

# NEW WATCHDOGS IN CONGRESS

*... but the press will have to watch them*



By ROBERT O. BLANCHARD

**C**OINCIDING with the momentous events surrounding the publication of the Pentagon Papers has been the apparent revival of the long-dormant government information watchdog committee in Congress.

The new congressional freedom of information spokesman is Rep. William S. Moorhead (D-Pa.). He replaced Rep. John E. Moss (D-Calif.) in April as chairman of the Foreign Operations and Government Information Subcommittee of the House Government Operations Committee — for 15 years known as the Moss or FOI Committee.

The Moorhead Committee's recent hearings have halted the subcommittee's eight-year decline as a government information watchdog.

*Had the Moss Committee been as aggressive in exposing government information abuses during the Kennedy, Johnson and Nixon Administrations as it was during the Eisenhower Administration, perhaps the extent of government secrecy and duplicity — and even some Vietnam policy, revealed by the Pentagon Papers — might not have developed.*

But it cannot be assumed yet that the revived subcommittee, even with a new chairman and new staff, will be any more effective in the long run. If past experience is any guide, the press — represented by media FOI spokesmen and committees — will deter-

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mine how effective, or ineffective, its congressional agent will be.

Media FOI spokesmen were responsible for the establishment of the Moss Committee in 1955 — then called the Special Subcommittee on Government Information — at the height of press-executive branch confrontation not unlike the present.

Continued press support was responsible for the subcommittee's effectiveness in checking many executive branch information abuses during the Eisenhower Administration. But press tolerance of congressional stalling in the 1960s — and its susceptibility to congressional rhetoric in place of action — was equally responsible for the Moss Committee's decline as an effective watchdog of the Kennedy and, particularly, the Johnson Administration. By the time of the Nixon Administration, the subcommittee was all but defunct.

In the beginning, the Moss Committee courted and heeded the views of the chief press FOI spokesmen of the American Society of Newspaper Editors, Sigma Delta Chi, the Associated Press Managing Editors, the National Newspaper Association, and the American Newspaper Publishers Association.

Unfortunately, while they had Congress's ear these and other media FOI spokesmen did not ask for enough. They sought legislation to check excessive government secrecy. But they permitted the Moss Committee's "freedom of information" bill to protect a host of government secrecy categories — including the presidential privilege to order secret anything he considers to be "in the interest of national defense or foreign policy."

Even more serious was the media FOI groups' view of the Moss Committee's watchdog function only as a means to legislative ends. They did not pressure the subcommittee to maintain a continuous vigil on executive agency information practices.

Even while their support of the Moss Committee was exposing secrecy, embarrassing government officials responsible for it and causing release of information, the media FOI leaders were subject to criticism from some other journalists. They were, after all, involved in making news. They were participating in congressional hearings (called "panels" in an attempt to soften the fact), publicizing hearings, committee prints, reports, press statements, member speeches and proposed legislation.

The only way this activity could be justified was for the media FOI spokesmen to overtly defend the right of media professional organizations to engage in pressure politics as do other professional organizations. Unfortunately, FOI spokesmen — many of them editors — were (and still are) unwilling to articulate this point.

Thus, as some of the worst Eisenhower-Nixon Admin-



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istration secrecy abated and the sophisticated press men of the Kennedy Administration dashed into Washington, the freedom of information issue was reserved for hinterland editors who did not understand the inner workings of government.

After all, it was repeatedly said and written about the FOI issue, the "talented" and "hard-working" correspondent could really "dig" and get the "inside" story. The price seemed cheap enough. The information was off-the-record, for-background-only, from an exclusive interview, not-for-attribution, or for trial balloons. The real scoop was the selective leak of classified information.

In this atmosphere, in the Era of Consensus, the media FOI spokesmen — particularly the ASNE — slowed down their political activities which once had created and sustained a political atmosphere for an alert congressional watchdog.

It should be a surprise to no one that in this atmosphere, congressional FOI spokesmen — themselves wooed by Presidents and their sophisticated congressional liaison tacticians — should relax their vigil. There remained little political capital in FOI.

The state of affairs was only made worse by the denial of both press and congressional FOI spokesmen that they were relaxing their vigil. To the charge, first published in the summer of 1966, that the press FOI groups were in a state of decline, Moss said:

There is no cause to lament the demise of the FOI organizations. From my observation post, it is obvious these groups were never more active or aggressive in the crusade for the people's right to know and for freedom of the press.

