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Operation *Quis Custodiet*, Etc.:

# THE INTELLIGENCE CONTROVERSY

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In a simpler era, intelligence activities consisted of the clandestine collection of information about foreign countries, usually for military purposes, and were considered a fact of international life. Robert Benchley could amuse many and upset few with the observation: "Every country has spies in every other country, and every other country knows about them. It is merely a form of international courtesy, like exchange professors . . . In fact, they give a rather nice cosmopolitan air to the streets."

World War Two and the Cold War drastically altered the intelligence profession in two fundamental respects. First, there is the continuing technological revolution in techniques of intelligence, generally viewed as a desirable development. Thanks to electronic interceptions of communications and photographs from satellites, information once unobtainable by any means is now routinely made available to analysts, and they, with the indispensable aid of com-

puters, arrive at conclusions with a degree of accuracy which not too many years ago would have been deemed impossible.

The Central Intelligence Agency and the Defense Department's intelligence components allot the largest parts of their budgets to collection by technological means. The US and the USSR have implicitly sanctioned such activities to monitor each other's adherence to agreed arms levels. The SALT I Agreement specifically provided that neither country would interfere in the operation of the other's "national means" for verification.

The second change gave the intelligence profession a totally new dimension, and this has not been so easily accommodated. As perceptively described some fifteen years ago by Margret Boveri, "What one may call 'classical' espionage was essentially a wartime activity which consisted of bringing home enemy secrets, most often military ones. Today, in what we choose to call peacetime, espionage goes on in every aspect of life—cultural, political, intellectual, and military—and in the camps of any and all potential and actual enemies and even of one's

allies. It has active aims which were entirely missing in classical espionage, the sowing of confusion among enemy public opinion and the undermining of the enemy's way of life."

These "active aims," or covert operations, have come to include such actions as influencing elections in foreign countries, economic warfare, *coups d'etat*, and, perhaps, assassinations. In the preface to a new book, *The Intelligence Community: History, Organization, and Issues*, the editor states: "The effectiveness and morality of US foreign intelligence activities has . . . been the subject of widespread controversy, discussion, and debate over the past decade." In an introduction to the same book, Senator Frank Church (Chairman of the Senate Select Committee to Study Governmental Actions with Respect to Intelligence Activities, which issued its final report in April 1976) says more specifically that there "has never been any question about the propriety and necessity . . . of gathering and evaluating foreign intelligence . . . nor about the means to acquire such information . . . What has become controversial has to do instead with the so-called covert op-

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erations of the CIA . . ."

Thus, the "subject of widespread controversy, discussion, and debate over the past decade" has, for the most part, been one activity, covert operations, of one agency, the CIA. The issue has gone beyond the question of morality. It has become clear that no responsible legislator believes that the United States, in today's world, should give up its covert action capability any more than it should undertake unilateral disarmament. The issue has become that of control, with the Congress determined to assume a far stronger and more direct regulatory role.

The very legality of the CIA's engaging in covert action was long a point of contention. At the same time, the inherent contradiction between the requirements for secrecy and the nature of congressional supervision remained an obstacle to the devising of a mechanism for congressional supervision of intelligence activities, including covert operations.

Most frequently cited as CIA's authority for covert action is Section 102(d)(5) of the National Security Act of 1947 (which brought the CIA into being), which instructs the agency to "perform such other duties relating to intelligence as the National Security Council may from time to time direct." Also cited are the "inherent powers" of the President in foreign affairs and as Commander-in-Chief, and the Hughes-Ryan Amendment to the Foreign Assistance Act of 1974.

Those objecting to citation of the National Security Act of 1947 insist that, if it had been the intent of the Congress to authorize the CIA to engage in covert activities, it would have so stated. Debate about the "inherent powers" of the President is as old as the presidency. (Interestingly, in 1846 the eleventh president, James Polk, sparked the first crisis over the use of the Executive Branch for covert activities, when he refused to give the House Foreign Affairs Committee information on Secretary of State Daniel Webster's expenditures from "Secret Service Funds.") The Hughes-Ryan Amendment, ironically, was intended and designated as "Limitations on Intelligence Activities." But in for-

bidding expenditure of funds by the CIA for "other than exclusively intelligence activities" except with presidential approval and subsequent reporting to appropriate congressional committees, it effectively recognized that the CIA does indeed engage in "other than exclusively intelligence activities."

The contradiction between the need for secrecy where intelligence and related activities are concerned and the congressional supervision essential to our democratic system has not been reconciled. More and more, however, we have come to realize that some contradictions cannot be reconciled, and therefore, have to be accommodated. It is often forgotten that our democratic system not only tolerates, but demands, secrecy in certain areas, among them the ballot, the grand jury, and doctor-patient, priest-parishioner, and attorney-client relationships.

