



Event: Professor Marvin Ott

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Participants – non-Commission: Professor Marvin Ott; a representative of the Department of Defense (DoD)

Participants – Commission: Kevin Scheid, Col. Lorry Fenner, Gordon Lederman

(U) BACKGROUND

(U) Professor Ott is currently a professor at the National War College (NWC). He was a Foreign Service Officer, a college professor, and an employee of Congress's Office of Technology Assessment. In 1982, he was a senior analyst at the Central Intelligence Agency (CIA). At the CIA, he was a desk-bound analyst with the Directorate of Intelligence (DI) and received a "working stiff's view of the DI." He found that his colleagues had never worked anywhere except the CIA. He subsequently went to the Carnegie Endowment for International Peace. In 1985, the Senate Select Committee on Intelligence (SSCI) approached him to work on its staff due to his expertise in East Asia. Sen. Durenberger was then Chairman of the SSCI and wanted to build a professional staff. From 1985-1992, he was at the SSCI, and his time essentially coincided with the chairmanship of Sen. Boren. When Sen. Boren left, he became Deputy Staff Director. Since his time at the SSCI, he has been an NWC professor. He cautioned us that he is not an "intelligence professional." However, he has written an article about Congressional oversight.

CONGRESSIONAL OVERSIGHT

Effective oversight is hard to get because everything must be done right. Also, there needs to be mutual respect on both sides – there is so much detail and so many programs. There needs to be professionalism, a respect for motives, and mutual respect for expertise.

It is very hard for a legislative body to oversee a secret organization. There is a disconnect between the culture of Congress and the culture of the Intelligence Community (IC). Congress is very "fast and loose" with information. It's an "oil and

water thing.” There is no evidence that Congressional oversight can be done effectively. No other country can do it. It is impossible for a parliament to do it because there is no separation of powers.

Mr. Lederman inquired whether the oversight committees are advocates for the IC. Prof. Ott wondered whether the committees have ever said that publicly. Also, the IC has many ways to resist forceful oversight; oversight requires “voluntary partnership.” Moreover, IC programs are so complex, there is a need for the IC to point-out which programs constitute “dangers.” Finally, the IC cannot lobby Congress.

To judge whether the oversight committees are captured by the ‘overseen,’ look to see if the IC is “too happy” with the committees. While the oversight committees are not like the Senate Armed Services Committee and DoD (he noted that if Members served in the military, they may be too deferential to DoD), Members are probably too deferential to the IC. However, there were Members of Congress who were really uneasy with the IC (for example, Sens. Cranston and Feinstein).

There were informal agreements between Congress and the IC on the “rules of the road.” By law, the SSCI can access all information it wants from the IC, but the SSCI determined that it would be unwise to insist on accessing information regarding foreign liaison (due to the effect on liaison) and names of agents. However, Congress insisted on receiving the names of any agents associated with death squads in Central America.

Mr. Scheid noted that the IC hires staff to write reports that are required by Congress. Prof. Ott responded that most reports are never even read.

HISTORY OF CONGRESSIONAL OVERSIGHT THROUGH THE 1980S

From the 1940s to the 1970s, Congressional oversight of intelligence was a very clubby, informal system. Oversight was not very important. Sen. Russell in effect ran the entire oversight system. And then Allende, Watergate, the Phoenix program, COINTELPRO occurred. The intelligence oversight committees were created, and the IC was not very happy about them. However, the general trend line has been positive: the committees command the respect of the IC, and the IC recognizes that these committees are the IC’s best friends in Congress and that the IC is better-off dealing with these committees.

The system worked well with Sen. Boren as Chairman and Sen. Cohen as Vice Chairman. The Chairman and Vice Chairman were essentially co-chairs. Sen. Boren invested a lot of time in understanding the IC. Most Members of Congress do not really get a grip on the information. Sen. Boren had a succession of three excellent staff directors, such as “Sven Holmes,” who concentrated on hiring experts – generally people out of the IC. The SSCI tried an experiment with using IC detailees but ended that experiment due to conflicts of interest. Keith Hall headed the budget group. He was from Army Intelligence and then the Office of Management and Budget. He was very smart, tireless, very fair – he epitomized the SSCI staff. His expertise was so widely recognized, and his arguments were so formidable, that the SSCI would side with Hall

and the IC would not be terribly upset. By the end of Sen. Boren's tenure, the system of oversight was working better than anyone could have predicted. When the system is working right, oversight is very positive and adds substantial value to the IC.

