Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

TOP SECRET

16 June 1980

MEMORANDUM FOR THE RECORD

Staff Meeting Minutes of 16 June 1980

25X1

Mr. Carlucci chaired the meeting. 25X1

McMahon called attention to an 11 June 1980 memo from the SSCI requesting information on the nature and scope of U.S. intelligence relationships with since the early 1950s. He said this request will be difficult to handle. He noted that the SSCI year-long study on this topic is nearing completion. A brief discussion followed wherein Mr. Carlucci advised the DDO and OLC to review the Waller report to identify what might be passed to the Committee without compromising sources and methods. Because the SSCI request encompases the entire intelligence community, Mr. Carlucci asked to gather appropriate inputs from community elements. (Action: DDO, OLC, and CTS)

25X1
25X1
25X1
25X1

Clarke said he believes his talks last week with General Pustay and General Gorman have quelled the teapot tempest regarding net assessments. He said a colloquium with Defense representatives will begin today as planned, and the session will focus on comparative general purpose force effectiveness.

25X1
25X1

Clarke reported Dick Giza, HPSCI Staffer, has requested a copy of our post-mortem of the Soviet brigade in Cuba. Clarke said he told Giza a copy would be provided at the appropriate time, noting that NFIB principals have not yet reviewed the post-mortem.

25X1

Clarke called attention to General Tighe's memo of 30 May requesting DCI assistance, i.e., DCI signature on letters to Senators Bayh and Nunn and Representatives Boland and White, endorsing legislation authorizing the Defense Intelligence School to award the degree of Master of Science in Strategic Intelligence. Student enrollment includes officers from NSA, DIA, CIA, FBI, and military services. This precipitated a brief discussion wherein it was agreed this matter should be carefully coordinated with OTR and OLC.

25X1
25X1

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Clarke noted an item in today's Executive Summary that a Panamanian air force plane crashed this morning in El Salvador. He said the plane was carrying weapons including 22,000 rounds of ammunition destined for Salvadorian leftists. 25X1

Clarke reported the Soviets are getting ready for a third testing of the Typhoon missile, noting the two previous tests had failed. He said our 25X1

Mr. Carlucci reported a long but successful session with the IOB last Friday, noting that Tom Farmer queried him on our interest in transnational data flows. Mr. Carlucci asked if we have anyone working this problem, e.g., interlinking of computer systems, banking systems, etc. Davis commented that this matter was a major feature of PRM-35 a year ago; he said the Office of Political Analysis among others delved deeply into this problem. Mr. Carlucci requested to prepare a note for his signature to Farmer on what has been done on this topic. (Action: NFAC) 25X1 25X1 25X1

said the HPSCI will mark up S. 2284 on 18 June and will introduce its companion bill re Charters Legislation. He said also we will see today the Republican version of Charters Legislation. Relatedly, Mr. Carlucci said he was disappointed that Attorney General Civiletti intends not to testify on Identities Legislation and, on OLC's advice, he will phone Associate Attorney General Shenefield in an effort to gain active support from the Attorney General. Mr. Carlucci noted also to that the precises he provided which were prepared for the President on specific covert actions can be used in briefing our oversight committees without making them aware that these are the same precises provided to the President. McMahon concurred that this would be helpful. 25X1 25X1

Wortman reported yesterday's heavy thunderstorm resulted in damage to a camper parked on the Headquarters compound. 25X1 25X1

McMahon noted that Loch Johnson, a professor at the University of Georgia and former HPSCI Staffer, authored an article in the recent issue of Foreign Policy--"The CIA: Controlling the Quiet Option"--copy attached. He said the substance of the article raises serious questions re any secrecy agreements signed by Johnson. Mr. Carlucci asked that this be looked into for possible breach of security. 25X1

TOP SECRET

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

25X1

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Page Denied

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

FOREIGN POLICY
Summer 1980

The CIA: CONTROLLING THE QUIET OPTION

by Loch K. Johnson

In the new mood of American assertiveness, the cry is going out from Washington and the nation to unleash America's spymasters. With startling abruptness, the intelligence pendulum is plunging back through the modest arc of reform achieved painstakingly over the past four years. Its momentum threatens to sweep aside all vestiges of meaningful control over the U.S. intelligence agencies instituted by Congress and the executive.

