

# Where do we go from here?

Testimony of Hon. Michael J. Harrington before the  
House Select Committee on Intelligence - Dec. 11, 1975

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MR. CHAIRMAN: I thank the committee for this opportunity to testify on the role of the Congress in the intelligence area, even though I may be less a witness here than an object lesson. The fact that I appear before you, not among you, this morning may say more about the subject at hand than anything I might offer in the next hour of discussion. I trust you didn't invite me here to serve as a warning to the wayward, but I think the example of my recent troubles might serve well as a point of departure for some general observations on the problems we face as a Congress in challenging the national security mystique. To me the example suggests that our major obstacle in this area is ourselves.

None of you will object, I'm sure, if I spare you a full recitation of my record of interest in Chile, my efforts to get official information on CIA involvement there, my transmittal of that information to other members in hopes of stimulating an inquiry, and my tribulations as a result of all this leaking to the press. That story is fairly well known, and its comic-opera details are far less important to observe than the attitudes and institutional reflexes that brought it into being. I therefore direct your attention to the very end of the story — to the final twist of fate that "got me off the hook" — because I think it perfectly exemplifies the problem we confront.

Just as it was about to begin formal disciplinary hearings last month, the House Ethics Committee met in secret session and dismissed the entire proceeding on what was generally billed as a "technicality". According to the committee, it was discovered that the Colby testimony on Chile in April of 1974 had not been taken in executive session after all, and the charge that I mishandled executive session material was therefore without foundation. No prior notice of Mr. Colby's appearance had been given to Intelligence Subcommittee members, no vote has been taken to go into executive session, and no one but the Chairman had been present for the interview. The Ethics Committee's finding, in other words, actually illustrated what a sham congressional oversight of the CIA had been under the auspices of the Armed Services Committee. And the fact that this could be written off as a "technicality" as late as November 1975 illustrates how far we still have to go in raising

public and congressional awareness of the nature of our responsibilities. I might add that not one of the members who dogged me with sermons on the sanctity of the Rules during that period has so far stepped forward to suggest that a Chairman who violated his own obligations in this manner might himself be subject to challenge or complaint.

With such attitudes still so widely shared, I'm not sure how much sense it makes for us to sit here and debate the fine points of structural change and legislative reform. For example, throughout my time of troubles I repeatedly insisted that Congress must decide what a member should do when he discovers evidence of high-level crimes or improprieties in classified material. I still think we have to solve that problem, and the formulation of appropriate new procedures is not beyond the combined talents of the Rules Committee and the House Parliamentarian. But procedures alone won't make us stand up to Executive lawlessness. It really comes down to a question of stomach, and we can't legislate that.

In matters of national security, to put it plainly, Congress has allowed itself to be intimidated. For thirty years, presidents have told the American people that only the Executive Branch has the information, competence, and discipline to conduct foreign policy, and by and large, Congress has acquiesced in that judgment. Not wanting to be vulnerable to the charge at election time that we have trifled with the national security, we have erred on the side of "safety," contributing by simple avoidance to the slow but steady growth of a garrison-state Executive, an edifice of deception, lawlessness and unaccountability.

A prime example of Executive intimidation was Secretary Kissinger's speech in Detroit two weeks ago in which he called for an end to the "self-flagellation that has done so much harm to this nation's capacity, to conduct foreign policy". Just in case the point was missed, the Secretary went on to characterize the clandestine activities of the CIA in terms which, a decade ago, would probably have received near-unanimous acclaim from those who aspired to be elected to public office:



We must keep in mind that in a world where totalitarian governments can manipulate friendly political parties, there is a grey area between foreign policy and overt intervention which we deny ourselves at grave risk to our national security.

Now, who among us wants to be accused of "self-flagellation" or of posing "grave risk to our national security?" In the American political lexicon those are scare phrases of the highest order — plain intimidation.

A prime example of congressional acquiescence, on the other hand — and here I speak with special regret — was this committee's most recent response to the stonewalling obstructionism of the man who uttered those words. The tough stand you appeared to be taking in demanding documentation from this so-called "open Administration" had my unqualified support; the contempt citations you voted against the Secretary of State were an important and necessary step in restoring congressional co-equality. Although I fully understand the political realities that led to the final arrangement, I was deeply disappointed that once again we saw a caving-in to Executive high-handedness — to the arrogant presumption of superior insight at their end of Pennsylvania Avenue and the disdainful assumption of irresponsibility at this end.

In this connection, allow me to make a proposal. In my judgment, the announced determination of this committee, along with its Senate counterpart, to complete its work within another month or so has greatly weakened your position with the Administration, for it permits a defense based simply on delay. Your successor oversight committee — no matter how well-structured, no matter how competent or well-intentioned — cannot possibly retain the momentum of this special investigation. In view of the obstacles you have encountered here under the very best of conditions, you can hardly expect that successor committee to complete your work after the reporters and cameras have gone. There are a great many areas that have had little or no public treatment by either of the select committees. The area of Defense Department intelligence activity, for example, needs to be investigated far more thoroughly — we have learned very little publicly, regarding the allegations of abuses and incompetence in the DIA, the NSA, and the service intelligence agencies. After two years of intense international speculation about the CIA's role in the Chilean coup, the Senate Committee held only one afternoon of public hearings on the subject, without a single witness from the CIA. Senator Church, in my opinion, should have issued subpoenas to the officials involved and followed the initial example of this committee if the officials had failed to comply.

