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Free Again

In Its Hawkish New Mood Congress Is Too Eager to Remove CIA Restraints

By DAVID WISE

The smile on the face of Adm. Stansfield Turner told it all. It was there for 50 million Americans to see during President Carter's Jan. 23 State of the Union speech. The television cameras focused on the CIA director just as Carter came to the part about removing "unwarranted restraints" on the intelligence agency.

The admiral's smile lit up the screen. There was his old Annapolis classmate, the President of the United States, ready once again to unleash the CIA. In that brief moment, one could easily visualize the agency rising from the ashes of intelligence reform.

The CIA's timing is flawless. In the present hawkish atmosphere in Washington, intelligence reform has become almost a dirty word, an X-rated idea whose time has come—and probably gone. Thanks to the Ayatollah Ruhollah Khomeini, the Soviet takeover in Afghanistan and Carter's hard-line foreign policy, the emphasis now is on strengthening the CIA's powers and punishing its critics with jail sentences and fines.

All but forgotten are the abuses that were revealed by a Senate investigation in a much different atmosphere five years ago, when a committee headed by Sen. Frank Church (D-Ida.) disclosed how the CIA had tested drugs on unsuspecting American citizens (one of whom, Dr. Frank Olson, committed suicide); how it opened first-class mail in violation of federal law, spied on the anti-Vietnam War movement in Operation CHAOS, and hired two Mafiosi, Johnny Rosselli and Sam Giancana—both of whom have since met violent deaths—to try to murder Fidel Castro. The list of CIA horrors was much longer, of course.

Last month, the Senate Select Intelligence Committee, with the "virtually complete" support of President Carter, introduced an intelligence "charter" that seemed only remotely related to the findings of the Church committee. While outlawing CIA assassinations, the bill would loosen procedures for covert operations; give the agency a free hand to use the press, clergy and academics as spies; and all but exempt the CIA from complying with the Freedom of Information Act.

For a time, in the wake of the Church committee investigation, there was considerable pressure to reform the CIA, the FBI and the other intelligence agencies. Two years ago, the Senate intelligence committee, the successor to the Church panel, hammered out its first charter, attempting to define in law what the agencies could and could not do. The bill, S 2525, set off a great howl among the agencies and their conservative supporters on Capitol Hill. Too restrictive, they said.

The staff of the Senate committee diligently went back to the drawing board. An endless series of meetings ensued between the committee staff and representatives of the National Security Council, the Justice Department and the intelligence agencies. Little by little, the provisions of the reform bill were whittled away.

In the meantime, the original reform measure died at the end of 1978. It was not reintroduced last year. The new, milder version of the charter that made its appearance on Feb. 8 was supposed to have been unveiled by the White House and the Senate committee last fall. But a series of foreign policy crises intervened—first the skirmishing over SALT II, then the seizure of the hostages in Iran, then Afghanistan.

In the wake of these events, Adm. Turner and his deputy at the CIA, Frank C. Carlucci, saw the hole in the line and plunged through. Not only might it be possible to avoid any reform, but in the crisis atmosphere the agency might be able to ram through legislation vastly expanding its powers.

The President's speech had barely ended when Sen. Daniel P. Moynihan (D-N.Y.) broke ranks with his colleagues on the intelligence committee, and introduced a three-pronged CIA-backed legislative package. The first part of his bill would repeal the Hughes-Ryan amendment and free the CIA to conduct more covert operations without telling Congress in advance. The second part would virtually exempt the agency from the Freedom of Information Act, and the third is a mini-Official Secrets Act that would punish government officials and—until Moynihan later modified his position—the press and other citizens who talked or wrote about the agency if "identities" were revealed.

Moynihan's ploy was not designed to endear him to Sen. Birch Bayh (D-Ind.), chairman of the Senate Select Committee on Intelligence, or to Sen. Walter D. Huddleston (D-Ky.), who heads the subcommittee that has been trying to salvage a CIA charter bill.

In varying form, all three of the features of the bare-bones Moynihan bill are contained in the Carter-backed CIA charter package. The danger, however, is that Congress in an election year—and amid the relentless beating of war drums—will choose to pass only the three pro-CIA parts of the package and abandon all or most of the curbs on the agency.

There is broad support in Congress for repeal of the Hughes-Ryan amendment, which has required the CIA to report covert operations to as many as eight congressional committees.

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The amendment, sponsored by the late Rep. Leo Ryan of California and former Sen. Harold Hughes of Iowa, was passed in the wake of the CIA's covert undermining of the regime of President Salvador Allende in Chile (on Richard Nixon's orders) and the failure of CIA Director Richard Helms to tell Congress the truth about it. Its language is simple. No funds may be spent by CIA on covert operations abroad unless the President finds the operation is "important" to national security and reports "in a timely fashion" to the "appropriate" committees of the Congress, including the foreign relations committees of both houses.

In practice, the CIA initially reported to those committees plus the armed services and appropriations committees in both houses, six in all. By 1977, with the formation of intelligence committees in the Senate and House, the number had grown to eight. (Currently it is down to seven, since the House Armed Services Committee has decided it does not want to be briefed.) The CIA and its supporters argue that Hughes-Ryan meant sharing CIA secrets with 163 members of Congress and 41 staff members. This, the agency argued, would result in leaks of secrets to the press. When it is pointed out that no such leaks of covert operations have occurred, the agency's advocates fall back on the claim that the mere requirement for reporting to so many committees has so inhibited and intimidated the agency that it has virtually ceased running covert operations. The truth is, however, that the agency has continued to conduct covert operations.

