

# **Secrecy and Intelligence in a Free Society**

APPROVED FOR RELEASE 1994  
CIA HISTORICAL REVIEW PROGRAM  
2 JULY 96

**UNCLASSIFIED**

*The following article is the summary of a detailed study prepared for the Center for the Study of Intelligence of the Office of Training on the recurrent topic of the intelligence dilemmas arising from security requirements within the framework of a free society. We hope this statement of the problem will stimulate further thoughts on the subject.*

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In discussing what I believe to be the major areas of concern that our free society has evinced regarding secrecy and intelligence, I hope to make it clear that I feel there are no final answers. They are not problems that can be solved; they are focal points that will demand continuing attention in pursuit of a balance which must be worked out between the opposing factors.

The central problem which demands attention does not stem from the question whether secrecy, intelligence, or even clandestine operations are compatible with a free society. The central problem is the structure through which that free society oversees its processes of secrecy determination, intelligence production, and the conduct of clandestine operations.

This may appear to be a mechanistic conclusion, but I make it because I am convinced that our free society is in basic agreement as to the kinds of things on which secrecy is justified. I am also convinced that — if the society knew more about the subject — there would be a consensus on the criteria which should be applied to deciding whether or not a foreign clandestine operation was an appropriate activity for a free society. .And, in complement to such agreement, there is the fact that the virtue and blessing of a free society is that there is a constant and continuing process which defines and refines the values the society expects to be applied by its institutions. These values themselves do not change radically — but neither are they absolute. They adjust to the efforts the society is called upon to undertake, and they adjust in particular in accordance with the threats the society feels it faces. In other words, the free society will relinquish some of its freedom if that is necessary, but it will wish to see readjustment take place once such relinquishment is no longer necessary.

The inherent feature of secrecy is the limitation of access to the secrets. The free society as a whole cannot make the judgment as to whether or not individual matters are legitimately kept secret. It must place its trust in an oversight body or bodies to act in its behalf. The smaller the number of people it decides it needs to establish such a condition of trust, the better it will be for the secrecy system.

The free society must have confidence that its oversight mechanisms

have adequate access to secret material to make judgments, and that this judgmental process is being exercised independently. There has to be trust that secrecy is not being used against the best interests of the free society; that the activities which are being protected by secrecy are being conducted effectively; and that necessary readjustment of these activities takes place in conformance with changed domestic and international circumstances. It is this confidence and this trust in the oversight mechanisms which has broken down.

In exploring the means by which confidence and trust can be restored, the free society must bear in mind the fact that its consensus does change. The lessons of the past must not be ignored, but it would be an error to judge what was formerly done — or what might be done in the future — by a consensus of the current moment deprived of historical perspective. It would also be mistaken to concentrate too much on preventing the abuse of secrecy without also recognizing that there are legitimate secrets. The free society owes it to those it holds responsible for producing secret information and conducting secret activities to maintain an oversight process which protects legitimate secrecy.

What then are some of the suggestions for improvement which should be considered? I have grouped them under five headings:

## **Redefinition of Government Secrecy**

"National security" alone is an inadequate base for a government secrecy classification system. Some suggest expanding this to "national defense or foreign policy." Executive Order 11652 uses "national defense or foreign relations" and then combines the two into "national security." However, as I have noted, the Freedom of Information Act not only excludes from its procedures those national defense or foreign policy secrets which have been "properly classified," but also excludes eight other areas, such as trade secrets and certain investigatory records. Such matters are not part of the classification system, but one suspects that a good many of them get mixed up in the classification system of those agencies dealing with national defense and foreign relations secrets.

If it could be granted that there is overall confusion about governmental

secrecy in our free society, wouldn't it be better to have a comprehensive system? Or would formalizing what already exists in practice only compound the already overwhelming problems of dealing with government paper? Nicholas deB. Katzenbach, discussing this only in the foreign policy field, comes down in favor of major surgery on the classification system and relying "on the good sense of bureaucrats to keep confidential what should be confidential most of the time, without employing bloated concepts of national security to do so."\* Perhaps so, but I believe the opposite course of inclusiveness is worth exploration.

