

ARTICLE APPEARED  
ON PAGE 16

WASHINGTON QUARTERLY  
SUMMER 1983

*Senator Barry Goldwater (R-Ariz.) is  
chairman of the Senate Select Committee on  
Intelligence.*

**Barry Gold**

*While upholding the principles  
of democracy, congressional  
oversight on U.S. intelligence  
activities must be careful not to  
endanger the work and  
well-being of those whose very  
responsibility is to ensure the  
freedom and security of this  
nation.*

STAT

## Congress and Intelligence Oversight

During the early 1970s, it appeared Congress was going to hamstring the U.S. intelligence services with its public investigations of the alleged abuses within the intelligence community. Today, six and a half years after formation of the Senate Select Committee on Intelligence and its counterpart on the House side, I believe it is possible to say that the intelligence community is recovering very well.

The reason for this promising outlook is that congressional oversight of our intelligence agencies is working.

The committee that held the public investigation was given one cumbersome title, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. Chaired by former Senator Frank Church of Idaho, the committee's per-

formance was a sorry demonstration of the way Congress deals with its problems. We spent nearly \$3 million and over 15 months investigating the intelligence community, with a peak staff of over 130 professionals, consultants, and clerical personnel. I wish we could try to do to the Soviet KGB what we tried to do to ourselves.

Clark Clifford, that wise adviser to many presidents over the years, lamented the committee's efforts at the time and I agreed.

That committee was formed to determine the extent of abuses mentioned in the Rockefeller Commission Report, made upon the request of President Ford. I endorsed the Senate's decision because I felt it was necessary to investigate any possible abuses of the privacy of American citizens. After endorsing it, however, I refused to sign the two

CONTINUED

final reports put out by the committee as I felt both were inaccurate and played too much to the sensational publicity.

In my comments at that time, I said that the free-wheeling, self-righteous, and frequently moralizing thrust of the report assured recommendations which were premised on wish and speculation rather than fact and testimony. It presented a strong dose of 20/20 hindsight that raised more questions than answers. It also blackened the reputation of agencies and persons that have served the country well. The Senate resolution that set up this committee had promised a calm and deliberative investigation. That promise was not fulfilled. The committee is out of business now and has been replaced by the current permanent committee.

The formation of this new committee is the only positive aspect to emerge from this investigation. It has consolidated for the first time all the government's intelligence activities under the jurisdiction of one committee in the Senate. It has focused on the problems raised by the previous method of accountability rather than on abuses.

The Senate majority picked a wise man, Senator Daniel K. Inouye (D-Hawaii), to be the first chairman. Through his good judgment, common sense and order was restored and this in turn led to trust and respect between the intelligence community and Congress. Now, the intelligence community must account for its activities, including covert action, and request allocations for every dollar it wants to spend. It's the best form of accountability known in a free society and is similar to that which other committees of Congress have regarding the agencies under their jurisdiction. The intelligence community welcomed this greater accountability to Congress, the Congress was ready for it, and the American people are better off as a result.

In the mid-1970s, I emphasized the importance of having an effective system for collecting information and assessing the events that bear on U.S. strategic interests, particularly at a time when turmoil and anti-American sentiment seemed to be in-

creasingly widespread. In reviewing our intelligence capabilities at the time, I commented that we had been through an extended period in which intelligence agencies of our government had been pictured more as enemies of the American people than as contributors and necessary adjuncts to our national security.

The media have never shown any marked sympathy for the collection and use of intelligence information, especially if such activity required the use of secret or clandestine methods. Nor have they shown any sympathy for the men and women of the American intelligence community who suffer great hardship and sacrifice in performing their day-to-day tasks. There seems to be built-in abhorrence on their part for anything of a confidential nature, even in the interests of protecting American people and interests.