The SSCI and the House Permanent Select Committee on Intelligence (HPSCI) have different jurisdiction. The HPSCI has to worry about tactical issues, which makes the HPSCI very focused on the "weeds" and too focused on "resource wars." Under Sen. Boren, every word in the intelligence authorization bill was written by the SSCI, not the HPSCI. Prof. Ott acknowledged that he has no expertise regarding the HPSCI but that in the "golden age" of oversight the SSCI was dominant while the HPSCI "held steady." There was "remarkably little communication" between the SSCI and the HPSCI – they should have been talking but did not.

The SSCI only began delving into military matters after Gulf War I to assess IC support for military operations. The special activities account was sensitive due to DoD dabbling in that area. The SSCI made repeated attempts to get more money for HUMINT, yet there was a kabuki dance every year because the IC was not convinced of the importance of HUMINT.

DCI Gates's confirmation (on the second try) was Sen. Boren's swan-song. There was a general sense on the SSCI staff that DCI Gates would be confirmed but that the IC needed to cleanse itself of Iran/Contra (in the Iran/Contra affair, the IC had lied to the Congress). To this end, Sen. Boren spearheaded the issue of politicization of intelligence, which he did not think was a major issue but thought should be raised in the confirmation hearing. However, the issue spiraled as the hearing progressed.

CONGRESSIONAL OVERSIGHT IN THE 1990S

In the early 1990s, Sens. Boren and Murkowski left the SSCI, which accelerated the degradation of the system. Sen. DeConcini lacked one-tenth of Sen. Boren's grasp of the issues. He appointed a terrible staff director, and the deputy staff director became the de facto staff director. James Woolsey was the Director of Central Intelligence (DCI). The peace dividend was coming, and the IC's budget was going to be hit. Sen. DeConcini and the SSCI knew it – Sen. DeConcini needed to work with the DCI to soothe the pain, but DCI Woolsey demanded an increase. DCI Woolsey was rock-solid in an impossible position. DCI Woolsey tried to lobby each Committee Member, which was a huge error. There was a breakdown of communication between the DCI and Sen. DeConcini. Sen. DeConcini basically had to plan declines in the IC budget without the benefit of DCI input. Meanwhile, Sen. Specter knew the issues but was busy running for President. Charlie Battaglia was appointed as staff director and turned out to be very good.

Sen. Shelby subsequently took over as Chairman and knew nothing about intelligence – his appointment was a pure political play. He saw the SSCI as being the same as any other committee, with political logrolling, etc. – but that was verboten in the SSCI. (For example, the SSCI had previously opposed amendments that steered money to particular districts.) Sen. Boren's staff had been nonpartisan, yet under Sen. Shelby it became very

partisan. Indeed, the staff in the 1980s had substantial expertise – John “Elluf” on the SSCI worked counterintelligence issues for 12-13 years and by the end had been doing it longer than anyone at the FBI. The staff changed in the 1990s as well.

The IC saw what was happening. The irony is that in the mid-1990s, senior jobs in the IC were held by people who had been at the SSCI, so they believed in oversight. DCI Tenet and other IC leaders continued to act as if oversight was effective. With respect to the effect of having former SSCI staffers in senior IC positions be too chummy with Committee Members, Prof. Ott said that good Committee Members would distrust former staffers who are in those positions. Therefore oversight could still be effective.

THE SSCI'S RELATIONSHIP WITH OTHER COMMITTEES

Regarding relations between the oversight committees and the armed services committees, the SSCI understood that if its relationship with the Senate Armed Services Committee (SASC) or the Senate Appropriations Committee (SAC) was bad, then the SSCI would get “rolled.” The SSCI was like a 120-pounder in the ring with two 800-pounders. The SSCI is merely a “B” committee.

