



Written by [Thomas R. Eddlem](#) on July 10, 2009

## CIA Lies and Other Redundancies

Not surprisingly, House Republican leaders pounced upon the Democrats' letter as a lame attempt at defending House [Speaker Nancy Pelosi for saying back in May](#) that intelligence leaders had engaged in a pattern of deception against Congress. House Minority Leader [John A. Boehner of Ohio told the Washington Post](#): "I do not believe that the CIA lied to Congress. I'm still waiting for Speaker Pelosi to either put up the facts or retract her statement and apologize."



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So do the CIA and other intelligence agencies lie to Congress? It reminds me of the Tom Clancy-based movie *Clear and Present Danger*, where Colombian drug kingpin Ernesto Escobedo and his intelligence officer Felix Cortez are talking about CIA Officer Jack Ryan:

Felix: "Whatever this man has told you is a lie. He lies for a living."

Ernesto: "He is in the intelligence business."

Felix: "Exactly."

Ernesto (to Felix): "You're in the intelligence business!"

Lying is indeed part-and-parcel of the intelligence business, and in the movie honest CIA employee Jack Ryan brings the matter of an unauthorized covert operation to Congress as soon as he uncovers it.

In the real world, there was no Jack Ryan in our intelligence services who brought this matter to the attention of the Congress. Or if you want to paint Leon Panetta as a "Jack Ryan," it took eight years for "Jack Ryan" to come forward. This explains the recent congressional letter, which states: "Recently you testified that you have determined that top CIA officials have concealed significant actions from all Members of Congress, and misled Members for a number of years from 2001 to this week. This is similar to other deceptions of which we are aware from other recent periods. In light of your testimony, we ask you publicly correct your statement of May 15, 2009."

While Republicans painted the still-classified intelligence operation as minor, and suspended from time to time between 2001 and 2009, Representative Rush Holt (D-N.J.), who signed the letter, [told the press](#): "We wouldn't be doing this over a trivial matter." House Intelligence Committee Chairman Silvestre Reyes (D-Texas) was likewise convinced it was a major issue related to the candor of intelligence agencies, which the legislature is constitutionally charged with funding and overseeing. "These notifications have led me to conclude that this committee has been misled, has not been provided full and complete notifications, and (in at least one case) was affirmatively lied to," Reyes [wrote in a separate letter to Panetta](#).

The letter also highlights a veto threat President Obama recently issued over the Fiscal 2010 Intelligence Authorization bill (H.R. 2701). President Obama objects to a provision in the bill that requires intelligence agencies to immediately report covert activities to the House and Senate



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Intelligence Committees: “The President shall provide to the congressional intelligence committees all information necessary to assess the lawfulness, effectiveness, cost, benefit, intelligence gain, budgetary authority, and risk of an intelligence activity.”

In a letter published by his Office of Management and Budget, Obama claimed in a letter to Reyes:

The Administration strongly objects to section 321, which would replace the current "Gang of 8" [the eight largest intelligence agencies] notification procedures on covert activities.... Unfortunately, section 321 undermines this fundamental compact between the Congress and the President as embodied in Title V of the National Security Act regarding the reporting of sensitive intelligence matters — an arrangement that for decades has balanced congressional oversight responsibilities with the President’s responsibility to protect sensitive national security information. Section 321 would run afoul of tradition by restricting an important established means by which the President protects the most sensitive intelligence activities that are carried out in the Nation’s vital national security interests. In addition, the section raises serious constitutional concerns by amending sections 501-503 of the National Security Act of 1947 in ways that would raise significant executive privilege concerns by purporting to require the disclosure of internal Executive branch legal advice and deliberations. Administrations of both political parties have long recognized the importance of protecting the confidentiality of the Executive Branch’s legal advice and deliberations. *If the final bill presented to the President contains this provision, the President’s senior advisors would recommend a veto.* [Emphasis in original.]

Obama’s letter is perhaps the most constitutionally troubling of his presidency. He claims that Congress should fund intelligence operations without having any say over how money is spent, and absurdly claims that revealing covert operations to congressional intelligence committee members would somehow endanger national security.

Obama’s letter is a blatant attempt to usurp the clear legislative function of government. In essence, he’s arguing that intelligence agencies should be able to make law without consulting Congress. Congress, he’s essentially arguing, should just pass bills with the money and shut up. While Obama offers palliative language about “the Administration has emphasized the importance of providing timely and complete congressional notification,” notification is not the same as Congress’ constitutional duty for legislative oversight. And in this case, the Obama administration is claiming the legislature shouldn’t even have its constitutional right to notification.

It should be clear that if the CIA or another intelligence agency can create an intelligence program — perhaps including surveillance of Americans, as some programs have done under the Bush administration — without congressional authorization or even congressional knowledge, that’s equivalent to handing the legislative branch powers wholesale over to the executive branch. This was an event the Founding Fathers specifically warned against. “When the legislative and executive powers are united in the same person or body,” Madison approvingly quoted Montesquieu in *The Federalist*, #47, “there can be no liberty.”

Under such a program, the legislature becomes superfluous. After all, what good is a legislature if it does not make the laws, or even know about them? Freedom-lovers have long known that a powerful legislature is the key to free government. Legislatures are always the most powerful branches in free governments, while the executive branch is always the most powerful branch in tyrannies. James Madison stressed in *The Federalist*, #51, Madison notes that “in republican government, the legislative



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authority necessarily predominates." Madison notes that one of the ways to ensure against a tendency for a legislative body to accumulate dictatorial powers in the U.S. Constitution was for the Founders to split the legislature into two branches. "The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit."

Today, the Obama administration is claiming both legislative and executive powers for itself. President Obama would exercise legislative powers by creating covert programs by executive order and then shield them from Congress using "executive privilege," a legal fiction concocted in the 1950s by President Eisenhower to shield State Department employees from the prying eyes of Senator Joseph McCarthy. This is precisely the kind of dictatorial program Thomas Jefferson warned George Washington could happen under the doctrine of executive orders. Jefferson told Washington in Bladensburg, Virginia, on October 1, 1792 that "the equilibrium of the three great bodies, legislative, executive and judiciary, could be preserved, if the legislature could be kept independent, I should never fear the result of such a government; but that I could not but be uneasy, when I saw that the executive had swallowed up the legislative branch."

The news in the past eight years of the vast spying on American citizens without warrants is proof alone that at the very least intelligence agencies need to be brought under strict surveillance of the legislative branch.

*Photo of Leon Panetta: AP Images*



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