The Freedom of Information Committee of ASNE defended Moss from the same source of criticism:

The complexion of the (FOI) battle has not changed . . . because a Democratic administration has come to power and Moss is majority whip (as critics charged).

The new public records law itself is a milestone. And Moss assured us that there will be public hearings on it as soon as sufficient experience with it has accumulated.

This was in 1967. The ASNE FOI committee never did succeed in getting Moss to hold his promised hearings on the effectiveness of that "milestone" — the Federal Public Records Law — even though there has been a vast accumulation of criticism and evidence that it was not being enforced.

There were many warnings about the weaknesses of the law and the need for compensating political and congressional surveillance. Kenneth Culp Davis, a leading authority on administrative law, said this about ASNE's "milestone":

That the Congress of the United States, after more than ten years of hearings, questionnaires, studies, reports, drafts, and pulling and hauling, would wind up with such a shabby product seems discouraging. The drafting deficiencies cannot be explained away as the product of extreme complexity, intractable subject matter, or unruly struggles between irreconcilable political philosophies. The failures in this instance are in the nature of inattention and indifference.

In 1969, Ralph Nader and his raiders released a documented indictment of the law:

The Act . . . explicitly provides for nine exemptions which offer a vast amount of discretion—so vast that to call these exemptions loopholes would be to indulge in the grossest kind of understatement.

The ASNE also assured Moss's critics in 1967 that the Moss Committee was "active on all major fronts: the White House, the Pentagon, Vietnam, the Dominican Republic, and major federal agencies, including NASA."

However, Moss acknowledged inaction. Responding to an Associated Press inquiry in 1966, he made this remarkable statement about the Johnson Administration's information record:

On the basis of complaints we receive, this administration has a reputation for an almost *perfect score in not abusing the handling or withholding of information*. We get fewer complaints now. If anyone feels I'm playing politics, let him bring in a complaint. (Emphasis added).

In its heyday, when it was playing havoc with the information policies of the Eisenhower Administration, the Moss Committee did not *wait* for complaints. The subcommittee staff aggressively sought examples of executive information abuses from members of the press. Although the Moss Committee staff consulted with reporters, editors and publishers in Washington and throughout the nation, they avoided responding *ad hoc* to individual complaints.

Throughout its "golden era", 1955-1963, the Moss Committee quietly gathered the evidence and then staged hearings or published reports, delivered speeches, wrote press releases — all documenting an over-all charge of administration-wide information abuses.

Not so in the 1960s, and this has made all the difference.

Today's media FOI spokesmen should consider three important principles or experiences as they develop their rapport with the Moorhead committee.

First, is the undeniable and too often underestimated watchdog powers of Congress.

Not even the Moss Committee's inaction in the 1960s can take away from the performance of the Special House Subcommittee on Government Information. From 1955-1960, Moss presided brilliantly over a model of congressional oversight. It was as effective in catching attention of the press and manipulating it as it was responsible and judicious with the agencies it was investigating.

But mere activity was not the only element of its effectiveness. Two scholars on government information, Dan Nimmo and Francis Rourke, found that the Moss Committee's effectiveness was often in what is called the "law of anticipated reaction". The credible threat of Moss Committee exposure swept the bureaucracy and was a deterrent to secrecy.

Another element of effectiveness was the subcommittee's continuity. Rourke discussed this factor as it related to the subcommittee:

(The Moss Committee) served the very useful purpose of giving continuity to the task of legislative oversight of executive information practices—a function which the legislature otherwise performs only on an *ad hoc* basis as cases involving the withholding of information come to the attention of individual legislators or committees.

These factors, combined into a continuous threat of exposure to executive agencies, were not significant parts of the Foreign Operations and Government In-



formation Subcommittee which succeeded the Special Subcommittee on Government Information in 1963. As Rourke observed:

This subcommittee did not prove to be nearly so effective a force under Kennedy and Johnson as it had under Eisenhower. The zeal of Democratic congressmen for exposing the misdeeds of executive agencies diminished by a measurable amount when the White House was controlled by a Democratic rather than a Republican president.

Responding to this type of criticism in 1966, Moss cited a long list of *ad hoc* cases from his files which were brought to the attention of the subcommittee. But these cases were seldom published in a subcommittee report or print, or reviewed in hearings.

