

Intelligence Agencies and the Constitution

It is the Majority Leader's view and my view that there is a need to examine in depth to what extent, if any, covert activities are required by the United States. There is a need to understand not only the requirements of the United States for these activities, but what systems or procedures or oversight and accountability are required to assure that constitutional guarantees and processes are not abused in the future, as they have on occasion been in the past . . .

The history of the past twenty-five years has shown that the creations authorized by the National Security Act have severely strained our constitutional system. As a consequence, there is clearly a requirement to revise the basic authorities for our intelligence agencies. But to what extent and in what ways, neither Senator Mansfield nor I can assert at this time. Nor do we believe that anyone is in an informed position to do so. From a statement by Senator Mathias, urging creation of a Select Senate Committee to study government intelligence activities.

ACCORDING TO SENATOR MATHIAS, in the 28 years since the creation of the Central Intelligence Agency there have been more than 200 separate resolutions and legislative proposals urging the reform one way or another of the agency itself. And the amount of reform that has been achieved by this ad hoc approach has been almost nonexistent. Now the reformers are having another go; fresh resolutions are being prepared and several different congressional committee hearings are under way on various aspects of the latest crisis in CIA's affairs. We think Senators Mansfield and Mathias, and Rep. Michael J. Harrington, have a better idea. The two senators are supporting a resolution to set up a select Senate committee, equally divided between Democrats and Republicans, to study not just CIA but all domestic and foreign intelligence activities of the United States government. It would review the past, report on the present and make some proposals for the future. Mr. Harrington would establish a new House Select Committee on Intelligence, which would also take a broad view of the intelligence problem, while addressing itself to the particular allegations which have recently been made against the CIA.

The point of all this, as we understand it, is by no means to pre-empt or postpone an urgent examination of the ways in which the CIA appears to have gone beyond its legislative charter over the years. On the contrary, we think that this matter cannot be left solely to President Ford's "blue ribbon" commission and that standing committees of both houses have some responsibility to make immediate inquiries into charges which have raised serious questions in the public mind about whether assorted intelligence agencies of the federal government are even now under effective control. But

none of these committees has a sufficiently broad area of interest to undertake the sort of full-scale investigation that is sorely needed.

For what is sorely needed is not only to know whether on this or that occasion, or in this or that particular fashion, the CIA or the FBI or other intelligence operations have violated regulations or the laws in ways that impinge on the rights of private citizens. Rather, it also seems necessary at this point to go back to the drawing board and re-examine in the most searching and painstaking way what this country's current requirements are in terms of an intelligence capability and how that capability can best be accomplished without undermining constitutional rights of individuals or putting at risk our legitimate national security interests. There is no use pretending that these two objectives are not by their nature in conflict much of the time. Just as there are risks to rights of privacy in any domestic intelligence operations so there would be a risk to our national security in ending secret intelligence activities by the government. Unless you are prepared to accept extreme solutions, one way or the other, it comes down to a balancing of risks and some very hard choices.

And it also comes down to the question of who does the balancing and to what extent the decisions are subject to effective supervision and control by both the Congress and the Executive Branch. Clearly some of the intelligence machinery and some of the practices have outlived their usefulness. But this is not necessarily to say that a wholesale dismantling is indicated. The point is to decide, first, what the real requirements are. That is why the proposals for broad and searching congressional inquiries by select committees strike us as a good idea.