Sen. Boren had a “major relationship” with SASC Chairman Sen. Nunn; SASC staff director Arnold Punaro and SSCI staff director Tenet could work together. Accordingly, the SASC never brought its hammer down on the SSCI. Yet the SSCI always made judgments about not getting into issues that would upset the SASC. Sen. Boren had a good relationship with Sen. Byrd of the SAC. The SAC had one person assigned to the IC budget, and that fellow had many other responsibilities as well; the SSCI carefully cultivated its relationship with that staffer. Prof. Ott also noted that Sen. Bentsen, Chairman of the Finance Committee, and Sen. Glenn, Gov't Affairs Chairman, were on the SSCI.

Mr. Scheid noted that if the SSCI saves money from the IC, then that money is merely given to the SASC.

RECOMMENDATIONS ON THE MEMBERSHIP OF THE OVERSIGHT COMMITTEES

The Members have limited tenure for fear of being “captured” by the IC. However, the limited tenure means that Members do not understand intelligence and have “honest ignorance.” It really comes down to having the right people. Sen. Dole put new people on the SSCI in the 1990s. The SSCI used to have the “barons.” Sen. Dole brought in a “flamethrower,” Sen. Kyl, a move that was related to the rise of Speaker Gingrich and brought partisan zeal to the SSCI. The Majority and Minority Leaders must put seasoned senators in this Committee who are not out to score political points but rather have good judgment. If there are good people on the SSCI, they need to be left there.

The stature of the oversight committees can be increased by making half of the membership of the SSCI be powerful individuals such as the Chairmen of the SASC,

Finance, Judiciary, and Gov't Affairs (Col. Fenner suggested Foreign Relations as well, and Prof. Ott agreed). The Chairman of the SAC should not be on the SSCI in order to maintain the distinction between appropriations and authorizations. These powerful individuals would not be overburdened by being on the SSCI because the work is basically done by the staff. Moreover, these Members will not spend much time on SSCI matters because it will not benefit them for reelection purposes. These Members would set the tone for the entire Committee. They would increase the stature of the SSCI.

RECOMMENDATIONS ON THE STAFF OF THE OVERSIGHT COMMITTEES

The staff of the oversight committees is absolutely critical. The staff needs to be swept clean. Hiring needs to be done for professional expertise, not for party affiliation.

He does not believe that polygraphing the staff would make a difference. The CIA should not control whom the SSCI hires. Over the years, the staff made some bad judgments, but there were never any foreign penetrations of the staff.

The SSCI and HPSCI now have approximately 70-75 staff total. There should perhaps be 20 staffers for the SSCI, and the HPSCI should have an extra layer due to its jurisdiction over the GDIP. Staff should have a lot of latitude. Having a big staff is not helpful. Keith Hall had wide latitude but only 2-3 people.

CONGRESSIONAL OVERSIGHT AND 911

Prof. Ott defined an intelligence failure as when something adverse to U.S. interests occurs and there is an intelligence component. He asked rhetorically whether if something does not happen whether it means that there was an intelligence success. 911 was a clandestine operation conducted by people already identified by the CIA as a threat to the U.S. The reason we have an IC in the first place is to prevent such attacks. The CIA is our capability to go after secret threats.

Mr. Scheid inquired how to determine whether Congress is culpable if 911 was an intelligence failure. Prof. Ott said that we should show that Congress has some culpability for 911. Such culpability is hard to prove, but if the oversight of the 1980s had continued into the 1990s, then there would have been 2-3 staff assigned to counterterrorism as a full-time job. They would have gone to the field, talked to stations and liaison, and talked to the DCI's Counterterrorist Center. A good staffer would have detected the threat of aircraft as weapons. Indeed, good oversight prevents groupthink. It is painful, expensive, and difficult to change groupthink. Bureaucracies do not change and never question basic assumptions. However, Congressional staff can do it all the time and can force bureaucracies to address issues. Between 1993 and 2001, there would have been numerous – perhaps 10-12 – classified hearings on counterterrorism, and maybe 80-100 visits by staff to CIA headquarters, maybe 35-40 staff visits overseas. Some chief of station eventually would have spilled his/her guts about how CIA is unprepared to counter terrorism. Staffers would then have had ammunition, and a

Member would take this issue on (for example, Sen. Glenn took on proliferation as his issue).