The Carter-backed intelligence charter would require the CIA to report to only two committees, the Senate and House intelligence committees. It would weaken the existing requirement that the President certify covert operations as "important" before they could take place. The bill would require the President to do so only if the operation involved "substantial resources, risks or consequences." And it would establish whole categories of covert operations that the CIA could conduct without telling Congress about each individual operation, as long as the President had approved the categories and informed the intelligence committees about them. Members of the Senate panel say that in practice, the CIA has customarily notified it in advance of conducting any covert operations. It is a vital point, since reporting after the fact gives Congress little voice in controlling them.

But the senators came in for a rude shock when Turner recently testified before the Senate Select Committee on Intelligence that it was "not correct" that the agency had notified the committee in advance of every covert operation. Indeed, he indicated that such information had been withheld more than once.

The issue had come to a head when Senators Bayh, Huddleston, conservative Jake Garn (R-Utah), and liberal Charles Mathias Jr. (R-Md.) met at the White House on the morning of Jan. 30 with the President, Turner, Zbigniew Brzezinski, Carter's national security adviser, and David Aaron, deputy adviser. According to Huddleston, the President and his aides argued against prior notification in "extremely difficult cases where lives were at stake" and in cases where "another country would refuse to deal with us if it had to be reported to anyone."

Chairman Bayh was unconvinced, arguing that even in "extremely sensitive" operations of "short-term duration" it would be possible to notify the committee in advance if the senators and the President could agree on "special procedures" for doing so. After the White House meeting broke up, lawyers for both sides stayed behind and attempted to draft language that would bridge the gap between Carter's position and the committee's. That effort failed.

When the charter was made public, a little more than a week later, it contained language requiring the President to give the two committees "prior notice" of covert operations, except in "extraordinary circumstances" when for 48 hours the advance notice could be limited to the chairmen and ranking minority members of the two committees and the four leaders of the House and Senate. These were the "special procedures" Bayh had in mind.

Carter would not go along with blanket prior notice. In a letter to Bayh, he gave the bill his general support but made it clear that "a few issues remain to be resolved" so that the CIA would be free to carry out "action in extraordinary and difficult circumstances." At the same time, Carter endorsed "a majority of the provisions" in the charter.

Among those provisions is the one exempting the CIA from the Freedom of Information Act, except for requests by Americans for data about themselves contained in CIA files. Critics of the measure argue that there is no valid reason to exempt the agency and that if such a law had been in effect, the details of the CIA's drug-testing program and information about CIA spying on Americans in Operation CHAOS would have been suppressed.

Morton H. Halperin, a former National Security Council official and director of the Center for National Security Studies, argues that the CIA already has substantial control over what it chooses to release, since the Freedom of Information Act permits the agency to withhold classified data. Although the courts could conceivably force the CIA to release secret material under the Freedom of Information Act, no such information has been made public by court action up to now.

One of the more difficult measures being pushed by the CIA is the so-called "Agee" bill, prompted by former CIA officer Philip Agee's disclosure of the names of dozens of CIA officers and agents in his book, "Inside the Company: CIA Diary." In the Carter-Senate committee version, the CIA charter legislation would impose criminal penalties on government officials or former officials who disclose classified information that reveals the identities of CIA agents, informants or sources.

The much broader Moynihan version—as originally proposed—would have provided jail or fines, or both, for reporters or other persons outside the government who disclosed information that could reveal the identities of CIA agents, informants or sources. On Feb. 20, Moynihan retreated. He said he would withdraw the section applying to the press because "it might have a chilling effect" on journalists.

Another troublesome issue that Congress will have to face if it passes a comprehensive intelligence charter is whether and to what extent the CIA should be allowed to use journalists, clergy and academics as spies. In 1976, George Bush, then the CIA director, announced that the agency would no longer pay full-time U.S. reporters to act as intelligence agents. Stated another way, it meant the agency would not employ spies using full-time reporting jobs as cover. (In the same announcement, the CIA said it would not use American clergy as spies.) But the Church committee revealed that of 50 CIA journalists, fewer than half would be terminated under the new rule, since it did not apply to news executives or free-lance writers. A year later, Turner issued a new directive eliminating "stringers"—part-time or occasional news correspondents—but continuing the use of executives and free-lance writers. It also permitted "exceptions" to be made by the CIA director allowing the agency to use press cover at will.

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Turner, in fact, recently testified that he had waived the ban on the use of such groups "on rare occasions," and that he had done so without informing the senate committee. The CIA's deputy director, Frank C. Carlucci, subsequently told the Senate intelligence committee that, although Turner had authorized waivers for the use of the proscribed groups, the waivers had not been used.

How this and other reform issues will be resolved by the 96th Congress is not yet clear, but most observers in Washington are doubtful whether even Carter's tame reforms will pass. And CIA critic Halperin points out that none of the changes sought by the agency "would improve the CIA's ability to predict world events." Jerry J. Berman, Washington legislative counsel for the American Civil Liberties Union, warned gloomily that if the three CIA "goodies" are enacted, "that will be the end of charter reform. The train may be going out of the station without the protection against abuses that the congressional investigations disclosed." Small wonder that Stansfield Turner is smiling. □

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