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EDITORIALS.**Locking the Files**

The steady erosion of the Freedom of Information Act continues to disfigure the internal security landscape in the Reagan era. On April 11, the House Intelligence Committee began a public markup of an Administration bill that would largely exempt Central Intelligence Agency "operational files" from public scrutiny under the F.O.I.A. [see Angus Mackenzie, "The

Operational Files Exemption," *The Nation*, September 24, 1983]. Later this month, the House Government Operations Subcommittee on Information will consider the bill. Both bodies are expected to make only minor language changes; then the bill will go to the floor for a vote. The Senate has already approved the exemption. Following the predicted passage in the House and resolution of differences in a House-Senate conference, President Reagan will sign the final bill. Then hundreds of thousands of documents—no one knows the extent of the material—detailing the C.I.A.'s

domestic and foreign programs of disinformation, surveillance, recruitment of informers, subversion and assassination will be officially and irrevocably closed to press and public.

It is not that C.I.A. files have been easily pried open in the past. All the agency's files that relate to national security matters or that might reveal confidential sources or investigative techniques are exempt from F.O.I.A. requests. Civil libertarians who support the exemption say that operational files contain only unreleasable material and so the bill's passage will not reduce the current flow of information. But the blanket exemption would preclude many of the kinds of suits journalists and researchers now bring against the C.I.A. in Federal court for relevant papers. Those suits force the agency to justify its claims when national security is invoked; judges then review the raw files in their chambers and decide whether the documents should be released. The C.I.A. has not lost a single such suit in eighteen years, but even the possibility that a rogue judge could rule against the agency worries the spymasters enough to press for the exemption.

Even suits pending in Federal courts may be removed from judicial review by the Senate's version of the law. Last year, Democratic Senator Patrick J. Leahy of Vermont, a member of the Senate Intelligence Committee, asked the C.I.A. which of the sixty-odd suits then in litigation might be dismissed if the exemption passed. The agency specified twelve that "may be affected," and Angus Mackenzie, of the Center for Investigative Reporting, obtained a list of them for *The Nation*.^{*} It includes the following:

§ Glen L. Roberts, owner of a computer software company and publisher of a newsletter that provides "a fresh outlook on government arrogance," requested C.I.A. files on David S. Dodge, former acting president of the American University of Beirut, who was kidnapped in Lebanon in July 1982 and was subsequently released.

§ The Center for National Security Studies, an A.C.L.U. affiliate, initiated two suits. The first seeks information about the C.I.A.'s covert operations in Central America, including details of its involvement in El Salvador's March 1982 election. The second is an omnibus suit covering a wide range of center requests under the F.O.I.A. that the C.I.A., in effect, simply ignored. One request relates to the agency's files on its domestic operations against various organizations and publications. In response to the suit, the C.I.A. released some documents on the Students for a Democratic Society, the Vietnam Veterans Against the War, various bookstores which carry radical reading material, left-wing newspapers, an antiwar convention held in 1972 at the University of California and Pacific News Service. The center continues to press for more documents, but the C.I.A. hopes to get the suit dismissed under the exemption.

§ J. Gary Shaw of Cleburne, Texas, is trying to get C.I.A. files on suspects in the John F. Kennedy assassination case, including right-wing French terrorists reported to have been in Dallas on November 22, 1963.

§ Henry Hurt, a *Reader's Digest* writer, is researching C.I.A. involvement in the case of a Soviet defector,

^{*} Mackenzie's research was partially funded by a grant from the Fund for Investigative Journalism.

Nicholas George Shadrin, who disappeared in Vienna on December 20, 1975, and is presumed dead—the victim of a botched double-agent masquerade.

§ A suit is pending against the C.I.A. for files on the agency's infiltration of the underground, dissident and left-wing press in the United States. Publications believed to have been targeted include *Ramparts*, *Quicksilver Times* (both defunct) and the New York City-based *Guardian*.

On March 15, Representative Romano Mazzoli and others introduced a bill (H.R. 5164) to permit all suits filed before February 7 to continue. Even if the ongoing suits are saved, they serve as examples of what would be thrown out of court under the exemption.

In many cases, the C.I.A. has released some files, apparently in an attempt to head off unfavorable judicial rulings. Sometimes the agency simply stonewalls. In one of the most egregious cases of official obstinacy, the C.I.A. has refused to release a single page of some 180,000 documents on the Guatemala coup of 1954, by which the agency overthrew the elected government of Jacobo Arbenz Guzmán and installed a right-wing regime whose successors rule to this day.

