OVERWATCH

"The advancement and diffusion of knowledge is the only guardian of true liberty."
-James Madison

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Photo By: Lance Cpl. William Hester

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Inspector General of the Marine Corps

The Inspector General of the Marine Corps (IGMC) will promote Marine Corps combat readiness, institutional integrity, effectiveness, discipline, and credibility through impartial and independent inspections, assessments, inquiries, investigations, teaching, and training.

The Intelligence Oversight Division

To ensure the effective implementation of Marine Corps-wide oversight of Intelligence, Counterintelligence, Sensitive activities (to include USMC support to law enforcement agencies, special operations, and security matters), and Special Access Programs. To establish policy and ensure their legality, propriety and regulatory compliance with appropriate Department of Defense/ Department of the Navy guidance.

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http://atsdio.defense.gov/

Marine Corps Inspector General
http://www.hqmc.marines.mil/igmc/UnitHome.aspx

Naval Inspector General
http://www.ig.navy.mil/

Message from the Director, Intelligence Oversight

I hope everyone is enjoying their summer. As you are enjoying some well-deserved rest, please stay safe and vigilant. The incident in Chattanooga, Tennessee should serve as a reminder that there are bad individuals lurking among us.

Congratulations to General Joseph F. Dunford, USMC on his confirmation as only the second Marine to take over as Chairman of the Joint Chiefs and General Robert Neller as the next Commandant of the Marine Corps.

I am pleased to present you with the latest edition of "OverWatch." As always, I welcome your feedback and comments. Your help is greatly needed to make this a useful resource for our community of interest. .

The Chairman of the Joint Chiefs of Staff, General Martin Dempsey recently released his National Military Strategy. In it, he states the *"global security environment is the most unpredictable I have seen in 40 years of service."* The Chairman goes on to state *"future conflicts between states may prove to be unpredictable, costly, and difficult to control."* As such, we must remain particularly watchful when it comes to protecting the rights, privacy, and liberties of citizens. Chaotic environments can sometimes breed "just make it happen" mentalities. We must never allow this mindset to impinge on our oversight duties.

In the first two articles, we see a continued attempt by lawmakers to further define the parameters of intelligence oversight. Specifically, the authors discuss attempted legislation to further involve the Privacy and Civil Liberties Oversight Board (PCLOB) in oversight of covert actions. This should be a reminder that the Intel community continues to be under significant scrutiny. Regardless of the addition of more layers of oversight, we must continue to be watchful in our roles while protecting civil liberties and the rights of our nation's citizens.

The third article, authored by Mr. Bryan Clark, revisits the church committee and the effects of recent events on future regulations. Two of the Committee's workers that were interviewed for the article call for a "second Church committee" that can deal with the complexities of today's environment.

Let's continue to keep open lines of communication. Should you run across a question, or simply want to share a best practice, please feel free to contact me at any time. Additionally, please consider writing for the next issue of OverWatch."Kindly send your submissions to Major Chris Doyle at christopher.l.doyle@usmc.mil.

Thanks for what you do for our Marine Corps and our great country.

Semper Fidelis,

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Feature Article

Bill Would Increase Oversight of Spy Agencies

by Jordan Fenster

Intelligence agencies in the United States should have a few more eyes on their operations, according to U.S. Rep. James Himes, D-4th District.

Introduced by Himes at the tail-end of April, H.R. 2108 would require reports submitted to Congress by agencies such as the NSA and CIA to also be submitted to the Privacy and Civil Liberties Oversight Board (PCLOB).

Himes said in a release that his introduction of the so-called "PCLOB Oversight Enhancement Act" was directly connected to the proposed reauthorization of H.R. 2048, the USA Freedom Act.

That bill extends and puts some limits on the ability of intelligence-gathering agencies to monitor domestic data. Should the bill pass, government agencies would only be allowed to get information from telecommunications companies when there is a "reasonable, articulable suspicion" of international terrorism, connected to a "specific selection term," according to an analysis by activist organization Electronic Frontier Foundation.