From the moment intelligence reform became a serious possibility in 1975, strong forces resisted it. The abuses and failures documented in detail that year by Senate and House investigating committees were sufficiently serious to overcome these forces, at least long enough to establish permanent intelligence committees in both the Senate and the House. But the more than 90 other recommendations for reform presented by the investigators languished. The single significant exception was a 1978 statute tightening prohibitions on the heedless use of wiretaps. Now, the fall of Shah Mohammad Reza Pahlavi of Iran, the kidnapping of U.S. embassy officials, and the Soviet invasion of Afghanistan have thrown most intelligence reform efforts from neutral into reverse.

In May 1980 the omnibus charter produced in 1978 by the Senate Select Committee on Intelligence concluded its lengthy and complex metamorphosis. Originally a huge, 263-page bill, the legislation rested momentarily at a second major stage of 172 pages earlier this year before emerging rapidly and dramatically in a final, spare form of three pages. This end stage was given the name Intelligence Oversight Act of 1980. In a curiosity of nature, the frog has become a tadpole.

LOCH K. JOHNSON *is an associate professor of political science at the University of Georgia, Athens.*

For the most part, the debate on intelligence reform has run counter to the direction of greater legislative control envisaged by Senator Frank Church (D.-Idaho) and then Representative Otis Pike (D.-New York) four long years ago. Indeed, in light of the current mood, many fear that as the superpowers slide toward a new cold war, the intelligence agencies will slip back quietly into their familiar ways. Most of what they did in the old days was laudatory, often indispensable, sometimes heroic. But with lax external checks, abuses inevitably arose. Surely Americans have not forgotten so quickly the undisputed findings of the 1975 congressional inquiries: the unlawful mail openings, the break-ins, the wiretaps, the interceptions of cables and telegrams, the questionable operations abroad, the bungling, the inefficiency, and the sheer stupidity of so many schemes.

This unhappy evidence sums to far less than the total performance of the Central Intelligence Agency, the Federal Bureau of Investigation, or any other intelligence agency. The congressional investigators came away from their inquiry with a high regard for the overwhelming majority of men and women in these demanding services. Nonetheless, these sad events—horrors, in some instances—did occur, and they cast a dark shadow across the entire intelligence establishment. They cannot be allowed to happen again. Yet if the counsel of those who wish to brush aside the few safeguards now in place is followed, a recurrence of these nightmares is a distinct risk. This is why the current debate on intelligence reform is so important.

The CIA's Bête Noire

A central topic in the debate is an amendment to the 1974 Foreign Assistance Act, sponsored by former Senator Harold E. Hughes (D.-Iowa) and the late Representative Leo J. Ryan (D.-California). It is known as the Hughes-Ryan Act. The legislation requires the president himself to approve in writing all important covert actions, namely,

CONTINUED

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

those designed secretly to influence events in a way favorable to U.S. foreign policy. It also establishes a procedure for informing Congress of these decisions.

Known by the euphemism special activities in the current administration and often called the quiet option at CIA headquarters, covert action is a step between using diplomats, on the one hand, and sending in the Marines, on the other. Covert actions represent only a small fraction of the resources expended by the CIA. In the estimate of former CIA Director William Colby, they consume around 5 per cent of the agency's budget, a sharp decline from a decade ago. The option remains controversial, however, because much damage can be done even within this low budget ceiling and because the pressures are strong in high places to expand dramatically the use of covert action. Critics of the Hughes-Ryan Act view it as the major obstacle to the expansion of covert actions.

Bluntly put, the CIA wants to rip the Hughes-Ryan Act right out of the U.S. code book. The offending language reads:

> No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the [CIA] for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress. . . .

The primary bête noire of Hughes-Ryan, from the CIA's point of view, is found in the last phrase. Appropriate committees came to mean four in the House and four in the Senate: the committees on appropriations, armed services, intelligence, and foreign affairs. CIA officials felt eight were simply too many.