Writer Stephen Schlesinger, who with Stephen Kinzer published a thorough study of the coup in a 1982 book, *Bitter Fruit*, sued the C.I.A. for its files on the events. Recently his request was denied by the U.S. District Court for the District of Columbia. Judge Thomas Flannery held that disclosure would be "risking damage to American foreign relations . . . particularly in Central America at this time in light of the delicate political situation." No doubt he was referring to U.S. covert operations against the Nicaraguan government, which are distressingly similar to those carried out by the C.I.A. in Guatemala thirty years ago.

What is in the mountains of C.I.A. operational files is not just of academic or historic interest. Much of it is still pertinent to dirty tricks and drastic practices in progress today. No one claims it will be easy to scotch such schemes, but when the press, the public and independent political forces have access to intelligence information, they are better able to prevent history from being repeated.

Hunger in Africa

Last month the Reagan Administration attached a controversial military appropriations bill for Central America to a popular measure for emergency food aid to Africa. Because of that cynical maneuver thousands on that continent continue to die, victims of the worst drought there in recent memory.

Emergency food aid for Africa has strong bipartisan support. In January, Republican Senator John Danforth visited an area in southern Mozambique that is suffering terrible famine. His group saw skeletons of cattle lying where they had died in dry basins that had once been small lakes. Refugees from interior regions of the country had fled to the coast, although there was little more to eat there than leaves and roots. A U.S. Air Force doctor with Danforth's group predicted many children would die unless help arrived quick-

The size of the food shortage can be debated; that there is unger in Kampuchea cannot. A February 9 report from the late Department admitted that the food situation in ampuchea is "precarious" and noted that malnutrition lagues many parts of the country. How will the United tates respond?

Four years ago, Representative Millicent Fenwick urged er colleagues in the House to approve aid for Kampuchea: 'We have never cared who sat in the palaces of the world; ve have always been concerned about who is starving in the trets.' Today, those who could make a difference do not hare that sentiment. □

DISPUTE OVER C.I.A. FILES

The Case for the New F.O.I.A. Bill

RA GLASSER

Later this month a bill that has evoked concern and disagreement among civil libertarians and critics of the Central Intelligence Agency will be sent to the floor of the House of Representatives. The bill, which would exempt certain kinds of C.I.A. files from normal requirements under the Freedom of Information Act, has been scrutinized and debated in a series of recent public hearings before various Congressional committees. After many revisions, the latest version of this bill, H.R. 5164, has a good chance of passing in the full House, partly because, after a long drafting process, it has gained the support of the American Civil Liberties Union.

The A.C.L.U.'s position has been attacked in several forums and publications, among them *The Nation* [see Angus Mackenzie, "The Operational Files Exemption," September 24, 1983]. Some of our critics have gone so far as to suggest that the A.C.L.U. has become, wittingly or unwittingly, an accomplice in weakening the F.O.I.A.

In light of those charges, it is important to understand what the American Civil Liberties Union has been doing, why it supports a much-changed version of legislation it originally opposed and why it thinks the legislation represents a modest victory for those who support the F.O.I.A.

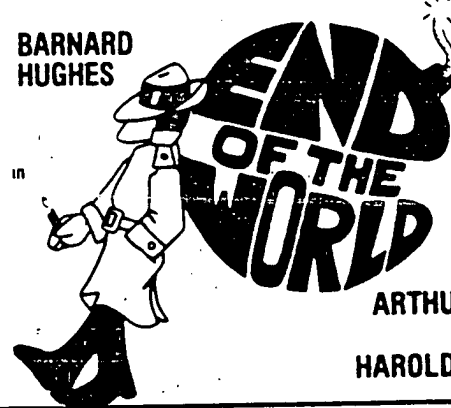
The Freedom of Information Act is one of the most important laws enacted by Congress. By making government information available to the public, the act strengthens America's commitment to informed, robust debate on all public policies. The act is especially vital with respect to the C.I.A., whose, illegal activities are encouraged by the shroud of secrecy that envelops them. While the shroud has not yet been sufficiently lifted, over the last decade the F.O.I.A. has been a significant tool in bringing the C.I.A.

Ira Glasser is national executive director of the American Civil Liberties Union.

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But most people who submit requests to the agency under the F.O.I.A. encounter two main problems: the C.I.A. withholds information it should release by hiding behind exaggerated claims of national security, which the courts have never had the courage to reject; and when it does decide to release information it takes an intolerable amount of time—often two to three years.

Aside from pure obstructionism, a primary cause for delay is the time-consuming search the agency undertakes through its "operational" files when processing an F.O.I.A. request. Basically, operational files contain documents and information related to the intelligence *process* rather than the intelligence *product*. For example, a document that describes the technical capacity and location of a sophisticated optics device is considered operational; the information obtained by that device is not. Similarly, how an intelligence source was spotted and recruited, how much he is paid, the details of where and when he meets with his case officer, are all considered operational; any information provided by that source is not.