Mr. Scheid noted that the terrorists found the seams in our bureaucracy, such as between foreign and domestic, and these seams were created by Congress. Does this make Congress culpable? Prof. Ott responded that Congress was reflecting a deep-seated American opposition. When he was on the SSCI, words such as "domestic intelligence" were never uttered, although people knew that something to that effect was going on. Good oversight would also have looked across bureaucratic divides. It is hard for CIA to critique FBI, but staffers can easily flesh-out information-sharing barriers. If Sen. Boren's staff had looked at the IC and counterterrorism, it would have started out as an interagency discussion by "leaning over the cubicle" to talk with John Elluf regarding the FBI and Brit Snider regarding domestic intelligence. The Chairman and Vice Chairman of the SSCI would have been brought-in quickly. As an East Asian expert, he would have been tasked to do a report on Asian terrorists. However, the SSCI never confronted the question of transnational threats.

Mr. Scheid noted that the Commission has been unable to find any IC after-action reports after the first World Trade Center attack, the Khobar Towers attack, the Millennium plot, etc. Prof. Ott noted that if such attacks had occurred in the 1980s, there would have been a Congressional staff report, perhaps released to the IC – or Congress would have required the IC to do a report. Sen. Boren's tendency was not to task the IC to do a report but rather to have the SSCI staff inquire and write a report. Also, Members take Congressional staff reports more seriously than IC reports.

He read Sen. Shelby's annex to the Joint Inquiry and thought it sounded fairly good.

THE AUTHORIZATION BILL

A statute is too public, so it is a lot easier to have a classified annex concerning the IC. It was unclear to him whether the classified annex had the force of law. Mr. Scheid noted that (1) the schedule of authorizations has the force of law, and that document used to be one or two pages and is now fifty; and (2) the classified annex does not have the force of law and has grown to five hundred pages. Prof. Ott commented that this change illustrates the breakdown of the system and the current "pathology" in oversight. Micromanagement leads to the loss of energy and conveys the notion that the Congress does not trust the IC. The SSCI has become too "gotcha-oriented."

THE DCI'S AUTHORITIES

The question of the DCI's authorities is in the "too-hard box" because it cannot get past the SASC. Everyone understood that there is an "inherent paradox:" the DCI is responsible for what happens in the IC but has almost no control over it. "The DCI has a whole lot of responsibility but no authority." The essential dilemma is that if you are going to staff the IC, the majority of the people come from DoD, are paid by DoD, and belong to DoD. The people are in the National Security Agency (NSA) – "their loyalty is

really to DoD.” There is no civilian group that can supply people for NSA. If DoD supplies the money and the people, then DoD has ownership. The key, then, is DCI-SecDef relations.

EXECUTIVE BRANCH OVERSIGHT

The General Accounting Office (GAO) was held at bay by CIA. The SSCI voted not to give GAO jurisdiction over CIA. The SSCI thought that its staff could do such oversight. However, now the SSCI is not performing such oversight, so perhaps GAO should be brought in. But first, the SSCI should be given a three-year trial to develop an internal GAO-esque capability; if the SSCI does not, then GAO should be given jurisdiction over CIA.

The President’s Foreign Intelligence Advisory Board (PFIAB) does not seem to have done anything. The PFIAB has good people and “high-voltage” chairmen, but nothing seems to happen. Mr. Scheid noted that some observers have argued that the PFIAB under President Clinton was used to investigate DCI Deutch, while the PFIAB as chaired by Gen. Scowcroft has been muted; the IC runs on personality and relationships – if the President is happy with the DCI, then there is no need for an aggressive PFIAB. Prof. Ott noted that the PFIAB should not exercise “mad dog” oversight but rather should try to be “helpful.” Mr. Scheid noted that the PFIAB was at one time involved in satellite purchases. Prof. Ott noted that the PFIAB never once came up during the SSCI’s work.

RECOMMENDATIONS FOR OTHER INTERVIEWEES

He recommended we speak to John “Elluf” and also to Bob “Magner,” who was in CIA in the 1980s.