

**CONGRESSIONAL OVERSIGHT OF COVERT
ACTIVITIES: HEARINGS BEFORE THE
PERMANENT SELECT COMMITTEE ON
INTELLIGENCE, HOUSE OF REPRESENTATIVES,
NINETY-EIGHTH CONGRESS, FIRST SESSION,
SEPTEMBER 20, 21, 22, 1983**

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SEPTEMBER 20, 21, 22, 1983



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CONGRESSIONAL OVERSIGHT OF COVERT ACTIVITIES

TUESDAY, SEPTEMBER 20, 1983

HOUSE OF REPRESENTATIVES,
PERMANENT SELECT COMMITTEE ON INTELLIGENCE,
Washington, D.C.

The permanent select committee met, pursuant to call, at 9 a.m., in room H-405, the Capitol, Hon. Edward P. Boland (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order.

Recently this committee for the first time in its 6-year history reached the stage of public disagreement with the President on the subject of a particular covert action operation. That disagreement continues, but we don't meet it today and won't try to resolve it today. Rather, our purpose is to explore a more basic structural question: What should be the role of Congress in the consideration, approval, or cancellation of covert operations?

Why does the committee raise these questions now? There are several reasons. First, the history of the committee's disagreement with the President to which I referred earlier points up the disadvantage that the Intelligence Oversight Committees have in dealing with covert action. They have no power to stop them except by refusal to fund them.

This power is usually only effective in the fiscal year after a particular covert action has begun. The President must approve covert actions. He must report them to the Intelligence Oversight Committees before they are implemented. Yet, he need not ask Congress for new funds at the time they begin.

The CIA, which performs U.S. covert actions, has contingency funds and statutory transfer authority which would permit all the fiscal flexibility that even a relatively expensive covert action requires. Some may say, "Oh, so what? The President is charged with accounting for foreign affairs. Covert action is an integral part of foreign policy. Congress can stop funding for policy with which it doesn't agree, but it shouldn't try to make policy."

We do not meet today to dispute the President's pre-eminence in foreign affairs, but right now Congress can't exercise much influence on covert actions because it can't stop covert actions from beginning, except by publicly exposing them. That forces the question I proposed earlier: Isn't there some way for Congress to be in on the takeoffs as well as the crash landings of covert actions?

For the next 3 days we will be getting testimony from some of those who have been close to these operations over the past years.

We welcome their presence here and we welcome their judgments and their opinions.

[The statement of Mr. Fowler follows:]

REPRESENTATIVE WYCHE FOWLER, JR. (DEMOCRAT OF GEORGIA), CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND EVALUATION, PERMANENT SELECT COMMITTEE ON INTELLIGENCE

Mr. Chairman, as chairman of your Subcommittee on Oversight and Evaluation and as sponsor of the three bills before the committee today, I would like to thank you and the other members of the committee for holding these hearings on the important topic of congressional oversight of covert activities.

A strong and effective intelligence-gathering capability is vital to our national defense. Intelligence collection and analysis and counter-espionage activities contribute as much to our security as do missiles, tanks and aircraft carriers. As an original member of this committee, I have worked with the other members of the committee to bolster the efforts of our intelligence community in these areas. There is widespread agreement both in the Congress and among the American people that these capabilities need to be strengthened.

However, the category of covert action, or "special activities" in the parlance of the intelligence community, has attracted attention and controversy vastly out of proportion to its role within our intelligence agencies.

As defined by the President's December 1981 Executive order on U.S. Intelligence Activities, special activities are those "conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States is not apparent or acknowledged publicly . . . but which are not intended to influence U.S. political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions."

Historically, these covert actions have included political, economic, propaganda and paramilitary activities designed to influence foreign governments, organizations or events. Legally, statutory authority to conduct such actions has never been expressly granted, except for the rather vague provision of the original National Security Act which authorized the CIA "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Otherwise, "special activities" are governed solely by Executive orders, which can be and in the recent past have been, changed by each new administration.

As for the congressional role, the primary mechanism for congressional involvement in overseeing covert operations has been the Hughes-Ryan amendment which, as amended in 1980, requires the intelligence community to provide prior notice to the two intelligence committees on covert activities.

Apart from being informed, there is no formal means for the Congress to either provide legislative branch sanction to the activity in question or to block such activity.

The controversy surrounding our policy in Nicaragua raises again the question of the adequacy of the current system for determining when and under what kind of controls covert actions should be undertaken. While much congressional and media attention was focused on this subject during the mid-1970's, aside from the adoption of the Hughes-Ryan amendment, no legislative action was taken. This set of hearings represents an important next step in furthering the oversight process and I deeply regret that the administration has chosen not to participate in these proceedings.

