

The Watchdog Committee Question

APPROVED FOR RELEASE
CIA HISTORICAL REVIEW PROGRAM

22 SEPT 93

SECRET

History, issues, and prospects in the matter of a congressional joint committee to oversee intelligence activities.

John S. Warner

For the last ten years or so there have been spasmodically recurring calls in the Congress and the press for the establishment of a joint congressional committee to act as watchdog over CIA and intelligence activities generally. The usual implication is that such a committee would function with respect to intelligence in much the same way the joint Committee on Atomic Energy does for the atomic energy program and AEC. The Executive Branch has taken an official position, though not publicly, against the idea; but there are many thoughtful people both in the Congress and in the intelligence community who are inclined to favor it. This paper examines the issues and their history in the hope of helping put intelligence officers, at least, in a position to make an informed judgment.

Legislative History

In each of the last five Congresses before the 89th, more than twenty resolutions, on the average, have been introduced in various forms calling for the establishment of a joint committee on intelligence

activities. (In the current Congress the number is down to fifteen.) Most of these specify foreign intelligence activities; a few are ambiguous about including domestic activities like those of the FBI and Secret Service.

The most serious effort occurred in 1956, when Senator Mansfield was joined by 35 co-sponsors in a resolution which proposed that the membership of the joint committee consist of the members of the existing CIA subcommittees of Armed Services and Appropriations in the two houses.¹ The Senate Committee on Rules and Administration cleared the resolution for a floor vote, although Senator Hayden, a member of that committee who also chaired the CIA subcommittee of Senate Appropriations, filed a formal dissent. He declared that the resolution was based on mistaken and erroneous assumptions that Congress maintained little or no control over the Agency's expenditures and that members had been kept in the dark about its activities because of the veil of secrecy imposed by the Executive Branch, whereas in fact the CIA subcommittees maintain continuing supervision of the Agency in an entirely adequate degree. If CIA must have a watchdog committee, he said, why not have one for the FBI?

More recently, in 1961, the House Rules Committee conducted hearings to determine whether a joint committee resolution should be sent to the House floor. Several of the members expressed concern about security aspects of enlarging the circle of congressmen witting of intelligence activities, and members of the CIA subcommittee of House Armed Services, including Chairman Kilday, testified against the resolution. Mr. Kilday, urging his view that the congressional supervision of CIA was fully adequate, cited the fact that in the years 1959 and 1960 the Agency had made 46 appearances before various committees and had always responded fully and candidly to his subcommittee's questioning. One member of the Rules Committee was surprised to learn that there were in fact four subcommittees for CIA affairs in the Congress. The Rules Committee let the resolutions wither on the vine.

Administration Position

In February 1956, when the Mansfield resolution was pending, the

National Security Council decided not to favor a joint committee on the grounds that it would be an unnecessary supplement to the existing subcommittee setup, that this setup could accomplish any further review of intelligence activities the Congress decided was desirable, that a joint committee would have serious jurisdictional problems with other committees to which various agencies operating in the intelligence field were already responsible, and that it could raise substantial security problems and interfere with the conduct of foreign relations by the Executive Branch.

In November of 1960 the question was reviewed again within the National Security mechanism, and it was decided that the 1956 action remained valid and did not require updating. The McCarthy Position.

Of the 15 measures relating to oversight of intelligence activities now pending in the Congress, it is not anticipated that there will be any action during the remainder of this session on those which would establish a joint committee.² But Senator McCarthy introduced a somewhat different resolution this year. S. Res. 210, which required only Senate approval and would not become a law, provided that the Senate Committee on Foreign Relations "make a full and complete study with respect to the effects of the operations and activities of the Central Intelligence Agency upon the foreign relations of the United States."

Senator McCarthy had long pursued the objective of a joint committee. Earlier this year he indicated privately that he realized such a measure would not get favorable action and this was the reason for the new approach. There was considerable division of opinion within the Foreign Relations Committee on his proposal, some of the members seeing it as an infringement on Executive Branch prerogatives.

As a partial measure in the spirit of Senator McCarthy's wish for Foreign Relations to review CIA affairs, Chairman Fulbright suggested last April in a letter to Senator Russell, Chairman of the Armed Services Committee, that members of Foreign Relations might sit with his CIA subcommittee. The combined Appropriations and Armed Services subcommittees met to discuss this proposal, but the result was a foregone conclusion: Senator Russell responded negatively on behalf of the subcommittee members.

The next action was a substitute resolution put by Senator McCarthy before Foreign Relations to establish a select committee of three

members each from Appropriations, Armed Services, and Foreign Relations to have legislative oversight over CIA, DIA and other components with foreign intelligence functions; and this was approved by the Foreign Relations Committee on 17 May. On the previous day, however, Senator Russell and other members of Appropriations and Armed Services had made spirited statements on their exercise of jurisdiction over CIA. As the press reported, Senator Russell put his considerable prestige on the line in opposition to the intrusion of Foreign Relations into responsibility for this jurisdiction. The outcome is at this writing unresolved.

