

FOR THE FIRST TIME in 30 years the Congress is addressing itself to the question of what role it can or should play in the secret intelligence operations of the Executive Branch. Up to now its oversight committees have either been passive recipients of CIA secrets and FBI progress reports or avid investigators of publicized covert action operations.

The problem is not the past but the future. It should not be too much of a challenge for the Special Committees now at work to come up with satisfactory post-mortems regarding the charges against the CIA. What will be difficult for the Senate and House Intelligence Committees to handle is the basic long-term issue:

How far can a permanent committee of the Congress play a constructive future role in guiding, controlling or second-guessing the White House in running its secret business? What can Congress do beyond controlling the size and organization of the intelligence community through its appropriations power? What price will the nation pay for congressional intervention into America's secret intelligence activities at home or abroad?

The answers to these questions are likely to be different for each category of secret operations with which the Congress may wish to concern itself. These cover a broad range—in the case of CIA alone from covert action (paramilitary, propaganda and political) to espionage and counter-espionage. Each type of operation varies in the degree of secrecy with which it is carried out and therefore the degree to which it can, or should evade oversight. At one end of the spectrum are such "noisy" paramilitary actions as the Bay of Pigs or the "secret army" operation in Laos. At the other end are quiet intelligence operations—an American agent within a Moscow ministry or a KGB officer working for the CIA in a Soviet embassy in Asia. In cases like these the slightest hint, inside or outside the committee rooms of Congress, can destroy the operation.

Another pertinent element affecting the question of congressional access is the fact that these three main types of operations—action, intelligence and counterintelligence—are generated within the Executive in sharply different ways.

Covert political action operations like the anti-Allende program in Chile are the most accessible to congressional scrutiny. Action projects assigned to the CIA are generated at the White House level and require a formal policy decision at the National Security Council level (the Forty Committee). Such decisions are on the bureaucratic record. That record may be hidden, but history has shown that it is almost impossible for the American government to carry out a large-scale secret action without that action being exposed by Congress or the press.

Overseeing Spies Without Blowing Cover

By Harry Rositzke

The writer served for 27 years with the CIA and its predecessors, retiring in 1970.

The Executive is unlikely to disregard this fact of life even if tempted to intervene secretly in the Persian Gulf or in the shaky southern tier of NATO.

A precise curb on the President's freedom in using his "third arm" to achieve foreign policy aims has recently been added by Congress in an amendment to the Foreign Aid Act. He must now inform Congress of any on-going non-intelligence operation

abroad which he considers to be in the national interest.

Granted that this or any future president is unlikely to disregard this requirement for large-scale actions ordinary political action on a small scale is bound to remain within his discretion.

Congress and the public tend to equate political action with coups, counter-coups and secret funding of election



By Maxwell Silverstein for The Washington Post

campaigns, but the day-to-day core of secret political action, both for the CIA and the KGB, is the maintenance of confidential contacts with high-level government officials, politicians, and labor leaders around the globe.

These persons may be straightforward intelligence agents supplying information, yet the simple fact that they are committing espionage for the U.S. gives them a bias in favor of the American interest as they pursue their normal-political or government careers. But the principal so-called "agents of influence" are men who do not spy for the CIA, but who for personal or career reasons, and often *without* the payment of money, will act to further American foreign policy aims in their country. They may be bankers, industrialists, media executives or senior military officers as well as politicians and labor leaders of the right or the left. The only requirement is that they be in a position to exert personal influence of one kind or another in their own societies.

It is this ground-level of political action that cannot, and should not, be open to name-by-name scrutiny by a congressional committee. It makes no sense for an oversight committee to second-guess the State Department or the CIA on who should or should not be on the list of secret political contacts, for it has nothing to contribute in the way of expertise or political judgment. Here, at the agent level, the Congress cannot oversee the Executive's conduct any more than it can stipulate the open contacts maintained by our Embassy political officers or military attaches.

A Blank Wall

WHEN CONGRESS moves its oversight function from political action operations to secret intelligence work abroad, it faces similar, if not greater, limitations. And here it must deal with the programs of three federal agencies: the CIA, the Defense Intelligence Agency and the National Security Agency.

The requirements for foreign intelligence, both open and secret, are generated within the intelligence community as a whole. The main priorities are set by the White House and the Departments of State and Defense directly or through the analysts within the various intelligence staffs throughout the government. These information

objectives come out of the strategic and tactical concerns of the diplomatic and military policy-makers and reflect their needs. The only function of intelligence is to serve those needs.

Congress is not only incapable of "overseeing" the secret intelligence operations of the CIA or the DIA designed to satisfy these requirements, but it can be argued that secret foreign intelligence operations are none of Congress' business. This is an axiom in the European democracies. What Congress can do is to determine how much money is to be spent on foreign intelligence collection—and not much more.

This does not mean that Congress cannot be informed about foreign intelligence collection. It can be briefed, on the priority intelligence targets, on the kinds of information being sought by what means and on the year's performance vis-a-vis those targets by the CIA, DIA and NSA. Yet these briefings will naturally reflect the Executive's estimates of its own performance—and the Congress is bound to

accept this self-evaluation, for it will have no basis for questioning these judgments.

Nor can Congress ride herd on individual intelligence operations, however politically sensitive. It is up to the Executive to decide whether the recruitment of a high-level agent in Moscow will affect detente adversely, or whether the penetration of a friendly Foreign Office is justified by the information to be gathered weighed against possible embarrassment if the operation comes to light.

Only in such large-scale technical intelligence operations as the U-2 and the Glomar Explorer affairs can Congress justifiably demand some degree of prior consent. It is conceivable that a standing committee might send a handful of investigators into the halls of the CIA and the DIA to ferret out less expensive intelligence operations to which they or their bosses might take exception, but the loss in security would hardly be repaid by any improvements in the quality of intelligence collection.