A significant question was not asked for a long time. Since the Congress could have established stronger control over the CIA and covert action any time it so desired, why had it not done so thirty, twenty, or even ten years before? The answer is obvious, if not reassuring. Until recently, the Congress has not wished to assume such control—and the concomitant responsibility.

In May 1976, Senator Church reminded his colleagues that, less than ten years after the creation of the CIA, Senator Mansfield had introduced—unsuccessfully—a resolution to create a Joint Congressional Committee on Intelligence Activities and that, in the two decades following, more than 200 similar proposals had been made, also without success. As Senator Leverett Saltonstall admitted in April 1956: "It is not a question of reluctance on the part of CIA officials to speak to us. Instead, it is a question of our reluctance, if you will, to seek information and knowledge on subjects which I personally, as a member of Congress and a citizen, would rather not have . . ."

Outside observers arrive at much the same conclusion, although expressing themselves more bluntly, especially outside observers who have previously been on the inside.

Former CIA Inspector General and Executive Director Lyman Kirkpatrick, Jr., writes: "Of all the controls and review mechanisms over the intelligence community, potentially the most powerful is the Congress . . . The issue is not so much one of authority as it is the reluctance of the members of Congress to get into sensitive intelligence matters . . ." According to journalist Leslie Gelb, who spent several years as a Senate aide and as a Defense Department official, the "fact is that many liberals stay away from all the intelligence subcommittees because they do not want to be tagged in the future with having tacitly approved an operation, even if they agreed to it, or because they want to be free to criticize if anything goes wrong."

Revelations which were part of the fallout from Vietnam and Watergate eroded such reluctance. In May 1976, Senate Resolution 400, Proposed Standing Committee on Intelligence Activities, was passed, 72-22, with six not voting. In introducing the resolution, Senator Church said: "This is a time for a new beginning . . . The creation of a new permanent intelligence oversight committee is an absolutely necessary first step toward establishing an agreed-upon procedure by which problems of national importance that are necessarily secret in character can be addressed within the constitutional framework."

Arthur Schlesinger, Jr., expressed the concern of many, when he wrote: "A joint congressional committee could . . . help; but, though such a committee can and should review targets and priorities, it cannot really oversee the day-to-day detail of clandestine operations." He went on to endorse a proposal made by Franklin A. Lindsay, a former high-ranking CIA official. In January 1975, Lindsay suggested that ". . . a more effective way to apply the sort of mature judgment needed would be to create a review committee of men seasoned in foreign affairs who have reached a career position where they can put in the substantial time necessary to think through the risks of covert operations and the possibility of accomplishing the same ends by overt means. Such a

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review committee would buttress and support the . . . highest level policy approving process."

There are many sound ideas as to what the next step should be. All of them, however, will be of academic interest only if something positive and effective is not done, and done soon, about restoring the damaged self-respect and shattered morale of a dedicated group of individuals who necessarily work in the shadows so that their fellow citizens may walk in the light. Columnists Rowland Evans and Michael Novak have referred to "the beleaguered Central Intelligence Agency," its "vulnerability as Congress's favorite whipping post," and the fact that "the four-year victimization of the CIA has left deep wounds." One retired CIA officer refers to headquarters at Langley simply as "a disaster area."

None of the foregoing is meant to imply that career intelligence officers object to investigations into past illegalities. They are as interested as anyone—more than most—in exposure of the tiny minority which may have committed assorted excesses. Nor has increased congressional supervision met with objections within the CIA. On the contrary, at least four former Directors of Central Intelligence—McCone, Helms, Bush, and Colby—have publicly stated that this would be welcome. And David Phillips, President of the Association of Retired Intelligence Officers, testified before the Congress that 98 per cent of that organization's membership favored an [oversight] committee.

As succinctly stated by Leslie Gelb, just "as it was wrong to pin American involvement in Vietnam on the lies of the Pentagon, so it makes little sense now to blame CIA for 30 years of covert operations. In both cases, the causes were rooted in the national American consensus behind the waging of the cold war. And in neither case will the nation profit from the experience unless this is recognized."

In the light of the past decade's traumatic experience, the intelligence community would be well advised to look toward the future and make suitable preparations. Inevitably, the pendulum

will start to swing in the opposite direction, and orthodox intelligence activities, not covert action, will come under critical scrutiny. And the target entity will probably be some organization other than the CIA, with the National Security Agency a logical choice.