Himes wants to take the issue a small step forward. As a member of the House Permanent Select Committee on Intelligence, Himes regularly receives reports from intelligence agencies, pursuant to the Foreign Intelligence Surveillance Act of 1978. He wants those same reports to be delivered as well to the nation's Privacy and Civil Liberties Oversight Board.

"This legislation would ensure that the PCLOB has the same timely and accurate reports I receive as a member of the Intelligence Committee," he said. "As we consider reauthorization of the USA Freedom Act, I will continue advocating for this improvement to ensure that we strike the right balance between protecting our security and respecting our citizens' rights and privacy."

Members of the PCLOB are appointed by the president and confirmed by Congress. The board was created in 2007 and tasked with reviewing and analyzing "actions the executive branch takes to protect the nation from terrorism," weighing those actions against "the need to protect privacy and civil liberties," according to the board's website.

In April, the five-member board said it would be taking a closer look at how spy agencies are using the 1981 Executive Order 12333 to collect data. After Edward Snowden released information regarding an NSA program intended to collect phone records in bulk, the PCLOB found that program counter to Section 215 of the Patriot Act and an ineffective tool to prevent possible terror attacks.

According to Himes, authorizing access to congressional intelligence reports would allow the board to better do its job.

"The PCLOB has been tasked with protecting our citizens' civil liberties, but it currently lacks the necessary information from our intelligence community to provide effective oversight," he said.

House Intelligence Bill Would Limit PCLOB Oversight

by Steven Aftergood

The House Intelligence Committee inserted language in the pending intelligence authorization bill that would bar access by the Privacy and Civil Liberties Oversight Board (PCLOB) to classified information pertaining to covert action.

"Nothing in the statute authorizing the Privacy and Civil Liberties Oversight Board should be construed to allow that Board to gain access to information the executive branch deems to be related to covert action," according to the new Committee report on the Intelligence Authorization Act for FY 2016 (section 306), published yesterday.

To the extent that covert action is employed against terrorism and is therefore within the scope of PCLOB's charter, the House Committee action would preclude PCLOB oversight of the implications of such covert actions for privacy and civil liberties.

That "unduly restricts" PCLOB's jurisdiction, according to Rep. James Himes (D-CT), a member of the House Intelligence Committee who unsuccessfully sought to modify the provision.
It is possible that there is some tacit rivalry between PCLOB and the congressional intelligence oversight committees, particularly since the PCLOB found that the Section 215 program for collection of telephone metadata was unlawfully implemented while the oversight committees had approved and embraced it. (The recurring failure of the intelligence oversight committees to accurately represent broader congressional and public perspectives over the past decade is a subject that remains to be addressed.) By contrast, the same House bill directed that the DNI shall provide the Government Accountability Office with the access to information that it needs to perform its authorized functions. The relevant directive (ICD 114) "shall not prohibit the Comptroller General [i.e., the head of the GAO] from obtaining information necessary to carry out an audit or review at the request of the congressional intelligence and defense committees."

The new House Committee measure may be gratuitous in any event, since the PCLOB is an executive branch agency and is already subject to the authority of the Director of National Intelligence to protect intelligence sources and methods, and to regulate access accordingly.

The PCLOB has recently posted a plan for its review of two counterterrorism-related activities governed by Executive Order 12333.
"The Board plans to concentrate on activities of the CIA and NSA, and to select activities that involve one or more of the following: (1) bulk collection involving a significant chance of acquiring U.S. person information; (2) use of incidentally collected U.S. person information; (3) targeting of U.S. persons; and (4) collection that occurs within the United States or from U.S. companies," the PCLOB plan said.

Yesterday, Senators Dianne Feinstein and John McCain introduced an amendment to the 2016 defense authorization act "to reaffirm the prohibition on torture." The amendment would limit interrogation techniques to those included in the unclassified Army Field Manual 2-22.3 (Appendix M). And it would require regular review of "to ensure that Army Field Manual 2-22.3 complies with the legal obligations of the United States and reflects current, evidence-based, best practices for interrogation that are designed to elicit reliable and voluntary statements and do not involve the use or threat of force." The amendment had not yet been voted on as of yesterday.

