

## *Introduction*

In defending the centralization of the National Security Council system in the White House when President Richard M. Nixon came into office, Henry Kissinger cited Franklin Delano Roosevelt as a precedent. According to Kissinger, the American system of government inherently places power in the White House.<sup>1</sup> As a factual statement of the 20<sup>th</sup> century, Kissinger was surely correct, but as an interpretation of the intent of the Framers of the Constitution, scholars disagree. The Constitution gave Congress the advantage in foreign policy, but national security demands secrecy and decisiveness; features inherent in the executive, not legislative, branch. James Madison once remarked that war is the true nurse of executive aggrandizement, and Roosevelt, of course, was fighting World War II. Even though no post-WWII American president has yet fought World War III, they have all built upon the powers FDR amassed in the executive. After all, even though the Cold War never turned hot between the two main adversaries it did entail that possibility and thus necessitated continued executive vigilance over military and intelligence matters. In Arthur J. Schlesinger, Jr.'s words, this led to “[t]he image of the President acting by himself in foreign affairs, imposing his own sense of reality and necessity on a waiting government and people.” The result of the so-called “Imperial Presidency” has been the erosion of the constitutional separation of powers in foreign policy making as articulated by Aaron Wildavsky in his “Two Presidencies” thesis,

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<sup>1</sup> Henry Kissinger, *Years of Renewal* (New York: Simon & Schuster, 1999), 74.

which essentially states that the American president has more power over foreign and defense policy than over domestic policy.<sup>2</sup>

Without rehashing the debate of what the Framers intended or not, this paper builds on the insights about executive usurpation of foreign policy powers after World War II that have been pointed out by Schlesinger and others. Without taking a stance on the issue of what power should lie with which branch, it does take the perspective of Congress and asks the following: Accepting that the Framers gave Congress the power to declare war, appropriate funds, and ratify treaties, in what cases can we expect the legislative branch to assert these constitutional powers against the executive branch in foreign policy in the modern era? During the Cold War, Congress (as has been well documented elsewhere) handed over its constitutional powers in foreign policy to the White House, content to play Monday morning quarterback.<sup>3</sup> A notable exception, however, was the unprecedented event in 1975 when Congress terminated funds to a Central Intelligence Agency (CIA) covert operation in Angola and effectively stopped the Ford administration's efforts to affect the outcome of the Angolan civil war. After the "vacation from history" during the post-Cold War 1990s, the U.S. became engulfed in the "War on Terror," similar to the Cold War in its permanently heightened level of threat to national security but different in terms of adversaries. Assuming that Congress values its constitutional powers over foreign policy, one would expect representatives and senators to have asserted themselves in the decision to go to war against Iraq, as the first hot war

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<sup>2</sup> See for instance Arthur M. Schlesinger Jr., *The Imperial Presidency* (Boston: Houghton Mifflin Company, 1973), 206-7 and Aaron Wildavsky, "The Two Presidencies" in Aaron Wildavsky, ed., *The Presidency* (Boston: Little, Brown, and Company, 1969), 231-243.

<sup>3</sup> See for instance Fareed Zakaria, *From Wealth to Power* (New Jersey: Princeton University Press, 1998), chapter 3.

of the “War on Terror” surely would set a precedent for how and whom held the ever elusive war making power in Washington.<sup>4</sup> This did not happen. Instead, Congress got in line behind the president just as it had most of the time since 1945.

It is my contention that Congress asserted itself in an unprecedented manner in 1975 because it exerted an unprecedented control over the flow of intelligence, enabling it to evaluate the claims of the executive branch on grounds of better information than it had before due to the investigations of the intelligence community by the Church and Pike committees. This enabled Congress to exert its constitutional powers in foreign affairs. It is thus my opinion that a large part of the reason Congress has lost its power in foreign and defense policy since 1945 is the institutional advantage the president has on top of the hierarchy of the national security state. If Congress can level the playing field by acquiring the same information the president has, it has a better chance of asserting its powers. This is true both for the constitutional as well as the political realm. Possessing the relevant intelligence prior to a decision means possessing the information necessary to sway public opinion. It is thus initially a puzzle why Congress did not do prove more recalcitrant in 2002, as the Joint Inquiry into the Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001 was taking place at the same time these committees also were evaluating the White House’s intelligence on Iraq. One could reasonably expect that the widely lamented failures of the intelligence community pre-9/11 would lead central members of Congress to question the Bush administration’s

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<sup>4</sup> For the purposes of this paper, I do not consider the U.S. retaliation against the Taliban regime and al Qaeda in Afghanistan as a war. One would have to be far removed from the politics of foreign policy to seriously argue that Congress would assert itself against President Bush as he tried to retaliate against the perpetrators of September 11, 2001. Furthermore, there is no reason why Congress should have done so, as self-defense is recognized domestically and internationally as a valid reason to go to war and there seems to be consensus on the accuracy of U.S. intelligence in this instance.

official statements regarding Saddam Hussein and his alleged stockpiles of weapons of mass destruction (WMD). This did happen to an extent, as key representatives and senators in the intelligence committees were privy to intelligence that painted a more equivocal picture than did the administration's official statements. As we shall see however, because the information flow from the executive to the legislative branch was nowhere near that during the intelligence investigations of 1975 (especially with regards to the CIA); because the Joint Inquiry was concentrating on 9/11 and not Iraq; and ultimately because the White House inherently has the upper hand in public information campaigns the end result was one favorable to the executive branch.

### *Methodology*

Thus, I am selecting two case studies with opposite outcomes for congressional assertion (or opposite values on the dependent variable, if you like) Angola 1975 and Iraq 2002.

The reasons for selecting these two cases are the following. They both happened during times of permanent threats to national security (Cold War and the "War on Terror," being the "background variable"), they both entailed using the enumerated powers of Congress (appropriation of funds for Angola and resolution of use of force against Iraq), and most importantly, they both happened during congressional investigations into the intelligence community, yet they produced diametrically opposite results for the role of Congress.

At this point, it is important to note that the author is fully aware of the difference between a covert operation run by the CIA and an overt invasion of another country. At first glance, then, it would seem like I am grappling with apples and oranges. It is my contention that the vital part of the story of who decides foreign policy is not whether or not it is an overt or covert operation or war, but rather how the decision to take military

action was made - namely if the people controlling intelligence is the same people making the decision. This is not to say knowledge of what kind of military operation is in question will not affect the decision, one would assume it does, but this becomes irrelevant for the paper when one considers the fact that the operation that was opposed by Congress was the smaller and less costly one. Furthermore, what the U.S. did in Angola was in effect making war, and according to Secretary of State Henry Kissinger it was “not really secret” either as press reports started trickling in and Congress members obtained an unprecedented amount of information regarding the covert operation.<sup>5</sup> Thus, whereas the main story in this paper is who knew what when, it is also relevant that at the time Congress shut down the Angola operation it was public knowledge that the CIA was involved in the Angolan civil war as well as the fact that the Soviet Union was too.

In investigating the workings of American foreign policy, my methodological challenges are eased by the fact that the position of the United States in the international system is either as one of two superpowers (relevant for Angola 1975) or as the sole superpower (2002). Thus, the systemic constraints of international politics on foreign policymaking can be assumed to play a role in 1975 (and as we will see, they did, but in the end Congress disregarded this and went its own way) and a very little role in 2002, making it fair to concentrate on domestic factors such as the federal separation of powers-system. My state-centered thesis will thus concentrate on intra-federal separation of powers in foreign policy and the central decision-makers who possess the power to decide foreign policy. “Central decision-makers” is defined as the two presidents’ administrations, the two houses’ foreign relations and intelligence committees

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<sup>5</sup> Kissinger, 802.

particularly and Congress more generally, always trying to specify which branch and subgroup within the branch I am writing about.