In 1975, I was asked to serve on the so-called "Church Committee" of the U.S. Senate to investigate alleged improper intelligence activity. In my humble opinion, the Church Committee went out of its way to do as much as it possibly could to disrupt the activities of the Central Intelligence Agency and other elements of our intelligence family. Not once did that committee keep in mind, nor did the newspapers that reported on its activities keep in mind the fact that everything they criticized about intelligence activity was done by those agencies on direct orders from the various presidents of the United States. The operations that the media have depicted as reprehensible in the intelligence business occurred in the past two decades, and all of it was approved by the president—these activities were undertaken because the man elected to the highest office in the land decided that they were in the best interest of the American people.

Throughout this entire period of attacking, criticizing, and undermining our intelligence agencies, the question of ultimate responsibility was conveniently ignored. The effect of all this public breastbeating was to reduce the government's capability to gather needed intelligence and to assess it properly.

Since the mid-1970s, world events have

**CONTINUED**

begun to persuade the American people and many members of Congress of the vital need for a healthy intelligence community. Even some members of the media are beginning to understand that abuse cannot be heaped upon the agencies and individuals whose job it is to serve this country's intelligence interests without eventually doing them grave damage.

The U.S. intelligence system is the most public intelligence system in the world. Through proper congressional oversight, we may be able to maintain this openness and still come up with the intelligence we need to safeguard our freedom. But it is not easy.

### RECOVERY

The Senate Select Committee on Intelligence has been in business since May 19, 1976. There were two compelling reasons why it was formed. First, to consolidate all national and foreign intelligence activities under the jurisdiction of our committee in both Houses, and second, to develop charters that would put the agencies under the rule of law. Both tasks were intended to make intelligence more accountable to the Congress.

Senate Resolution 400, which describes the committee's functions, duties, and organization, established the permanent committee on intelligence. Previously, jurisdiction for intelligence matters was shared by at least four committees.

The attempt to put together charters was a cumbersome one. There was a great deal of criticism because we were unable to agree on a 150-page intelligence charter that was a dubious undertaking from the start. The committee tried unsuccessfully to revise the original draft, and neither effort was approved. The first time around the proposals were too long and too restrictive. The second version which emerged two years later, was shorter, but still too restrictive. We finally set aside both charters and agreed on a shorter version, which we use today.

That version, known as the Intelligence Oversight Act of 1980, repealed the congressional reporting requirement of the un-

workable Hughes-Ryan amendment and required that significant, anticipated intelligence activities be reported to the two intelligence committees of the House and Senate instead of all eight congressional committees. This new law strengthened the system of congressional oversight of intelligence activities of the United States by requiring the agencies to keep the two committees fully and currently informed, provide full access to information, and give prior notice of significant intelligence activities.

By agreeing on this legislation, along with the already established budget authorization procedure, we overcame the biggest obstacle, which was ourselves.

The budget authorization process is standard procedure now, though no other nation in the world has such a process. This method ensures that our constitutional responsibilities are fulfilled, while at the same time maintaining the confidentiality necessary for an effective intelligence system. We examine in detail the budget of the Central Intelligence Agency, the National Security Agency, and the intelligence activities of the Departments of Defense, State and Treasury, and of the Federal Bureau of Investigation and the Drug Enforcement Administration. This process allows us to determine if intelligence is being well managed and responsive to the country's needs. It gives us a chance to focus on a wide range of national security issues, such as international trade and monetary policy, nuclear proliferation, energy and other scarce natural resources, political developments in Third World countries, and international terrorism and narcotics.

In arriving at the shorter version of the charter, two important items were deferred. One was relief for the intelligence community from the Freedom of Information Act (FOIA) and the other was intelligence identities protection legislation to preserve the anonymity of our intelligence operatives around the world.

In June of 1982, the Senate finally took steps to protect our covert agents by passing the Intelligence Identities Protection Act. The act helps to protect our intelligence em-

**CONTINUED**

ployees abroad from other American citizens who would expose them by the unauthorized disclosure of their names. These unauthorized disclosures have not been infrequent; most have been made by former CIA employees. At least 1,200 names had been made public in magazines or newspapers, and another 700 names appeared in one book. A bi-monthly bulletin exposed alleged CIA, FBI and military intelligence personnel and assignments, and a worldwide network called "CIA Watch" operated for the purpose of eliminating the CIA. Until passage of this legislation, we had no legal means to stop such disclosures.