Frank Church, His Famous Intelligence Committee Find Legacy Tested in Modern Times

by Bryan Clark

Forty years ago this spring, in a cramped room on Capitol Hill, Idaho Sen. Frank Church led a group that pored over many of the most highly classified documents of the CIA, NSA and FBI.

The room contained the staff and U.S. senators of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, better known as the Church Committee. Church was the leader of the committee, which had unprecedented power to examine the country's top intelligence agencies.

"It was the first open hearing into the role of a secret intelligence agency in a democracy," said Tim Weiner, a former New York Times investigative journalist.

Weiner has won a Pulitzer Prize and National Book Award for his reporting on the intelligence community.

The Church Committee's investigation revealed more about the secret, sometimes illegal, work of the nation's top intelligence agencies than any

comparable effort before or since. And it led to reforms meant to rein in the agencies and protect civil liberties, though many of those reforms were weakened in the years after the 9/11 attacks.

"I know the capacity that is there to make tyranny total in America, and we must see to it that this agency and all agencies that possess this technology operate within the law and under proper supervision so that we never cross over that abyss," Church said at the time on NBC's "Meet the Press." "That is the abyss from which there is no return."

A TIME OF TURMOIL

The committee convened in early 1975, during a time of unparalleled domestic dissent and distrust of executive power.

Months earlier, on Aug. 9, 1974, President Richard Nixon became the only U.S. president to resign from office. The American people had lost faith in the Vietnam War, and Saigon would fall within months.

The impetus for an investigation of the government's expansive intelligence apparatus came in December 1974. The New York Times published a front-page article by investigative reporter Seymour Hersh based on a set of documents that CIA director William Colby had dubbed the "family jewels." The documents detailed illegal operations, including warrantless wiretapping and surveillance of the civil rights and antiwar movements.

The article created an uproar, and it quickly was determined that a congressional investigation was needed.

Church lobbied Senate Majority Leader Mike Mansfield, D-Mont., to be named committee chairman.

Church had served as an Army intelligence officer in eastern Asia during the final years of World War II. He initially supported the Gulf of Tonkin Resolution, which greatly escalated the Vietnam War, but had grown disillusioned and became an effective critic of Nixon's conduct of the war, including the secret bombing of Cambodia.

Rod Gramer, a former Idaho Statesman reporter and Church biographer, said in an interview that the slowly leaking news about the CIA covertly backing the overthrow of Chilean President Salvador Allende struck Church's conscience.

Allende, the co-founder of Chile's Socialist Party, was elected president in 1970. The CIA supported a 1973 military junta led by Gen. Augusto Pinochet. A truth and reconciliation commission later found Pinochet responsible for torturing some 28,000 people. He used the national soccer stadium to imprison his victims, thousands of whom were never seen again.

Church's notions of America clashed with the reality of his nation engaging in tactics he associated with the Soviet KGB.

"He used to say that when we start acting like our enemies, we start looking like our enemies," Gramer said.

'WE WORKED SEVEN DAYS A WEEK'

The Church Committee faced a monumental task: to investigate intelligence agencies for possible illegal behavior, and then formulate reforms. It had 18 months to accomplish the task. The committee interviewed 800 witnesses and reviewed some 110,000 classified documents during 126 hearings.

"We worked seven days a week," said Peter Fenn, who was Church's chief of staff at the time. "Weekends were nonexistent for us. It was a terrific time."

Frederick "Fritz" Schwarz acted as the committee's chief counsel. Initially, he said, some advocated handling the matter quietly. Schwarz resisted.

"Unless there was evidence of outrageous conduct, there would be no groundswell of support (for reform)," Schwarz said in a phone interview.

And the committee found plenty of outrageous conduct: human experimentation, opening domestic mail, warrantless wiretapping and defying presidential orders.

“We were looking at things that, if true, would shock the conscience of America,” Schwarz said. “Every single president (from Franklin Roosevelt to Richard Nixon) had abused their secret power.”

