

Laws, Men And the C. I. A.

By Anthony Lewis

WASHINGTON, Feb. 22—The C.I.A. activities brought to light during the last year—domestic spying, assassination plots and the rest—troubled many Americans as not only immoral but illegal. It concerned people, it frightened them, that a powerful secret agency seemingly operated in large areas without any authority in law.

For example, the National Security Act of 1947, the C.I.A.'s basic charter, had been generally understood to bar it from any domestic activities. Yet the Rockefeller commission found that the agency had run a massive domestic probe of antiwar groups, Operation Chaos, that "unlawfully exceeded the C.I.A.'s statutory authority."

Seen against that background, President Ford's intelligence reorganization plan is disturbing. For it does not try to establish a clear basis in law—in statutes—for what the intelligence agencies can and cannot do. It leaves most of the controls to executive orders, and it even purports to authorize by order some things that had been considered unlawful.

Mr. Ford's order says that foreign intelligence agencies generally may not operate inside the country. But then follows a long list of exceptions.

One exception is that the agencies may conduct "physical surveillance" of present or former employees, or employees of contracting firms to stop unauthorized disclosure of "national security information." In other words, the C.I.A. can spy on a former official

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to keep him from disclosing that the United States is running a secret war in Laos or intervening in Angola.

Another exception indicates that the C.I.A. may on occasion examine Americans' tax returns. Another allows it to infiltrate organizations in this country if they are made up largely of foreigners and are "reasonably believed to be acting on behalf of a foreign power." Another allows collection of corporate information when it "constitutes foreign intelligence or counterintelligence."

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Now it may be that some or all of those things have to be done. But is it clear that they should be done by our foreign intelligence agencies rather than by a domestic police organization?

An even more important question is whether the C.I.A. should—or can—be given such powers by executive order. This is not just a narrow question of law. It is a fundamental question of constitutional legitimacy.

In the American system of government, the exercise of power must always be linked to some authority in law. We do not, like the British, put our faith in individuals and unwritten traditions; we believe in formal rules and institutions.

When President Truman seized the nation's steel mills to stop a strike during the Korean War, the Supreme Court reflected a deep public instinct in deciding that such a step went beyond any "inherent powers" of the President. Similarly here, political wisdom as well as the Constitution counsels that President Ford go to Congress for legislation. Otherwise he will appear to be saying that the way to deal with intelligence illegalities is to declare them legal.

What the intelligence community needs above all is to restore the public confidence that has broken down. The legislative process, whatever its faults, is a powerful way to build consensus in this country. An order imposed suddenly by a President, without public debate, and subject to sudden change by future Presidents, is never going to restore a sense of legitimacy.

It is just as important to establish rules of law for covert action abroad as for the domestic side. Relying on "inherent powers" of the President for legal authority, as Mr. Ford has done, is too uncertain and too dangerous. There has been real doubt that the 1974 act authorized any covert action aside from intelligence-gathering. Those doubts can only be settled, and legitimacy established, by carefully drawn legislative limits.

Legitimacy should also be an aim in planning oversight of the C.I.A. and the other agencies. That the Executive should scrutinize its own operations is fine, but experience has shown the foolishness of relying entirely on any institution to police itself, especially when shielded from public scrutiny.

As a major reform after the Bay of Pigs, President Kennedy reconstituted the President's Foreign Intelligence Advisory Board. It failed utterly to stop abuses and illegalities. Now President Ford has appointed a new oversight board: three private citizens, average age just under 70, who will be available part-time. Pollyanna would have trouble finding any hope in that.

In sum, the Ford intelligence plan cried out for Congressional attention. The Senate, at least, appears likely to set up a meaningful oversight committee. That committee should have jurisdiction over intelligence budgets: the key to making the Executive listen. And its first duty should be to start through the legislative process the laws by which the intelligence community will live.

- See also - Lewis, NYT 19 Feb 76
 Lewis, NYT 26 Feb 76
 Colby, NYT 26 Feb 76
 Hersh, NYT 10 Nov 75, p. 2
 Stern and Pincus, WXP 9 Feb 76, col. 2
 Calamaro, NYT 17 Mar 76