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The CIA's Whipping Boy

How a Whistleblower Got What He Didn't Deserve

By Peter Kornbluh

THE DECISION by outgoing CIA Director John Deutch to revoke the security clearance of State Department senior adviser Richard Nuccio is a dangerous message for the future conduct in U.S. foreign policy: Those who engage in crimes of state can take retribution on those who assert the conscience of the state.

Nuccio's misdeed was to have privately informed then-Rep. (now Senator-Elect) Robert G. Torricelli (D-N.J.) of the classified truth about the CIA's involvement with a Guatemalan colonel implicated in the murder of one American citizen and the husband of another. By going after Nuccio, the agency is diverting attention away from the real issue: its own lack of ac-

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countability—to the law, to the Constitution, and to the democratic principles the CIA is supposed to uphold.

The CIA is now conducting the type of smear operation against Nuccio's character that it runs against enemy foreign nationals. To reporters, CIA officials have disparaged him as a leftist sympathizer; officially they have cast him as a leaker of the most sacred secrets of state—the name of a CIA asset. "What you did," Deutch wrote in his Dec. 5 letter to Nuccio, "jeopardized . . . the security and integrity of [deleted] US intelligence sources, methods and activities."

Documents from the CIA, State Department and National Security Council tell a very different story. Nuccio was neither a sympathizer nor a leaker—he was a cautious bureaucrat who got caught up in a CIA coverup. He sought to extricate himself by fulfilling his constitutional duty—with the knowledge of his superiors—to provide truthful information to a member of the House Intelligence Committee who

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was authorized, by the CIA itself, to receive that information.

Deutch's ruling on Nuccio's security clearance culminates a pattern of CIA misconduct and abuse in its "little shop of horrors," as one columnist described the agency's record in Guatemala: These include:

- Putting on the payroll an "extremely violent individual," as declassified intelligence documents characterize the CIA asset at the center of the scandal, Col. Julio Alpirez.

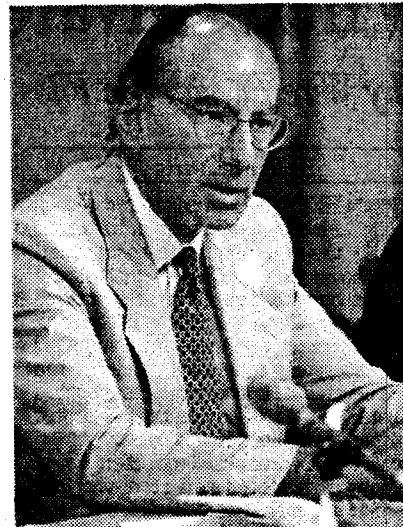
- Hiding its relationship to Alpirez after he participated in the 1990 murder of an American citizen, Michael Devine, who owned and operated an inn in Guatemala. The coverup included giving the colonel a severance package of \$44,000 in a brown paper bag, and failing to notify the House and Senate intelligence committees. The president's Intelligence Oversight Board called that failure "a dereliction of responsibility and a violation of its statutory obligation."

- Obstructing Executive Branch and congressional inquiries into the torture and execution of Guatemalan rebel leader Efraim Bamaca, the husband of American lawyer Jennifer Harbury. Alpirez also was involved in this crime, according to CIA reports.

The unraveling of agency's actions in Guatemala began with Harbury's persistent effort to find information on the fate of her husband. The Guatemalan government claimed Bamaca had committed suicide on the battlefield to avoid capture in March 1992. But two rebels captured that day who later escaped said Bamaca had been taken prisoner. Harbury launched a series of three hunger strikes to find out the truth.

Nuccio, as the State Department's point man on Guatemala at that time, was dismissive of Harbury's highly publicized campaign to find her husband. "I thought her story was kooky," he said in an interview. Other officials in the White House considered Harbury's account to be credible and sought to pressure Guatemala, but were blocked by Nuccio's position that assisting her would damage peace negotiations to end the civil war there. "State (Rick Nuccio has the lead) apparently has been reluctant to act because of the peace talks," noted an e-mail memorandum written by an NSC staffer in early October 1994.

Later that month, Nuccio came across a May



BY DANIEL PORTNOY—ASSOCIATED PRESS

Richard Nuccio: A cautious bureaucrat under CIA attack for exposing CIA misconduct.

1993 CIA intelligence report, based on sources in the Guatemalan military, that supported the stories of the two rebels who claimed Bamaca had been captured alive and then tortured. That discovery led to a meeting in November 1994 involving Nuccio, Deputy Secretary of State Ann Patterson and three CIA officials, including the Directorate of Intelligence's branch chief for Latin America, and the Directorate of Operations's Guatemala reports officer. When pressed by Nuccio to name an unidentified Guatemalan officer referred to in the cable—the now-notorious Col. Alpirez—the CIA officials proved uncooperative, according to Nuccio and others. They described him only as a "discredited source." Nuccio and other State Department officials left the meeting "disappointed" and convinced that the CIA representatives "were not entirely forthcoming . . . or willing to fully employ existing collection capabilities to develop new information," according to a memo written by one of Nuccio's colleagues.

Led by Nuccio, the State Department then pressed for re-review of CIA intelligence from the field. That set in motion a collection of data in Guatemala, including new CIA interviews with its sources about Bamaca. One informant told the CIA that Bamaca had been captured alive and Alpirez had participated in his torture and execution. That interview was written up in a Jan. 25, 1995 intelligence report, which acknowledged the CIA's close relationship with Alpirez.