### *Overview of the Literature*

The literature on congressional-executive relations in foreign policy is often of a normative character. The most heated normative debate is by far the discussion of which branch has more legitimate power in foreign policy according to the intent of the Framers of the Constitution. After World War II, the argument has revolved around whether or not the development of presidential primacy in foreign policy, especially in initiating military actions, is constitutional. Proponents of congressional power in foreign affairs, such as Schlesinger or Louis Fisher, argue that because the legislative branch was given the power to declare war this primacy, especially the tendency to take military action without formally asking for a resolution by Congress, is deeply unconstitutional.<sup>6</sup> The view is that the executive branch has usurped the war making powers of the legislative branch and that the War Powers Resolution of 1973 was a brave but largely failed attempt by Congress to once again gain control over the power to decide when the U.S. goes to war. William Conrad Gibbons points out that Alexander Hamilton in *Federalist* 69 wrote that the Commander in Chief would have the supreme command of the military and naval forces while the legislature would declare war - the president were to be the agent of Congress.<sup>7</sup> Hamilton is known as the most vocal proponent of executive power (he wanted the president elected for life – during good behavior anyway), which is why quotes from him about the limitations on presidential power, or presidential prerogative,

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<sup>6</sup> See for example Louis Fisher, *Presidential War Power* (Lawrence: University Press of Kansas, 2004)

<sup>7</sup> William Conrad Gibbons, "Origins of the War Power Provision" in Michael Barnhart, Ed., *Congress and United States Foreign Policy: Controlling the Use of Force in the Nuclear Age* (Albany: State University of New York Press, 1987), 10

are popular. Schlesinger points out that Hamilton proposed in the Convention that the Senate “have the sole power of declaring war” with the executive to “have the direction of war when authorized or begun.”<sup>8</sup> Proponents of Congress, along with James Madison, also make sure to point out that the wording in the Constitution that says Congress has the power to “declare war” not “make war” was articulated so for the purpose of “leaving to the Executive the power to repel sudden attacks,” not so the president could start wars on his own initiative.<sup>9</sup>

Many things were not enumerated in the Constitution however, as proponents of presidential prerogative powers will be quick to point out.<sup>10</sup> Presidential prerogative, the notion that the executive sometimes must go beyond the written word of the Constitution to act in accordance with what the president feels is the best interest of the nation, is argued for instance by Robert Scigliano.<sup>11</sup> What proponents of Congress call a constitutional partnership, proponents of presidential prerogative call “exercising traditional executive functions” or “micromanagement.”<sup>12</sup> Prominent among the presidential prerogatives argued for is emergency powers. Whereas there was made no provision in the Constitution for such powers, the Framers were heavily influenced by John Locke, who made an exception in his social contract for prerogative powers of the ruler. Locke argued that if, in times of emergency, the ruler found it necessary to pursue extralegal or illegal actions, the subsequent reaction from the legislature and the people

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<sup>8</sup> Quoted in Schlesinger, 3

<sup>9</sup> Quoted in *ibid.*, 12

<sup>10</sup> See discussion on John Locke and emergency powers.

<sup>11</sup> See Robert Scigliano, “The War Powers Resolution and the War Powers” in Joseph M. Bessette and Jeffrey Tulis, Ed., *The Presidency in The Constitutional Order* (Baton Rouge: Louisiana State University Press, 1981), 115-154. See also Gordon S. Jones and John A. Marini, *The Imperial Congress* (New York: Pharos Books, 1988).

<sup>12</sup> Jones & Marini, 5. “Micromanagement” is Henry Kissinger’s word.

would vindicate or remove the ruler.<sup>13</sup> Locke's prerogative power may have been left out of the Constitution, but the efficiency and superior control one person has as opposed to hundreds quickly became clear to the rulers of the new republic, which is perhaps what Kissinger meant when he said that American government inherently centralizes power in the executive.<sup>14</sup>

However, before one can make the decision to go to war one must have access to vital information. This important aspect of the conduct of foreign relations - and the topic of this paper - is yet another area of constitutional silence. On the issue of control of information essential to intelligent decision Madison wrote to Jefferson in 1798, "[t]he management of foreign relations appears to be most susceptible to abuse of all the trusts committed to a Government." This was due to the fact that foreign relations could "be concealed or disclosed, or disclosed in such parts and at such times as will best suit particular views."<sup>15</sup> Congress may have the power to declare war, but if it is the role of the president to present relevant intelligence to Congress, the power over the initiation of war suddenly becomes less clear-cut.

Rather than argue for or against the current state of affairs, this paper will use two case studies to examine when and how Congress can assert its constitutional powers in foreign policy. Acknowledging both the wording of the Constitution and the post-WWII development of presidential foreign policy primacy, what explains the contemporary dynamics of congressional-executive power sharing in foreign policy, or more specifically, in the decision to take military action?

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<sup>13</sup> John Locke, *Second Treatise on Government*, chapter 14.

<sup>14</sup> Indeed, John Jay noted this in the *Federalist Papers*, No. 64. Furthermore, during the early years of the Republic Congress was not in session all year and as such was *not* amenable to dispatch.

<sup>15</sup> Quoted in Schlesinger, 15

### *Competing Arguments*

It is crucial at this point to clarify the purpose of this paper. The most important goal of the paper is examining the case studies for their intrinsic value, not to devise an externally valid theory of American foreign policy making. Angola 1975 is important because it was the first time in American history Congress cut off funding for a covert operation, an act previously vested de facto in the executive branch. Indeed, this case's deviation from the norm in congressional-executive dynamics in foreign policy makes its study pertinent. Iraq was the first war of the "War on Terror" and as such a perfect time for Congress to assert itself in this new American foreign policy era. The fact that it conforms to expectations regarding congressional behavior in foreign policy makes it mundane; that fact that it did not transpire during the Cold War gives this undertaking a more long-term perspective. Furthermore, its controversial nature makes it an interesting case in itself. What this paper does seek to do, it point to relevant similarities and differences between these two cases, especially highlighting the role of intelligence sharing because I believe its explanatory power is powerful in these two cases. Moreover, it has the modest aim of pointing out what role intelligence sharing and control over information may play in foreign policy decision-making on the part of Congress in general.

One important difference exists between the two case studies that could conceivably compete with the intelligence-variable in explanatory power, and that is partisanship. During the Ford administration, the Democratic party held a majority in Congress, which constituted a divided government, whereas during the first Bush

administration, the Republican party held a majority.<sup>16</sup> Whereas this paper will not be presented in terms of a formal Lakatosian three-cornered fight between a theory of partisanship versus a theory of intelligence control (versus the empirical evidence), I will make it clear why the issue of partisanship cannot contribute as much explanatory power to these two case studies as can access to and control of intelligence. The partisanship thesis would argue that Congress, especially the House of Representatives, has reelection foremost in mind, and playing to one's "political base" is a popular way of obtaining reelection. Thus, if the president is of one party and Congress of another, the very definition of divided government, one would expect Congress to oppose the president on most policies, domestic and foreign, as a way to secure reelection and position one self in one's party. This perspective would argue that Congress in 1975 was antagonistic towards the Ford administration and cooperative towards the Bush administration in 2002, which is indeed what happened. As a matter of fact, the issue of foreign policy is not often thought of as salient to local constituents and as such should in theory lend itself well to being decided on the basis of party lines as opposed to reelection considerations.

However, this line of thinking illuminates very little about the case studies in this paper. In fact, it is not even necessarily correct as a general way of explaining congressional action. In the words of R. Douglas Arnold in his book *The Logic of Congressional Action*, congressmen - and women must always take account of the fact that an issue which may seem rather clear cut (such the 2002 Iraq resolution) may have

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<sup>16</sup> The 107<sup>th</sup> Congress was a tricky one, as the majority status of the Senate switched back and forth between the parties due to the even 50-50 split making the Vice President the tie-breaker (which changed from Democrat to Republican on January 21, 2001) and to Senator James Jeffords of Vermont's switch from Republican to Independent in the summer of 2001, giving back the one-man majority to the Democrats until October 25, 2002.

the ability to arouse voter's attentions and possible opposition down the road.<sup>17</sup> Thus, whereas one might expect foreign policy decisions to allow members of Congress some discretion to vote the party line due to voters' inattention and disinterest, representatives and senators realize events down the road could conceivably change this. For example, during the race for the Democratic nomination for president in 2004, senators were scrambling to explain their votes on the 2002 Iraq resolution to a newfound, largely anti-war constituency. Douglas, assuming that reelection is goal number one, states that members of Congress will try to anticipate which stance on the issue at hand will be favorable in the future election, but if they fail in this science of prediction, they may very well change their stance. It is perhaps a rather cynical view of the behavior of Congress members, but it seems to explain the behavior of the Democratic nominee John Kerry quite well. Thus, albeit part of any explanation of congressional action, partisanship becomes an unreliable indicator of which stance members of Congress will take on foreign policy issues due to the multiple considerations they must take into account. I contend partisanship in general is a poor predictor of foreign policy decision-making, as members of Congress are notorious for looking to their constituencies (whether it be their home constituency or their new national one if running for president) rather than to the president (if of the same party) when voting in Congress.

The assumption that politics often supercedes policy on the Hill is partly why proponents of presidential prerogative power believe the president is better suited for foreign policy-making than Congress is. In Lee H. Hamilton's words: "Congress frequently prefers to play Monday morning quarterback, letting the President make the

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<sup>17</sup> Douglas R. Arnold, *The Logic of Congressional Action* (New Haven: Yale University press, 1990), 68

tough military decisions, and then criticizing or praising him depending on the result.”<sup>18</sup>

Whereas certainly there will be no difficulty in finding examples of this, it does beg the question: Why did we see congressional assertion in 1975 before the CIA was allowed to succeed or fail, and in an area (covert action) traditionally shunned by Congress? Was it the post-Watergate Democratic Congress of 1974 that was out to “get” Nixon’s heir? Was this merely a partisan consequence of Vietnam and Watergate? I argue this position sells the reaction to the executive usurpations of the late 1960s and 1970s short. It was not a partisan reaction, as the Vietnam War surely was not conducted by a Republican, it was an institutional resurgence on the part of Congress due to the realization that both parties had abused executive power grossly to the detriment of Congress. Indeed, the outrage over the CIA’s “family jewels” was based on an institutional, not partisan critique.<sup>19</sup> The “Imperial Presidency” had gone too far. Granted, the role of party affiliation was present, as can be seen in the House of Representatives’ Pike Committee’s rampant leaks during its intelligence investigations, a good example of the worst role Congress can play in foreign policy. However, the respected and bipartisan Church Committee in the Senate conducted its investigation well and used its newfound information to check the executive, specifically in Angola. In the end, it took two thirds of Congress to override President Ford’s veto of their actions, a number much greater than the sum of Democrats. It was a congressional, not a partisan, assertion.