The agency has a ready solution to the Hughes-Ryan problem: repeal the act altogether. If this proves impossible, then at least limit the reporting requirement to the House and Senate intelligence committees. Better still, combine these two committees into a single joint committee on intelligence.

The argument for the reduction from eight to two committees holds great surface appeal. Fewer committees might shrink the potential for leaks, and agency briefers would no longer need to hop from one committee to another. But the argument has serious flaws.

In the first place, the possibility that sensitive material might be leaked out of committee has been greatly exaggerated. Opponents of Hughes-Ryan often claim that 200 or more individuals must be briefed on covert actions. In reality the true figure is around 46 members and 17 staffers, or a total of 63 people. Moreover, since the establishment of the intelligence committees, leaks regarding covert action have been almost nonexistent. Furthermore, a leak could come just as easily from the executive branch, where far more people—at times over 100—are aware of impending covert action.

The CIA lobbied hard for the reduction to the two reporting committees now included in the Oversight Act. The agency will no doubt discover, though, that other key members, whom it can ill-afford to refuse, will want information directly. Today, more members demand to know these plans—and rightly so if they are to perform their duties in harmony with the rest of the government.

But to speak of appropriate committees is to overlook the more important provisions of the Hughes-Ryan Act. If anything, that law needs to be strengthened, not diluted or revoked. The act applies only to the CIA. All a president has to do in order to avoid Congress is assign the covert action mission to another agency. The military would be the obvious choice.

Another shortcoming of the act concerns the language defining covert action as "operations in foreign countries, other than activities intended solely for obtaining necessary intelligence." This means that what the CIA actually spends much more time doing—collecting intelligence covertly—does not have to be reported to Congress. The agency must inform the congressmen only of what it considers important secret political, economic, paramilitary, and propaganda operations. Not only is intelligence collection excluded, but so are counterintelligence operations, despite the fact that both of these activities can hold high risk for the nation.

The National Security Council (NSC) became aware of the need to be informed of all sensitive covert operations, not just covert

CONTINUED

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

actions. Unfortunately the two intelligence committees remain hesitant to do what the NSC has done already: establish procedures for the routine reporting of sensitive covert action, counterintelligence operations, and collection proposals. Not everything the CIA does in these areas should be reported: most of these activities are uncontroversial. The appropriate rule of the thumb for Congress should be: What is significant enough to go to the NSC should go to the intelligence committees and, arguably, to the leaders of the other six committees as well.

A Tangled Knot

Other improvements in the Hughes-Ryan Act would include clarification of the phrases "in a timely fashion" and "unless and until" and the word "important." Normally under Hughes-Ryan the CIA will contact the congressional committees within 24 hours—usually immediately following the president's approval. The wise inclination of the CIA is to test congressional opinion before proceeding, especially within the intelligence committees where CIA budgets are authorized. Since the passage of Hughes-Ryan, only once has congressional reaction been sufficiently negative to reverse a presidential decision. In that instance, the committees were informed prior to implementation. But nothing in the Hughes-Ryan Act guarantees that the CIA will always provide 24-hour notification.

The recent covert action involving the secret transport of Americans out of Iran with the help of Canadian officials in Tehran was not reported to Congress until over a week after its approval and implementation. The ill-starred U.S. hostage rescue attempt in Iran also reportedly relied in part upon CIA support, yet apparently no members of Congress were informed of the operation in advance.

Another tangled knot in the Hughes-Ryan Act is the definition of what is important. A tendency reportedly has grown within the CIA to forward only a few broad covert action categories to the president and make in-house decisions on all the supposedly routine ones. Although these routine operations are allegedly offsprings of earlier presidential findings, this permits the agency to by-pass the White House and Congress.

Here lies danger for real mischief. To avoid excessive CIA discretion, Congress ought to specify explicitly what is important. Certainly any covert operation costing much money (perhaps over $200,000), representing radical departures from previous policy, targeting terrorist groups, employing false propaganda, funding prominent foreign leaders or political parties, or involving paramilitary action seems to deserve presidential approval and a report to Congress.

The CIA opposes the statutory establishment of precise definitions or rules, preferring the flexibility of its own internal guidelines, which, upon request, it is prepared to share with the intelligence committees. The difficulty with this arrangement is that CIA directors quietly waive guidelines when they wish, without informing Congress. Rules this easily bent are poor deterrents against abuse.