In any case, whether the lesser secrets are dropped out of the currently overblown "national security"-based classification system into a system of government-wide applicability, or whether they are dropped to the level of reliance "on the good sense of bureaucrats," there can be no doubt of the need for drastic reduction in what has formerly been placed in the national security category. What is needed is much greater clarity as to what this category should *really* contain. Better guidelines would help immensely in the judgmental factor which will always be involved. At the same time, the numbers of persons entitled to make such judgments must continue to be reduced. Some such clarifications and further reductions, it seems to me, will be the inevitable results of current attempts to cope with the major changes brought about by the Freedom of Information Act and Executive Order 11652.

Another area that needs clarification has to do with abuse of the classification system. On the one side, it has been much too easy to overclassify. A Subcommittee headed by Congressman William S. Moorhead conducted a study in 1971 that found there had been 2,433 investigations by government agencies of classification system violations over a four-year period. Of these, only 2 involved cases of overclassification and "not a single administrative penalty was imposed against overclassification."\* On the other hand, great concern has been expressed about dangerous leakage in the system — "unauthorized disclosure." No one would deny that there are legitimate secrets which deserve greater protection. Clearly the current Espionage Act is inadequate for this purpose. One doubts, however, that it will be improved upon until secrecy has been reduced to the level the national consensus will feel is justified and our free society becomes more convinced than it is at present that there are adequate intra-executive means of airing and reconciling legitimate dissent.

# Congressional Oversight

It is, of course, up to the Congress as to how it organizes its oversight role. The current system has come under a great deal of attack, notably from members of Congress itself. At least some modification, and possibly even major change, in the four-subcommittee system appears to be in the offing. Whatever means of rebuilding trust and confidence are found, there is one primary fact of life about secrets which must be faced: those who have been made responsible for secrets they feel are important cannot be expected to continue a system which endangers the secrets. There must be trust and confidence on both sides of a secrecy-sharing process. In a free society, the official who feels secrecy has been and will be violated cannot have and should not have the option of evasion of legislative oversight. His only option is to point out the consequences of poor security and the fact that the activity must cease if the secrecy necessary to its continuance cannot be preserved. And, does anyone deny that the publicity — attracting nature of clandestine operations creates special problems in establishing mutual trust and confidence?

Another matter to be considered with regard to oversight are the interests of the men concerned. The primary role of the intelligence community will undoubtedly remain one dealing with military, security matters. However, other fields have been increasingly added, notably international economics, narcotics intelligence, and international terrorism. Further, there is a special need to view the intelligence community as a whole, and the members of that community relate to quite a variety of authorization committees. There needs to be a means of promoting greater Congressional cohesion between these differing jurisdictions.

Other than including people who have the trust of their Congressional colleagues, whose composition unifies the field of intelligence yet reflects its diversified content, who can follow methods preserving secrecy, there is the key question of how much detail the oversight body needs. British intelligence authority John Bruce Lockhart's central thesis on this question is: "the operations of Secret Services must remain secret, but the principles by which Secret Services can best be directed and controlled should be considered carefully, discussed, and

understood by those at government level who are responsible for controlling Secret Services. "\*\* Not having a parliamentary system, we in the United States need to have such consideration, discussion, and understanding shared by the executive and legislative bodies. It is extremely important to note that what Lockhart urges be left out of the discussion are the details of the "*operations of Secret Services*." The application of such a concept to CIA is not as radical as it might appear, inasmuch as only a portion of what CIA does is made up of the "Secret Service" kind of operation — and much that is supposed to pass as clandestine, really isn't.

Perhaps such exclusion of clandestine operations from examination may not be found satisfactory, however. Sometimes detail is needed for making evaluations. Sometimes knowledge of specifics is needed to be able to ask the right general questions. Does examination of detail need to be seen as an ongoing process, or might it be seen as temporary — until confidence was restored? Would examination of detail need to be across the board, or could the need be met by periodic or spot checks? Could detail be restricted to one type of operation, and the others left alone?