Common sense would predict that Congress would have an even easier task asserting itself against the White House in 2002, as the prospect of an all-out war would

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<sup>18</sup> Lee H. Hamilton & Jordan Tama, *A Creative Tension: The Foreign Policy Roles of the President and Congress* (Baltimore: The John Hopkins University Press, 2002), 64

<sup>19</sup> See discussion of the “family jewels” in the Angola case study.

lead to a public debate. Indeed, the flow of information from the White House took on a more public role than in 1975; from August 2002 the administration spoke often of the threat it saw emanating from Iraq. Thus, any opponents in Congress would be expected to have an easier task affecting Iraq policy, as the debate was public and not relegated to the classified realms of intelligence committees. What happened instead was a public relations campaign for using force against Iraq conducted by the White House, dispersing highly politicized information and intelligence to the public. Congress members skeptical of the administration became ensnared in a PR battle with the White House that they had little prospect of winning. This is of course because of the differing nature of the two institutions – the leader versus the politician for example, but also because of the resources each institution has, with executive control of intelligence being the most decisive. Here of course the development post-WWII is essential, as it was the creation of the Intelligence Community (IC) in the executive branch as a response to the Second World War and the Cold War that put the President on top of this hierarchy of information. The intelligence investigations and their subsequent reforms in 1975 were an explicit attempt by Congress to gain institutional access to the IC realizing that information was power. The arguably most significant reform, the establishment of the permanent intelligence committees in both chambers, did this to an extent, but as we shall see, was no match in 2002 for an administration bent on a certain foreign policy. The case studies will show that whereas partisanship matters, control over information and intelligence is decisive.

### *The CIA in Angola and a Case Study in Congressional Assertion*

#### Historical background

The story of the first congressional shut-down of a covert operation cannot be told without taking into account the unique environment the botched Vietnam War and the Watergate scandal created in Washington. Both these factors lead to an increasingly skeptical and reform-minded Congress. Furthermore, it led to Gerald Ford being appointed president on August 9, 1974 without any electoral mandate whatsoever and with the subsequent mid-term congressional elections in November 1974 resulting in a Democratic Congress. Much like President George W. Bush twenty-six years later, Ford was weakened by the way he got into office. Indeed, President Nixon had thought appointing Gerald Ford as vice president would halt congressional efforts to impeach him because Congress presumably would not want such an inexperienced man in foreign affairs becoming president.<sup>20</sup> Also like George Bush Jr., President Ford was a foreign policy novice and thus relied heavily on his administration for guidance. Henry Kissinger would as Secretary of State from 1974-76 and National Security Advisor from 1974-75 conduct much of U.S. foreign policy. According to Kissinger himself, he had been endowed with “quasi-presidential” authority in foreign affairs during Watergate in order to insulate national security from domestic upheaval, a role continued under Ford.<sup>21</sup> President Ford entered the White House in the middle of a term, but his entrance coincided with the commencement of the Angolan civil war, which quickly got caught up in the American anti-communist strategy on the African continent.

The military coup in Portugal in 1974 and its subsequent recognition of the overseas territories’ right to self-determination opened up the field for the independent movements in Angola to assert themselves. They had developed since the 1960s and

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<sup>20</sup> Henry Kissinger, *Years of Renewal* (New York: Simon & Schuster, 1999), 27

<sup>21</sup> *Ibid.*, 1060

stemmed from the three regions of the country. The Marxist Cuban and Soviet-backed MPLA (the Popular Movement for the Liberation of Angola) versus two allied organizations with more eclectic ideologies: Zambia and Tanzania-backed UNITA (the Union for the Total Independence for Angola) and China and Zaire-backed FNLA (the National Front for the Liberation of Angola). According to the January 1975 “Alvar Accords,” Portugal would grant independence to Angola on November 11, 1975. Thus, from January 1975 to November 1975 there was a scramble for control of the Angolan capitol, Luanda. MPLA was headed by Agostinho Neto, a medical doctor, and was strongest in the area around the capital. By August, MPLA had the upper hand. This changed when FNLA launched a campaign with Zairian troops and foreign mercenaries paid for by the CIA against the capitol from the north and UNITA attacked from the south. Intervention by Cuban troops saved MPLA, and on independence day all three movements declared independence in their respective regions.<sup>22</sup>

#### The Role of the Executive Branch and the CIA

According to Henry Kissinger, it was the visit of President Kenneth Kaunda of Zambia on April 19, 1975 that convinced President Ford and Secretary of State Kissinger that “the Soviet Union was intervening in Angola with military advisers and weapons and that we should oppose this intrusion for the sake of Angola’s neighbors.”<sup>23</sup> Kaunda urged the U.S. to support UNITA’s Jonas Savimbi. In a National Security Council (NSC) meeting on June 27, Kissinger presented this as a generic Cold War situation: deny increased

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<sup>22</sup> For an overview of the Angolan situation in 1975, see for example Edward R. Drachman and Alan Shank, *Foreign Policy, Countdown to 10 Presidential Decisions* (Albany: State University of New York Press, 1997), Chapter 6, “President Ford’s Decision to Intervene in the Angolan Civil War.”

<sup>23</sup> Kissinger, 791

Soviet sphere-of-influence in Africa by countering its efforts in Angola.<sup>24</sup> Whereas administrations as far back as Eisenhower had vacillated between supporting Portugal and supporting independence movements in Portugal's African colonies, the increased involvement of the CIA in Angola seems to have begun before President Kaunda's visit, however, as the agency provided funds to FNLA and its leader, Holden Roberto, in 1974. This was done without informing the so-called "Forty Committee," a subsidiary body of the National Security Council in charge of overseeing covert CIA activities.<sup>25</sup> On January 22, 1975, twelve days after the Alvar Accords, the Forty Committee met and approved an additional \$300,000 to Roberto. In May Assistant Secretary of State for African Affairs Nathaniel Davies was asked by Kissinger to head an interagency task force of the NSC to develop policy options towards the civil war in Angola.<sup>26</sup> In June, the report recommending diplomatic and political strategies and arguing against covert CIA operations was handed to Kissinger.<sup>27</sup> In a meeting on June 6 in the Oval Office between Ford, Kissinger, and National Security Advisor Brent Scowcroft, Kissinger said: "We have to give attention to Angola. My people want 'to let the democratic process' work. That is total nonsense. There is none. My instinct is we should work with Mobutu [Sese Seko, the autocratic President of Zaire and Roberto's brother-in-law] and through him with Roberto."<sup>28</sup> According to Davies, he advised against covert operations because of the difficulty of keeping it a secret; the absence of an irrevocable U.S commitment in

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<sup>24</sup> Ford Presidential Library. Collection: NSA. NSC Meeting File, 1974-1977. Folder: NSC Meeting 6/27/1975. "Talking Points for Secretary Kissinger. National Security Council Meeting on Angola."

<sup>25</sup> Drachman & Shank, 192-193.

<sup>26</sup> Ford Presidential Library. Collection: NSA. Memoranda of Conversation. Folder: 6/6/75 Ford, Kissinger. "National Security Study Memorandum 224."

<sup>27</sup> Edward R. Drachman, Alan Shank, *Presidents and Foreign Policy*, Countdown to 10 Controversial Decisions (Albany: State University of New York Press, 1997), 193.

<sup>28</sup> Ford Presidential Library. Collection: NSA, "Memorandum of Conversation" Folder: June 6, 1975 Ford, Kissinger.

power and prestige; and the fact that providing arms and other military support would only lead to general escalation of the war. On July 14, however, at a meeting of the 40 Committee, Kissinger asked the CIA to provide a covert plan for intervention in Angola. On July 17 the plan, known as “Operation Feature” or IAFEATURE, recommending \$14 million to be spent on arms for the FNLA and UNITA, was approved by President Ford.<sup>29</sup> Whereas the Forty Committee had explicitly stated that there were to be no U.S. military presence in Angola itself, there were approximately one dozen paramilitary advisers present.<sup>30</sup>

Washington in July 1975 was in a surreal mode, according to Kissinger. The humiliating withdrawal from Vietnam and the Khmer Rouge take-over of Cambodia in 1975 had not made the foreign policy situation easier for the Ford administration. Right-wing conservatives were criticizing the administration for not being tough enough on Communism, whereas liberals (and the African bureau of the State Department) criticized it for being too obsessed with Communism. Writes Kissinger in his memoirs: “Congressional harassment was guaranteed if we went ahead [with Angola] and might involve a replay of the Vietnam debate....”<sup>31</sup>

#### Congressional-Executive Relations

In his memoirs from the Ford administration era, Henry Kissinger writes that the Cold War consensus on executive-congressional relations regarding covert operations broke down at the end of the Nixon presidency.<sup>32</sup> Up until then, oversight of the CIA was

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<sup>29</sup> John Prados, *Presidents' Secret Wars* (New York: William Morrow & Company, Inc., 1986), 340.