Such operational information, with a few important exceptions described below, is invariably classified and therefore exempt from release under the provisions of the F.O.I.A. The courts have never ordered the release of such information, and are not likely to under any conceivable standard of classification. Nonetheless, every time an F.O.I.A. request is made to the C.I.A., all operational files have to be reviewed.

To alleviate the problem of delays, the A.C.L.U. set out to draft legislation that would spare the agency from searching through its operational files. At the same time we wanted to insure that the kind of information currently being released or likely to be released in the future would not be exempt or improperly hidden in operational files. We felt that such legislation would obligate the C.I.A. to respond to requests more quickly, while guaranteeing that no new curbs on information would result.

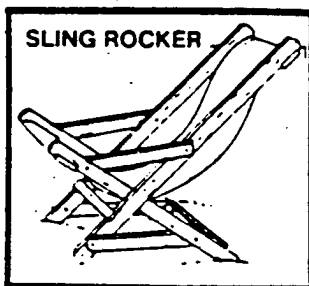
Of course, the C.I.A., already on record as favoring legislation that would exempt it from all provisions of the act, jumped at the opportunity to support a bill that would exempt it from searching its operational files. Our task, therefore, was to defeat the legislation unless its language strictly limited the exemption. That was not easy.

After much lobbying, the Senate passed S. 1324 which, while much improved over the version that was introduced, was not adequate in several important respects. If that had been the final version of the legislation, we would have opposed it and we believe our opposition would have killed it.

Fortunately, the legislative process is just that, a process. Accordingly, after the Senate approved its bill, we set to work on the House version. For us, the House is a much more hospitable forum, and we thought we stood a good chance of getting everything we wanted. We did. In its present form this bill differs markedly from the Senate's. We support this version because we believe it will obligate the C.I.A. to release information more quickly and prevent it

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from withholding any information it is currently obligated to release. Here is a summary of the major provisions of H.R. 5164:

§ Operational files in three divisions of the C.I.A.—the Directorate of Operations, the Directorate for Science and Technology and the Office of Security—would be exempt from search and review. (A few important exceptions are noted in the bill and summarized below.) The term “operational” is defined narrowly to include only files that document the means of acquiring information, as opposed to those that contain the information itself. All other C.I.A. files, including those in the three specified divisions, will be subject to search and review under the Freedom of Information Act.

§ All documents from operational files that are disseminated outside the three divisions, whether within the C.I.A. or elsewhere in the government, will be subject to search and review—even a document that concerns the most intimate details of an operation and is sent only to the director of Central Intelligence. Once disseminated, information cannot be exempt, even if it is kept in an otherwise exempt operational file. That includes any document shown to someone outside the three divisions on an “eyes only,” 10-copy basis and returned to the operational file.

§ All information in operational files concerning covert operations will be subject to search and review, unless the very existence of the covert operation is properly classified information.

§ All information in operational files concerning the subject matter of an investigation of improper or illegal conduct by the C.I.A. will be subject to search and review. Such investigations may be conducted by the agency’s inspector general or general counsel, by Congressional oversight committees or by the President’s Intelligence Oversight Board. The C.I.A. also initiates an investigation whenever a private citizen makes an allegation of improper or illegal conduct: for example, that an organization has been illegally infiltrated. (It does not investigate claims of a clearly frivolous nature, such as “the C.I.A. is manipulating my rain waves.”) Regardless of an investigation’s outcome, the C.I.A. will be required, in response to an F.O.I.A. request, to search its operational files for information concerning the alleged abuse. This provision insures that all information in the operational files concerning abuses investigated by the Church and Pike committees will continue to be accessible and that in the future, similar information on alleged abuses will be available.

§ Operational files must be searched in response to U.S. citizens or permanent resident aliens who request information about themselves. This provision preserves the access to information currently available to individuals.

§ Federal courts will have the right to review whether a particular file meets the legal definition of “operational” or whether particular documents are improperly kept solely in operational files. This guarantee significantly improves on the Senate version and clearly opposes the C.I.A. position, taken during Senate hearings last June, that no judicial review should be permitted.

§ Finally, the bill does not apply retroactively to any lawsuit pending on February 7, 1984, the day before the House began hearings on the bill.

Some critics of the A.C.L.U.’s position say the bill would allow the C.I.A. to withhold information it is currently obligated to release, or conceivably would be obligated to release under a more liberal standard of classification. That claim is false. Various people have shown us documents released under current law that arguably might not be released under the proposed legislation. We have examined them all, and in every case the document would still be released under one of the exceptions provided in H.R. 5164. Moreover, even a liberal administration would without doubt continue to classify the kinds of sources and methods the bill would exempt.