‘NO SUCH AGENCY’

The National Security Agency was the nation’s largest intelligence agency, but the public knew almost nothing about it in the mid-1970s. Insiders joked that it stood for “No Such Agency.”

The Church Committee shed more light on the agency than any prior inquiry, including the existence of a program called Project Shamrock, which intercepted all telegraphs entering or leaving the country.

The NSA had spied on Church for years as a part of Project Minaret, a warrantless electronic surveillance program it operated in the late ’60s and early ’70s.

Minaret spied on Martin Luther King Jr., Muhammad Ali and several journalists, all without warrants. The senators the NSA spied on included Howard Baker, R-Tenn., who later served as White House chief of staff under President Ronald Reagan.

The NSA fought to keep the identities of those it spied on secret until 2013.

“It was a real shock,” Fenn said. “And if it had come out at the time, I tell you, all hell would have broken loose. You’re monitoring United States senators? That would have been the height of irresponsibility.

“Aside from the fact that a lot of this was clearly illegal, it severely undercuts our democratic system of government.”

CHURCH’S LEGACY

The Church Committee in mid-1976 released extensive reports on programs within the intelligence community that were either illegal or ill-advised.

“What you essentially had was the question of if and how you could actually run a secret intelligence service in an open and democratic society,” investigative reporter Weiner said.

Several major reforms resulted from the panel’s work. Permanent intelligence oversight committees were set up in the House and Senate. Sen. Ron Wyden, D-Oregon, who serves on the Senate Select Committee on Intelligence, said those reforms helped end “decades of abuses” by intelligence agencies.

“Thanks to Sen. Church’s dogged investigation, the Church Committee represented a landmark achievement in congressional oversight of U.S. intelligence agencies,” he said.

Congress enacted the Foreign Intelligence Surveillance Act, or FISA, after the investigation. It established a court that could make decisions about wiretapping and other forms of surveillance that could affect U.S. citizens.

“We were trying to set up a system where warrants would be required,” Fenn said. “Not traditional warrants with an open court. You had a FISA court because they had to be kept secret. But somebody should make the call on whether to tap somebody’s phone or send some crew in to bug their apartment.”

Two major laws — one outlawing assassinations of foreign leaders and another limiting the term of the director of the FBI — also were enacted.

AFTER 9/11

Schwarz, Fenn, Weiner and Wyden all agree that in the years following the Sept. 11, 2001, terrorist attacks on the World Trade Center and Pentagon, many of the institutions spawned by the Church Committee’s investigations were seriously weakened.

One blow to the power of the FISA court, Weiner said, came when President George W. Bush authorized warrantless NSA surveillance of American citizens without going to the court. It was an effective end-run, he said.

“The system broke down after 9/11 on the direct orders of the president of the United States, who tried to bypass and countermand the court,” Weiner said.

Fenn recalled a CIA official’s telling remark during a hearing.

“The guy looked up at me from the table and said, ‘Hey, guys. We’ll be here long after you are gone.’ And (what) he meant was, ‘We’ll wait you out,’ ” Fenn said.

While the House and Senate intelligence committees continue to exercise oversight over the 17 federal intelligence agencies, Weiner said the will of Congress to maintain effective management has waned considerably. Fenn and Schwarz both said the time has come for a second Church Committee, but Weiner can’t see it happening.

“It’s too late,” he said. “If you were ever going to have an investigation into the establishment of secret prisons and the use of torture as a tool of interrogation, it should have happened many years ago.”