<sup>30</sup> Stephen Weissman, “The CIA and U.S. Policy in Zaire and Angola” in Ray, Schaap et al., *Dirty Work 2: The CIA in Africa* (Seacaucus, N.J.: Lyle Stuart, Inc., 1979), 197

<sup>31</sup> Kissinger, *Years of Renewal*, 806

<sup>32</sup> *Ibid.*, 316

restricted to subcommittees of the Appropriations and Armed Services Committees, traditionally very deferential to the CIA. According to the Director of Central Intelligence (DCI)<sup>33</sup> at the time William Colby, the decline in the reputation of the agency can actually be traced back all the way to the Bay of Pigs-invasion, but the situation significantly worsened during the Johnson and Nixon administrations:

In a time of growing distrust of government, [the agency] found itself as an exemplar of the repugnant clandestine methods and secret manipulations that were seen as characteristic of the Johnson and Nixon administrations.<sup>34</sup>

The Watergate scandal, which developed from the summer of 1972 onward, broke the dam. As previous CIA –employees became connected with the break-in to the Democratic Watergate offices, Congress’s eyes focused both on the White House and CIA. On May 9, 1973, DCI James Schlesinger ordered all former and current CIA employees to come forward with information they had on Agency activity outside its proper charter. With this, the so-called “family jewels” were born.<sup>35</sup> In 1974 the Hughes-Ryan Amendment was passed to the Foreign Assistance Act stating that no funds would be authorized for CIA operations going beyond intelligence gathering unless the President made a “finding” that such operations were important to the national security of the United States, and set up reporting requirements to eight congressional committees.<sup>36</sup> It was the first significant congressional oversight reform.<sup>37</sup> Ford had made this “finding” on July 18, 1975 and subsequently reported it to Congress, although the communication

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<sup>33</sup> The DCI was at time the overseer and coordinator of all U.S. intelligence agencies, simultaneously the head of the CIA and the President’s chief intelligence advisor.

<sup>34</sup> Colby, William, *Honorable Men* (New York: Simon & Schuster, 1978), 309.

<sup>35</sup> Colby, 338

<sup>36</sup> Drachman and Shank, p. 199./Colby, p. 382. Identifies this as a reaction to the suspected and partially leaked CIA activities in Chile against Salvador Allende.

<sup>37</sup> Thomas G. Paterson, “Congress, the CIA, and Covert Actions,” in Ray, Schaap et al., *Dirty Work 2: The CIA in Africa* (Seacacus, N.J.: Lyle Stuart, Inc., 1979), 162

to Congress did not specify the country the requested support was going to, only that it was on the African continent.

On December 22, 1974, *The New York Times* published an article by Seymour Hersh titled “Huge C.I.A. Operation Reported in U.S. Against Anti-War Forces, Other Dissidents in Nixon Years” and in William Colby’s (the new DCI as of May 9, 1973) words “[w]hat was to become the Year of Intelligence in Washington began...”<sup>38</sup> On January 21, 1975 the Senate voted 82-4 to establish a select committee of six Democrats and five Republicans to conduct an investigation and study of American intelligence activities (especially the “family jewels”) headed by Frank Church (D-Idaho).<sup>39</sup> The report was due September 1, 1975, later extended to April 30, 1976. Then the House of Representatives passed Res. 138, establishing its own Select Committee on Intelligence to investigate the IC headed by Otis G. Pike. In Colby’s words:

...[t]he constitutional separation of powers had taken control of the subject of intelligence...I cannot pretend that I was happy with this exposure...But I must say that, unlike many in the White House and, for that matter, within the intelligence community, I believed that the Congress was within its constitutional rights to undertake a long overdue and thoroughgoing review of the Agency and the intelligence community.<sup>40</sup>

After the 40 Committee had approved increased support for mainly FNLA and a strategy based in Zaire in July 1975, the congressional committees had to be convinced. To do this, a more passive strategy of supporting both UNITA and FNLA to achieve a deadlock and hopefully an intervention by the Organization of African Unity (OAU) was adopted.<sup>41</sup> Davies subsequently resigned and was appointed ambassador to Switzerland.

Kissinger was not optimistic about cooperation with Congress. “At the very moment that

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<sup>38</sup> Colby, 391

<sup>39</sup> Kissinger, 322

<sup>40</sup> Colby, 401, 404

<sup>41</sup> Kissinger, 809

we were asking the CIA to organize resistance to a Soviet takeover in Angola, our intelligence agencies were being dismantled by a McGovernite Congress and the CIA Director was in a state of shock.”<sup>42</sup> The result in Kissinger’s view was that the administration ultimately erred because it was constrained by congressional objections making it poorly prepared for the unpredictable. Of course, the dislike was mutual. As House Majority Leader Thomas P. O’Neill, Jr. stated on “Meet the Press” December 14, 1975:

[Kissinger’s] credibility isn’t as good as it has been in the past. [House members] think he has an inflated ego. They think he has been making decisions on himself. In many instances, probably without the President’s advice. But in all instances for the most part without Congress. For Congress wants some input. The Congress at this particular time, as far as Kissinger is concerned, I would have to say that he is pretty low in esteem of the Congress, in comparison where he was so terrifically high a couple of years ago.

By November 1975, the money that had funded CIA’s activities in Angola, \$31.1 million taken from the CIA Contingency Reserve Fund, were all spent.<sup>43</sup> At a time the operation would need more money, Congress was getting increasingly suspicious of the earnestness of executive-congressional communications in regards to Angola. This was partly a reaction to numerous appearances by DCI Colby in Congress denying direct CIA involvement with the Angolan Civil War. Colby himself states in his memoirs that he did in fact inform the eight relevant congressional committees of the CIA’s ongoing activities in Angola, although what he was sharing was that no CIA aid was going to guerillas *inside* Angola, which was technically true because Operation Feature was being

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<sup>42</sup> Ibid., 810

<sup>43</sup> Drachman & Shank, p. 200. Different accounts have different numbers listed for the amount spent by the CIA for the covert action in Zaire/Angola for the year 1975. For instance, Stephen Weissman in his article “The CIA and U.S. Policy in Zaire and Angola” in *Dirty Work 2: The CIA in Africa* (Seacacus, N.J.: Lyle Stuart, Inc., 1979) writes on p. 197 that \$32 million was the total spent.

conducted through Zaire.<sup>44</sup> In August, Senator Dick Clarke (D, Iowa), chairman of the African Affairs subcommittee of the Foreign Affairs Committee, had gone on a fact-finding trip to Africa and learned of then-Apartheid led South Africa's support of UNITA, which was highly unpopular.<sup>45</sup> He came home worried that the administration had exaggerated the Soviet threat in Angola when presenting its intelligence to the congressional committees.<sup>46</sup> In September, the *New York Times* reported that the CIA was aiding MPLA opponents through Zaire. According to John Stockwell, Chief of the Angola Task Force in the CIA at the time, the newspapers were publishing an increasing number of accurate reports on IAFEATURE, with the *New York Times* being particularly on the money, causing suspicions of a "Deep Throat" in the Agency.<sup>47</sup> On November 22, the *Washington Post* published a story on South Africans fighting in Angola. According to Stockwell "[t]he propaganda and political war was lost in that stroke." It led to other African countries shifting their support more decisively to MPLA, as a demonstration against South Africa. On December 5, 1975, Senator Clarke (D, Iowa) successfully moved to amend the International Security Assistance and Arms Control Act, prohibiting any non-humanitarian aid to any groups in Angola. Clarke had been fighting funding for Angola in secret sessions, and promptly moved it into the public eye after the newspaper story.<sup>48</sup> This had become an easy choice after Bill Nelson, CIA deputy director of operations, and Ed Mulcahy, deputy assistant secretary of state for African affairs, had

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<sup>44</sup> Colby, 423. After the law passed in October 1974, the DCI was obligated to inform the relevant congressional committees of CIA's covert activities, which at this time numbered eight; the Appropriations, Armed Services, Foreign Affairs, and Select Committees of both houses.