Lastly, when an examination or follow — up probe involves very sensitive material, does the full committee (or committees) need to be a part of such an examination? Couldn't one or two members, possibly on a rotating basis, be assigned to the task? Or, preferably, could such a question be transferred to some such body as the President's Foreign Intelligence Advisory Board, which would then have the responsibility of standing behind a reassurance of the oversight group. Or, could such inquiry be undertaken by a very small number of particularly trusted and reliable Congressional staffers? And what open record is at all possible on such matters to help reassure the free society and improve acceptance of appropriate joint responsibility? Could, for instance, some sort of quarterly listing of general topics covered by oversight proceedings be made public?

## **Executive Oversight**

Executive oversight is not as critical a matter at the moment as

legislative oversight, but it too merits attention. The primary concern of our free society at this time does not seem to be whether or not the Executive knows what CIA does, but whether the Executive will be able to abuse the secret capabilities represented by CIA. The meeting of the problem of legislative oversight and the functioning of a much more open Presidency should result in overcoming this fear.

This does not mean that there should be a return to the secrecy which used to surround the clearance procedures for CIA activity. The channels for executive approval of CIA activities should be uniform and not competitive or duplicatory, so that no future charges of CIA selecting the most favorable channel can be made. The channels should be publicly known, and so should the people in them. Again, it should be as much a matter of principles rather than details on operations whenever possible, but obviously when details are required in order to make risk/gain assessments, they must be readily provided. Clearly, such details will be required very often. Full knowledge can sometimes provide a better base for cooperation on the preservation of secrets than a partial knowledge leading to shared speculation between those partly "in the know." How often an operational activity needs to be reviewed, and the number of people who need to give their approval, can depend on the type of operation involved.

The "grey" area between CIA's domestically-based but foreign-related activities and those of the FBI must be reduced to an absolute minimum. There must be clearly understood procedures for an accountable ruling in case of any doubt. Domestic activities must be governed by the standards and institutional arrangements of the domestic scene, and it must be clear to the free society that this is the case. There must be a very minimum of overlap between the decision-making process for domestic activity and the decision-making process for foreign activity. The two must be judged by different standards.

Lastly, there is the problem of efficiency and effectiveness. There is a great deal more of the administrative side of the intelligence organizations which could be open to Congressional scrutiny. However, the major responsibility obviously rests with the executive branch, which must continually improve its management practices. More rigorous, not less rigorous, review by the Office of Management and Budget is needed. Continued progress must be made on the community-wide framework of requirements against which evaluations can be made. The techniques of evaluating programs must also be improved. There must

be evaluation in depth on a selective basis — a requirement, a source, a station, etc.

## **Reduction of Agency Secrecy**

Without the shadow of a doubt, a sort of Gresham's Law operates with regard to respect for security systems. If an employee is asked to treat worthless material with the respect due only to worthwhile secrets, the bad practices will drive the good practices out of circulation. Similarly, if a free society is asked to respect a security system and then finds that the system has protected "bad" or worthless secrets, it may well result in damage to the system's ability to protect "good" secrets. From both the standpoint of the employee's observance of the security structures and the free society's respect for maintaining security systems, there can be only one conclusion: the matters which need to be kept secret must be reduced to a minimum.

For a conclusion so obviously correct for a free society, it is hard to see why there should be any disagreement or serious problems. But it is vastly easier to state such a conclusion than it is to implement it. It seems to me that the problems of implementing it for the Agency stem from three main sources. The first of these is an insufficient differentiation between the security needs of the varied personnel of CIA. To draw again on the wisdom in this field which John Bruce Lockhart has set forth:

Those in control of Secret Services must have a realistic and disenchanted understanding of "security." This is not as simple as it sounds, because possibly more follies have been committed in the name of security than in any other governmental activity in a modern state. These broad principles must continually be borne in mind if this area of folly is to be reduced.