The bill had broad support but had been delayed over a misunderstanding that it might interfere with the First Amendment rights of the news media. These were considered and the resulting law will protect those rights while allowing for prosecution of those who unlawfully disclose names of foreign intelligence operatives.

The act sends out a clear signal that U.S. intelligence officers will no longer be fair game for those members of their own society who wish to take issue with the existence of CIA or find other motives for making these unauthorized disclosures.

#### **FOIA NEEDS ADJUSTMENT**

There's very little doubt anywhere that the intelligence community needs relief from the FOIA, yet this will likely be just as hard to get as was the identities law.

The Senate Intelligence Committee hearing on charter legislation demonstrated considerable opposition to exemptions to FOIA for the intelligence community but, in my view, we must sooner or later come to grips with the fact that openness in government must be tempered by consideration of how much openness our national security can afford.

The Freedom of Information Act of 1966 was designed to recognize the individual's right of access to the government's records that concerned him. Unfortunately, the act has had an unintended side effect on the in-

telligence community, because of its dealings with classified intelligence from sources in foreign countries. President Johnson warned us of this when he signed the law in 1966, saying that "the welfare of the nation or the rights of individuals may require that some documents not be made available." In 1974, President Ford refused to sign stronger FOIA amendments because of his concern "that our military or intelligence secrets and diplomatic relations could be adversely affected."

These warnings have now come home to roost. Even the Russians can make requests to the intelligence agencies and, under this law, their requests must be answered. Since the act was passed in 1966 and amended in 1974, the intelligence community has been denied intelligence that it normally could have expected from foreign agents, friendly foreign services, and Americans traveling abroad because these sources no longer believe that the U.S. government can protect them from public disclosure. At present, many sources have stopped sharing information with the United States altogether, while others share only what they think will not harm them if disclosed. The FOIA has also created a problem with the CIA's record-keeping system by necessitating distribution of and access to information that goes beyond what is considered consistent with good security practices. Testifying before the committee recently, Frank Carlucci, former deputy director of Central Intelligence, noted that "If we believe we need intelligence, then we have to accept some secrecy. FOIA has called into question around the world our ability to keep a secret. Its application in its current form is inappropriate, unnecessary in light of current oversight by the Senate and House Intelligence Committees, and harmful."

In closed testimony before my committee, we were told of a request that involved 150 reports and 600 documents from a foreign resident in Europe. The documents involved in this and many similar cases are filled with names, dates, places, and details of operations which, if released, would predictably

**CONTINUED**

lead to the deaths or incarceration of numerous people who had assisted the U.S. government in our intelligence collection mission.

The last question of that testimony poses this question: "Would you cooperate with the United States intelligence if you knew that the information which you delivered, often at risk of death, was subject to review for disclosure under American law?" That's a sobering question.

In addition to the serious situation this law has created, it costs the taxpayers \$16 million or more per year to process FOIA requests just for the intelligence agencies. In effect, this is like an expensive government subsidy to those who make the request and I'm not sure that this is fair to the other taxpayers.

#### **HUMAN SIDE OF INTELLIGENCE**

Four years ago, in commenting on press publicity on intelligence collection, I suggested in a *Congressional Record* statement that a disturbing trend has become evident regarding the future course of our intelligence efforts. Whether this trend is the result of fascinations with "gee-whiz" technology or whether it represented the selling of SALT II does not matter. What does matter, however, is that our intelligence effort is based on a triad concept not unlike that of our regular armed forces. The three legs of the triad are communications intelligence (COMINT), imagery intelligence (IMINT), and human intelligence (HUMINT). If we are not careful, we may end up crippling the HUMINT leg of the triad.

In this regard, a recent newspaper article sought to downplay the valuable role that the HUMINT plays in our intelligence process. Its conclusion was that since we have superior technology, HUMINT is an outdated relic of the past—a conclusion with which I fundamentally disagree.

