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CONGRESS, OVERSIGHT AND THE U.S. INTELLIGENCE COMMUNITY

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After the Central Intelligence Agency was created by the National Security Act of 1947, congressional oversight over the Agency was exercised by senior members of the House and Senate Armed Services and Appropriations Committees. That oversight was far from vigorous. The attitude of those senior Senators and Congressmen was summed up in 1956 by then Senator Saltonstall of Massachusetts who said that: "It is not a question of reluctance on the part of CIA officials to speak to us. Instead it is a question of our reluctance . . . to seek information and knowledge on subjects which I personally, as a member of Congress and as a citizen, would rather not have, unless I believed it to be my responsibility to have it because it might involve the lives of American citizens."¹

That attitude changed dramatically in 1975 following media reports of illegal and improper activities by U.S. intelligence agencies. Those revelations caused both houses of Congress to examine the effectiveness of their oversight over the intelligence agencies. Out of that effort came the creation of two select committees, the Church Committee in the Senate and the Pike Committee in the House, tasked not only to investigate the allegations of wrongdoing but also to conduct a thorough review of the operations, budgets and effectiveness of the intelligence agencies. It is safe to say that, at least since 1947, the intelligence community had not had such an intense congressional investigation of its activities.

Each of the select committees recommended to its respective house that a permanent oversight committee for intelligence be created. In 1976, the Senate acted to create such a committee and in 1977, the House followed suit. As a result, the Congress is now a major factor in the intelligence activities of this country.

While serious Congressional interest in the activities of the intelligence community first was stimulated by (and in turn stimulated) the news media, its relationship to the intelligence community has acquired a different cast with the creation of the new permanent intelligence committees. Out of those years of psychological trauma for many in the intelligence business has come a new attitude and a new working relationship on the part of intelligence professionals as well as the Congress. Adjustments in methods of operation—never easy in either the Federal bureaucracy or Capitol Hill—have been made to the benefit of both and to the ultimate benefit of the American people.

What are the fundamentals of Congressional oversight? According to the bipartisan leadership of the House of Representatives, who commissioned a workshop on Congressional Oversight and Investigations:

"Today the American people expect more effectiveness and efficiency in government.

¹ *Congressional Record*—April 9, 1956, p. S.5292, quoted in the "Final Report of the Select Committee to Study Governmental Operations with respect to Intelligence Activities," United States Senate, Book I, p. 149, S. Rept. 94-755.

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"They want the Congress to do a better job of identifying and dealing with problems before they become crises. They want us to eliminate ineffective and wasteful programs and fraud in government. They want us to curb the abuses of governmental power and restrain overly burdensome regulations. They want us to have the facts when we legislate and they want us to determine rationally how the national budget should be spent.

"We believe that a crucial step in reaching these objectives is to improve the capability of the Congress to oversee the implementation of laws, policies and programs of the Federal government."²

Those concepts apply to all areas of government, including intelligence. How, then, does Congressional oversight work with respect to the intelligence community? While there are some differences in subcommittee structure between the House and Senate Select Committee on Intelligence, basically they exercise the same functions. For the purposes of this article, the House committee will be used as the model.

As the statement above by the House Leadership indicated, the issue of efficiency in spending the budget is of major concern in the operations of the nation's intelligence services. Also of keen interest is the question of the effectiveness or quality of the activities of those services. Then, there is the matter of "abuses" of governmental power and the need to guard against the intelligence agencies committing such abuses. Completing the list of major concerns is that of legislating rationally in the area of intelligence.

Effectiveness of Intelligence

Assessing the effectiveness of intelligence is one of the most difficult yet important tasks facing the oversight committees. One of the key factors leading to the creation of the Central Intelligence Agency in 1947 was the perception that, had there been such a central intelligence function in 1941, the attack on Pearl Harbor would have been anticipated. However, a review of events over the past thirty-four years suggests that anticipating events and providing effective and timely warning is more difficult than was realized in 1947.

One of the first steps taken by the House Permanent Select Committee on Intelligence was to examine the state of the nation's Indications and Warning system. That study revealed that there existed no focal point within the intelligence community for the Indications and Warning function. It spotlighted that weakness in the intelligence system and insisted that the Director of Central Intelligence address the issue. As a result, a National Intelligence Officer for Warning was created—a first step toward improving Indications and Warning effectiveness.

