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The CIA's 'Illegal Domestic Spying'

A CITIZEN reading recent newspaper stories accusing the Central Intelligence Agency of "illegal domestic spying" has got to feel more than a little confused. For so far almost no solid evidence has been produced to substantiate the widespread impression of a secret foreign-intelligence agency acting as a domestic police force. "Informed sources," leveling generalized accusations of misconduct, are apparently readily available. But open assertions attributed to identifiable sources are a distinct rarity in this affair. Perhaps we have missed a story or two. But up to now all but one of the reported cases involving an American citizen supposedly wrongly "targeted" by the CIA turn out to have had a foreign connection of more or less relevance to the agency's rightful duties.

Typically anonymous, an ex-CIA man who told a reporter he had spied on student radicals in New York went on to explain: "These kids were directly involved with foreign stuff. We always worried about drugs from Communist China, KGB agents and foreign guns." The one exception is E. Howard Hunt's account, first offered in Senate testimony last year, that he spied on the Goldwater campaign in 1964. More direct evidence of illegal domestic spying may yet be forthcoming in the several investigations of the CIA being contemplated in the Congress and the White House. Meanwhile, in the name of fairness, we offer certain cautions.

While almost any CIA activity can be fitted under the heading of "spying," and while CIA activities undertaken on American soil can be called "domestic spying," it remains to be determined which of these activities has been conducted in "violation" of the agency's congressional charter or are "illegal."

Part of the problem lies in the looseness of the charter, written in the cold-war fever of 1947. It said the CIA would have "no police, subpoena, law-enforcement powers or internal-security functions." But in an order cutting across this domestic-police ban, the charter made the CIA director "responsible for protecting intelligence sources and methods from unauthorized disclosure"—a mission he could hardly perform without invoking some police powers. Even more negligently, the charter authorized the agency to "perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." By this last grant of authority, the Congress in effect wrote the President a blank check to issue additional and secret directives to the CIA through the NSC. In brief, the CIA was authorized to perform missions the Congress may neither have specified beforehand nor known about afterwards. This is how th CIA got into "dirty tricks," an activity not here at issue. This is how Congress lost the opportunity to conduct effective CIA oversight. This also explains how difficult it is to know if a particular CIA act is in "violation" of the agency's charter.

A second problem in assessing CIA operations lies in the inherent ambiguity of the operations themselves. A distinction between "foreign" and "domestic" cannot be easily or automatically drawn. Providing "cover" for overseas operators can involve first creating a believable identity—a role for them to play, so to speak, as legitimate businessmen or political dissidents or whatever, here in this country. Establishing whether a foreign government is influencing a domestic group, or maintaining contact with a foreign agent who comes to this country, may lead to infiltration or, in another framework, electronic or mail surveillance that may or may not be illegal depending on how it's done. Performing the agency's basic foreign-intelligence function commonly involves interviews with Americans returning from abroad; their names—thousands of them—are on file in Langley. Since foreign embassies are considered foreign territory, break-ins there may be legal in terms of the CIA's charter, though illegal in terms of American law. It is precisely the tension between these two sets of terms which characterizes many of those alleged acts now being described in the press as "questionable if not illegal."

A final problem in assessing the CIA arises from the unavoidably secret nature of intelligence. If the United States is to fend for itself and defend itself in a troubled world, then it must have an intelligence service and that service must be a secret one. Such a service is indeed prey to abuses of zealotry, venality and bureaucratic rivalry. The answers—both familiar, both imperfect—are two. One is careful executive oversight—we note in the current uproar no suggestion has yet been made that the CIA had slipped its White House leash. The other is careful congressional oversight, which the CIA has never received. Any new oversight procedure, however, will have to reflect a compromise between the openness demanded by the American democratic tradition and the secrecy required for the nation's security.