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Can Counterintelligence Come In From the Cold?

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"The best hope that the free world will remain free lies in an efficient, constitutional, freedom-loving — but adequately secret — CIA and FBI."

— M.R.D. Foot, Professor of Modern History,
University of Manchester, in *The Economist*,
March 15, 1980.

What a cushy job it must be today to run the Soviet KGB, the USSR secret police and espionage agency. There is longevity and job security, not as in the old Stalin days when, after a few years as head of the secret police, you were taken out and shot.

Better yet, Yuri Andropov, who runs the KGB, sits on the Politburo secure in the knowledge that his once redoubtable adversaries, the CIA and the FBI, have for the last seven years been so weakened that they are no longer serious competition. Even now, when there is some possibility that Congress may allow the CIA and FBI to function once more, it will still be years before these agencies will be sufficiently secure against KGB penetration and disinformation.

Penetration of the CIA by the KGB is now an established fact. On October 29, David H. Barnett, a former CIA agent, confessed that he had been selling important secrets to the Soviet agency for some years — including a top-priority clandestine CIA operation in Indonesia in the 1960s. Mr. Barnett also confessed that he had revealed to the KGB the identities of thirty covert CIA employees.

The organizational deficiencies have multiplied since 1975 because of Congressional investigations, Executive orders and, above all, because of the serious decline of U.S. counterintelligence capacity in the CIA and the FBI. This was the conclusion of many specialists who attended the third meeting of the Consortium for the Study of Intelligence (CSI). It is now possible, for example, to assign Soviet agents to the U.S., literally by the shipload. In 1978, there were 1,300 Soviet and 700 Soviet-bloc officials permanently assigned to the U.S. as diplomats, media and trade representatives, and staff to international organizations. The number of Soviet-bloc graduate students has increased from the usual 35-40 to 200. During 1977, there were almost 60,000 Soviet-bloc visitors to the U.S. Of these visitors, 14,000 were commercial, scientific, and cultural delegates, while the remaining 40,000 were crewmen who enjoyed complete liberty while Soviet ships were docked in 40 U.S. deepwater ports.

Now I have it on good authority that before Congress put the FBI on its "most wanted" list, the FBI routinely covered KGB suspect agents on a one-to-one basis, that is, one FBI surveillance expert to one KGB suspect. Today, as Mr. Andropov knows well, the ratio has dropped to 1-to-4. There are just too many KGB targets floating about the U.S. today, while some 300 FBI staffers are busy checking applications from all kinds of dubious sources under the Freedom of Information Act. Let me quote former Assistant Attorney General Antonin Scalia, now a professor at the University of Chicago Law School:

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A story that I often tell is, when I was at the Justice Department, concern was expressed by the National Aeronautics and Space Administration that it was receiving a regular series of requests from AMTORG, the Soviet trading company. And they asked the Justice Department was there anything they could do about it under the Freedom of Information Act and, of course, the answer was no. The Act doesn't make any distinction with respect to citizens or aliens or foreign companies, so it's not an unreal problem, but the Act was quite clearly drawn that way and intentionally so. I don't think that it was an oversight.¹

Thus foreigners and foreign governments, regardless of whether friend or foe, have the right under American law to information from *all* agencies of the American government.

If this state of affairs were limited to a few agencies, the damage might be controllable. But the damage goes far beyond that — it threatens the very existence of counterintelligence, without which there can be no operative intelligence system. To put it simply, the crisis of U.S. intelligence is a crisis of counterintelligence.

Newton S. Miler, former chief of operations in the counterintelligence staff of the CIA under James Angleton, recently told the CSI that America did not have an effective counterintelligence capability. He told us that neither the CIA nor the FBI neutralizes Soviet and Soviet-bloc intelligence activity in the U.S. There are even people who believe that the CIA has been "turned around" and that revitalizing the agency, instead of starting a new one, would merely strengthen the possible KGB penetrators in the CIA right now, such as any Barnetts who still may remain undiscovered. The importance of counterintelligence has been emphasized by Richard Helms, CIA director from 1966-72, who has said, "Counterintelligence is terribly important, because without an effective counterintelligence program — both in the CIA and the FBI — the problem of double agents and infiltrators is insurmountable."