When this report finally reached Washington, officials at the State Department, the NSC and the White House understood they had been grossly misled by the CIA. Relying on this false information, these officials had, in turn, misled the Congress, the American public and the two

widows, Jennifer Harbury and Carol Devine, about U.S. government's knowledge of, and relationship to, the murders of their husbands.

An interagency group then met at the NSC and directed the CIA, along with the State Department, to brief the House Intelligence Committee behind closed doors about the CIA's involvement with Alpirez in early February. The Clinton administration's presumption was that the story would become public. "We thought it would be in the papers the next day," one official said privately.

But the news did not leak. For Nuccio the issue was a "ticking time bomb," as he described it to one colleague at the time. With secret State Department memos predicting that soon "the Alpirez [CIA connection] could become public, inadvertently or not, in a number of ways," Nuccio felt the need to correct the false impressions he had left with members of Congress. "I said, 'They've been trying to cover this up and nobody will believe that I wasn't a participant,'" he recalled.

While the CIA asserts that Nuccio did not go through "proper channels," the truth is otherwise. Nuccio told his superiors that he was in the troubling position of having misled Congress. He was actually advised by the State Department's Bureau of Legislative Affairs to talk to Torricelli, a member of the intelligence committee to whom he had previously given misleading information. As a member of the committee, Torricelli had already been authorized by the CIA to receive the classified information. And, after Nuccio spoke with Torricelli, he reported his conversation to his superiors.

"I didn't do it to get the information out," Nuccio says. "I did it so that Torricelli would know that I hadn't tried to mislead Congress and could inform others if I was accused of doing so."

It was Torricelli, not Nuccio, who was the source for a front page New York Times story on March 23, headlined "Guatemalan Agent of CIA Tied to Killing of American." A senior CIA official and a senior NSC official confirmed the story. With that the CIA's Guatemalan coverup collapsed.

Angry CIA officials, unable to punish Torricelli because of his status as a congressman, decided to make an example of Nuccio.

Now, with the CIA's decision to revoke his top security clearance, Nuccio's case has taken on a meaning far beyond his imperiled diplomatic career. If not reversed, the ruling against him will reduce the understood standards of accountability, integrity and honesty in the foreign policy process that the constitution demands and the American public deserves.

This is the fundamental issue that Anthony Lake, the incoming director of central intelligence, will confront if and when he takes over the agency. Ironically, Lake was one of the victims of the CIA's Guatemala coverup: As national security adviser to the president, Lake was

given false and incomplete intelligence by the agency while preparing for a meeting with Harbury in November 1994.

There are three key reasons why Lake should overrule his predecessor.

First, Deutch's decision sends a chilling message to current and future members of the executive branch who uncover wrongdoing committed in the name of national security: If you fulfill your constitutional duty to provide truthful information to the legislative branch, the CIA will ruin your career.

Second, punishing Nuccio is a direct challenge to Congress's constitutional right to honest and

complete information. Without such information, the principles of democratic checks and balances are rendered meaningless.

Third, Nuccio should be given back his clearance, and his good name, as an affirmation of the public's overriding right to know the truth about shameful CIA operations.

Redressing Nuccio's punishment is the first step Lake can take toward reforming a cover system that has repeatedly refused to abide by legal, constitutional and moral constraints on its conduct. If the agency gets away with punishing Richard Nuccio, it may well feel free to cover up murder again.

Nuccio Case Unprecedented

THE NUCCIO case is unprecedented. There are no known examples of a member of the Executive Branch being investigated and punished for sharing information with Congress. In taking action against Nuccio, the CIA is asserting the preeminence of its rules and regulations governing classified information over congressional law protecting communications between officials and the legislative branch.

In his Dec. 5 letter notifying Nuccio that his security clearance had been revoked, Director of Central Intelligence John Deutch cited the 1947 National Security Act which mandates that the DCI shall "protect intelligence sources and methods from unauthorized disclosure." This provision, until now, has been understood to prohibit disclosures to unauthorized persons such as reporters, but not to prohibit disclosure to members of Congress with security clearances. Deutch also cited an internal CIA policy directive that requires that "any doubt concerning personnel having access to SCI [sensitive, compartmented information] should be resolved in favor of the national security and the access should be denied or revoked."

But the government's own "Secrecy/Nondisclosure agreement," which Nuccio signed when he assumed his State Department position contains language specifically protecting the right of government officials to furnish information to Congress. In signing the agreement, Nuccio pledged to "never divulge, publish or reveal" classified information, unless authorized. But since 1987 the agreement also has included a provision stating that "these restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights or liabili-

ties" created by . . . section 7211 of title 5, United States Code."

That is a reference to a law commonly known as the LaFollette Act, which was first passed in 1912 for the purpose of protecting the ability of government workers to bring information to the attention of Congress. The act states that "the right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or member thereof, may not be interfered with or denied."

Moreover, the LaFollette Act has been strengthened by Congress in the past 10 years by the passage of appropriations legislation asserting that no government funds "may be used to implement or enforce . . . any other nondisclosure policy, form or agreement [which] directly or indirectly obstructs . . . the right of any individual to petition or communicate with Members of Congress in a secure manner as provided by the rules and procedures of the Congress."

In taking disciplinary action against Nuccio, Deutch relied on an opinion from the Office of the Legal Counsel of the Justice Department that, in a footnote, contended that the LaFollette Act is unconstitutional. No court has ever upheld that opinion. Nor has the Justice Department ever notified Congress or signatories of the secrecy/nondisclosure agreement that it regards the reference to the LaFollette Act as non-binding. Thus, according to Nuccio, he was acting within the letter and the spirit of the law when he informed a member of Congress that the Executive Branch had given out false information in the case of the Guatemalan murders.

— Peter Kornbluh