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CRIMES AND SILENCE

The CIA's Criminal Acts and the Media's Silence

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As we speak, so to speak, or read, the CIA is committing hundreds of extremely serious crimes around the globe in our name and at our expense with nothing to show for it. This is not according to Sy Hersh—the investigative reporter who uncovered the My Lai Massacre—or Amnesty International. This is according to the CIA itself, as reported by the House Intelligence Committee. "The CS (Clandestine Service of the CIA), is the only part of the IC (Intelligence Community), indeed of the government, where hundreds of employees on a daily basis are directed to break extremely serious laws in countries around the world," reads a committee staff study. "A safe estimate is that several hundred times every day (easily 100,000 times a year), DO (Directorate of Operations) officers engage in highly illegal activities."[1]

One would think the Cold War never ended.

The report was the first official admission and definition of CIA covert operations as crimes which the committee, without explanation, equated with essential national security operations. In other

words, the national security of the United States requires that more than one hundred thousand extremely serious crimes be committed every year. The committee expressed no legal or ethical concerns about these crimes. On the contrary, CIA offenders were portrayed as potential, hapless victims of sinister foreign authorities opposed to their lawbreaking. "A typical 28 year-old, GS-11 case officer," reads the study, "has numerous opportunities every week, by poor tradecraft or inattention, to embarrass his country and President and get agents imprisoned or executed."[2]

One would think that one hundred thousand extremely serious crimes a year would be a major story no matter what the CIA's rationale was. At the very least, pundits could have pondered and asked in the press how these crimes serve U.S. national security, particularly since the committee did not bother to do so. Nor did the committee explain the impact the crimes might have on peaceful, diplomatic relations or examine their moral and legal ramifications. In fact, the committee indicated that it did not matter that laws were broken because they were laws of other countries. To claim that our national security requires one hundred thousand crimes a year is a rather stark assertion and operating principle, particularly in a world that increasingly believes the United States acts as if there is one law for America and another for the rest of the world. Beyond that, it would seem that these crimes might actually threaten U.S. national security by making enemies. What nation is going to roll over, play dead, and accept that breaking its laws is axiomatic with U.S. national security?

There was not a single word about any of this even in the alternative press, which was particularly disturbing in light of the nature of the CIA crimes. The report suggested that the CIA's crimes include murder and that "the targets of the CS [Clandestine Service] are increasingly international and transnational and a global presence is increasingly crucial to attack those targets."[3] In other words, we are not simply talking about stealing secrets. We are talking about the CIA committing crimes against humanity with *de facto* impunity and congressional sanctioning.

Other government documents, including CIA reports, show that the CIA's crimes include terrorism, assassination, torture, and systematic violations of human rights. The documents also show that these crimes are part and parcel of deliberate CIA policy (the staff report notes that CIA personnel are "directed" to commit crimes). For instance, an investigation by the president's Intelligence Oversight

Board (IOB) conducted in 1996—the same year that the committee staff report was completed—found that in Guatemala "several CIA assets were credibly alleged to have ordered, planned, or participated in serious human rights violations such as assassinations, extra-judicial execution, torture, or kidnapping while they were assets—and that the CIA was contemporaneously aware of many of the allegations."[4]

Also according to the IOB,

> Among the most serious examples of credible allegations against a then-active CIA asset, were those involving an asset who was the subject of allegations that in multiple instances he ordered and planned assassinations of political opponents and extra-judicial killings of criminals, as well as other less specific allegations of unlawful activities. Although some of these allegations were from sources of undetermined or suspect reliability, one was from a source considered credible by the [CIA] station at the time. Another asset was alleged to have planned or to have had prior knowledge of multiple separate assassinations or assassination attempts before and during his asset relationship. A third asset has been alleged to have participated in assassination, extra-judicial killing, and kidnapping during and before his time as an asset.[5]

CIA documents show that the CIA created, trained, and armed death squads in Guatemala as part of its coup and destabilization of the democratically elected government in 1954. These death squads were run by Guatemala's CIA-controlled security services. The IOB reported that, "The human rights records of the Guatemalan security services—the D-2 and the Department of Presidential Security (known informally as 'Archivos,' after one of its predecessor organizations)—were generally known to have been reprehensible by all who were familiar with Guatemala. U.S. policymakers knew of both the CIA's liaison with them and the services' unsavory practices."[6] The IOB added that the CIA considered the security services their "partner" and provided "vital" funding even after official U.S. aid had been terminated because of systematic human rights violations.[7] In other words, the CIA carried out its own foreign policy in contravention of official U.S. policy. The IOB also wrote that the CIA had spoken to the security services about human rights, " but egregious violations continued, and some of the station's closest contacts in the security services remained a part of the problem."[8]