Therefore, several improvements in the Hughes-Ryan Act are necessary for the effective oversight of covert operations. The number of individuals, although not the number of committees, briefed on covert operations needs to be reduced. The act needs to apply to all components of government, not just to the CIA; to cover all NSC-approved covert operations, not just covert action; to stipulate prior notification before planned execution; and to define what is important with more precision to assure that Congress is informed about all high-risk operations. Against these strong prescriptions, how does the Senate Intelligence Oversight Act of 1980 measure up?

Built-in Escape Hatches

In several respects the diminutive Oversight Act takes a surprisingly long and certainly lonely step toward the reforms recommended originally by Church and Pike.

First, the Oversight Act requires reporting only to the two intelligence committees, as desired by the CIA. More important, the act also requires by law—not just by resolution, as before—that each intelligence committee "shall promptly call to the attention" of its parent chamber or appropriate committees "any matter relating to intelligence activities" that requires attention.

With this provision, the CIA will not have to run from one committee to another eight times over; and, at the same time, all com-

CONTINUED

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

mittees will have access to intelligence information. Oddly, the net result is to transfer the obligations of a CIA briefing from the agency to the intelligence committee. Surely the CIA would prefer to explain directly its own policies to interested congressmen, if only to protect itself. Whether the flow of information permitted by the act will work in practice, only time can tell. Much will depend upon how aggressively the six traditional committees press for information. They may be content to rely simply on their representatives to serve as listening posts on the intelligence committees, or they may demand additional avenues of access to the CIA for their leaders.

Second, the Oversight Act encompasses all components of the government engaged in intelligence, not just the CIA. Third, the act takes a reasonably strong stand on the key issue of prior notification. It requires that the intelligence committees be kept "fully and currently informed of all intelligence activities . . . including any significant anticipated intelligence activity. . . ." The legislation notes, however, that the actual approval of Congress for a covert action is not required, skirting a constitutional confrontation.

The act has built-in escape hatches for the president. He may avoid advance notice, according to the preamble, in order to protect "sources and methods," or if he "determines it is essential to limit prior notice to meet extraordinary circumstances affecting vital interests of the United States." But, even in "extraordinary circumstances," the president must report in advance to the chairman and ranking minority members on each intelligence committee, plus four other congressmen: the Speaker and minority leader in the House, and the majority and minority leaders in the Senate. And, "in a timely fashion," the president must inform the full committee about the operation and "provide a statement of the reasons for not giving prior notice."

The act has additional strengths. Brevity is one. Earlier versions were sufficiently complex and lengthy to alienate all but the most dedicated students of intelligence reform in Congress. More substantively, the act stands steadfastly in favor of congressional access to intelligence data in the executive branch. Its language requires the executive to furnish "any information or material concerning intelligence activities," including illegal intelligence activities and significant intelligence failures. Stating this, even in law, is one thing, of course: actually obtaining documents is quite another, as Church and especially Pike discovered in 1975. Finally, the legislation abandons some dubious provisions included in its earlier stages, such as ambiguous references to the War Powers Resolution of 1973, which requires the president to consult with Congress before entering into hostilities, as another means of avoiding prior reporting.

If nothing else, the three pages of the Oversight Act provide admirable relief from normal government long-windedness. Unfortunately, the brevity often reflects evasion of key issues rather than devotion to pithy regulations.

First among its apparent weaknesses is an ambiguity over what operations should be reported. Through silence on that point, the act endorses the recent CIA failure to report on covert operations if the NSC—hardly an impartial observer—decides that those operations are covered by a category of already approved special activities. A category may grant sweeping authority, for example, to conduct counterterrorist operations on behalf of U.S. interests in Latin America. This kind of blank check could conceal many sins and the agency would never have to report back to Congress on the details of the counterterrorist program. Questions such as what groups are truly terrorists, as opposed to legitimate protesters, and what methods should be used against them are too important to be left to a few covert action specialists in the CIA and the NSC. The intelligence committees should insist that the CIA steer clear of categorical requests, except in the most innocuous circumstances.