The I&W case is illustrative of one of the several ways a Congressional oversight committee can act to improve the effectiveness of the intelligence community. In that instance, the committee spotted a problem and then urged responsible executive branch officials to solve it.

In another case, that of the fall of the Shah of Iran, the committee's post mortem found that the failure of top policymakers to appreciate the fragility of the Shah's position was due only in part to inadequate intelligence collection and analysis. The

² Letters of transmittal, Thomas P. O'Neill, Speaker, John J. Rhodes, Minority Leader, Jim Wright, Majority Leader, "Workshop On Congressional Oversight and Investigations," U.S. House of Representatives, Ninety-sixth Congress, First Session, October 22, 1979, House Document No. 96-217.

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study concluded that the policymakers themselves were in part to blame. They did not ask the intelligence people to assess the Shah's opposition. Quite the contrary, concern over offending the Shah by having either Embassy personnel or CIA officers contact opponents of the regime discouraged such contacts. A staff study of that crisis concluded that: "long-standing U.S. attitudes toward the Shah inhibited intelligence collection, dampened policymakers' appetite for analysis of the Shah's position, and deafened policymakers to the warning implicit in available current intelligence."³

The point this example brings home is that the effectiveness of intelligence depends in large measure on the receptiveness of the policymakers to the intelligence provided and on their willingness to properly task the intelligence agencies.

A third area which the committee has examined in assessing the effectiveness of intelligence is that of the use and management of analytical personnel. Several steps have been taken at the CIA in recent years to improve the quality of intelligence analysts. Additional steps are planned. For example, scholars from the academic world have been brought into CIA to meld their knowledge and intellectual disciplines to the analytic capabilities resident at Langley. Efforts are being made to ensure that analysts spend some years living and working in the countries they are to analyze. In the case of military intelligence, the committee has taken several steps over the last two years to help improve the quality of analysis. The Defense Intelligence School for some time has been seeking legislation to allow it to confer a Masters degree in the area of foreign intelligence studies. Legislation so authorizing that degree was passed in 1980. In another case, the committee voted additional slots to help strengthen analysis in certain areas where it was felt that there was insufficient coverage.

Of course, assignment of analytic personnel overseas can be thwarted by Executive Branch action such as the MODE⁴ program, which restricts the number of U.S. personnel in each Embassy. Action by the Congress to authorize additional slots can be thwarted by a presidentially-directed hiring freeze.

The most important factor in improving the quality of intelligence analysis is that of management within the intelligence community itself. Senior intelligence officers need to do a better job of utilizing the talent available. When the committee learned that for many years the U.S. intelligence community had underestimated the North Korean ground force order of battle by a factor of two, it asked the DCI for the number of intelligence analysts the United States Government had working on that order of battle. The DCI, it discovered, did not have that information and had no bureaucratic mechanism to assemble such data. The committee had to levy its own data call on the CIA, DIA, 8th Army, USARPAC, etc. It discovered that a number of analysts were working on various aspects of the order of battle problem. No one, however, was coordinating those disparate efforts to ensure that adequate analytic resources were being devoted to the ground forces order of battle.

The committee has taken the position that, although the nature of bureaucratic structures of authority may limit the ability of the DCI to manage production by non-CIA centers of analysis, it does not seem unreasonable to expect the DCI, as the nation's senior intelligence officer, to be aware of analytic problems, to know whether

³ "Iran: Evaluation of U.S. Intelligence Performance Prior to November 1978," Staff Report Subcommittee on Evaluation, Permanent Select Committee on Intelligence, U.S. House of Representatives, January 1979, p. 7. GPO #38-745

⁴ "Monitoring Overseas Direct Employment" which is an OMB reporting requirement on the numbers of permanent Embassy employees at each U.S. Embassy.

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or not the CIA has adequate resources to cover shortfalls they create and to alert the Secretaries of Defense, State, etc., of the need to employ their own assets whenever he finds that the CIA cannot cover a vital subject. The committee has urged the DCI to work closely with senior intelligence officers in other agencies to better manage scarce analytic talent. Some progress has been made in that regard.