According to the IOB, the CIA's assassins and torturers implemented CIA policy, and CIA officers were rewarded and promoted for recruiting as many of these so-called informants as possible, regardless of their criminal records. Contrary to the committee's claim, the IOB found that specific U.S. laws pertaining to the CIA were violated. In Honduras, the CIA's own inspector general reported that paid CIA assets at the highest level created and ran a death squad called Battalion 316 which, according to the Honduran government, murdered at least 184 people.[9] A secret CIA study found that versions of the Guatemalan and Honduran scenarios were replicated throughout Latin America and that more than one thousand informants known as "unsavory characters" were employed around the world. CIA managers themselves were said to have been "startled" by the large numbers of human rights abusers employed as informants.[10]

The House Intelligence Committee's only concern regarding these brutal CIA informants and other CIA offenders was that they might be arrested and prosecuted. The committee did not advise the CIA to cease or even limit its lawlessness. In fact, it said that if the CIA stopped its criminal activities, "the taxpayer would be better off without a CS [Clandestine Service]."[11] It explained neither this assertion nor how crimes protect national security. In response to the committee's concern, the Senate Intelligence Committee proposed a bill that would immunize CIA offenders who violate treaties and international agreements while following orders. This is the Nazi rationale, plain and simple. The bill passed both houses of Congress and was signed into law by President Bill Clinton on December 27, 2000.

The law is Section 308 of the Intelligence Authorization Act for Fiscal Year 2001. It provides that, "No Federal law enacted on or after the date of the enactment of the Intelligence Authorization Act for Fiscal Year 2001 that implements a treaty or other international agreement shall be construed as making unlawful an otherwise lawful and authorized intelligence activity of the United States Government or its employees, or any other person to the extent such other person is carrying out such activity on behalf of, and at the direction of, the United States, unless such Federal law specifically addresses such intelligence activity."[12]

One has to stand back and take a deep breath on that one. Taken literally, it means that the Constitution does not apply to the CIA or any U.S. intelligence personnel, including lowly agent-assassins. Why?

Because the Constitution provides that all treaties are the *supreme law of the land.* Not just the law, but the *supreme* law—and no exemptions.

While Section 308 applies to future agreements, if recent history is any indication, the CIA will apply it broadly and retroactively. This would mean exempting itself from all international law. The tragic consequence of such CIA license was seen in the April 2000 shootdown of a plane carrying American missionaries over Peru. The shootdown resulted in the deaths of Veronica Bowers and her seven-month-old daughter, and serious wounds to the pilot. In 1994, in violation of international law, Congress passed a law allowing the CIA to interdict civilian planes suspected as drug carriers and providing immunity from all liability, even for "mistakes." The shootdown in Peru was a CIA-controlled operation. The Senate Intelligence Committee eventually blamed the CIA for it, but there were no repercussions or prosecutions.[13]

While Section 308 applies to treaties and international agreements, it is clear from the record that it covers CIA violations of the laws of other countries as well. According to a report by the Federation of American Scientists, "A congressional staffer said the new provision (S308) was urgently needed, given that the CIA habitually engages in criminal activity abroad."[14] Also an explanation that the intelligence committees provided as to how other countries cannot apply the principle of Section 308 indicates that it covers crimes other than treaty violations. "It (Section 308) is also not meant to suggest," wrote the committees, "that a person violating the laws of the United States may claim any authorization from a foreign government as justification for a violation of a U.S. law, or as a defense in a prosecution for such violations."[15] What's good for the goose, is not good for the gander.

No one is above the law. No one has the right to exempt anyone from the law. Yet the Senate Intelligence Committee, in creating Section 308, claimed on May 4, 2000, that some laws do not apply to the CIA.[16] This claim parroted former CIA General Counsel Stanley Sporkin's 1987 testimony that some laws "don't have application to the U.S. Government."[17] In other words, the CIA is above the law, and Section 308 was simply turning this fact into an explicit law so that CIA officers, according to the committee, "will not be burdened by the uncertainty that laws never intended to apply to their activities could be so interpreted."[18]

Again, there was not a peep from the media about any of this even though such a story would not have affected corporate sponsorship or

profits. I talked about it with Vernon Loeb, who covers the CIA for the *Washington Post*. He agreed that Section 308 was quite disturbing, as was the fact that the intelligence committees held no hearings about the bill. But Loeb wrote nothing about it despite doing several articles about the Intelligence Authorization Act.

Apparently, the intelligence committees felt that *de facto* impunity for committing one hundred thousand crimes a year along with *de jure* impunity for violating treaties just were not enough ammunition for the CIA to do its job protecting national security. So at the same time they were pushing through Section 308, they called for the lifting of all restrictions on hiring and deploying a category of informants commonly known as "unsavory characters," even though these informants carry out assassinations and terrorism for the CIA around the world. The committees recommended that the "aggressive recruitment" of "terrorist informants who have human rights violations in their background" be "one of the highest priorities." "Unquestionably," added the committees, " a robust and effective intelligence effort will, from time to time, require U.S. interaction with extremely dangerous and truly unsavory characters."[19] As usual, the committees did not explain or prove this assertion. Even if it is true, it does not provide a legal or moral justification for hiring human rights violators.