Still worse is the fact that throughout these five years the powerful Congressional intelligence oversight committees have paid little or no attention to the presence of the KGB in the U.S. Nor have such powerful newspapers as the *New York Times* and *Washington Post* — which for years occupied themselves with relentlessly exposing our intelligence agencies — paid any attention to the KGB. I know of no Congressional committee which is presently working on an investigation of the KGB. Unfortunately nothing much can be done on such a matter because there are weightier debates going on in Washington. There is, for example, a dispute over Carter Administration amendments to the National Intelligence Act of 1980 and to the Foreign Intelligence Surveillance Act (FISA) of 1978. In one case, the row is over an amendment to the FISA whether to "extend the emergency surveillance period of 24 to 48 hours"! This situation justifies Senator Frank Church's observation: "I wonder if we are competent to manage an intelligence gathering program on anything."² Senator Church should know.

1. Report of the Proceedings of the American Bar Association Committee on Intelligence, December 1979.

2. *Situation Report of the Security and Intelligence Fund*, Washington, D.C., Volume I, Number 6.

Intelligence Security

The importance of a counterintelligence agency is to ensure that the other parts of the intelligence community can be trusted — that is, those sections which deal with covert operations, clandestine collection and analysis and estimates. If counterintelligence operatives are inefficient or intimidated, the enemy success is inevitable.

Success or failure in counterintelligence depends largely upon the ingenuity of counterintelligence officers as well as on the initiative and courage of sources of information. In other words, successful counterintelligence depends upon the quality of its personnel — the counterintelligence analyst, the counterintelligence case officer, and the agent or informant. But the quality of the personnel is insufficient to guarantee good results. There must be positive incentives to good performance and under the present system, certainly during the last seven black years for U.S. intelligence, there have been disheartening disincentives.

The counterintelligence analyst, farthest removed from danger or betrayal, must perform an unpleasant duty if he is to be loyal to his assignment. He must constantly question the *bona fides* of sources and the validity of information which is usually hard-won, often unique. Such questioning of information, especially from defectors, reflects — or may be interpreted as reflecting — on the judgment of others in the intelligence community and in the government itself. Often the counterintelligence analyst is questioning the judgment of officials of much higher rank than his.

The counterintelligence case officer has an even more difficult road. He is the actual counter-spy. His duty is to investigate, to maintain surveillance, to infiltrate, to carry out “experiments” — e.g., feeding data to certain persons through certain channels and then watching for results to confirm or disconfirm suspicions about individuals within his own service who may have been deceived or used or have actually gone over to the other side. If there had been any successful counterintelligence activity in Britain could the Philbys, Blunts, and Macleans have flourished?

The agent (i.e., the source or informant) is in the most difficult, if not the riskiest, position of all. If his identity becomes known, he may be killed. Lester Dominique, a federal informant, was recently found bludgeoned, beaten with chains, disemboweled with a machete. His name had been inadvertently left in open court documents.

The agent, the informer who penetrates an organization, must do the things required of anyone living in the environment he is penetrating. Such work is usually unpleasant, often dangerous and sometimes illegal. Adding to the informant's agonies is the fact that he is no longer regarded as a useful member of the society which he is serving, whatever his motive may be. In the 1950s, an informer's job was glorified in a TV serial, “I Led Three Lives.” But by the 1970s, the undercover operative no longer enjoyed much esteem. Thus E. Drexel Godfrey, a former senior CIA official, wrote in *Foreign Affairs*

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(January 1978) that those in the business of corrupting others actually end up corrupting American society. Such a statement, unprovable by its nature, borders on the metaphysical and tells us little about how to combat in peacetime enemies determined to destroy that same society.