Abuses and Oversight

All Congressional committees are charged with guarding against abuses of power by government agencies. The two select committees on intelligence regularly receive and investigate complaints from employees and from the public about alleged illegal, or improper activities by elements of the intelligence community. Further, Executive Order 12036 requires the Director of Central Intelligence and the heads of departments and agencies involved in intelligence activities to "report in a timely fashion to" the two select committees "information relating to intelligence activities that are illegal or improper and corrective actions that are taken and planned."⁵ Over the last three years, no illegal activities on the part of the U.S. intelligence agencies have been reported.

For the last several years, an extended debate has occurred on the pros and cons of legislation spelling out in some detail what activities the intelligence agencies are allowed to undertake and what methods of operation are to be permitted. That debate has involved both select committees, the Executive Branch, including the White House and the Department of Justice, as well as a wide spectrum of the American public. Extensive guidelines have been developed within the Executive Branch under the guidance of the Attorney General to cover those activities of the intelligence services which might involve a "U.S. person."

During the 96th Congress, no consensus was developed to support an extensive list of legislative restrictions on intelligence activities. Agreement was reached, however, on language which for the first time put into law the obligation of the DCI and other intelligence officials to keep the two select committees fully and currently informed of all intelligence activities, as well as any illegalities.⁶ Compliance with the concept embodied in that language will depend on the trust which exists between the committees on the one hand and the intelligence officials on the other. But, good faith implementation of that law will enable the two committees to carry out their responsibilities for vigorous oversight and to guard against misuse of the nation's intelligence activities.

Cooperation with oversight committees' requests for information has varied from agency to agency. Some respond quickly and completely. In the case of others, however, the process is much like pulling teeth. Committee Members and staff have found a great deal of truth in the old adage that you must ask the right question if you want the right answer.

Closely connected with the willingness of officials in the intelligence services to share sensitive information with the oversight committees is the question of how closely those committees will hold that information. From the beginning, the Chairman and Members of both select committees recognized that their attitudes

⁵ Executive Order 12036, "United States Intelligence Activities," January 26, 1978, Sec. 3-403. 43 Fed. Reg. 3674.

⁶ Public Law 96-450, October 14, 1980, "Intelligence Authorization Act for Fiscal Year 1981." Sec. 407. 94 Stat. 1975.

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towards security would be a major factor in establishing a relationship of trust with the intelligence community. The resolutions adopted by each House of Congress establishing the select committees directed the committees to adopt in their rules regulations to protect the confidentiality of classified information in their possession. The same resolutions also established procedures for the investigation and punishment of any unauthorized disclosure of classified information by a Member or staff employee.

Further, all prospective staff employees must meet the criteria established by the DCI for Executive Branch employees who will receive access to sensitive compartmented intelligence. The committees have compartmented their staff's access to intelligence on a need-to-know basis. Strict controls have been implemented from the inception of both committees for the handling, storage, dissemination and destruction of classified information. Each staff employee must sign a non-disclosure agreement before being hired. Both select committees have put careful thought and much effort into the security aspects of their operations. They have received the full cooperation, and the certification, of the various security offices within the intelligence community in creating a secure environment on the Hill.

Legislation on Intelligence

Traditionally, very little legislation has been passed affecting the U.S. intelligence community. Over the past several years, however, a number of legislative measures have been introduced and passed affecting, in one way or another, the way the intelligence agencies operate. For example, in response to Congressional concerns that the United States might become involved clandestinely in a war such as Laos or Angola without the knowledge of the Congress, the Foreign Assistance Act of 1974 was amended by the so-called Hughes-Ryan Amendment to require that:

"No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency 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, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives."

Thus, for the first time by law, the Congress became fully involved in reviewing the covert action program of the CIA. Even though the Hughes-Ryan Amendment did not give the "appropriate committees of the Congress" veto power over covert actions, the clear implication was, and was taken to be, that the Congress wanted a major reduction in CIA's non-intelligence collection activities, i.e., paramilitary, propaganda, political action, etc.