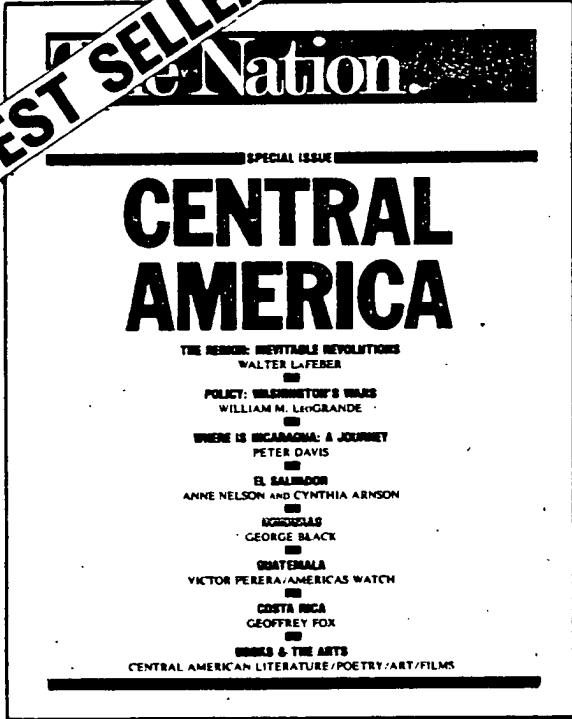
Others suggest that the A.C.L.U. has compromised important principles by lobbying for the bill. That, too, is false. If anyone has compromised in this process, it is the C.I.A., which initially opposed many of the provisions on which we insisted.

Our position was unflinching: from the beginning, we maintained that we would oppose the bill unless each of our concerns was adequately met. Although the Senate bill did not meet them all, H.R. 5164 does. As A.C.L.U. staff counsel Mark Lynch testified before Congress on May 10, “Any movement away from what has been achieved in H.R. 5164 would be unacceptable, and we would oppose any tinkering with this bill in a House-Senate conference.”

Such tinkering is unlikely because Senators Barry Goldwater and Daniel Moynihan, chair and vice chair, respectively, of the Senate Intelligence Committee which helped draft the Senate version, have informed the House



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committee in writing that they will accept H.R. 5164 without a conference.

The A.C.L.U. believes that the bill deserves the support of information act advocates. It promises to speed up the response to requests and imposes various legal obligations on the C.I.A. that insure against the loss of information now available or likely to become available. While it is not the biggest triumph, it is a significant step forward. It is certainly not the disaster some have made it out to be. □

Vatican

(Continued From Front Cover)

testify to that. Missionaries from France, Ireland and elsewhere implanted their faith in Africa, where Catholicism is a fast-growing minority in some countries, under siege in others but recognized, as everywhere else in the Third World, as a religion of the elite. For a long time the Third World Catholic elite, shaped in the image of Rome, lacked self-confidence when confronted by the will or displeasure of the Vatican. But that has changed in recent years.

Since it appeared in Latin America more than fifteen years ago, liberation theology has bothered the Vatican. Priests who allied themselves with the poor or opposed brutal governments embarrassed bishops who tolerated or were friendly to those in power. The situation was worse for the bishops whenever they sided with the priests. In the 1970s Dom Helder Câmara, Archbishop of Recife in overpopulated and perennially drought-stricken northeast Brazil, became perhaps the most famous of the sympathetic bishops. The Brazilian press was forbidden to mention his name, except critically. He was called a communist. His home was burned down several times. His priests were beaten and arrested, and one of his aides was killed. Dom Helder may be a hero to the priests, the nuns and the people, but the Vatican has never really supported him.

Also important was Archbishop Oscar Arnulfo Romero, the primate of El Salvador, who started out as a quiet conservative but became openly critical of the government after the murder of a priest who was a close friend. On March 24, 1980, just before Easter, Romero was murdered as he said mass in a chapel in San Salvador. The order was widely reported to have come from Maj. Roberto d'Aubuisson, who had been the National Guard's intelligence chief only a few months before. On the fourth anniversary of that event, with El Salvador rent more than ever by a bloody civil war and d'Aubuisson standing as a presidential candidate, an unauthorized parade of mothers of the *desaparecidos* marched in commemoration to the cathedral where Romero is buried, carrying banners with the Archbishop's words: "Do not fear those who kill, because they cannot kill the spirit." Maurizio Clerici, correspondent for Milan's *Corriere della Sera*, described the scene outside the cathedral,

T.M. Pasca is an American journalist who writes for The Nation from Rome.