A few years back Senator McCarthy based his argument for a joint committee on charges of CIA blunders and intelligence failures; more recently he has softened in this respect. Undoubtedly his reasons are complex. Clearly, however, one of his firmest convictions is that the Congress should have more responsibility in the conduct of foreign affairs. He has declared in speeches that the clear constitutional responsibility of the Senate in the field of foreign policy has been eroded. "The constitution of the United States," he says, "does not so much provide for a system of checks and balances, as is often said, but rather it provides for a sharing of responsibility." It gives the Senate a responsibility, he has quite precisely stated, for taking in the field of foreign policy a role similar to that of a parliament in the parliamentary form of government.

Another aspect of this position of Senator McCarthy's can be seen in a proposal he made in 1956. At that time a member of the House, he found it objectionable that only members of the joint Committee on Atomic Energy were wilting of atomic energy matters, that such information was not made available to the other members of Congress. He therefore introduced a resolution providing that the House membership in the JCAE should be put on a rotating basis, so that over a period of time a much larger number of representatives would become knowledgeable in the field.

Other Congressional Views

Part of the opposition within the Congress stems from a dislike of joint

committees in principle. After the creation of the JCAE there was a strong effort to establish a joint Committee on Space Matters, and this proposal was free of some of the complicating factors that arise in the intelligence field. Speaker McCormack nevertheless led the fight against such a joint committee, declaring that it was wrong in principle as weakening the bicameral legislature established by the constitution. Mr. McCormack continues to hold this view of joint committees in general and one on intelligence in particular.

In general, the opposition in principle in the House appears to be somewhat stronger than in the Senate. House members feel that the Senate views itself as the more exclusive club and tends to look down on the "junior body." In a joint committee, therefore, when it comes to arrangements such as for seating, chairmanship, and scheduling of meetings, the House gets, as Mr. Kilday has put it, the short end of the stick.

In addition, the proponents of a joint committee on intelligence find themselves in the unenviable position of implying that Senators Russell and Hayden, Chairmen Rivers and Mahon, and their CIA subcommittees are not adequately fulfilling their responsibilities. This can only reinforce those gentlemen in their opposition to getting a new watchdog to watch what they are watching.

The JCAE Precedent

Most proponents of a joint committee point to the Joint Committee on Atomic Energy as a prototype. The parallel between CIA/intelligence and AEC/nuclear energy, however, breaks down in a number of places. The AEC has a continuing legislative program of some magnitude which makes a considerable domestic impact on the economy and within industry, while the CIA legislative burden is pretty small. The JCAE has basically one agency with principal responsibility in its field to deal with, whereas a joint committee on intelligence would be forced to delve into five or six departments and agencies in order to get a comprehensive look at its subject matter.

The JCAE does have an excellent record with respect to avoiding leaks of classified information. It also maintains security procedures and

physical security up to the standards prescribed by AEC for storage and transmission of Restricted Data. But whether the joint-committee constitutes a model for correct legislative-executive relationships is another question.

A few years ago a former AEC General Counsel, Harold P. Green, and Alan Rosenthal made, under the auspices of the George Washington University, a study of the JCAE as an instrument of the government.³ They concluded that it has made severe and unprecedented inroads on the doctrine of executive privilege, that its encroachment in executive responsibilities is equaled by abdication on the part of the executive, that its comprehensive access to information even while matters are pending gives it the opportunity to participate in the executive's formulation of policies, that it exerts influence principally by participation in the executive's decision-making processes rather than by legislation, and that its success in doing so results from its having been established by law and from the law's provision that it be kept fully and currently informed on matters affecting atomic energy. These conclusions are painstakingly documented in a review of JCAE activities over the years, and it is demonstrated that the Committee's influence has historically transcended legislative considerations and intruded into basic policy areas.

Executive Prerogative

This question of invading the prerogatives of the Executive Branch is one of the more serious problems in determining the appropriateness of a joint committee on intelligence. It arises with respect both to intelligence and to covert operations.

Finished intelligence, under the law, is intended for the President and the policy makers in the Executive Branch. A sound case can be made that it is the exclusive property of the President, since he has responsibility under the constitution for the conduct of foreign affairs. But it is only one factor in foreign policy decisions, and giving it to Congress in isolation from other considerations might, it could be argued, lead to political difficulties in which CIA would be caught in the middle between the Executive and Legislative Branches.

In theory this danger is present even under the existing subcommittee structure. Though the problems feared have not arisen, they could in the future. But they would be more likely to if there were a joint committee, as illustrated in the case of the one on atomic energy. A very active and well-informed joint committee would be in a position to urge on the Department of State and the White House a different course of action from the one they were following and back up its case by citing the intelligence furnished it in its watchdog capacity.

