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EDITORIAL

THE ABSCAM CAPER

It seems that not much is new at the "new F.B.I." The latest caper, in which agents posing as businessmen and Arab sheiks offered bribes to selected public officials (how selected remains troublingly obscure), and the subsequent leaking of prejudicial details to the press in advance of any indictment or consideration of evidence by a grand jury, shows that the Bureau's regard for constitutional rights has not improved significantly under the leadership of Director William Webster.

In fact, we can recall no more outrageous example of misconduct through the use of prejudicial publicity by law-enforcement officials at this stage of a criminal investigation. Especially disturbing is that such misconduct has been directed against elected officials at the beginning of an election year. Many months and perhaps years later, the judicial system may in whole or in part exonerate any of the accused. But a political adjudication has already been made. For those involved, the punishment has already begun.

If the continuing revelations concerning operation Abscam prove anything, it is the need for a strict legislative charter to limit the mandate of the Bureau to *investigating* rather than *instigating* criminal activity. The capacity for political mischief when such extensive and intrusive undercover operations are directed at elected officials is, of course, immense. In the Hoover days, such information might well have reposed in the Director's private files, for blackmail purposes, so the Bureau's new-found zeal against crime in the suites is salutary; but the operation also highlights improper F.B.I. conduct that is not unique to Abscam. Perhaps this episode, which has hit Congressmen so close to home, will finally prompt them to enact a law that will check such abuses.

THE AGENCY'S BILL

MOYNIHAN UNLEASHES THE C.I.A.

The C.I.A. has spied on our own people. The F.B.I. has committed burglaries. . . . This is a time for change in our country. I don't want the people to change. I want the Government to change.

—Jimmy Carter, Dallas, September 24, 1976

GEORGE LARDNER Jr.

Television crews and Congressional aides squeezed up against one another in a Senate hearing room last month for a bizarre lesson in semantics. The drive for "reform" of the Central Intelligence Agency and the rest of the nation's intelligence community had taken a new turning, as Senator Daniel Patrick Moynihan proceeded to demonstrate at a crowded press conference.

It was the day after President Carter's State of the Union Message with its alarums over the Persian Gulf and what Carter called "unwarranted restraints" on our intelligence-gathering activities. Moynihan and six colleagues—four Republicans and two Democrats—seized on the occasion to introduce what they christened the Intelligence Reform Act of 1980. Simply put, the proposal amounts to an official secrets act. It would enable the C.I.A. to close the door on most of its misdeeds, past, present or anticipated. It would repeal the law governing covert operations and lift Congressional restraints in effect for the past six years. It would provide for the prosecution of citizens who disclose certain information, even if it is in the public domain.

Moynihan, of course, characterized the measure differently. It was simply a modest beginning, he said—a three-part proposal that "should be seen as but the first blocks in the reconstruction of our intelligence community, not the final edi-

(Continued on Page 176)

Republic's entry into the European Economic Community has benefited Southern farmers—and industrialists—immeasurably, in sharp contrast to their counterparts in Northern Ireland, which remains outside the community, and the Republic has overtaken the once prosperous Northern Ireland of the 1950s and 1960s. In the long run, the Protestants in the North, with their mercantilist traditions and their hardheaded business sense, will be more influenced by bread-and-butter issues into considering links with the Republic than by political pressures.

I look forward to seeing Irish unity in my lifetime. I believe the best way to achieve that goal, not simply in geography but more importantly in the hearts and minds of people, is by creating conditions which make unity appealing to the Northern Protestants. If those one million do become willing citizens of a new Ireland, their contribution could be truly positive in building a far more pluralist society. But their participation must be won through consent—not pressure—or partition of Ireland will live on in their thoughts, if not in physical reality. □

Moynihan

(Continued From Front Cover)

fice." "For too long," Moynihan continued, "we have seen in our own nation a threat to our liberties which, more properly, ought to be seen in places outside our country. Simply stated, we have enemies in the world. It is the K.G.B., not the C.I.A., which threatens democracy."

The speech was vintage Moynihan. But the bill, known as S. 2216, could have been written by the C.I.A.—as indeed much of it was. Moynihan seemed chagrined by a reporter's question to that effect, until an aide informed the Senator that not a few of the provisions had come from C.I.A. headquarters in Langley, Virginia. Whereupon Moynihan harrumphed that he saw nothing wrong with that. "We have made no effort to exclude them," he said of the C.I.A.'s draftsmen. Senator Malcolm Wallop, a co-sponsor of the measure, called it "normal procedure" for a bill affecting a Government agency. Neither dwelt on what that did to the word "reform."