<sup>45</sup> Prados, 345

<sup>46</sup> Paterson, 164

<sup>47</sup> John Stockwell, "Media Manipulation in Angola" in Ray, Schaap et al., *Dirty Work 2: The CIA in Africa* (Seacaucus, N.J.: Lyle Stuart, Inc., 1979), 134

<sup>48</sup> Passed December 19, 1975 54-22. President Ford called it an "abdication of responsibility by a majority of the Senate." See Gerald R. Ford, *A Time to Heal* (NY: Harper & Row Publishing, Inc., 1979), 345

contradicted each other before the committee about the CIA's involvement in Angola (Nelson offering the whole truth and Mulcahy, arriving late for his testimony, presented the technically true version).<sup>49</sup> It thus became the first time that the Senate had cut a covert program with an open vote. Twelve days later, Senator John Tunney (D, California) introduced an amendment to the draft of what became the 1976 Defense Appropriations Bill, which sought to cut \$33 million from the proposed budget. This was the estimated amount sought by the CIA to continue covert operations in Angola. The Ford administration naturally argued that aiding anti-MPLA forces was vital to countering Cuba and the U.S.S.R. in Africa. However, Congress wanted to set a precedent reigning in presidential prerogative power in foreign policy. In California Senator Alan Cranston's words:

...[we] have rejected insofar as Angola is concerned the closed system under which so many fateful foreign and defense policy decisions have been made by a few men in the executive branch and even fewer men in Congress. This is an important precedent.<sup>50</sup>

President Ford vetoed the International Assistance and Arms Control bill. Congress approved the bill again with the Clarke amendment intact, and was later signed into law by Ford. The Defense Appropriations Bill was approved and signed into law with the Tunney amendment intact. Thus, the CIA's engagement in Angola was over.

Was this merely a McGovernite Congress "playing politics" with the Republican administration? Not even Kissinger himself would support such a conclusion. According to him, as the media started reporting Davis' and others opposition to the Angola operation, the opposition from Congress became bipartisan. Republican along with

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<sup>49</sup> Prados, 347

<sup>50</sup> Drachman and Shank, 202. Quoted from California Senator Alan Cranston.

Democratic senators criticized the administration for getting the U.S. involved in another war far away. In Kissinger's words:

While the liberal abdication at least extrapolated a consistent position, the conservative opposition was more painful and more worrisome.<sup>51</sup>

As Kissinger mentions, the Vietnam War had contributed to another important development in American politics apart from a congressional-executive schism; the rise of a group of ex-Democratic foreign policy hawks called neoconservatives. In his memoirs, Kissinger criticizes this "right wing" and its "standard-bearer Ronald Reagan" for attacking the Ford administration's foreign policy from the right, accusing the administration of accommodating Communism.<sup>52</sup> Says Kissinger: "[t]he civil war in the conservative camp left the field to their liberal opposition."<sup>53</sup> Of course, it took two thirds of Congress to override President Ford's veto of the Clarke Amendment, which meant forty-eight more representatives than there were Democrats in the House and eleven more senators than there were Democrats in the Senate. Indeed, only twenty-two senators had voted against the Tunney Amendment in the first place, one of which was not such conservatives as Senator Jesse Helms (R- NC), who voted for both the Clark and Tunney amendments. In the words of Loch Johnson, in his book *A Season of Inquiry*, "[t]he newly elected members of Congress in 1974 (the aggressive post-Watergate class) included a large number who had won office by campaigning against the imperial presidency of Richard Nixon and promising a new morality in government."<sup>54</sup> It was

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<sup>51</sup> Kissinger, 828-832

<sup>52</sup> Kissinger, 835

<sup>53</sup> *Ibid.*, 832

<sup>54</sup> Loch K. Johnson, *A Season of Inquiry* (Lexington: The University Press of Kentucky, 1985), 11

Congress versus White House, and the Congress, for the first time since World War II, had won.

### Discussion

According to Schlesinger, Watergate resulted in a reinvigoration of the separation of powers, as the other branches of government rediscovered their constitutional powers in relation to the White House and exercised them forcefully. In 1975 Congress oversaw the establishment of two new committees set up to deal specifically with the intelligence community, leaving behind the years of letting the IC woo its secret subcommittees behind closed doors. The immediate job of these committees was no less than investigating the entire IC with particular attention to the “family jewels.” Watergate had produced an enormous skepticism towards executive use and abuse of intelligence. Through these new committees (that would become the intelligence committees) and their investigations, their members gained access to both a wealth of information and intelligence officials themselves they had not enjoyed before. All of a sudden, members of Congress could question and evaluate the executive branch and the IC as opposed to merely appropriate money for whatever CIA project the current administration was conducting overseas to win the Cold War.

Part of executive power is the ability to set the agenda, to influence what issue gets attention. The Ford administration had no interest in Angola becoming an issue at all, and that is how it would have stayed had this been but a few years earlier.<sup>55</sup> What eventually put Angola in Congress’s corner, then, was their enhanced ability to evaluate the incoming information from the White House and the CIA because of their increased

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<sup>55</sup> Ibid., 7

access to information. Walter Isaacson, in his biography of Kissinger, lays the blame for this on DCI Colby's eager cooperation with Congress: "After [IAFEATURE] was approved, [Colby] would insist on going to Congress to have funds officially appropriated, which would result in the leaks that would kill the program."<sup>56</sup>

The two major problems with Angola in Congress's view were of course fear of Vietnam-style escalation and resentment of Watergate-style executive secrecy.

Democratic Majority Leader of the House, Tip O'Neill, had the following exchange with Catherine Mackin on "Meet the Press" December 14, 1975:

Mrs. Mackin: Was [the covert operation in Angola] a repetition then in some manner or form of the Vietnam involvement? How we began to get involved in Vietnam?

Mr. O'Neill: Well, in Vietnam, of course, we sent advisers over there, technicians and things of that nature and eventually we sent troops over there. I assure you we are not going to do that. That is not the will of the Congress of the United States. ... This is one of the questions that has been facing the country and that the Congress is so tremendously upset about: Who sets the policy in a thing like that? Who says we should send the CIA in?

The intelligence investigations of the mid-70s were a rare occurrence and led to the interpretation that Congress was reasserting itself perhaps for the first time since the slaughtering of The Treaty of Versailles in the Senate in 1919 and the Neutrality Acts of the 1930s. The War Powers Resolution of 1973 was for a while the prime example of a "resurgent" Congress. This loss of presidential prerogative was not viewed positively in the White House. According to Kissinger, Congress had become more concerned with "inhibiting executive discretion" than with national security policy. In the wake of Watergate,

A collective mania for ever more sweeping investigations descended over Congress, of which the intelligence investigations were the most sensational ... These consumed an exorbitant amount of time of the top officials of the Ford Administration in servicing the

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<sup>56</sup> Walter Isaacson, *Kissinger: A Biography* (New York: Simon & Schuster, 1992), 677

committees and in agreeing on how to deal with classified documents...From the safe-haven of Capitol Hill, they were able to second-guess the administration on an ad-hoc basis, free of the constraints of a sense of continuity and of long-term foreign policy perspective that are inseparable from high-level policymaking.<sup>57</sup>

Kissinger remembers a better time during the Vietnam War when Congress, however much opposed it became to the war, limited itself to “Sense of the Congress” (non-binding) resolutions, instead of legislating counter to the administration on foreign policy. According to Isaacson, Kissinger privately blamed President Ford for not being strong enough to counter Congress on Angola or even circumvent it, as Nixon would have done.<sup>58</sup>

By establishing reporting requirements to eight congressional committees with Hughes-Ryan in October 1974 and then establishing stronger monitoring processes by replacing the secret CIA subcommittees with the select intelligence committees in both chambers, Congress started out with strong reforms on intelligence sharing between the branches. Of course, the executive branch would come back swinging. On February 15, 1976, the newly appointed DCI, George H. W. Bush, refused to confirm whether U.S. aid to Angola had stopped or not.<sup>59</sup> President Ford’s Executive Order 11903 to reorganize the intelligence community (among other things replacing the 40 Committee with a panel called the Operations Advisory Group) was an attempt to get ahead of congressional bills making their way through the houses. In 1985 Congress repealed the Clark Amendment and the neoconservative administration of Ronald Reagan resumed anti-MPLA activities in the ongoing Angolan civil war. The executive was once again on the rise.

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<sup>57</sup> Kissinger, 36-37

<sup>58</sup> Isaacson, 683

<sup>59</sup> Prados, 347

## *Iraq 2003 and a Case Study in Congressional Acquiescence*

### Historical background

“Saddam Hussein is out of the nuclear business,” Secretary of Defense Dick Cheney stated to a closed hearing of the Senate Foreign Relations Committee after weeks of bombing during the first Gulf War.<sup>60</sup> Not unlike his statements on Saddam’s nuclear capabilities over a decade later, he was not proven correct. UNSCOM, the U.N. Special Commission established to verify Iraqi compliance with the weapons provisions of U.N. Security Council Resolution 687 of April 3, 1991, revealed that Saddam in fact did have a clandestine nuclear program.<sup>61</sup> Until 1994, UNSCOM inspections went without much disagreement between the U.N. Security Council permanent members. After 1994, however, Great Britain and the U.S. on one side and France and Russia on the other differed on the progress of the inspections. When UNSCOM withdrew from Iraq in 1998, Britain and the U.S. commenced “Operation Desert Fox,” bombing suspected weapons sites in southern and central Iraq.<sup>62</sup> This was in addition to the two countries patrolling what they had defined as “no-fly zones” in the Kurdish-controlled northern Iraq and southern Iraq. Between Operation Desert Fox and Operation Iraqi Freedom, Great Britain and the U.S. thus routinely bombed Iraq and as such was containing Saddam, but not overthrowing him.