CIA's responsibility for conducting covert operations raises more directly the question of executive-legislative relationships. One can visualize a situation in which either the existing subcommittees or a new joint committee was made cognizant of preparations for a Bay of Pigs operation and one or more members had serious objections to the project. It is possible that these would argue their views with the State Department and the White House, and then losing there would plead the case in public. Here again, though this type of thing could happen under the present subcommittee system, it would more readily come about if a joint committee were engaged in continuing and vigorous review of Agency plans and activities.

Security Considerations

Many members of Congress have argued that any enlargement of the existing subcommittee system would be harmful to security. Senators Lausche, Dirksen and Russell have made recent statements to this effect.

CIA is the only major agency where strict security applies across the board to such basic matters as personnel, budget, organization, and expenditures. But to judge by experience, security is not such an obstacle to the practicality of a joint committee as it might seem. We know of no unauthorized disclosures from our four subcommittees in the past, and the joint Committee on Atomic Energy has a good security record. It is possible that if the membership of a newly established joint committee were not selected carefully there might be more risks than in the past, but committee membership is a delicate matter in any case. And under a resolution of the Mansfield type, where the joint committee

members are specified to be the existing subcommittee members, obviously the security question is a standoff.

It has been mentioned that the creation of a new joint committee might have adverse effects on liaison relationships with foreign intelligence services. Some liaison services have exhibited apprehension about our relationships with the Congress under the present system, but when the situation has been explained to them their fears appear to be allayed. No doubt the same thing could be done if a new joint committee were established.

Security with respect to the staff of a joint committee may be a more serious matter. The staff men for the current subcommittees have heavy responsibilities in fields outside of intelligence and can devote only a small portion of their time to CIA. A full-time staff of perhaps three or four devoted exclusively to intelligence matters could be expected to be very active in studying the Agency and its activities. They would get a continuing across-the-board look at the Agency's most sensitive activities, which very few people in the Agency itself are afforded. Although the normal clearance procedures could be applied, the staff members would not be subject to Agency security discipline, and fear has been expressed that sooner or later one of them would be tempted to make capital of his knowledge of secret matters, say by publishing a citizens-have-the-need-to-know book.

The Jurisdiction Problem

Probably the most formidable question from the viewpoint of the Congress itself is the matter of committee jurisdiction. Most agencies and departments in dealing with congressional committees can take full responsibility for their range of functions. But in answering to a joint committee concerned with all foreign intelligence activities in the Executive Branch, CIA cannot speak with authority for other agencies of the intelligence community. Moreover, these other agencies have their own lines of responsibility to different congressional committees. Would the Armed Services committees be willing to cede to the joint committee their jurisdiction over the intelligence components in the Department of Defense? Or Foreign Affairs its jurisdiction over State

Department intelligence, or the joint Committee on Atomic Energy its role in AEC intelligence? They would not. On the other hand, there are other committees in the Congress which could, if they cared to, assert some claim to jurisdiction over at least a part of CIA's activities. The House Committee on Government Operations has indicated that it believes its charter would authorize its looking at Agency activities through its Subcommittee on International Operations. Legislation affecting CIA personnel could be claimed by the Post Office and Civil Service committees. There is a subcommittee of House Foreign Affairs which lists one of its responsibilities as liaison with the Agency. If a joint committee were established, however, it would assert exclusive jurisdiction, even as the Armed Services and Appropriations subcommittees have maintained exclusive jurisdiction for legislative oversight and appropriations under the present system.

Joint Committee as Champion

Although some members of Congress have proposed a joint committee in the belief that CIA does a poor job of running itself, others support the idea for the purpose of allaying concern on the part of the unwitting and of defending the Agency against misguided attacks. One representative who has consistently introduced joint committee resolutions did so at first on the grounds of CIA intelligence failures; now that he has learned a good deal more about the Agency he just believes a joint committee could help it in congressional and public relations. That is what has happened in the case of the joint Committee on Atomic Energy.

This argument was probably more cogent in the past than it is now, when the existing CIA subcommittee members have become more vocal in championing the Agency. Last March, for example, a defector was surfaced through the House Armed Services subcommittee, and Mr. Rivers pointed this up on the floor to show how substantively his subcommittee works with the Agency. And Mr. Bates, the senior Republican, also took the occasion to say some complimentary things.⁴

The preceding January, Senator Symington had reported on the floor on his visit to some 15 CIA overseas stations. His remarks were most

commendatory, both concerning performance and with respect to relations with military commanders and embassy officers.⁵ Just recently Senator Saltonstall devoted an entire issue of his bi-weekly news letter to constituents to a favorable discussion of CIA and its role as a successful producer of finished intelligence. These are but examples of the ways in which subcommittees members are protecting and defending the Agency publicly.