In place of the threat of exposure and the continuity of oversight, Moss described a curious consensus-style of surveillance of the Johnson Administration. This description might help explain how it was possible for the executive branch to practice widespread duplicity and secrecy in the 1960s, unchecked by the Moss Committee. Moss wrote:

. . . . Following the Subcommittee's all-out information battles during its formative years there has been *far less need to engage in the tactics of formal hearings* or to apply other forms of public pressure to focus attention on or to solve information withholding problems . . . The difference in handling the problems in the 1960s as compared to the era of the Eisenhower Administration is that the Subcommittee has had the *close cooperation* of and responsiveness from the top level officials of the Kennedy-Johnson Administration. Thus, it has been possible in most instances to get the information problems solved *before they become a public issue*. (Emphasis added).

This leads to a second set of experiences the press should take into account in its relations with the Moorhead Committee: media group political collaboration with Congress.

The classic cooperation between the media FOI groups and the Moss Committee ranged from day-to-day coordination of the timing of press releases and subcommittee reports to participation in hearings. It began in the 1950s as an effective "buddy system", but ended in the 1960s with the Moss Committee staff as big brother.

The subcommittee was established, in great part, in response to the FOI crusade spearheaded by the ASNE. The subcommittee's first three years was largely a public rehash of research and rhetoric generated by the ASNE. Somewhere along the line, the Moss Committee became infallible in the eyes of FOI groups. They began to depend more and more on the subcommittee for the initiative and guidance on what to do.

They even permitted — if not requested — the subcommittee staff to draft sections of their annual FOI reports. Of course, the initiative, guidance and rhetoric was carefully orchestrated by the subcommittee staff to harmonize with Moss's new, cooperative relationship with the Democratic Administration. In return, the FOI groups defended the Moss Committee from criticism.

FOI groups' adoration of the Moss committee also blinded them to Moss's growing identification with and socialization in the House of Representatives — which in this century has become a careerist institution. With the help of the national prominence gained as chairman of the subcommittee, Moss secured his district in California. He has been a safe-seat congressman. He has

long passed what H. Douglas Price has called the "fourth term crisis." This usually leads congressmen to the adoption of the mores, traditions and ways of behavior of a congressional careerist looking toward the future and power-through-the-leadership.

These factors, in addition to Moss's position as deputy whip, certainly took their toll on Moss's interests and energies as an FOI spokesman. Thus, when he was forced this year to choose between the chairmanship of the FOI Committee and the chairmanship of a Commerce subcommittee, he chose the latter. He did this only after reform-inspired legislation limited every congressman to one subcommittee chairmanship.

This leads us to the last great experience which the present media FOI spokesmen should keep in mind when dealing with the Moorhead Committee.

The press-Moss Committee collaboration turned into cronyism almost without the media recognizing the change. It was accomplished by the subcommittee through the application of the arts and sciences of an old political shell game. The more infamous and familiar examples of this process are government regulatory agencies going to bed, as it were, with the industries they are supposed to regulate.

The techniques of this game are described in a classic analysis by Murray Edelman, "The Symbolic Uses of Politics." Political forms, he said, serve overtly as a powerful means of expression for mass publics while behind the scenes, they convey special benefits to particular groups, but not necessarily the publics.

Although probably never a mass public issue, the FOI crusade was a broad coalition of press, bar and scientific groups with common gripes over post-war and Cold War administrative and executive secrecy.

But a major goal of the movement was freedom of information legislation. The goal has been achieved — the Federal Public Records Law — but, other than its symbolic value, is not meeting expectations.

Francis Rourke has suggested that many reform movements, including the FOI crusade, become self-defeating this way:

I am much impressed by the fact that some of the (media) groups involved in freedom of information . . . have struggled so hard for reform legislation, even though it is difficult to see how much legislation could be really effective.

Congressional committees and interest groups tend to "measure their achievements or provide themselves with a *raison d'être* by getting legislation enacted," he said.

The legislative oversight function — the watchdog activity — important and as effective as it is "does not seem to confer sufficient legitimacy" for these groups.

They seem to need a legislative coonskin to nail in their annual FOI reports.

The new generation of media FOI spokesmen should demonstrate to Moorhead and his staff that it can count on them as alert and cooperative constituents while the subcommittee functions as a continuous check against executive secrecy and propaganda. They should appreciate the value of the watchdog function and their role in implementing it in the political process. They should measure the results, not the rhetoric, of the subcommittee. In short, they should keep a close watch on this watchdog. ■