Our satellites can give us little or no information on the intentions of hostile agents, their plans and targets. In these areas, it requires humans to be in the right places at the

right time, which is often a long, tedious, and dangerous process. A satellite cannot be expected to tell us where, when, and how the next terrorism bomb will explode.

For all their sophistication, satellites can only tell us information of a quantitative nature—how many missiles or how many submarines the enemy has. Knowing what the enemy may do with his armament is completely beyond the satellites' capabilities, and this constitutes the basic reason for having a strong human intelligence effort. In an age of nuclear uncertainty, having a sense of the intentions of our enemies becomes more and more critical if we are to preserve our freedom. Too much reliance on our technical systems could ultimately exclude a third alternative in world affairs, namely, covert and/or paramilitary operations. By limiting ourselves to diplomatic responses or all-out military intervention, we would deprive this country of an important tool to influence events that require more than words and less than direct military intervention.

And let us not forget that however useful our satellites may be, they are still susceptible to technical countermeasures and deception. Just as in modern warfare, we have a variety of new technical systems, yet it ultimately comes down to the human eyes and ears as well as the human mind to make the judgmental decisions which thousands of computers can never make. If we are to maintain a successful intelligence service, we must keep a proper balance between technology and man.

Perhaps because of the American love of technology or the desire to avoid getting our hands dirty, there has been a tendency to ascribe an excessive value and promise to the space systems. The advent of the space reconnaissance programs has been the single most important contribution to intelligence since the radio receiver. But the fact is that technical and human collection resources are both essential in assessing what is going on in foreign countries. Our experience in recent years has reinforced this, and has resulted in a rebuilding of the more traditional capabilities.

**CONTINUED**

The sanctuary of space, however, is clearly in jeopardy. Although we believe that peacetime operations are not presently at risk, the capability to incapacitate space vehicles exists today. Soviet initiatives in this area have forced us to respond in kind, but more important is the challenge these developments present to the collection of intelligence.

U.S. initiatives in space, and especially in the intelligence field, have always been at the forefront of technology. There is no reason to believe that we have exhausted our technical know-how or that we have reached a plateau in our capabilities. On the contrary, opportunities abound for enhancing sensing technology, propulsion technology, and data processing technology. While technology is unquestionably a vital ingredient in our use of the high ground of space, we must not lose sight of an even more important factor. At the core of all our progress and potential are the dreamers and the builders and the operators of these magnificent devices. The intelligence space program has profited from the application of the best minds in this country, and the best of the best will be needed in the future to carry on in the fine tradition of the early space pioneers. But where will they come from? Will there be enough to go around? Will they have that extra capacity and vision so essential to tackle the challenges of the future? The education and encouragement of the next generation of space scientists and engineers may well be the most critical challenge we face.

### CONCLUSION

Because the intelligence community went through a difficult period during the 1970s, the quality of collection was bound to suffer.

Unfortunately, we seem to have reached a point where cynicism and distrust have replaced good will and trust. Too often we are ready to enact laws, pass regulations, and use the other coercive forces of government against all sorts of seeming ills. If we continue this trend, mediocrity and do-nothingism could become the watchword of the governors and governed alike. The Senate Intelligence Committee, by the very nature of the subject it is dealing with, cannot operate in the open and is therefore taken to task as being excessively secretive or being a captive of the intelligence agencies. If we are to be successful in obtaining good intelligence information for the protection of our freedom, we must also understand how to safeguard it. As chairman of the Senate Intelligence Committee, I am very concerned with our tremendous responsibility in this regard. Because committee members need access to classified information in order to perform our legislative and oversight responsibilities, we cannot afford to risk poor security and "leaks."

Recently, however, we have begun to restore the trust and confidence between the intelligence community and Congress. We share the goal of getting the best intelligence information possible to serve our national security and protect our freedom.

Recent years have witnessed a growing public awareness of the importance of intelligence that is timely, relevant, and of the highest quality.

We have enjoyed freedom for 200 years. We worked hard for it, many have fought for it, and some have died for it. It is up to us to decide whether we can make it last another 200 years. I think we can if we realize that freedom and intelligence go hand in hand.

TWO