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On Behalf of the Public's Right to Know

By Morton H. Halperin

WASHINGTON—In June, 1974, Representative Michael J. Harrington was permitted to read the transcript of a secret briefing by the Director of Central Intelligence, William E. Colby, on American covert intervention in Chile.

What the Massachusetts Democrat, long a critic of the Central Intelligence Agency, read shocked and appalled him. The United States, he learned for the first time, had been actively involved in seeking to prevent Dr. Salvador Allende Gossens from coming to power and sought to undermine his control after he became President in what was conceded to be a free election. Mr. Colby's briefing described efforts to bribe members of the Chilean Legislature. At least some of these actions violated American treaty commitments under the United Nations Charter and the Rio Pact to refrain from interfering in the internal affairs of other nations.

More shocking was the fact that the description of the American role in Chile given by Mr. Colby to the House Armed Services Subcommittee on Intelligence contradicted in important respect statements made publicly by leading Administration officials, including Henry A. Kissinger, and testimony given under oath by the outgoing Director of Central Intellibence, Richard Helms.

It was clear to Mr. Harrington that the committee intended to do nothing about the information it had received except perhaps to ask some more questions about Central Intelligence Agency activities elsewhere. The other committees that had received contradictory testimony were not notified; the Justice Department was not asked to explore possible perjury. The transcript was to remain locked in committee files.

In order to get access to Mr. Colby's testimony Mr. Harrington had signed a committee secrecy agreement specifying that he could not pass the information on to anyone, not even colleagues or cleared staff members. This produced the dilemma that led to the recent Congressional efforts to censure Mr. Harrington and to his counterattack launched this week.

Mr. Harrington's problem was similar to Dr. Daniel Ellsberg's after Dr. Ellsberg read the Pentagon Papers. The Congressman was in possession of information that showed that the executive was deceiving the public and that he believed would have a significant effect on policy if released, but he had made a commitment not to disclose the information.

Surprisingly, his solution was the same as that of Dr. Ellsberg: Give the information to the liberal Senate Foreign Relations Committee and prod it to hold hearings. The committee's reaction was the same: It put the material in its files and did nothing. The members of that committee felt committed to the Congressional tradition that information classified by the executive branch could not be made public by the Congress.

After letting the matter of how the information regarding Chile eventually reached the press lie unexplored for almost a year, supporters of the C.I.A. in the Congress decided to move against Mr. Harrington. By denying him access to Armed Services Committee secret files and by asking the ethics committee to investigate his conduct, they acted to divert attention from C.I.A. covert operations abroad and illegal activity at home to the question of a Congressman's violation of a secrecy agreement. Mr. Harrington's refusal to quietly accept this criticism will now force the Congress and the public to face the issue he said yesterday that he had taken steps to challenge the strictures of "a classification system gone wild." Where should loyalties lie in such a situation?

We would all prefer a world in which the executive does not violate treaty commitments abroad or deceive the public and infringe on constitutional rights at home, and in which the public and the Congress are given all the information needed for informed public degate and evaluation of Administration actions. But we do not live in such a world.

Until we do, Congress and the public will depend on the acts of conscience of those who come to know, to inform the rest of us about how we are being deceived. We are in the debt of not only Daniel Ellsberg and Mr. Harrington, but the still-anonymous C.I.A. official who turned to the press when the C.I.A. and the Congressional oversight committees continued to conceal the illegal domestic activities of the agency, and to others. Such acts are, and must be, rare coming only at the call of conscience in face of clearly outrageous deception.

The lesson here is clear: We cannot depend on such acts to keep us informed and should not be asking others to accept the risks involved. Rather, Congress must legislate to change the situation. Executive branch actions that constitute criminal offenses must be spelled out clearly: violations of treaty obligations, violations of the charters of organizations such as the C.I.A., deliberate deception of the Congress or the public on important policy issues, spying on organizations and individuals who are not suspected of crimes, planning covert operations in democratic societies if not everywhere.

One could go on, but the point is that the list must be precise and then Congress must do two other things: It must create a permanent special prosecutor to investigate crimes of the executive branch, and it must make it a crime not to report known or suspected violations of these laws to the special prosecutor.

Mr. Helms told the Senate Watergate committee that until recently it had not been considered a crime to obey Presidential orders. What he meant was that no one ever went to jail for such crimes. Some of the Watergate conspirators did, but that change must be made permanent.

If all that is done, we will have less need to rely on acts of conscience to keep us informed. At least, until then we should not permit attention to be diverted from the crimes of the executive to the acts of courage that fulfill our right to know.

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