Intelligence and the Rule of Law

THE YEAR-LONG DRIVE to subject American intelligence agencies to the rule of law has unquestionably faltered, especially in the House. But the need to cap the drive with appropriate legislation remains as imperative as ever and, particularly in the Senate, is still possible to fulfill. The administration has exploited such misfortunes as the assassination of the CIA's Athens station chief and wholesale leaks from the House intelligence committee to promote its preference for Executive self-policing rather than effective congressional oversight. We are hopeful, nonetheless, that the Congress will regain some of the indignation and self-confidence that marked its approach to Executive branch abuses of power last year, that it will toss in a proper measure of respect for the requirements of Executive flexibility, and that reasonable new controls will result.

Plainly, the place to start is the Senate select (temporary) intelligence committee's bill to establish a standing (permanent) Committee on Intelligence Activities. Chairman Frank Church and seven others on the select committee introduced this measure, which is supported in principle by an eighth member and opposed only by two members. The bill is nobody's dream but some of its most important features have the common virtue of political acceptability and substantive merit. Moreover, given the now-defunct House select committee's inability to produce either a final report or remedial legislation, the Church bill is likely to be the only congressional game in town. It is to be reported out of the Government Operations Committee by March 1 and out of the Rules Committee, to the Senate floor, by March 20.

The Church bill would replace the oversight system, or non-system, which has served the nation so poorly since the CIA was established in 1947. All foreign and domestic intelligence agencies, and all their activities, would be covered. The committee would have the tool of annual authorization authority—the power of the purse—over the whole national intelligence community, and the right to be kept "fully and currently informed" by the agencies and to acquire all information it deems necessary from them. No covert foreign operation could be undertaken until the committee had been "fully informed...prior to the time such activity is initiated." The committee could disclose "any information" upon its own determination of national interest; if the President objected, he could—with the committee's approval—appeal to the full Senate. Leaks by senators would be subject to punishment under Senate rules; leaks by staff members would be subject to punishment not only under Senate rules but also under the terms of their employment contracts.

As we say, this is nobody's idea of perfection —though the first thing to be said about that is that there can be no perfect fool-proof solutions in a relationship that depends so heavily on good faith and mutual trust. By assuming budgetary and information-access powers, however, this bill takes two giant steps toward responsible oversight. By reserving the legislature's right to disclose information on its own determination of national interest, the measure removes any excuse for the Congress to kowtow to the Executive branch as in the past. (It also thus avoids the critical mistake of the Pike committee —its unwise pledge, made in its haste to compensate for a late start, to give the President the final word on disclosure of information provided by him.)

Of course there is a risk of leaks, even some truly harmful ones. But just as there can be no ultimate safeguard that a careless Congress will not spill deservedly secret information, so there can be no ultimate safeguard that a determined President will not again abuse power cloaked in the secrecy of "intelligence" or "national security." The risks must be balanced off. A further possibility is that a President's anticipation of strong opposition or leaks could inhibit the covert operations he might otherwise contemplate. This particular result, we note, would probably be to the good: An operation that cannot gain some reasonable degree of congressional consensus puts such a strain on relations between the two branches that leaks are virtually inevitable in time. Angola is a case in point.

Secrecy fits poorly into a democratic society whose pride is the public accountability of official power. Yet there is a continuing need for enough secrecy to assure the nation's well-being in an uncertain and perilous world. Any "solution" is sure to be a compromise open to challenge from both sides. In this sense, the quest for a perfect solution is a recipe for stalemate. This puts an extraordinary burden on the Executive and Congress to conduct their search for a mutually acceptable solution in a spirit of accommodation. We think the Church committee's proposal generally meets that test. The tone and content of the administration's response, which is expected shortly, will go a long way toward determining whether accommodation is actually possible.