Although formal proof is lacking, it may be that the size of the overall counterintelligence program has increased both in manpower and in money during the last few years. Compared with the early 1970s, some parts of the counterintelligence community — parts of the CIA's counterintelligence staff and the FBI domestic security program — have been cut. Other sectors have been augmented — the FBI's foreign counterintelligence staff and Department of Defense sections.

Despite this apparently good news, it is far from clear that the total resources devoted to counterintelligence are adequate to the needs of the 1980s, especially when the KGB has had such an easy time for several years. However, the most formidable obstacles to U.S. counterintelligence have been specific laws, judicial opinions and regulations enjoying the force of law which together have created a host of disincentives to effective counterintelligence.

Laws whose norms are clear-cut are not the problem. Counterintelligence operatives now know that they are barred from engaging in activities once considered permissible. But other rules are nowhere near as clear; lawyers themselves will argue about the meaning of regulations and judicial decisions. Thus, for instance, it is not always possible to guarantee an informant's anonymity. Finally, as is the custom with Congress when confronting a delicate issue, some rules are made intentionally vague — to satisfy competing pressure groups — on the assumption that the questions will be finally resolved by the courts. What is the counterintelligence operative to do in the meantime? His interest is to stay at a safe distance from a law or regulation until the matter is settled conclusively.

The totality — laws, court cases, presidential orders, guidelines, the interpretations which the CIA and other agencies offer of these norms; the hearings and statements of powerful legislators and their staffs — create a legal and legislative climate which hampers counterintelligence performance. That is the opinion of both retired counterintelligence officials and former informants.

Let me make something clear. I do not argue that counterintelligence should be free of rules, standards and prohibitions. Restrictions are necessary to protect civil liberties. However, the constraints which have been put into effect since the 1970s have been narrowly focused to the detriment of counterintelligence performance. It should be possible to devise rules that can both assist the counterintelligence mission and protect civil liberties from potential abuse by the government.

The Function of Counterintelligence

The legal restrictions arise from a misunderstanding of what counterintelligence is and what it is not. Counterintelligence cannot be identified with criminal proceedings, because counterintelligence deals with activities whose primary characteristic is not criminality but hostility to the nation's security. The pur-

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pose of counterintelligence is not to prevent crimes and to punish criminals but rather to learn about and to neutralize the activities of the nation's enemies.

In criminal investigations, it is hard to imagine that the government would have a right to keep tabs on wholly innocent persons. In the field of intelligence and counterintelligence it is sometimes necessary to observe the activities of perfectly loyal citizens in order to learn about the activities of hostile intelligence services.

The counterintelligence officer's relationship with a hostile spy is not comparable to that between a policeman and a criminal. The hostile spy may not even be doing anything criminal because covertly influencing public policy in the U.S. is not a crime. Punishing him is not the task of counterintelligence. Its tasks are fourfold:

- (1) to protect our own intelligence operations.
- (2) to discover deception and disinformation.
- (3) to uncover secret political operations directed against the U.S.
- (4) to keep spies and terrorists from being successful.

It is not part of counterintelligence operations to go beyond identification of an enemy agent. Counterintelligence officers generally argue against arresting hostile operatives; once known, they become harmless. The Foreign Intelligence Surveillance Act of 1978 requires special proceedings to obtain warrants for surveillance; the requirements are a parody of criminal law. Even more ludicrous is that in the course of the trials required to convict spies it is often necessary to reveal more information than the spies, during their operations, had actually succeeded in obtaining.

It is not my intention to depict counterintelligence officers or other CIA officers as nature's noblemen, worthy of exemption from the accepted rules governing the behavior of other appointive officials. Counterintelligence officers have a job to do which, by its nature, may be unpleasant and discomforting to a democratic society. Not all democratic standards can be applied in dealing with the operatives of a government which operates by a totalitarian standard and which judges victory solely on its success in weakening a democratic society.