With all the war talk bubbling around Washington, however, it is comforting to dream that the C.I.A. can magically pull us back from the brink. The Moynihan bill has an ominous head of steam behind it. Similar legislation is already pending in the House. The Carter Administration seems especially keen on giving the Agency a freer hand for covert actions, in a harking back to "the good old days" of the 1950s and 1960s when it restored the Shah of Iran to his throne, engineered the overthrow of President Jácobo Arbenz Guzmán in Guatemala and finally plunged us into the Bay of Pigs. The new drive has raised speculation about the possibility of covert aid to the Moslem rebels in Afghanistan—as though overt aid were somehow unthinkable. Secrecy is more beguiling. It avoids hard questions, such as whether we really want to go to war—and where—and when.

Although the crisis in Iran and the Soviet invasion of Afghanistan have solidified the new mood, it has been building for some time, beginning, in fact, with the final days of the Senate and House investigations of 1975-76 into the C.I.A.'s and the Federal Bureau of Investigation's excesses in the name of national security. A new rule of law was promised. The only result was the creation of the permanent Senate and House intelligence committees, which were assigned the task of supervising America's spies and counterspies. They quickly fell prey to the Washington rule that the regulators shall lie down with the regulated and became even more secretive. The two committees have produced only one law of any significance: a statute setting up a special court that issues secret warrants permitting electronic surveillance of American citizens in national security cases. The chairman of the Senate Select Committee on Intelligence, Birch Bayh, hailed its passage in 1978 as "a landmark in the development of effective legal safeguards for constitutional rights." He predicted that it would pave the way for enactment of a comprehensive legislative charter to govern the U.S. intelligence community.

The President who said he wanted "the Government to change" promised a charter, too. He assigned Vice President Mondale as his point man, charged with the task of producing controls that the intelligence agencies could digest. They digested Mondale instead. The Vice President turned out to be so ineffectual—and so inattentive—that he launched the Carter-Mondale re-election effort last year unaware that the charter legislation had yet to be sent to Capitol Hill. This lapse caused some embarrassment when Mondale opened the campaign last September in Florida and listed reform of the intelligence agencies as one of the Administration's accomplishments. He professed surprise on being told by a reporter, after the speech, that the C.I.A. charter had not yet been introduced. He promised the reporter an interview on the subject. Then he went on to California to tell a crowd there that "we have proposed legislation for charters for the F.B.I. and the C.I.A." Mondale subsequently declined to be interviewed about the matter. "He just feels he has had no time to focus on it," a spokesman said.

Then came Iran and Afghanistan. The Administration began pressing hard for one of the C.I.A.'s long-stated objectives: repeal of the Hughes-Ryan amendment governing covert operations. (See editorial, "Leash the C.I.A.," *The Nation*, January 26.) Suddenly, the new vogue word was "revitalization" of the C.I.A.

An irony of the alleged dismantling of the Agency as a result of the 1975-76 investigations is that the two most significant reforms were enacted before the exposés took place. One was the Hughes-Ryan amendment, which Congress tacked onto the 1974 Foreign Assistance Act following a furor over C.I.A. activities in Chile. The amendment provided that covert action—"other than activities intended solely for obtaining necessary intelligence"—could be undertaken only if the President finds each such operation

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"important to the national security" and reports it "in a timely fashion . . . to the appropriate committee of the Congress." ("Covert action," as the Senate intelligence committee puts it, "is defined as clandestine activity designed to influence foreign governments, events, organizations or persons in support of U.S. foreign policy in such a way that the involvement of the U.S. Government is not apparent. In its attempts directly to influence events, it is distinguishable from clandestine intelligence gathering—often referred to as espionage.")

The C.I.A. has been railing against the rule ever since, denouncing it as an invitation to leaks since it requires reports to eight Congressional committees—the Foreign Affairs, Armed Services, Appropriations and Intelligence committees of both House and Senate. By Moynihan's arithmetic, that means disclosure to "some 180 legislators and almost as many staff" whenever the C.I.A. undertakes a mission outside the realm of intelligence collection.

Actually, the circle of lawmakers privy to such secrets is much more limited. On some of the committees, only the ranking members are informed. On the intelligence committees, which would continue to receive reports of "substantial" undertakings under the Moynihan bill, only the members plus a few top aides are apprised. What seems to bother the C.I.A. most about Hughes-Ryan is the restraint it imposes. According to Senator Walter Huddleston, the Agency has decided against some projects—and modified others —out of fear of disclosure.