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<sup>60</sup> Andrew Cockburn and Patrick Cockburn, “We Have Saddam Hussein Still Here,” *The Iraq War Reader*, (New York: Touchstone, 2003), 92

<sup>61</sup> Sarah Graham-Brown and Chris Toensing, “A Backgrounder on Inspections and Sanctions,” *The Iraq War Reader*, 166

<sup>62</sup> *Ibid.* 167

### The Role of the Executive Branch and the IC

According to Bob Woodward, the first foreign policy-issue Vice President Dick Cheney wanted the president-elect to be briefed on by the outgoing Secretary of Defense William S. Cohen was not “the routine, canned, round-the-world tour normally given incoming presidents.”<sup>63</sup> The incoming vice president wanted Iraq to be “Topic A.” Due to reasons that will not be discussed in this paper, central Bush administration officials came into office with a clear focus on Iraq.<sup>64</sup> Thus it is not so shocking that on September 11, 2001, Secretary of Defense Donald Rumsfeld demanded information on the possibility of going after Iraq as well as Osama Bin Laden.<sup>65</sup> Four days later at Camp David the decision was made to wait with Iraq until after Afghanistan, although in the months after 9/11 the CIA was told by Vice President Cheney to come up with options on Iraq. On November 21, 2001 Bush asked Secretary of Defense Donald Rumsfeld for options on Iraq, “wanting to be briefed on what the scenarios would look like, but keeping it a secret so far.”<sup>66</sup> At this point in time, it would still be over a year until Congress was asked to vote on the use of military forces in Iraq, just weeks after they were presented with intelligence on Iraq’s weapons of mass destruction (WMD) capabilities.

In 2002 the CIA had “two streams of information” regarding WMD and Iraq: what the U.N. inspectors had developed between 1991 (the end of the Gulf War) and 1998, and what they had obtained after 1998, when the U.N. inspectors withdrew. CIA

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<sup>63</sup> Bob Woodward, *Plan of Attack*, (NY: Simon & Schuster, 2004), 9

<sup>64</sup> For information on the link between Bush administration officials and Iraq, see “Project for a New American Century,” an organization advocating, among other things, the overthrow of Saddam Hussein throughout the 1990s and whose members included Richard Cheney, Donald Rumsfeld, Douglas Feith, and Richard Perle. Also, see Stefan Halper and Jonathan Clarke, *America Alone*, (New York: Cambridge University Press, 2004) and Richard A. Clarke, *Against All Enemies: Inside America’s War on Terror* (New York: Free Press, 2004), 264

<sup>65</sup> Woodward, 24-25

<sup>66</sup> Bob Woodward, *Plan of Attack*, (NY: Simon & Schuster, 2004), 30

participated in UNSCOM inspections secretly, and they had uncovered much more WMD than they had anticipated, which had subsequently been destroyed. Then there was the information obtained since 1998, based on a “dramatically higher level of inference” from intercepted phone calls, defectors, and satellite photos. This was what the CIA based its updated intelligence reports on, like the one presented to President Bush, Cheney, National Security Advisor Condoleezza Rice, and Chief of Staff Andrew Card on December 21, 2002. It was at this meeting, the first “official” presentation from the CIA on Iraq DCI Tenet made his famous slam dunk-comment. According to Bob Woodward, President Bush said to Tenet: “I’ve been told all this intelligence about having WMD and this is the best we’ve got?” Tenet replied: “It’s a slam dunk case!”<sup>67</sup> At this point in time, however, Congress had given its authorization to use force against Saddam months ago.

#### Congressional-Executive Relations

Chairman of the Senate Select Committee on Intelligence at the time, Senator Bob Graham (D-FL), first found out about the administration’s plans in February 2002, a point in time he was still not suppose to know.<sup>68</sup> Upon a visit to CENTCOM (U.S. Central Command) at MacDill Airforce Base in his home state of Florida he was told behind closed doors by General Tommy Franks that military and intelligence personnel in Afghanistan were being redeployed to prepare for an action in Iraq. This was February 19, 2002. According to Senator Graham, General Franks went on to say that Iraq was a “special case” and “[o]ur intelligence there is very unsatisfactory. Some Europeans know

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<sup>67</sup> Ibid. 249

<sup>68</sup> Bob Graham, *Intelligence Matters*, (New York: Random House, 2004), xv

more than we do on Iraq's weapons of mass destruction...." which worried the senator.<sup>69</sup>

In May 2002, Senator Graham, as part of the "Gang of Eight,"\* was invited to Vice President Cheney's office to be briefed on the covert plan for Iraq.<sup>70</sup> At that point, as chronicled in Bob Woodward's book, Senator Graham told Bob Woodward that he was worried the "War on Terror" would take a "detour" into Iraq. Throughout 2002, as military and intelligence personnel were being moved, Congress would not be consulted;

Some of the funding would come from the supplemental appropriations bill being worked out in Congress for the Afghanistan war and the general war on terrorism. The rest would come from old appropriations. ... Congress, who is supposed to control the purse strings, had no real knowledge or involvement, had not even been notified that the Pentagon wanted to reprogram money.<sup>71</sup>

No matter the intentions of the Bush administration, by the time Congress was voting on its resolution to authorize force in Iraq, the money and the military resources were already redirected from Afghanistan to Iraq.

The intelligence flow between the executive and legislative branches on Iraq would soon coincide in timing with the Joint Inquiry into the Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001 (hereafter referred to as the Joint Inquiry). It was a bipartisan undertaking between the Senate and House Intelligence Committees, co-chaired by Bob Graham and Representative Porter Goss (R-FL), as opposed to the separate Church and Pike Committees in 1975 that reflected the partisan make-up of the two chambers. Initially holding closed hearings, it started public hearings on September 18 (the report was to be done before the ending of the 107<sup>th</sup>

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<sup>69</sup> Ibid, 126

\* The "Gang of Eight" is the Senate majority and minority leaders, the House Speaker and minority leader, and the chairman and ranking member of both the House and Senate Intelligence Committees, whom are briefed on the most sensitive covert operations. See Woodward page 193.

<sup>70</sup> Woodward, p. 193

<sup>71</sup> Woodward, p. 137

Congress), in the middle of the debate on the Iraq Resolution. Because the administration waited until after August 2002 to engage Congress officially on the matter of Iraq but wanted a vote on a resolution before the midterm elections in November, September and October proved to be very busy months.<sup>72</sup> Thus, at the same time the two congressional committees on intelligence were evaluating the failures made pre-9/11 by the IC, they were also evaluating the incoming information from the IC on the current threat posed by Iraq.

On September 5, 2002 the Senate Intelligence Committee called DCI George Tenet to a closed session to testify on Iraq. The committee asked to see the (classified) National Intelligence Estimate (NIE) on the rationale for invading Iraq\*. At this point, no NIE had been requested by the White House, thus none had been produced.<sup>73</sup> Senators Graham, Carl Levin (D-MI, Chairman of the Armed Services Committee), and Richard Durbin (D-IL) on the committee then requested that one be prepared, so the committee could evaluate the rationale behind a war. Tenet replied that he would prepare a NIE on Iraq's program for developing, building, and storing WMD. Three weeks later, on October 2, a ninety-page long NIE was used to brief the Senate Intelligence Committee, with DCI Tenet concluding that Iraq had sufficient stockpiles of chemical and biological weapons and enough of a restored nuclear capacity to constitute a threat to the United States and justify the use of military force to eliminate those threats.<sup>74</sup> The report also

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<sup>72</sup> By now, the statement by White House Chief of Staff Andrew H. Card that the White House waited until September to engage Congress on Iraq because "from a marketing point of view, you don't introduce new products in August" should be famous enough. This was said in an interview with *The New York Times'* White House correspondent Elisabeth Bumiller on September 5, 2002.

