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OLC RECORD COPY Ind; Helms

OLC 78-0399/84

30 May 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Testimony of Former DCI Richard Helms before the Senate Select Committee on Intelligence re S. 2525, Intelligence Charter Legislation

1. On 16 May 1978 the Senate Select Committee on Intelligence (SSCI) continued the intelligence charter legislation hearings, receiving testimony from former DCI Helms. Present on behalf of the Director of Central Intelligence were [redacted] Assistant General Counsel, OGC, and [redacted], Special Assistant, OGC, and the undersigned, [redacted] Office of Training, was present as an observer. Members of the SSCI present were Senators Birch Bayh (D., Ind.), Daniel P. Moynihan (D., N. Y.), Barry Goldwater (R., Ariz.), John Chafee (R., R. I.) and Jake Garn (R., Utah). Bill Miller, SSCI Staff Director, and several staff members were present. Carolyn Fuller, Senator Walter Huddleston's (D., Ky.) Legislative Assistant was also in attendance.

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2. Mr. Helms began the hearing stating that while he had no formal statement to make he wished to make some observations for the record. Mr. Helms stressed the following points:

--S. 2525 would create more difficulties than it resolves.

--S. 2525 would create a legal structure that would diminish the flexibility of the President in the national security arena; while not denying the Congress an oversight role, it is the President who should develop guidelines and restrictions for intelligence.

--S. 2525 would have the operative effect of allowing the Committee staff to run intelligence.

--S. 2525 calls for too many written reports.

--S. 2525 should provide the DCI with an enforcement mechanism with regard to his statutory responsibility to protect intelligence sources and methods.

--S. 2525 contains too many confusing definitions while a key phrase, "national security," is left undefined.

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3. During the question and answer period the following questions and/or statements were made by the Senators present:

Senator Bayh:

--wondered if it were possible to establish general guidelines defining the width and breadth of authority as for example in the intelligence charter legislation without getting into micro-management.

--suggested that instead of 67 separate reports as now called for under S. 2525, it might be better to have two or three "good" reports and discussions between oversight Senators and Representatives and the DCI.

--read that portion of S. 2525 which would codify the oversight function of the SSCI and asked Mr. Helms if he would like to comment on the language.

--asked Mr. Helms how the Government could respond to the problem of "leaks" while balancing first amendment rights.

--asked Mr. Helms to expand on his earlier statement in which he emphasized that the DCI should be given an enforcement mechanism to carry out his responsibility to protect intelligence sources and methods.

Senator Goldwater:

--made the point that, in his opinion, there is a rather sizeable segment of Congress that is completely opposed to the concept of intelligence and that, in his opinion, there is no doubt that the media have members who are completely opposed to the continuation of any intelligence gathering.

--wondered about the impact of leaks and divulgence of classified information on our allies and their confidence in the ability of the U.S. to keep a secret.

--asked if in Mr. Helms' opinion the current laws re subversion are adequate.

--made the point that the intelligence charter should serve as a vehicle to help eliminate the problem of divulgences of intelligence information gathered through intelligence sources.

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--said that he has asked his own legal advisors to formulate legislation that would be directed at the misuse of information gathered through intelligence sources.

--asked if Mr. Helms was in favor of the U.S. continuing to conduct covert actions.

--asked if the covert action weapon should be stricken from the hands of the DCI's and stated, after Mr. Helms responded to the question, that he wished the media and the American people would understand clearly that covert actions are not carried out at the will and whim of the DCI but each must be approved and ordered by the President himself.

--asked if the standard that any covert action be "essential to the national security" is a reasonable standard.

--stated that in his opinion a good two years would pass before the charters become intelligible or satisfactory and said that the Members of Congress are neophytes in the intelligence business.

Senator Moynihan:

--stated that the process of reorganizing CIA is making it impossible for the CIA to fulfill the function for which it was created, viz., to take a "forward anti-Soviet position in the world."