In confronting this highly successful Soviet espionage organization, American government officials — regardless of party — have simply not understood the counterintelligence mission, either in the CIA, the FBI or the Defense Department. I say "regardless of party" because it was President Ford's Attorney General, Edward Levi, whose guidelines regulating counterintelligence activities are effectively in force today. They have remained substantially unaltered throughout the Carter Administration.

The main concept which informs the guidelines is the criminal standard — the notion that an individual should not be subject to investigation unless it can be demonstrated that he is or probably will be involved in a criminal undertaking. One set of guidelines (publicly available) establishes thresholds which cannot be crossed unless it can be demonstrated that a U.S. citizen or resident alien actually has committed or is about to commit a crime. Advocating or discussing the violent overthrow of the government or the commission of terrorist acts is not enough. The FBI has interpreted these rules to mean that it cannot even collect publications of domestic organizations unless there is "probable cause" to believe that a crime is imminent.

According to the guidelines, should the FBI come across information that an organization may be planning to violate the law (for example, a report that someone is buying explosives) then the FBI may slightly increase surveillance of the group and establish a "limited investigation." This means no electronic surveillance, no mail cover, no placing of informants in the group.

Such "intrusive" techniques are permissible only when a "full investigation" has been authorized by FBI headquarters on the basis of "specific and articulable facts" describing "(1) the magnitude of the threatened harm; (2) the likelihood it will occur; (3) the immediacy of the threat; (4) the danger to privacy and free expression posed by a full investigation."

Here is the classic catch-22. How do you obtain the information to justify a full investigation without first using the investigatory techniques which are expressly forbidden in a "limited investigation"? The answer is you cannot do so.

These guidelines impose similar obligations on the field agents; they must write justifications for investigations which they may be reluctant to commit to paper because all they have is a hunch and imperfect data. It must often seem better to drop the case.

Further Obstacles

These are only the unclassified guidelines. The classified guidelines deal with foreign counterintelligence activities, but retired FBI and CIA officials indicate that the principles embodied in the one are not substantially different from the principles in the other.

These "domestic" and foreign guidelines reportedly have limited counterintelligence operations to a criminal standard so strict as to prohibit surveillance of the Puerto Rican terrorists who, released after serving twenty-five years in prison, vowed to strike again.

One could write at length about the legal straitjackets which restrain counterintelligence from effectiveness. But there are other problems which are little noted: training and recruiting counterintelligence personnel. Kenneth deGraffenreid of the Senate Select Committee on Intelligence told the CSI that recruitment and training are today almost certainly inadequate even for the narrowly defined mission that has been given to so many counterintelligence entities. In other words, even under the present constrained circumstances, the counterintelligence program does not even begin to address the needs of a national program of strategic multidisciplinary counterintelligence (MDCI). Mr. deGraffenreid maintained that counterintelligence is the essential base upon which this nation must construct its intelligence system; strategic MDCI is the counterintelligence philosophy which will meet the particular counterintelligence challenges of the 1980s.

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The MDCI to which he refers demands expertise in areas beyond classical counterintelligence functions, such as personnel security, double-agent operations, and analysis of long-term Soviet intelligence operations. The new areas which MDCI encompasses include assessment of the vulnerability of U.S. technical collection systems to strategic deception and application of counterintelligence procedures and analysis to the field of technical collection. In the past, counterintelligence has suffered because it has made insufficient use of technical systems to support its own operations.

Mr. deGraffenreid argues that the U.S. intelligence community at present lacks the structure, direction, and knowledge necessary even to gauge the total foreign intelligence threat to U.S. technology. Additionally, there is at present no centrally directed effort to protect U.S. weapons from compromise during their development cycle from design through operational deployment.

There are some observers who take an optimistic view of the future for U.S. intelligence and counterintelligence. I do not. Unless we are first made aware of the titanic effort directed by the Soviet Politburo to attenuate American power and will, and finally we realize that this effort is succeeding, no reform, no alignment, no new philosophy, and no new technical expertise are going to help one whit.