\*The NIE is a document prepared by the National Intelligence Council, the intelligence community's center for midterm and long-term strategic thinking. For more information, see Graham, 179

<sup>73</sup> Graham, 180

<sup>74</sup> *Ibid.*, 181

stated that Saddam Hussein had shown little interest in attacking the U.S., had few if any contacts with al Qaeda and little interest in assisting Bin Laden. At this point in time, only a few senators had been briefed on the CIA covert plan relating to Iraq, and no one knew how this might relate to the military plan, as detailed military plans were not provided to the Hill, thus the Committee did not have sufficient information to question the CIA or the administration's plan on Iraq.<sup>75</sup>

Whereas the White House had not ordered an NIE, Vice President Cheney and the Bush administration had already made several official statements on the status of WMD in Iraq. On August 26, 2002, Vice President Cheney, speaking to the Veterans of Foreign Affairs, started the administration's official campaign to convince the American public of the need to preempt Saddam Hussein by saying that it was imperative to stop him before he obtained nuclear weapons:

Simply stated, there is no doubt that Saddam Hussein now has weapons of mass destruction. There is no doubt that he is amassing them to use against our friends, against our allies, and against us.<sup>76</sup>

This caused some confusion regarding the administration's strategy, as Secretary Powell was giving interviews on the importance of getting the U.N. weapons inspectors back into Iraq, seemingly contradicting Cheney's direct path to an invasion. The administration was unanimously asserting that Saddam had WMD however. On October 2nd the Senate Intelligence Committee demanded the NIE report be declassified in an edited form so as to get its content out to the public, which was done in Graham's words

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<sup>75</sup> Woodward, 199

<sup>76</sup> "Vice President Speaks at VFW 103<sup>rd</sup> National Convention in Nashville, Tennessee," URL: [www.whitehouse.gov/news/releases/2002/08/20020826.html](http://www.whitehouse.gov/news/releases/2002/08/20020826.html), August 26, 2002 and Woodward, 164

“surprisingly quickly.”<sup>77</sup> The declassified report, twenty-five pages long, was out on October 4, 2002 and titled “Iraq’s Weapons of Mass Destruction Programs.” The report had been enhanced with maps, photos, graphics and tables, leading the senators to believe the report had been under way before they requested it. According to Senator Graham, the White House had requested a declassified NIE in the spring of 2002 to be used to make a public case for war against Iraq.<sup>78</sup> It did not include the assessment of Hussein’s lack of incentive to attack the U.S. or its sparse connections to al Qaeda. Senator Graham was in his own words “outraged”: “Dictatorships politicize intelligence. Democracies do not.”<sup>79</sup> Graham thus requested that more of the report be declassified, and three days later received edited paragraphs speaking of the lack of intent on the part of Saddam Hussein to engage the U.S. In a letter to Senator Graham on October 7, Tenet stated that the CIA had “solid reporting of senior level contacts between Iraq and al-Qa’ida going back a decade.”<sup>80</sup> Asking a third time for more information to be declassified, the Senate was denied.

As such, all intelligence on Iraq had been released that would be released before Congress was to vote on the resolution to authorize President Bush to use military force in Iraq. Not until July 2004 was the Senate Intelligence Committee able to conclude that there had been no Iraq-al Qaeda link and that the “Intelligence Community did not accurately or adequately explain to policymakers the uncertainties behind” the NIE.<sup>81</sup>

Whereas the 1975 investigations came to encompass the ongoing CIA operation in

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<sup>77</sup> Graham, 181

<sup>78</sup> Ibid., 182

<sup>79</sup> Ibid., 183

<sup>80</sup> “Letter to Senator Bob Graham,” October 7, 2002, *The Iraq War Reader*, 369

<sup>81</sup> “Report on the U.S. Intelligence Community’s Prewar Intelligence Assessments on Iraq,” July 7, 2004. Senate Select Committee on Intelligence, Pat Roberts, Kansas, Chairman; John D. Rockefeller IV, West Virginia, Vice Chairman. URL: <http://intelligence.senate.gov/iraqreport2.pdf>

Angola, the Joint Inquiry was focused solely on 9/11, and no spillover effect developed between the evaluation of pre-9/11 and pre-Iraq War intelligence. The only relationship between the two parallel processes, except the fact that it involved the same Congress members, was that the Joint Inquiry and the hearings on Iraq both experienced increased opposition from the White House and an unwillingness to release requested information.<sup>82</sup> As such, whereas the intelligence investigations of 1975 opened a floodgate of information for the investigative committees, the trickle of intelligence being provided for the hearings on Iraq that started in September 2002 came to a complete stop in October.

In October 2002 the Senate was temporarily Democratic due to Senator Jim Jeffords of Vermont switching from Republican to Independent. The partisanship theory is unhelpful however. Many Democrats did not join forces with Senator Graham. For instance, on October 2, President Bush appeared in the Rose Garden with dozens of congressmen, including Democratic House Minority Leader Dick Gephardt and Senator Joe Lieberman, to challenge Congress to pass a bipartisan resolution on Iraq. This was in line with the White House's strategy to get Congress to vote on this before the midterm elections (and possibly in line with the Democrats in question's presidential ambitions). On September 20, the White House had released its version of the resolution it wanted Congress to pass. The week of the Intelligence Committee's hearings of October 2 and 4 White House head of congressional relations, Nicholas E. Calio, let the senators know they either had to get in line or be left behind.<sup>83</sup> He had been working constantly on amassing support for the administration's policy since September 3. Thus, from

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<sup>82</sup> Graham, 201

<sup>83</sup> Woodward, 200

September to October 2002, Congress had to assess the quality of the intelligence on Iraq, but ironically, most of the information was being provided in official statements by the administration, not in NIEs:

Iraq could decide on any given day to provide a biological or chemical weapon to a terrorist group or individual terrorists.<sup>84</sup>

So outlined President Bush the possible danger of a WMD attack stemming from Iraq on October 7, 2002. At this time, polls were showing that two thirds of Americans believed Saddam Hussein was involved with or directly responsible for the 9/11 attacks.<sup>85</sup> Of course, if Iraq had been involved with or directly responsible for 9/11, the joint resolution passed by Congress on September 14, 2001 authorizing the President to use all necessary and appropriate force against the perpetrators of 9/11 would have been enough, and a new resolution approving the action in Iraq would not have been needed.

On Friday October 11, 2002, the Senate voted 77-23 to authorize the President to attack Iraq. The Senate was 50 Democrats, 49 Republicans, and 1 Independent. The day before, the House had also passed the authorization 296-133. The House was 221 Republicans, 212 Democrats, and 2 Independents. Thus, congressional support was both hugely bipartisan and also based on limited and vastly outdated information. During the debate in the House, Minority Leader Dick Gephardt said:

Saddam Hussein's track record is too compelling to ignore, and we know that he continues to develop weapons of mass destruction, including nuclear devices; and he may soon have the ability to use nuclear weapons against other nations. I believe we have an obligation to protect the United States by preventing him from getting these weapons and

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<sup>84</sup> "President Bush Outlines Iraqi Threat," [www.whitehouse.gov/news/releases/2002/10/20021007-8.html](http://www.whitehouse.gov/news/releases/2002/10/20021007-8.html), October 7, 2002

<sup>85</sup> The Pew Research Center for People and the Press, "Americans Thinking About Iraq, But Focused on the Economy," October 10, 2002. URL: <http://people-press.org/reports/display.php3?ReportID=162>

either using them himself or passing them or their components along to terrorists who share his destructive intent.<sup>86</sup>

On the Senate floor, Senator John F. Kerry had stated that he would vote for the resolution because “a deadly arsenal of weapons of mass destruction in his hands is a threat, and a grave threat, to our security.” The most vocal opposition in the Senate came from Senators Robert C. Byrd (WV), Barbara Boxer (CA), Paul Sarbanes (MD), Durbin (IL), and Paul Wellstone (MN).<sup>87</sup> Senators Tom Daschle and Diane Feinstein, who had been vocal critics of the Iraq policy, voted for the resolution. It charged Saddam Hussein of having significant amounts of WMD and of harboring members of al Qaeda. It also stated that the U.S. needed to cooperate with the U.N. Security Council.

### Discussion

On January 28, 2004, David Kay, who had recently resigned as head of the Iraqi Survey Group, told the Senate Armed Services Committee on the search for WMD that “we were almost all wrong, and I certainly include myself.” He did not think WMD would ever be found in Iraq.<sup>88</sup> That same day, reacting to Mr. Kay’s testimony, Democratic Senator Bill Nelson (FL), a member of the Senate Armed Services Committee, said: “The degree of specificity I was given a year and a half ago, prior to my vote, was not only inaccurate; it was patently false.” In the end, DCI Tenet acknowledged that the NIE should have included a paragraph on the absence of a “smoking gun.”<sup>89</sup> On Friday February 6, 2004, President Bush established the nine-member Commission on the Intelligence Capabilities

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<sup>86</sup> Reps. Charles Rangel, Howard Berman, Dennis Kucinich, Nancy Pelosi, Tom DeLay, and Richard Gephardt, “On Pre-Emption and Appeasement, Box-Cutters and Liquid Gold,” *The Iraq War Reader*, 365

<sup>87</sup> Woodward, 203

<sup>88</sup> *Ibid.*, 434

<sup>89</sup> *Ibid.*, 440

of the United States Regarding Weapons of Mass Destruction (the WMD Commission) to look into the intelligence community's activities before the Iraq War, presumably because he wanted to avoid "congressional investigations like the Church and Pike Committee in 1975-76..."<sup>90</sup> Its conclusion on March 31, 2005 was:

The Intelligence Community's performance in assessing Iraq's prewar weapons of mass destruction programs was a major intelligence failure. The failure was not merely that the Intelligence Community's assessments were all wrong. There were also serious shortcomings in the way these assessments were made and communicated to policymakers.<sup>91</sup>