For their part, many in the White House and the CIA came to feel that even if major covert actions were warranted and could be satisfactorily explained, the requirement to inform "appropriate" committee's—which by 1977 had expanded to eight, the House and Senate Appropriations and Armed Services Committees, House and Senate Select Committees on Intelligence and the Senate Foreign Relations and House Foreign Affairs Committees—posed too high a risk of public disclosure of covert action programs. By 1980, the Congress also had come to agree with that

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viewpoint. Both select committees recommended that only the two intelligence committees be informed of covert actions.⁷

As a result of the covert action reporting requirements, the select committees have served as a kind of "murder board" before which the Central Intelligence Agency must present the rationale behind each such program. Within the Executive Branch, there can often be such enthusiasm for a covert action that the independence of the review process can be questioned. Knowledge that each approved covert action must be defended before the two select committees encourages thorough review before a proposal is passed to the President for approval.

Another area where legislation was needed concerns the "graymail" problem. For years, the Executive Branch had been reluctant to bring criminal charges against individuals in possession of classified information which might be revealed in the course of a trial. The implied threat of such revelations served as a kind of blackmail, or "graymail" as it came to be known.

In 1980, both intelligence committees reported out, and the Congress passed the Classified Information Procedures Act,⁸ which established pretrial, trial and appellate procedures for criminal cases involving classified information. The legislation allows persons accused of criminal acts to defend themselves while providing the Government with procedures to protect classified information from being disclosed unnecessarily.

The Congress—again through its intelligence committees—and the Executive Branch also worked together to produce the Foreign Intelligence Surveillance Act of 1978⁹ which created a special court to authorize applications for orders approving the use of electronic surveillance to obtain foreign intelligence within the United States. Prior to the enactment of that legislation, electronic surveillance within the United States for the purpose of collecting foreign intelligence had been authorized by the Attorney General on the basis of the inherent constitutional powers of the President. However, two consecutive Attorneys General, one in a Republican Administration and one in a Democratic Administration, argued the need for a legal basis for obtaining court ordered surveillances to protect intelligence officers and the Attorney General from being successfully sued by subjects of such surveillance.

The select committees have also secured passage of legislation on a variety of matters to assist the intelligence community in functioning more effectively. For example, National Security Agency personnel assigned overseas are now authorized certain allowances and benefits comparable to those provided by the State Department to employees of the Foreign Service. The Department of Defense and the Central Intelligence Agency have been authorized by law to pay death gratuities to the surviving dependents of any intelligence employee who dies as a result of injuries outside the United States and "whose death resulted from hostile or terrorist activities or occurred in connection with an intelligence activity having a substantial element of risk."

In short, the existence of two select committees on intelligence has provided a focal point for the Executive Branch whenever legislation has been needed for the intelligence community.

⁷ Public Law 96-450—October 14, 1980, "Intelligence Authorization Act for Fiscal Year 1981." 94 Stat. 1975.

⁸ Public Law 96-456—October 15, 1980, "Classified Information Procedures Act." 94 Stat. 2025.

⁹ Public Law 95-511, "Foreign Intelligence Surveillance Act of 1978," October 25, 1978. 92 Stat. 1783.

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Rule XLVIII of the U.S. House of Representatives sets forth the duties of the Permanent Select Committee on Intelligence. One duty is to consider each year authorizations for:

- (A) The Central Intelligence Agency and Director of Central Intelligence;
- (B) The Defense Intelligence Agency;
- (C) The National Security Agency;
- (D) The intelligence and intelligence-related activities of other agencies and subdivisions of the Department of Defense;
- (E) The intelligence and intelligence-related activities of the Department of State; and
- (F) The intelligence and intelligence-related activities of the Federal Bureau of Investigation, including all activities of the Intelligence Division.

What that language means is that every year when the President forwards to Congress his budget proposal for the coming fiscal year, the two select committees on intelligence review those portions of the budget request which fund the intelligence and intelligence-related activities of the U.S. Government. In the course of extensive Committee hearings (usually more than 50 hours) and detailed staff study in preparation for those hearings, each program is thoroughly examined and each program manager is afforded every opportunity to fully justify his budget request.

For the most part, the select committees have been supportive of the budget requests for intelligence. In fact, they have added manpower spaces in certain cases where the committee believed the budget request was too low.

In other instances, the budget has been cut because the justification presented to the committee did not adequately support the request or because of unnecessary duplication between two or more programs. The House Permanent Select Committee on Intelligence conducts an almost unique cross-program review of projects in both the National Foreign Intelligence Program (NFIP) budget and the Intelligence-Related Activities budget of the Defense Department.