One can almost hear the chairman of a House Committee opening a meeting with the words: "We find ourselves this morning not going after the CIA . . . but being rather interested in the

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NSA . . . because allegations have been made to the effect that the NSA . . ." One can almost see a headline in the newspaper: "Controls on NSA Reported Sought." As a matter of fact, the chairman of a House Committee has already spoken the above cited words; it was in 1975, and the congressman was Otis Pike. And that headline has appeared in a newspaper—the *New York Times* of March 7, 1976.

Until comparatively recently, the NSA enjoyed special status. So secret is the agency that, compared with it, the CIA, in the words of *Time*, "is as open as a New Hampshire town meeting." Established by Executive Order in 1952, the NSA's existence was not even acknowledged until 1957. It is the one federal agency completely exempt from the Freedom of Information Act. Its annual budget is estimated as nearly double CIA's, and its employees around the world

may number more than eighty thousand. The NSA has two primary missions: protecting US communications from foreign exploitation, which is to say, communications security (COMSEC); and exploiting foreign communications to provide information to the United States Government, that is, signals intelligence (SIGINT).

The NSA has begun to lose its special status, its troubles probably beginning in June 1975, when the Rockefeller Commission's Report revealed that the NSA has fed 1,100 pages of material on American citizens into the CIA's "Operation Chaos," which was aimed at uncovering foreign influences among US radical groups. The following October, Lt. Gen. Lew Allen became the first NSA director to testify in public about the agency's activities, when he appeared before Church's Senate committee. He testified that, from 1967 to 1973, the NSA had intercepted international calls or cables of 5,925 foreign nations—and of 1,680 Americans.

With due respect to the first and fourth amendments, it is difficult, if not impossible, to draw visible lines in a shadow world. Between 1967 and 1973, for example, the NSA had several watch lists, covering the requirements of several US agencies. "At the height of the watch list activity," Gen. Allen stated, "there were about 800 names on the [total] watch list, and about one-third of these 800 were from the narcotics list. We estimate that over this six-year period, about 2,000 reports were issued by the NSA on international narcotics trafficking and about 1,900 reports were issued covering the three areas of terrorism, Executive protection, and foreign influence over US groups." Saying, "I am not the proper person to ask concerning the value of the product from these four special efforts," Gen. Allen added, "*We are aware that a major terrorist act in the United States was prevented.*" [Emphasis added.]

For the present, the controversy has subsided. While it raged, it wrought considerable havoc, but it did let some light into unnecessarily dark corners. Now, in its aftermath, determined individuals are

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applying the lessons painfully learned. A streamlining of the intelligence community has begun. A new congressional regulatory, or oversight, mechanism is taking shape. Under a new Executive Order, which will have been issued by the time this reaches print, it is likely that the national intelligence estimate, upon which the President relies heavily to make policy decisions, will represent a blend of several positions, rather than an exclusive distillate of the CIA's perceptions. And the President, in August 1977, gave the Director of Central Intelligence the power to decide on the final budget for the several intelligence agencies. In the past, a committee made this decision, and the Director of Central Intelligence controlled only the CIA budget (which, it may surprise some, represents less than fifteen per cent of the total US intelligence budget).

The path ahead will not be an easy one, especially for those senators and representatives who accept service on new, more directly involved congressional over-

sight committees in the area of intelligence. Ultimately, their task may well prove as vital as that of those whose activities they are regulating. Certainly, it will be as thankless, in addition to which the congressional overseers will not enjoy the benefit of anonymity.

Schooled in compromise as a way of professional life, these congressional overseers of intelligence and covert action will have to accustom themselves to an area where there are no middle roads, only decisions which demand to be made without delay and offer simply a choice between alternatives which may differ only in degree of unpleasantness. If they are fortunate, they will never find themselves in the nightmarish position of Churchill and his closest advisors on November 14, 1940. Because the British had acquired a device with which they were able to crack the "unbreakable" German code (the "Ultra" secret, only recently revealed), they had advance warning of a devastating air raid to be made on a city. To have ordered evacuation or taken other action to save the city or its in-

habitants would have risked letting the Germans know that the Allies were aware of their most secret orders and plans, often before the German field commanders concerned. The decision was to protect the secret, and Coventry was demolished, with accompanying atrocious civilian casualties.

From time to time, the congressional intelligence overseers may have to remind themselves that the Constitution they have sworn to uphold consists of more than the first ten amendments. In the first sentence of the Preamble, for example, two of the six objectives of "ordain[ing] and establish[ing] this Constitution of the United States America" were to "insure domestic tranquility" and "provide for the common defense." In this age of intercontinental ballistic missiles, nuclear weapons, and international terrorism, support of these two objectives involves a formidable task and an awesome responsibility. But the task cannot be shirked, nor the responsibility avoided, except at a cost few, if any, would care to calculate, much less advise us to pay.

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