The same blank wall faces Congress in overseeing the collection of communications intelligence by the National Security Agency. The electronic monitoring of foreign civilian and military traffic and the cryptographic analysis of foreign coded messages are the sensitive sectors of any nation's intelligence effort. As an ultra-secret element of the Washington intelli-

gence community, NSA cannot be examined or monitored from the outside — by Congress or by other elements of the Executive.

Congress can impose arbitrary limits on the NSA budget, the number of its overseas monitoring stations or the size of its Fort Meade headquarters, but it cannot judge NSA's efficiency or usefulness. It can, of course, get an evaluation of the NSA "product" by querying the "consumers," but that again will be an Executive judgment it cannot examine critically.

Maximum Security

COUNTERINTELLIGENCE operations abroad are even more impenetrable to oversight or control. They are, to start with, almost completely self-generated, for they normally arise out of the actions of other intelligence services—a KGB officer cultivates the society of an American Embassy clerk, or a local citizen walks into the Embassy to announce that he is a Soviet agent and wants to work for the Americans. In short, a CIA station reacts to events. Only in the rarer cases of shaping a recruitment attempt directed at a presumably susceptible Soviet or East European intelligence officer does a station take the initiative.

There is no policy level in Washington at which a congressional committee can grapple with these operations. Nor can the maximum security required to conduct them against a vigilant hostile service be compromised without degrading or destroying them. Once the need to know is extended to Congress and counterintelligence files are scanned for the names of targets and agents, the counter effort becomes a farce.

The same restrictions apply to the counterintelligence work of the FBI against foreign intelligence operations within the U.S.

Domestic counterintelligence work against American citizens is, fortu-

nately, much more easily controlled by the Congress. The political intelligence targets of the FBI are generated by instructions from FBI headquarters to its field offices. Whether or not any FBI counterintelligence program exceeds the proper limits of the policies laid down by the Department of Justice, or the Attorney General is exceeding his legal authority, can be determined by an examination of those instructions.

Congress as a whole also has the authority to define what organizations in American society are a threat to the nation's internal security. It can restrict, or blot out, any list of "subver-

sive" organizations. It can bar the surveillance of any American not engaged in suspect criminal activity. It can restrict within exceedingly precise limits the right of any federal agency to tap a telephone or examine a bank account.

A Frail Instrument

CONGRESS MAY AND hopefully will take whatever legislative actions it can, but tightening the laws will not remove public concern about "domestic spying." The people and the press are on jealous guard against our overzealous guardians, be they in the FBI or the CIA, in the police or the Pentagon. The search for illegal surveillance, wire-tapping, room-bugging, break-ins and improper files has lately become almost daily preoccupation of the press and the President and the Congress have responded with vigor to the public's demand for the facts—but again these are facts of the past.

What can a standing oversight committee do to prevent future misdeeds? The question is not one of the law or agency directives, but of the conduct of persons or units in the federal government who wilfully or ignorantly violate the law or exceed the limits of their bureaucratic charters. Can a committee reach into the more secret recesses of the White House or the federal security bureaucracy to detect in advance and forestall illegal actions against American citizens?

Congress is a frail instrument to rely upon for this demanding task. The operations of the White House plumbers, the Pentagon's wholesale compilation of dossiers of American civilians, the FBI's extensive program of investigation and harassment of American dissidents, the CIA's participation in several incidents of domestic surveillance—all eluded the attention of Congress while they were going on. An oversight committee can review overall expenditures, scan policy instructions and put searching questions to senior officials. It cannot detect infractions of policy or law by errant federal officials in Los Angeles, New York, or Washington.

A New Overseer

THERE IS A practical solution, one which is coming into vogue in other sectors of our society. It is to approach the problem from the bottom up rather than from the top down.

A counterintelligence ombudsman in Washington could well serve as the overseer of our guardians. He should be a man of character and experience,

a well-known figure with an established reputation—someone like Prof. Samuel Dash of Watergate fame. He would require only a small staff of investigators and a well-publicized address and telephone number.

The ombudsman, or his staff, would be available to any federal employee in the White House or in any intelligence or investigative agency who has reason to suppose that he, his boss or his agency are carrying out actions that are improper or illegal.

This system would permit a lowly clerk or a presidential appointee, discreetly and without threat of retribution, to blow the whistle on what offends his sense of legality. He can make his complaint in the full confidence that he will be taken seriously and his charges investigated.

The ombudsman offers the same opportunity to any American citizen whose rights are violated by a federal intelligence agency. The improper targets of domestic investigation or harassment have a right to be heard, and at no cost to them. Crank complaints are inevitable, but a bright investigator can winnow these out without wasting time.

An ombudsman of this sort could work under the authority of the Senate Judiciary Committee or of a Joint Committee on Intelligence—if one were to be set up.

Why an ombudsman—and not a congressional committee?

Both the man in a classified job and the put-upon citizen are much more likely to trust a known individual than an anonymous committee of part-time members. Leaks to the press generally are not addressed to the management of a newspaper, but to a known journalist of proven discretion. The complainants will also know their charges will not be caught up in the maelstrom of politics and publicity-prone legislators, for an apolitical ombudsman—and only such a person—can act without regard for what party occupies the White House or runs the committee. The current politicking regarding "domestic spying" is too conspicuous to be missed by anyone.

Obviously, the problem does not lend itself easily to foolproof solutions, there frequently being a basic contradiction between the nation's need to act secretly and the public's need to know. But if internal security matters are to be kept out of politics and yet properly policed, a neutral ombudsman may well be the best mechanism. It is an experiment worth trying, and Congress can make the experiment at little expense or risk.