Part of the motivation of those who push for a joint committee derives from lack of knowledge not only about CIA but about the supervision exercised by the subcommittees. To the extent we in CIA appropriately can, we have taken a number of positive measures during the last few years to acquaint more congressmen with the Agency, its senior people, and its relationships with the subcommittees. In 1965 we met with each of the subcommittees more than ten times, as against four or five times in previous years. We have also stepped up meetings, briefings, and visits to headquarters for congressmen. In 1965 some 60 of them visited us for breakfast or luncheon meetings followed by general briefings. We believe that all these efforts have diminished the suspicion that naturally falls on activities which have to be secret.

Prognosis

Some members of Congress believe that a joint committee would be a serious threat to security and effective intelligence functioning; Senator Saltonstall went so far as to say that "a joint committee would wreck the Agency." Actually, I believe the Agency could accommodate itself to whatever way the Congress chooses to organize the handling of mutual relationships. Review of the comparative merits and disadvantages of a joint committee does not reveal any startling differences from the present system. In theory, on the issues of security and executive prerogative, either system yields about the same results. It is only when we visualize how in practice a joint committee and staff might function that we see more problems in that solution. The most serious question, that of committee jurisdiction, need not concern us; it is for the Congress to worry about. In any event, our views on a joint committee will not be determinative. The Administration's position will undoubtedly continue to be in opposition, primarily because of the constitutional

separation of powers and the President's role in the conduct of foreign affairs. Further, the leadership in the Congress will continue to oppose the idea. With this opposition and without the support of a significant number of other members, it is difficult to see a joint committee proposal getting serious consideration in the foreseeable future.

Bibliography

1 The present composition of the subcommittees is as follows: **CIA Subcommittees of Armed Service** *Senate* - Richard B. Russell (D., Ga.), Chairman; John Stennis (D., Miss.); Levered Saltonstall (R., Mass.); Stuart Symington (D., Mo.); Margaret Chase Smith (R., Me.). *House* - L. Mendel Rivers (D., S.C.), Chairman; Philip J. Philbin (D., Mass.); Charles E. Bennett (D, Fla.); F. Edward Hebert (D., La.); William H. Bates (R., Mass.); Melvin Price (D., Ill.); Leslie C. Arends (R., 111.); O. C. Fisher (D., Tex.); Alvin E. O'Konski (R., Wis.); Porter Hardy, Jr. (D., Va.);William G. Bray (R., Ind.). **CIA Subcommittees of Appropriations** *Senate* - Carl Hayden (D., Ariz.), Chairman; Richard B. Russell (D., Ga.); Milton R. Young (R., N. Dak.); Levered Saltonstall (R., Mass.). *House* - George H. Mahon (D., Tex.), Chairman; George W. Andrews (D., Ala.); Frank T. Bow (R., Ohio); Glenard P. Lipscomb (R., Calif.).

2 These were introduced by the following members: Zablocki, Clement J. (D., Wis.); Gonzales, Henry B. (D., Tex.); Kelly, Edna F. (D., N.Y.); Kastenmeier, Robert (D., Wis.); Komegay, Horace R. (D., N.C.); Rosenthal, Benjamin (D, N.Y.); Lindsay, John V. (R., N.Y.); Cohelan, Jeffery (D., Calif.); Daddario, Emilio Q. (D., Conn.); Young, Stephen M. (D., Ohio); Flood, Daniel J. (D., Pa.); King, Carleton J. (R., N.Y.); Rogers, Paul G. (D., Fla.); Scheuer, James H. (D., N.Y.); Ryan, William Fitts (D., N.Y.).

The subcommittee chairman is in each case the chairman of the full committee. In each case except one the subcommittee members have been selected strictly on the basis of seniority. Membership is not listed in open publications except for that of the House Armed Services subcommittee. Because of the interlocking membership of the two

Senate subcommittees, they have for a number of years met concurrently. When the Mansfield resolution came to a vote on April 11, twelve of its co-sponsors voted against it and it was defeated 59 to 27. Among the nays was Senator Lyndon B. Johnson. Those in favor included three with later cause to be of different mind-Senator Humphrey, Senator John F. Kennedy, and Senator Margaret Chase Smith, now a member of the CIA subcommittee of Senate Armed Services. Senator Mansfield remarked that he had learned his lesson, having been beaten by the pros; and he has not subsequently introduced such a resolution or openly supported one.

3 The Joint Committee on Atomic Energy: A Study in Fusion of Governmental Power, published by the National Law Center of George Washington University, 1961.

4 He found "the Agency informed and responsive . . . indeed a great organization . . . deserves our protection and commendation at all times."

5 He concluded, "It is my considered judgment that the American public should be proud of this organization and its people, a group who serve our country with unstinting devotion."

SECRET

Posted: May 08, 2007 08:07 AM