With characteristic understatement, Huddleston, a ranking member of the Senate intelligence committee, allows that such restraint may have been "a good thing." He also told a reporter that he knows of no leaks that could definitely be blamed on Hughes-Ryan. The risks of disclosure by Congress have, in any case, always been exaggerated. A 1971 C.I.A. study found that only one of every twenty serious leaks of information come from Capitol Hill. Most of them can be traced to high-level Administration officials, to the Pentagon and to the intelligence and diplomatic communities. In the early 1970s, there were an estimated 400,000 to 500,000 people within the executive branch alone who were cleared for top secret information.

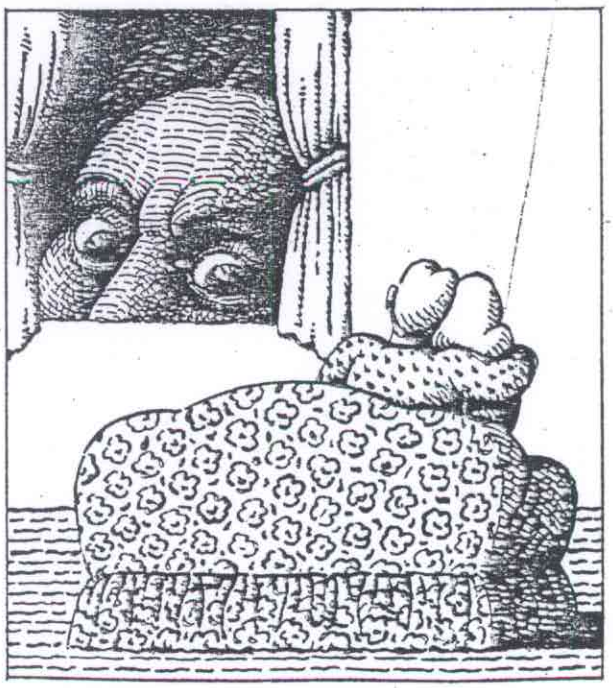
Moynihan's proposed Intelligence Reform Act of 1980 would do much more than restrict the reporting of what used to be called "dirty tricks" to the House and Senate intelligence committees. It would also restore, at least to a limited extent, the doctrine of Presidential "deniability," whereby the Chief Executive could disclaim any knowledge of such undertakings. The President would have to approve only those covert operations involving "substantial resources or risks." The National Security Council would pass on the rest, and these would not have to be reported to any Congressional committee at all. "You can defeat the purpose of reporting by reporting too much," Moynihan declared in justification of this provision. "We are requiring the reporting of events we will really pay attention to."

The other key reform proposed by Moynihan and company involves the Freedom of Information Act (F.O.I.A.), which has had the C.I.A. grumbling ever since it was forced to comply with it under a series of amendments Congress enacted in 1974. Until then, C.I.A. documents could be automatically withheld from public scrutiny simply by invocation of the "national security" exemption, but Congress changed the rule by providing that the reasons for such secrecy could be challenged in court. It also set down deadlines for compliance.

To hear the C.I.A. tell it, the information released has been thoroughly inconsequential. "[T]he information furnished is almost always fragmentary and is often misleading," C.I.A. Deputy Director Frank C. Carlucci argued last August in a letter to the White House Office of Management and Budget. "Therefore the information is more often than not of little use to the recipient." Never mind that the law has produced volume after volume about the assassination of President Kennedy, the C.I.A.'s controversial drug-testing programs and its illegal domestic spying operations. Never mind that the documents released under the F.O.I.A. show far more extensive surveillance than even the Rockefeller Commission was told about.

Carlucci asked for the Carter Administration's support of a measure that would put most C.I.A. files beyond the pale of the F.O.I.A. The "loss to the public from the removal of these files from the F.O.I.A. process," he maintained, "would be minimal." Carlucci has acknowledged that the C.I.A. can protect its legitimate secrets under the Freedom of Information Act as it stands, but the Agency contends that the law is still "inappropriate, unnecessary . . . and harmful" because its sources abroad remain fearful of disclosure.