In secret operations there are only two degrees of security. One is the suit of armour, where the man's identity or objective remains a total secret. The other is the fig leaf, where a facade of respectability is imposed on functions or individuals whose real purpose is widely known and accepted. Security trouble arises

when it is believed by those who control them that there are degrees of security in secret operations between the suit of armour and the fig leaf.\*

Those who are *really* operating in secret need the "suit of armor" and need every help in keeping it impervious. Those who are operating under "fig leaf" conditions should not be treated the same way as those within armor. It should also be fairly unlikely that the "fig leaf" operator would revert to or become a truly clandestine operator. A great many of the Clandestine Service personnel now have the trappings which are the due of the "suit of armor" operators but they are in fact engaged in "fig leaf" operations. The easily identified large-scale operations of Vietnam, Laos, and Cambodia come most easily to mind. However, this is also true of many of the liaison arrangements with foreign intelligence services. It may also involve such new missions as anti-narcotics and anti-terrorism activities conducted in cooperation with local authorities.

Such "fig leaf" operations may well be fulfilling agreed and necessary functions; they may well require some clandestine skills; and in some cases they may well be dangerous. But they do not require the high degree of protection of identity, skills and movements necessary for the truly clandestine operator. Add to this need to differentiate between operators requiring "suit of armor" protection and operators who need only fig leaves, the further differentiation between operators and the rest of the CIA personnel. Do people who are only handling secrets even need a fig leaf?

This area of difficulty can be compounded by the "one Agency" concept – the idea of interchangeability of Agency careers. In my personal opinion, this is a mistake in so far as it presumes a movement from the analytical side into the Clandestine Service. It has been done, but how often? And how many of those who did make such a transfer actually become clandestine operators?

Possibly the greatest source of difficulty on this differentiation problem could be the extent to which there may be an effort to hide the operators within the larger group of Agency employees. According to Roger Hilsman: "the original idea of CIA had been to conceal the cloak and dagger activities behind the much larger mass of 'overt' intelligence work – research and estimating, monitoring foreign propaganda broadcasts, and so on."\* I do not personally know if this was indeed the

intent. To the extent that it may be, such "cover" should be questioned as to its usefulness. At best it far more resembles a fig leaf than it does a suit of armor. And society would really not need to blush if this particular fig leaf were dropped.

In sum, the "one Agency" concept deserves a very hard look in terms of its consequences for personnel security practices. And the degree to which the personnel security practices of the Clandestine Service are based upon "suit of armor" assumptions also needs close examination. Are the justified needs of truly clandestine operations being endangered by being too widely applied? Shouldn't the truly clandestine be set apart as urged by another of Lockhart's principles: that the "operational front of secret operations should be as narrow as possible?"\*\*

The second main source of problems in reducing security practices to a minimum are what must be regarded as national bureaucratic tendencies inherent in any organization, but particularly large ones. Bringing about some uniformity in judgmental matters is extraordinarily difficult and in practice the "lowest common denominator" is subject to continual decline — particularly if there is no penalty for "playing it safe." Such penalties should be set up *and used*. There is no final answer, of course, but some clearer criteria need to be set up and there must be an improvement in systems of review — an excellent function to assign to deputy chiefs.

Another major factor to be attacked are practices stemming from tradition and precedent. Such practices do not necessarily represent accumulated wisdom.

Sometimes they do, but they can also represent outmoded ways of doing things which historical circumstances may have once justified — circumstances which subsequently departed the scene. There are, for instance, "worst case" regulations. These were set up when a "worst case" did occur or when someone had the imagination to think that it might. Such "worst case" regulations need to be examined to see what the probability really is of such an event occurring. All too often such regulations stay on the books, are not enforced by the authorities, but are available as a basis for supervisory thunder "just in case." This is dishonest administration, natural as it may be. Another group of practices undoubtedly stem from a "weakest-link" concept. At some particular point a given security practice may well have been set up or reinforced to prevent it from being the "weak-link" in a chain of security

practices. Its chain may no longer exist, or other parts of the chain may have become of a much weaker gauge. It is absolutely right to view security practices in a systems approach flow context. But differentiated flow channels are possible and can be treated differently so that what would be a "weak link" in one wouldn't necessarily be so in another.