The absence of clear, and permanent, standards to govern the conduct of covert activities and of a well-defined role for the Congress has been, in my opinion, harmful to both our overt and covert foreign policies. Suspicions abroad and here at home about "uncontrolled" covert actions have reduced confidence in the intelligence community and have undermined our efforts to rebuild the national consensus in favor of necessary intelligence activities that was damaged by the revelations of the early 1970's.

As Adm. Bobby Inman, former Deputy Director of Central Intelligence and one of the most respected intelligence professionals, said in a recent magazine interview, "This (covert action) is the single most divisive issue in trying to create a consensus on intelligence policy. In the public perception, covert action is our major function. In reality, it is a minuscule part of our total effort."

In response to these concerns I have introduced three bills (H.R. 2787, H.R. 3114 and H.R. 3872) aimed at clarifying and improving congressional oversight of covert

operations. In brief, my bills would replace the current covert activity oversight system of Executive order standards and simple reporting to Congress with one which provides statutory standards and a more formal means for congressional decisionmaking.

I am not trying to legislate a prohibition on covert activities. There have been in the past, and no doubt will be in the future, extraordinary circumstances in which covert action is the only available means to protect vital interests of the United States.

At the same time, I am trying to clarify the standards under which covert activities may be initiated. With an inherent danger of disclosure, with a mixed record of accomplishment, and with their risk of long-term damage to the success of American foreign policy objectives, covert actions should not be routine. As a foreign policy tool that must necessarily remain shielded from our normal democratic processes and as a method which quite often has an unfavorable cost-benefit ratio, covert action must be a last resort.

My legislation also aims at clearly establishing that these clandestine, covert actions, which cannot be subjected to the usual public debate, will be consistent with our official, openly proclaimed foreign policy. Experience has shown that covert operations work best when they are consistent with our publicly avowed ideals and foreign policy. It would seem only logical that neither overt nor covert policy can be successful when they are at odds with each other and since we are governed by a democratic system our overt foreign policy must be the controlling force.

Specifically, my first bill, H.R. 2787, would require that in order for a covert activity to be initiated, the President must make a written finding that such activity is:

Essential to the national defense or foreign policy of the United States;

Consistent with, and in support of, the publicly avowed foreign policy of the United States;

Likely to produce benefits that justify the anticipated risks and consequences of its disclosure to a foreign power;

Necessary because overt or less sensitive alternatives could not achieve the intended objectives; and

Required by circumstances that dictate the use of extraordinary means.

In addition to providing more exacting, statutory standards for the executive branch, my legislation would also transform the congressional role by giving to the two intelligence committees the authority to disapprove major covert actions. I anticipate that this will be the most controversial provision of the bill, not only in the executive branch and in the Congress but, in the aftermath of the *Chadha* decision, in the courts. I myself have concluded after much thought and experience with covert actions that a legislative veto would be the most desirable improvement in congressional oversight in this area.

Under the present system, the Congress, or more precisely its intelligence committees, has the right to be "fully and currently informed" of "significant anticipated intelligence activity." We can influence the executive branch policymakers by expressing our concerns and misgivings.

Yet the same statute which grants these rights (section 501(a) of the National Security Act) also states that the reporting provision "shall not require approval of the intelligence committees as a condition precedent to the initiation of any such anticipated intelligence activity."

Over the years the Congress has shown great reluctance to become involved in intelligence activities. In part this stemmed from deference to the President as the architect of American foreign policy and in part it resulted from uneasiness about potential security breaches if Congress thoroughly reviewed intelligence programs.

However, I would say that the very nature of intelligence activities which cannot be subjected to the crucible of full public scrutiny, cries out for the involvement of the people's branch of government, the Congress, in passing judgement on these activities. Such outside scrutiny can also serve to sharpen the internal review process within the intelligence community and the executive branch. When an outside party has oversight authority those directly responsible for implementing a given program are more likely to thoroughly analyze the advisability of the program.

The revelations and investigations that rocked the intelligence community in the mid 1970's did move the Congress toward a greater role in the field of intelligence policy, culminating in the creation of the two intelligence committees. As to the question of security, I must say, in all due humility, that the record of these two panels in protecting the Nation's secrets has been exemplary.

Thus, my legislation is built on the solid foundations laid over the past 6 years of congressional oversight of intelligence activities. Yet the current arrangement with respect to covert actions is less than totally satisfactory. It is ambiguous. It confuses