--underscored the fact that the Agency's security problems developed concomitant with the breakdown of the political consensus that supported the Agency.

--stated that the CIA (as of late 1960's, early 1970's) instead of being, as designed, a danger to Soviet expansion has been declared a danger to the American people.

--stated that we indict more intelligence officers than we do spies and this in face of a clear Soviet expansion in the world.

--emphasized that while an enormous amount of concern is being expressed re the actions of the CIA, we are unconcerned with the Soviet Union which is actively spying on Americans in massive numbers through the interception of their telephone calls.

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--stressed that the Russians are operating massively in this country.

--stated that there is at this moment a political agenda to what appear to be procedural matters which is having the operative effect of making it as difficult as possible for the CIA and the FBI to operate, and this while the Russians are in fact expanding around the world.

--stated that the KGB do not respect the Fourth Amendment rights of U.S. citizens and that the politicians of this generation are making it impossible to resist Soviet espionage in this country.

Senator Chafee:

--asked if the potential of disclosure has served to reduce the amount of information available from foreign sources and foreign intelligence services.

--wondered if it is really possible to keep a secret today such as the type exemplified by the breaking of the Japanese code in World War II.

--asked if, in Mr. Helms' opinion, clandestine human intelligence is passe.

Senator Garn:

--asked Mr. Helms' opinion of separating the DNI and the DCI into two separate positions held by two individuals, one in the White House and one at CIA Headquarters in Langley.

--stated that he agreed with Mr. Helms that the two titles should reside in one person.

4. In response to questions and comments by the Senators, Mr. Helms:

--stated that the National Security Act of 1947 might still be adequate if Congress had played its proper oversight role all along.

--stressed that legislation can never cover all contingencies and tends to put things in a straight jacket.

--emphasized that to require too many reports results in a constant traffic in paper and pleaded that the legislation be made simpler in this regard.

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--stressed that the main problem with oversight is security and that oversight should be limited to the House and Senate Intelligence Committees.

--stated that the success of all covert action is tied to the security surrounding the operations themselves; "... it is not possible ... to run an adequate and successful covert operation if it is leaking around the edges all the time."

--testified to the difficulty in finding a solution to stop leaks and wondered if even criminal penalties would serve much of a deterrent purpose.

--emphasized that for the DCI to protect intelligence sources and methods, he must be given authority to investigate leaks by employees of the Agency or by those outside the Agency in view of the FBI's distaste for conducting such investigations; one way or another the charter legislation should address this issue.

--stated that the "illusion that [DCI's] have been fiddle-faddling with their oversight committees over the years is a myth that has been created in the Congress."

--described the recent leaks of intelligence material and secrets and other state secrets as a hemorrhage which will put the U.S. at a serious disadvantage.

--stated that our allies and sources will not be forthcoming knowing that what they tell us will end up in the newspapers the next day or will put themselves in jeopardy.

--stressed that "[t]his is a time when ... intelligence can't be too good, and we can't possibly have too much of it," especially in view of the Russian assertiveness around the world.

--stated that there is no substitute for the conduct of covert actions and to strike such a weapon from the hands of the President in the modern context would be a great mistake.

--stressed that there is a common misconception that the covert action authority resides in the DCI whereas, in effect, it is the President himself who must approve the action.

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--stated that on the issue of counterintelligence a great deal of work remains to be done and that the American people should not fall prey to the assumption that until one catches a spy, there are no spies really doing any spying.

--agreed with Senator Moynihan's statement that the Russians are operating massively in this country.

--stated that the Freedom of Information Act has had a devastating effect on intelligence and asked that some intelligence exclusion be written into the FOIA.

--emphasized that in his opinion small staffs and smaller committees make for better security.

--stressed the need for the clandestine human element in intelligence to be used along side technological developments.

--stated that S. 2525 should not provide for the possibility of the DNI being a different individual than the DCI; both titles should reside in the same person.

SIGNED

[redacted] STAT

Assistant Legislative Counsel

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