The Intelligence-Related Activities (IRA) category is an aggregation of activities within the budget of the Department of Defense which:

- "a. Respond to operational commanders' tasking for time sensitive information on foreign entities;
- "b. Respond to national intelligence community tasking of systems whose primary mission is support to operating forces;
- "c. Train personnel for intelligence duties;
- "d. Provide an intelligence reserve; or
- "e. Are devoted to research and development intelligence or related capabilities.

"Specifically excluded are programs which are so closely integrated with a weapon system that their primary function is to provide immediate-use targeting data." ¹⁰

¹⁰ DoD Budget Guidance Manual, 7110-1-M.

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In fiscal year 1981, the Defense Department began to refer to IRA as TIARA, Tactical Intelligence and Related Activities, but the definition remained the same.

The distinction between an intelligence collection system which responds to an operational (military) commander's tasking for time sensitive information and one which responds to someone else's tasking for time sensitive information often is hard to make. One system may be able to satisfy tasking from a variety of sources, including operational commanders. In many cases, operational commanders' requirements cannot be met by collection systems funded in the NFIP, so a separate capability has to be provided. In other cases, however, the committee has found instances where proposed collection capabilities in the TIARA account duplicated capabilities in the NFIP.

The cross-program review by the House Select Committee is important because no truly effective review of the TIARA and NFIP accounts has been conducted within the Executive Branch. A mechanism exists for such a review but there is an understandable hesitancy for one element of the bureaucracy to buy trouble by poaching on the turf of another element of the bureaucracy. From the point of view of the committee, an effective cross-program review by responsible Executive Branch officials is much to be desired and it regularly recommends improvement in that area.

Another issue of concern to both select committees is the insufficient attention to out-year planning. Each of the last few years, the National Foreign Intelligence Program budget appeared to have been constructed with budget constraints playing the deciding role in what went into the program and what did not. Consequently, decisions affecting very expensive technical systems or mixes of systems requiring multi-year commitments of funds have been delayed year after year. The result has been a thinning of collection capabilities and an escalation of costs when the decisions are finally made to proceed with the necessary new systems. The committees continue to work with responsible intelligence community officials to develop better long-range planning.

Leaks

Perhaps the most vexing and intractable problem the select committees have grappled with has been that of the cascade of "leaks" of classified intelligence information over the past several years by Executive Branch officials. Nothing angers a Member of either committee more than being lectured in a closed session of the committee by a senior intelligence official about the sensitivity of the information being discussed and then finding the same information in the next day's newspaper attributed to "intelligence officials" or "knowledgeable Administration sources." In spite of persistent efforts by both committees to have the most damaging leaks investigated, little, if anything, has been done to identify the leakers. This issue is certain to continue to be a major concern of the two select committees. Some measure of that concern can be made by the fact that at the confirmation hearing for Mr. Casey to be Director of Central Intelligence, both Senator Huddleston and Senator Moynihan expressed their determination to continue to work to stop the leaking of classified information. Mr. Casey responded by stating that "the kind of purposeful leaks that have occurred cannot be tolerated, and you cannot maintain an effective and successful intelligence service if the people who are providing information feel it is not secure," raising the hope that strong efforts will be made in the future to deter such leaks.

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A close working relationship has developed between the intelligence community and the select committees over the past several years. At his confirmation hearing, DCI Casey summed up the relationship well:

“To carry out its assignment, the intelligence community needs both public support and the full participation and cooperation of the Congress. I am pleased that after a period of turmoil the Executive and Legislative Branches have now institutionalized their arrangements in the Intelligence Authorization Act of 1981. I pledge care and diligence in protecting the legal rights of American citizens. I pledge also to work closely with Congress on this as well as in monitoring and improving the performance of the intelligence community. Particularly through the Intelligence Committee’s study of U.S. intelligence products, procedures and budgets, Congress will provide a valued independent source of review to ensure we are achieving all that is humanly possible and the Congress will be in a position to provide any necessary legislation.”

The continuation of that relationship will help ensure that the intelligence community receives the resources and the legislation it needs to meet its challenges and that it will have strong public support from the Congress.

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