Second, like the Hughes-Ryan Act, some portions of the Oversight Act also seem to allow CIA avoidance of reports on risky collection and counterintelligence operations. In one section, the president is required to report on "all intelligence activity," but later he is permitted to remain mute on operations "intended solely for obtaining necessary in-

CONTINUED

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

telligence," the same exemption included in Hughes-Ryan. What the language requires in one clause, it gives up in another.

Third, the act—and for that matter the entire debate—ignores the central issue of when, if ever, covert action should be used. What is its place in U.S. foreign policy? The Oversight Act fails to set clear standards, other than retaining the Hughes-Ryan requirement that the president find the covert action "important to the national security."

Congress should set more explicit limits on the executive branch. The word "important" is rarely, if ever, interpreted in the strict sense understood by Church in 1975. When former Secretary of State Cyrus Vance testified that the covert action option should be employed only if "absolutely essential to the national security," Church agreed and recommended this option only when necessary "to deal with grave threats to American security."

Preventing Mischief

The intelligence committees have drifted far from this demanding and wise criterion. A high priority of the intelligence committees, and the committees on foreign affairs, should be to examine this issue more closely in order to evaluate the continued usefulness of this policy and its compatibility with American principles and ideals.

Many other intelligence issues of great importance to foreign policy have been shelved on Capitol Hill, such as the rights of Americans to be free of CIA surveillance abroad or the hiring by the CIA of U.S. journalists, clergymen, and professors as espionage agents.

But while further legislative debate and lawmaking remain important, statutory improvements alone are insufficient. To achieve a thorough examination of covert operations, members must be willing to study thick briefing books, wade through complicated budget requests, sit through long hearings, visit field stations, and ask tough questions in closed sessions where there are no television cameras to provide an extra incentive. Some members are willing to do this, others are not. Ultimately, this dimension—call it motivation—is far more significant than changes in the Hughes-Ryan Act.

During the debates on intelligence reform—in the past, now, and in the future—participants give attention to the merits of various legislative proposals; but beneath the staff research, the speeches, the colloquies, the lobbying, and the press conferences flow the strong currents of predisposition. Before seeing any reform proposal, some members will be deeply wedded to the expansion of covert action discretion, regardless of risk. For them, the words of a 1954 report on government operations, the Doolittle Report, still ring true: "If the U.S. is to survive, long-standing American concepts of 'fair play' must be reconsidered. We must develop effective espionage and counterespionage services. We must learn to subvert, sabotage, and destroy our enemies by more clever, more sophisticated and more effective methods than those used against us."

For others, a traditional deference to the president in foreign affairs will weigh against congressional supervision of intelligence activities. During the debate on the 1973 War Powers Resolution, Senator Jacob Javits (R.-New York) said to Senator Barry Goldwater (R.-Arizona): "So really you are opposed to my bill because you have less faith in the Congress than you have in the president. Isn't that true?" Replied Goldwater. "To be perfectly honest with you, you are right."

Who supports what during the deliberations over intelligence reform depends frequently upon opinions far more deep seated than questions of prior notification or categorical findings. Ultimately, this discussion represents yet another chapter in the great debate over U.S.-Soviet relations and over the proper balance between Congress and the president in the conduct of foreign policy.

Following the Vietnam war and the Watergate scandal, Congress sought to trim executive powers and restore some semblance of constitutional balance. Now as U.S.-Soviet relations deteriorate amid threats to American citizens around the world, legislators wonder aloud if they have gone too far. Torn between a distrust of presidential power, on the one hand, and dangers from abroad, on the other hand, their response has been ambivalent: unleash the CIA or tighten the reins?

So far the answer has been equivocal on several key issues, as wary legislators joined with a distracted White House in an uneasy alliance based on ambiguity. Although im-

CONTINUED

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4

portant, if left to stand alone the Intelligence Oversight Act of 1980 will represent no more than a few fence posts around which the intelligence agencies may pass with little effort. In the past, slack safeguards had an unfortunate result: uncontrolled mischief abroad and erosion of liberties at home.

Approved For Release 2007/10/29 : CIA-RDP84B00130R000600010230-4