Despite the Agency's claim that what it releases is "of little use," it complains that anyone, including avowed enemies like former C.I.A. officer Philip Agee, can ask for its docu-



ments. In fact, the C.I.A. treats many requests cavalierly—ignoring some, "losing" others, delaying still more—but it insists on assigning four people to Agee's petitions as a P.R. gimmick to dramatize its complaint about the law. Ordinary citizens get no such consideration, but that inconsistency doesn't seem to bother the C.I.A.'s allies in Congress. "Modification of the Freedom of Information Act makes sense," Wallop intoned at the press conference with Moynihan. "Congress never intended that the American taxpayers should pay to provide Philip Agee with four full-time research assistants within the C.I.A., but that is precisely what happened under the law in 1978."

The C.I.A.'s proposal—drafted by Langley and introduced by Moynihan word for word as part of his bill—would permit general freedom of information requests only for what Carlucci called "finished intelligence products." For the rest of its files, only American citizens could apply and they could ask, Carlucci said, only for "what, if any, information we have on them personally."

That may touch off a stiff fight. "All properly classified information is protected under the law now," says the American Civil Liberties Union's legislative representative, Jerry Berman. "None of it has leaked out under F.O.I.A. Vital secrets have been lost to spies, but not under the Freedom of Information Act."

The last of the "modest measures" (Wallop's phrase) in the joint Moynihan-C.I.A. package could prove even more controversial. It was actually drafted by C.I.A. lawyers and staffers of the House Select Committee on Intelligence and introduced in the House last year as a separate measure by all fourteen members of the committee. It would make it a crime to disclose the names of C.I.A. operatives stationed abroad—even if the disclosure came after the agent had returned home.

The stiffest penalties in the bill—ten years in prison and a $50,000 fine—would be imposed on offenders who have had authorized access to classified information—former C.I.A. employees, for example. Others, such as journalists, would face a year in prison and a $5,000 fine if the Government could show they intended "to impair or impede the foreign intelligence activities of the United States." The proposal even contains a little fillip designed to overcome a World War II-era court decision that barred an espionage prosecution for sending material already published in U.S. newspapers and magazines to Germany. Under the new bill, it would still be a crime to "disclose" a name taken from public sources—for instance, an old State Department biographical register—so long as the Government was still "taking affirmative measures to conceal such individual's intelligence relationship to the United States."

The C.I.A. has depicted this proposal as being aimed solely at Agee and an anti-C.I.A. "coterie dedicated to exposing the names of agents," but it would clearly have a much broader impact. (See editorial, "Naming Names," *The Nation*, December 1, 1979.) "There's a lot of intelligent people who think the bill is unconstitutional," said one House lawyer. "I said intelligent people, not intelligence people. Sometimes there's a difference."

The Carter Administration has already given its blessings to the three-part package as part of the long-promised charter for the C.I.A., but there are few officials who think that so comprehensive a measure stands a chance of enactment. The charter, moreover, has been evolving from a strict code of conduct for the intelligence community into a license for wide-ranging secret activities with few blanket prohibitions. Still to be introduced at this writing, it would, for instance, ban assassinations but impose no penalties on those who ignore the injunction. It would also sanction everything from burglaries to wiretapping of law-abiding Americans abroad, so long as the Government thinks some important information might be acquired.

Huddleston still hopes to get a charter through the Senate, rather than just the Moynihan bill, S. 2216, but he agrees that in its present mood the House will give the C.I.A. only the cold-war rearmament of S. 2216. The charter might get bogged down in election-year rhetoric and besides, the C.I.A. can burgle abroad right now, without having to meet statutory standards for breaking and entering.

As a result, Huddleston isn't even sure he can get a charter reported out of his own Senate intelligence committee. Moynihan, Wallop and two other sponsors of S. 2216, Senators Henry M. Jackson and John H. Chafee, all sit on the same panel. As chairman of the subcommittee on charters and guidelines, Huddleston could bottle up S. 2216 and insist on taking it from there only as part of an overall charter. But he says he doesn't intend to try that gambit. He plans to report out both S. 2216 and a comprehensive charter, and then let the full committee make up its mind.

Administration insiders say the Carter White House isn't going to push hard for "a full charter" either. Who ever said the C.I.A. did anything really wrong anyway? Jimmy Who? □

Iranian

(Continued From Page 165)

America decides to put aside its policy of expansionism and violating the sovereignty of other countries, then it will be adopting correct policies for the solution of the crisis."

Perhaps Senators Edward Kennedy and Frank Church could make a start in this country by launching a joint investigation by their respective committees, Judiciary and Foreign Relations. To help make the case for such investigations, as well as to obtain information that may be presented before any U.N. inquiry committee, *The Nation* has initiated a Freedom of Information Act request for all C.I.A. documents bearing on past intervention in Iranian affairs.

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