In short, the select committees should serve notice that they are prepared to outlast the Administration — that they will not go out of business until their work has been completed to the satisfaction of Congress and the public. I strongly urge you today to extend the life of this committee through the next session of Congress, providing yourselves the time and the resources to complete the job. The oversight committee that takes over after you should be secure in the knowledge that the intelligence abuses of the past have been thoroughly explored and their lessons absorbed by the nation.

Let me move, finally, to some lessons which I have drawn from what we have seen revealed in recent months. Effective Congressional oversight, if it can be achieved, will not by itself assure a law-abiding, well-managed intelligence community in the future. Certain additional steps will have to be taken.

(1) If we really believe in democracy and self-determination as a model for the world, covert action must be abolished as an instrument of United States foreign policy. The existence of a standing covert action capability in the CIA, available to a series of presidents anxious for quick results, has had disastrous long-term consequences, severely crippling this country as a leader in the world and badly shaking the faith of our own people in the integrity of their system. "Secret wars" fought without the knowledge or approval of the Congress; secret deals with foreign governments and political elements; the use of methods such as assassination and bribery — all have combined to make us look rather similar in the eyes of the world to societies we routinely condemn.

The effort by the Congress to control covert action, embodied in an amendment to the Foreign Assistance Act of 1974, has failed and ought to be supplanted by an outright prohibition. It has merely resulted in Congress being implicated in programs such as those under way in Portugal and Angola, without any real power on the part of this Branch to veto or even influence the actions undertaken by the Executive. Language must be found which will prohibit clandestine manipulation of foreign societies, and Congress must be emphatic in its enforcement.

(2) We must build in reliable safeguards against illegal activity by intelligence agencies, setting up mechanisms for the investigation and prosecution of those who abuse their public trust. To this end we should establish:

—A Special Prosecutor for the intelligence community, confirmed by the Senate for a fixed term, with jurisdiction over illegal activities by any of the intelligence

agencies of the federal government. The Justice Department performance in the Watergate case, and its failure to take action on any of the illegal intelligence activities which have been reported to it, including the allegations of perjury brought against Richard Helms, lead me to conclude that jurisdiction over these matters should be transferred to an independent prosecutor who can be held accountable to the Congress.

—An Inspector General for the entire intelligence community, appointed from outside that community and confirmed by the Senate for a fixed term, with responsibility to report any possible violations to the Special Prosecutor for intelligence. This function should be performed from an independent position to prevent the kind of negligence that became apparent following the Schlesinger review of questionable CIA activities.

—A legal counsel for each of the intelligence agencies, appointed from outside the intelligence community, confirmed by the Senate for a fixed term, and accountable to the Congress for the independence and integrity of their legal advice to the agencies. This would ensure that the agencies' lawyers would act to keep them within the law, rather than help them avoid it, as has often been the case in the past.

(3) After several decades of almost unrestrained proliferation of Executive secrecy, the classification system is in desperate need of revamping. Since access to information is essential both to Congressional oversight of Executive activity and to intelligent public debate, curbing the power to classify must be a basic part of our effort. There is currently no independent control over the large number of federal agencies which wield the secrecy stamp, nor is there an independent body to which classification abuses can be appealed. Indeed the only body I have been able to discover which is charged with declassification is an office in the National Archives. In light of this obvious need for reform,

—An independent Classification Appeals Board should be established, consisting of Congressional, Executive and public members, to monitor the use of classification by Executive agencies.

—Congress should have uninhibited access to all finished intelligence. The Congress established the CIA and it is entitled to the agency's findings.

—The "third agency rule" should be abolished, at least as it affects Congress. It is outrageous that such a regulation should be used by the Executive as grounds to deny Congress classified material.

—Congress should initiate a root-and-branch review of the classification system, taking its cue from the excellent effort of the Moorhead panel and establishing something in the nature of a national joint commission. The commission should not only document the abuses and difficulties which characterize the present system, but should thoroughly outline sane new standards of classification and disclosure, explaining in the process how minimizing secrecy actually enhances the national security in a democratic society.

In closing, let me emphasize that none of these specific steps can serve their intended purpose unless we seriously challenge, through forums such as this, the assumptions that have buttressed our defense and foreign policy over the past 30 years. The cold-war vision of this nation as the guardian and ruler of a free world ringed with peril is the root of most of the abuses and inanities your investigation has uncovered. With the sobering experiences of Vietnam and Watergate behind us, this crude and infantile perception should be ripe for radical revision. Until we regain a capacity for sensing global nuance and recognize our own moral and physical limitations as a nation, we will probably continue to hand over our rights as a Congress and a people to the national security bureaucracy.