Intelligence Photographs in the News

San Clemente Island, California - U.S. Marine Cpl. Heath Crouch sets up security before moving to his objective during a mechanized raid as part of Amphibious Squadron/Marine Expeditionary Unit Integration Training (PMINT) aboard San Clemente Island, Calif., March 1, 2015. Crouch is an intelligence analyst with Kilo Company, Battalion Landing Team 3rd Battalion, 1st Marine Regiment, 15th Marine Expeditionary Unit. The training allowed Marines and Sailors to integrate and prepare for complex operations like raids using AAV-7 Amphibious Assault Vehicles. **Photo by Sgt. Emmanuel Ramos**

ROBERTSON BARRACKS, NT, AU - U.S. Marine Corps Lance Cpl. David Whitehead, an intelligence specialist with Company C, 1st Battalion, 4th Marine Regiment, Marine Rotational Force – Darwin, performs a radio check May 20 before leaving with a convoy to Mount Bundey Training Area, Northern Territory, Australia. The Marines were preparing the convoy to begin Exercise Predator Walk. This deployment demonstrates the interoperability and combined capability of a Marine Air Ground Task Force with Australian allies. Whitehead is a native of Beaufort, South Carolina. **Photo by Lance Cpl. Makenzie Fallon**

MARINE CORPS BASE QUANITCO, Virginia - During a Marine Corps Intelligence Activity exercise May 5, the Multi-Utility Tactical Transport, or MUTT, is put through its paces at the Town of Quantico's Riverside Park and in the Potomac River, Marine Corps Base Quantico, Virginia. The unmanned vehicle can carry up to 600 pounds; roll over boulders, sand and debris; and even swim**. Photo By: Eve A. Baker**

Intelligence Oversight Division

MISSION: To ensure the effective implementation of Marine Corps-wide Oversight of Intelligence, Counterintelligence, Sensitive activities (to include USMC support to law enforcement agencies, special operations, and security matters), and special Access Programs. To establish policy and ensure their legality, propriety and regulatory compliance with appropriate Department of Defense/ Department of the Navy guidance.

Examples of sensitive activities include:

- Military support to Civil Authorities
- Lethal support/training to non-USMC agencies
- CONUS off-base training
- Covered, clandestine, undercover activities
- Intelligence collection of information on U.S. persons

SECNAVINST 5430.57G states:

"...personnel bearing USMC IG credentials marked 'Intelligence Oversight/Unlimited Special Access' are certified for access to information and spaces dealing with intelligence and sensitive activities, compartmented and special access programs, and other restricted access programs in which DON participates. When performing oversight of such programs pursuant to Executive Order, they shall be presumed to have a 'need to know' for access to information and spaces concerning them."

WHAT IS INTELLIGENCE OVERSIGHT?

Intelligence Oversight ensures that intelligence personnel shall not collect, retain, or disseminate information about U.S. persons unless done in accordance with specific guidelines, proper authorization, and within only specific categories (*See References*).

DEFINITIONS

i. **INTELLIGENCE OVERSIGHT (IO):** Ensures that intelligence personnel shall not collect, retain, or disseminate information about U.S. persons unless done in accordance with specific guidelines, proper authorization, and within only specific categories. References: E.O. 12333, DoD Dir 5240.01, DoD Reg 5240.1-R, SECNAVINST 3820.3E, MCO 3800.2B

ii. **SENSITIVE ACTIVITY OVERSIGHT:** Any activity requiring special protection from disclosure which could embarrass compromise or threaten the DON. Any activity which, if not properly executed or administered, could raise issues of unlawful conduct, government ethics, or unusual danger to DON personnel or property. These activities may include support to civilian law enforcement. Reference: SECNAVINST 5000.34E

iii. **SPECIAL ACTIVITIES OVERSIGHT:** As defined by Executive Order 12333, activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies or media, and do not include diplomatic activities or the collection and production of intelligence or related support activities. Reference: SECNAVINST 5000.34E

iv. **SPECIAL ACCESS PROGRAM (SAP):** Any Program imposing need-to-know or access controls beyond those normally required for Confidential, Secret or Top Secret information. Such a program includes but is not limited to a special clearance, more stringent adjudication or investigation requirements; special designation of officials authorized to determine need-to-know; or special lists of persons determined to have a need-to-know. A special access program may be a sensitive activity.

v. **QUESTIONABLE ACTIVITIES:** Any conduct that may constitute a violation of applicable law, treaty, regulation or policy.