

# 'Only Congress Itself'

By Anthony Lewis

WASHINGTON, Sept. 17—The Senate Intelligence Committee, with its televised hearings on secret C.I.A. poisons, provides the immediate drama in Washington. But the parallel House investigation may have a more profound impact on the larger issues raised by American intelligence activities in recent years. The reason lies in contrasting attitudes toward the crucial question of Executive secrecy.

Senator Frank Church and his committee have followed what an assistant attorney general, with what may have been excessive candor, called the "traditional approach" to getting classified documents. That is to negotiate with Executive officials about what will be provided and promise how it will be handled.

Representative Otis Pike and the House committee are insisting on their right to examine all the relevant evidence on their own terms. They will make no promises on what they will do with subpoenaed documents.

Why is that so important? One experienced person put it as follows:

"On that position hangs the whole question of whether Congress can exercise effective oversight of the intelligence community in future. If a Congressional committee cannot say 'we want X' and get it without negotiating and promising, you open yourself to the charm and the lawyers and the whispering in the ear."

What that observer was describing was the process that has effectively protected Presidents and their intelligence men from serious scrutiny for a generation. Congressional curiosity, when it arose, was headed off by a confidential chat with a friendly member, or a whispered warning of grave consequences to our security.

To know how the charm works one has only to watch Richard Helms, the

former C.I.A. director, testify to the Senate committee so smoothly and smilingly. A C.I.A. employe who violated orders by keeping poison followed "the human impulse to do the greater good," he said; yes, and good was self-defined—which is the essence of danger in secret C.I.A. activity. It was an "aberration," he added; yes, like the Bay of Pigs and Chile and the Phoenix assassination program in Vietnam.

The larger point underlying the various intelligence inquiries is the need for accountability. Intelligence agencies do need privacy, but our system requires that they be ultimately accountable to a detached scrutineer, which is Congress.

Accountability is inconvenient to Presidents and their agents. That is why, as Congressman Pike said, the executive branch urgently wants to continue the old charm-and-whisper approach in dealing with Congress. It is why President Ford has seemed so strangely agitated over the House investigation—because it might not be subject to control.

The President chose to draw the issue of power with the committee over a molehill, its release of four words from a classified document. The words, "and greater communications security," supposedly might have told someone that we knew something about communications in Egypt's Army, the subject of the report.

Why, if a private citizen had published those four words, Mr. Ford said, it would be "a serious criminal offense." Do his lawyers really think a judge and jury would convict on those innocuous words? In any event, his analogy is false. If a C.I.A. director were a private citizen, he would be subject to different rules, too. If a horse had stripes, it would look like a zebra. Congress is not a private citizen.

Mr. Ford's remark is actually extremely revealing. It shows the old attitude that "the Government" means only the executive branch; Congress is a second-class branch, which gets information—and thus a share of power—only by the executive's charity. If that is the attitude, nothing has been learned from the Presidential excesses of recent years.

If American intelligence had produced a series of triumphs, there might be something to say for this attitude. In fact, Congress has at length been aroused from its lethargy only by successive intelligence wrongs and disasters. But the reason for independent Congressional oversight is more than pragmatic.

In the deepest sense the safety of liberty in this country rests on respect for the separation of powers — on Congress as a balance to the growth of Presidential power. Anyone who needs to be reminded of that truth should read the late Alexander M. Bicke's remarkable book, "The Morality of Consent," about to be published by the Yale University Press. The secret of our "disorderly" system, he says, is the assurance of freedom given by the continuing contests of power, within government and between government and citizenry.

The great Supreme Court decision on separation of powers was the steel case of 1952, striking down President Truman's seizure of the mills because it went beyond the limits of law. Justice Robert H. Jackson, in his concurring opinion, said the Court rightly refused to extend Presidential power. But in the long run, he warned: "Only Congress itself can prevent power from slipping through its fingers."

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