Besides being looked at in a systems approach chain method, security practices should be examined as a layered concept. Is the secret at the core still a secret? Are the various layers of protection ("derivative" secrets) still needed or can some of them be relaxed or dispensed with? How many practices may have come from the requirements of some other body as part of the process of establishing the mutual trust needed for the exchange of secrets? Are these still needed?

A third main source of problems is the necessity of not disclosing too many clues as to your intelligence successes — or lack thereof. This is what is involved in the reluctance to disclose too much information about Agency organization or budgeting. It is held that such information could show trends which ought to be concealed. One suspects that some such trends would be fully evident from open policy documents, i.e., increased concentration on the Mid-East, decreased attention to Indochina, increased interest in economic information, etc. Further, even in the open parts of our system, it is often very difficult to track expenditures from budget year to budget year. Without denying that some trends merit concealment, one can't help wondering in how much of the agency this may be a problem, and at what level of budgetary listing it becomes a problem. Much information is justifiably withheld because it meets the statutory protection provided in the 1949 Act for intelligence sources and methods. But isn't there a good deal of such *organizational information* which would not endanger sources and methods?

Turning from organizational information, what about making more of the intelligence end-product available to Congress and the public? If this can be done without endangering sources and methods, or endangering what I regard as legitimate executive leadership rights and administrative responsibilities, I feel much more such information in an appropriately usable form should be made available. Such sharing is indeed on the increase. The more that it is possible to do this with central intelligence, the less possible parochial manipulation through partial release of information becomes. It has been suggested that the Congress should be able to levy its own estimate requirements on CIA,

and this is an idea worth exploring.

## Procedures for promoting change

The discipline of the marketplace brings change. Much of what CIA does cannot be out in the marketplace. Being responsive to a need to change and adjust poses very special problems for a closed organization. There is a need not only for CIA to be much more closely attuned to the consensus of our free society, but also for a reinforcement of its processes of eliminating the mediocre and the outdated.

CIA has had procedures to promote change, but I believe it is fair to say that they did not work well enough. Undoubtedly a part of the reason for resistance to change stems from a humanitarian concern about men whose services might no longer be required. Another part might stem from a cautious reaction to preventing an over-use of the Agency such as had marked certain periods in the past — an over-use which can produce failures not balanced in the public mind with successes. It might have derived from a realization that it would be much more difficult to operate in a multipolar world where the choices were less clear and where the cement of common assumptions characterizing the Cold War period would be lacking. It may well be prudent in some cases to keep standby capabilities until you are more certain that you won't need them. However, much necessary change didn't take place simply because it didn't have to.

Beyond the need to reinforce external procedures of promoting change, there is a need to examine CIA's internal methods serving this purpose. Where did recommended change take place and where did it fail to take place? What was the record as regards Inspector General surveys? Where was lip service paid to their recommendations but little actually ended up being changed? There were processes of feedback and some attempts at evaluation. What happened to these? What is the record on Management Advisory Groups? What was the upshot of training programs designed to help challenge assumptions and promote rethinking? There should be a considerable body of material available for analysis on what must be one of the key problems of secrecy and intelligence in a free society.

To conclude: free society needs intelligence. It needs secrecy. But there has been a loss of proportion, a loss of confidence and trust, and a lack of understanding on all sides. These must be overcome because the free society needs to make wise use of the capabilities at its command – and I include covert capabilities in this. It is high time that a mending took place.

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## Footnotes

\*Katzenbach, "Foreign Policy, Public Opinion, and Secrecy," *Foreign Affairs* (Oct., 1973) p. 17.

\*Rep. W. S. Moorhead, "Operation and Reform of the Classification System in the U.S.," in Frank and Weisband, ed., *Secrecy and Foreign Policy* (Oxford University Press, New York, 1974) p. 101.

\*\*John Bruce Lockhart "The Relationship between Secret Services and Government in a Modern State," RUST, *Journal of the Royal United Services Institute for Defense Studies*, (June 1974) p. 3.

\**Ibid.* p. 5.

\*Hilsman, *To Move a Nation*, (Doubleday, New York, 1967) p. 79.

\*\*Lockhart, *Op. cit.*, p. 5.

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Posted: May 08, 2007 08:43 AM