The President starts out with natural advantages over Congress in foreign policy of both institutional and practical nature. Aaron Wildavsky mentioned some of them when he wrote:

The general public is much more dependent on the President in foreign affairs than in domestic matters. While many people know about the impact of social security and Medicare, few know about politics in Malawi. So it is not surprising that people expect the President to act in foreign affairs and reward him with their confidence. Gallup Polls consistently show that presidential popularity rises after he takes action in a crisis – whether the action is disastrous such as in the Bay of Pigs or successful as in the Cuban missile crisis.<sup>92</sup>

Whereas this is perhaps a bit outdated in today's information age, it still holds that September 11, 2001 was a crisis of such a magnitude that the American public turned to President Bush for action and information. Two years later, the initial shock had subsided and Washington was no longer a place where Congress members joined hands on the steps of the Capitol to sing "God Bless America," but the President was still the authority on the "War on Terror." If he said that Saddam Hussein had terrorist links, any senator or

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<sup>90</sup> Ibid., 443

<sup>91</sup> "Commission of the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction," URL: <http://www.wmd.gov/report/report.html#chapter1>

<sup>92</sup> Wildavsky, 234

representative critical of this would not, and demonstrably did not, stand a chance of convincing the public otherwise. According to Richard Clarke, National Coordinator for Security, Infrastructure Protection, and Counterterrorism under Presidents Clinton and Bush, the Bush administration failed to inform Congress and the American people that they were judging the Iraqi WMD threat based on “dated information.”<sup>93</sup> The power to educate the American people on Iraq laid in the administration’s hands, as the voice of the White House sounds louder than does that of any one Congress member, especially in times of crises. Clarke accuses the administration of knowingly linking Saddam Hussein to 9/11 without any credible proof to win support for the war.<sup>94</sup> If it is the word of the president versus the word of a senator from anywhere, the president has every prospect of winning.

On the other hand, according to Professional Staff Member of the Senate Armed Services Committee, Charles W. Alsop, in today’s information age nobody controls information. The rather free flow of information coupled with the fact that “[m]ost of these guys have been around long enough to understand that intel is your best guess at a moment in time” can therefore lead to a competing interpretation of the facts in the Iraq case.<sup>95</sup> Whereas this paper holds that the Bush administration’s public information campaign coupled with restrictive access to intelligence on Iraq led to a certain vote on the Iraq Resolution, Mr. Alsop would perhaps say that Congress members were well aware of the uncertainty of the information the White House was presenting, but still voted for the resolution because they thought it was the right thing to do. One could also

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<sup>93</sup> Richard A. Clarke, *Against All Enemies: Inside America’s War on Terror* (New York: Free Press, 2004), 267

<sup>94</sup> *Ibid.*, 268

<sup>95</sup> Charles W. Alsop, personal interview, Washington, D.C., April 7, 2005

argue they voted for the resolution because they thought the salience of September 11, 2001 and the “War on Terror” would punish them at the polls one month later did they not stand with the president. The 9/11 argument is quite powerful, but still not convincing when one looks at the numbers. 373 votes for the resolution out of 535 is no Gulf of Tonkin Resolution. It testifies to a favorable yet fractioned Congress.

### *Conclusions*

In 1793 Alexander Hamilton and James Madison engaged in the now famous debate over whether the president had the power to declare the U.S. neutral in a military conflict. Hamilton, using the pseudonym Pacificus, argued for such an executive power, whereas Madison, writing as Helvidius, argued for Congress. Of course, Hamilton, like his Federalist colleague President George Washington, was against the U.S. siding with France in the ongoing war between France and Great Britain, and saw a declaration of neutrality as a clever way of getting around the revolutionary allegiance the U.S. owed to France. Madison, pro-French, did not want to see the U.S. turn its back on its former ally. There seems to be historical precedent for policy preference and one’s position on which power should be in the hands of what branch to be strikingly overlapping. The Republican party criticized Woodrow Wilson and Franklin Delano Roosevelt for constitutional usurpations, and Democrats today claim President Bush ignores Congress. Which is why, if one believes that partisanship is a powerful explanatory variable in Washington, it is surprising to find such a bipartisan backlash against President Ford in 1975 and such a bipartisan support of President Bush in 2002. Partisanship cannot be counted on to supercede the constitutional separation of power in foreign policy, or the perception of constitutional duties by each branch. Of course Watergate and September

11, 2001 are powerful events that cannot be discounted, however they should not be taken prima facie as catch all variables. Indeed, it seems odd to suggest that Congress, having successfully deposed of the man responsible for Watergate, President Richard M. Nixon, would take aim at President Ford just to be nasty. Not impossible, but surely a bit paranoid. What Congress did do was commence extensive post-hoc oversight of the activities of the intelligence community which eventually led to more information about and interest in an ongoing covert operation which it ultimately did not find in the best interest of the U.S. and subsequently shut down. Thus, whereas numerous events such as the Pay of Pigs, the Vietnam War, Watergate, and the overthrow of Salvador Allende in Chile were the catalysts for the intelligence investigations themselves, the fact remains that it was the opening of the flow of information from the intelligence community to Congress that enabled it to assert itself against the White House in the case of Angola.

As such, the puzzle in the Iraq 2002 case presented at the beginning of this paper, the fact that the grave intelligence failure that led to the attacks on 9/11 did not spur a backlash in form of opposition to the intelligence underlying the Iraq War, is no longer a puzzle. Having presented the two case studies, it seems clear that there are two very important differences between them. Firstly, the Joint Inquiry did not take on the same sweeping mandates as did the Church and Pike Committees of 1975, thus reigning in the wideness of the potential congressional oversight. Its mission statement was to review the IC before 9/11 and make recommendations for reform; it was not to investigate ongoing activities. Whereas one could have expected a consequential skepticism towards the IC's intelligence on Iraq this simply did not happen to an extent that derailed the resolution. Thus whereas Angola became a natural target of congressional skepticism as "The Year

of Intelligence” came to an end, the Joint Inquiry did not have many implications for the Iraq case, as it did not have the same spill-over effect as seen in 1975. Secondly, because there was nothing covert about the Iraq War, the Bush administration was able to preempt any intelligence reports on Iraq through official statements. This was significant because it enabled the administration to affect public opinion to its advantage. The result was a public that believed Saddam Hussein was linked to the attacks on 9/11 and was also acquiring nuclear weapons on the one hand, and a few senators and congressmen privy to intelligence briefings uncertain about these same facts on the other hand. The number of skeptic Congress members was severely overshadowed by the number of colleagues and a public eager to move forward in the “War on Terror.” A. Douglas Arnold would probably say most of them acted on the belief that their vote on the resolution was and would continue to be salient for their voters. This led to the vote on the Joint Resolution to be a politically, rather than intelligence-based, decision. I am not arguing that most representatives in Congress did not vote for the resolution wholeheartedly, as the question of whether or not full disclosure of both evidence and its equivocalness prior to the vote would have made a difference can never be answered satisfactorily. I do suggest that the role of public opinion be investigated closely both in these cases and in regards to foreign policy decisions more generally. Republican Congressman Ron Paul from Texas made this point on the floor of the House on September 10, 2002:

Should presidents, contrary to the Constitution, allow Congress to concur only when pressured by public opinion?<sup>96</sup>

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<sup>96</sup> Micah L. Sifry and Christopher Cerf, ed., *The Iraq War Reader*, (New York: Touchstone, 2003), 305

According to William Colby, by 1975, the atmosphere in the country had changed too radically for the executive branch to get away with “keeping the cloak-and-dagger world of intelligence strictly in its own prerogative and affair.” The “Year of Intelligence” touched off a struggle for power over the intelligence community that is still ongoing. Whereas the intelligence committees in Congress have more control over the intelligence flow now than it did before 1975, the president still has the “bully pulpit” through which to speak to the public. In conclusion, then, this paper has highlighted two variables that seem to make congressional assertion in foreign policy more likely (whether in a divided or unified government):

1. Full access to the intelligence relevant to the policy at hand;
2. That the policy at hand be covert, rather than overt, so as to exclude the possibility of a public relations war with the White House.

Thus, if only the relevant committees have access to full disclosure, they can still assert their authority against the White House if the manner is not treated in public. If the case in point is open for public relations campaigns, however, perhaps the only way for Congress to assert itself is for this entire institution to be privy to the IC’s classified reports. And as long as secrecy is valued in the conduct of foreign relations, this is not likely to happen. Furthermore, one runs into the thorny issue of public opinion when the debate is public.

The holder of the Oval Office has today the power necessary to make foreign policy alone. This will be complicated by a divided government, sure, but ultimately, because information to make decision also is information to persuade others, as the two case studies show, the White House’s control of information is the key to the war making

powers the Framers argued about.<sup>97</sup> Thus, whereas partisanship matters, control of intelligence and information is decisive.

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<sup>97</sup> The difference between declaring war and making war is not lost on the author; Congress has the power to *declare* war, not make it, as the Framers scrapped this wording. However, seeing as very few wars have been declared since 1945 but many have been fought, the two phrases often converge in reality.