The so-called restrictions the intelligence committees wanted lifted were hardly restrictions at all. They were simply guidelines for hiring informants that then-CIA Director John Deutch instituted after the activities of a particularly "unsavory" informant had been made public. Guatemalan Colonel Julio Alpirez, who had received $40,000 from the CIA, had been directly involved in the murder and torture of Michael Devine, an American innkeeper, and Effrain Bamaca, a guerrilla leader married to American attorney Jennifer Harbury. At the same time, the CIA discovered that more than one thousand such informants were employed around the world. The agency then fired these informants for engaging in the criminal activities they had been hired to carry out. But the CIA did not stop hiring unsavory characters. They simply subjected them to a six-month waiting period. Within months of instituting the guidelines, incoming CIA Director George Tenet assured Congress that not a single unsavory applicant had been rejected.[20] Congress then called for the elimination of Deutch's guidelines and the aggressive recruitment of informants. Tenet not only complied, it is very likely that he rehired some of the

fired informants. Indeed, as a sign that the good ole days of murder and mayhem were back, Tenet awarded the CIA's Distinguished Career Intelligence Medal to Terry Ward. Ward had been fired for his role in the deaths of DeVine, Bamaca, and others.[21]

All of a sudden, "unsavory characters" had been transformed into crucial intelligence sources in the fight against terrorism. The rationale was that it takes one to know one. Or, it takes a terrorist to capture a terrorist. "After all," wrote the committees, "it is an unfortunate fact that individuals with reputable backgrounds rarely yield the key intelligence leads that are critical to the counter-terrorist efforts of the United States."[22] Neither the committees nor the CIA presented any proof to support this claim or actual instances. There is no concrete evidence that this has ever been true. In fact, the contrary seems to be the case. The CIA's investigation of the fired one thousand informants revealed that 90 percent of their information was "useless."[23] On the other hand, there is voluminous evidence that the CIA itself uses informants as terrorists.

No one, not even Congress or the president, has the moral or legal authority to deploy known criminals, even if they are key intelligence sources on terrorism. Crimes cannot be authorized or retroactively ratified. It is a contradiction in terms. As the most powerful nation in the world, the United States can do just about whatever it wants. That still does not mean that it has the legal authority to do so. Might still does not make right. Nonetheless, this is precisely what the U.S. government is doing—to the sound of profound silence from the press. There has been no reporting, let alone analysis, of this story. There have not even been questions from the press regarding the rationale for using terrorist informants or how they can be controlled.

As noted, the IOB reported that the CIA's informants were in fact implementors of criminal CIA policies, not intelligence gatherers. Former ambassador Robert White agrees. He wrote that Manuel Noriega of Panama, Colonel Julio Alpirez of Guatemala, General Gustavo Alvarez Martinez of Honduras, Colonel Nicolas Carranza of El Salvador, and Emmanuel Constant of Haiti, all major human rights abusers, were CIA informants who "enjoyed profitable contractual arrangements with the CIA not because they were particularly important sources of information, but because they served as paid agents of influence who promoted actions or policies favored by the CIA in that country."[24] White reported further that even when the CIA could pro-

vide counterterrorist information, it did not. He has written that when he was ambassador to El Salvador, he was under presidential instructions to do everything possible to reduce human rights violations by the military. In 1980, after the assassination of Archbishop Oscar Romero, White directed the CIA chief of station to provide intelligence on violent right-wing leaders and their plans. "With the full backing of headquarters," wrote White, "the station chief refused on the ground that the CIA's mission lay elsewhere."[25] White also wrote that the CIA pursued its own proterrorist policy in Haiti to the point "of hiring a brutish thug and paying him while he persecuted and murdered the supporters of President Aristide."[26]

It was a similar story in Bosnia. According to former State Department official Richard Nuccio, when the CIA was asked to assist in identifying war criminals and terrorists in Bosnia, it refused because it would "undermine its ability to recruit."[27] Nuccio also reported that the CIA carried out its own policy in Guatemala to the point of continuing the terrorism and obstructing U.S. attempts to bring peace there. "The CIA systematically defied U.S. policy to end Guatemala's civil war by refusing to end its ties with torturers in the Guatemala intelligence service," said Nuccio.[28]

Now along with their *de facto* impunity, the CIA's informants are covered by Section 308,which must be seen for what it is: the culmination of the CIA's long-term attempts to obtain statutory exemption from the law along with its self-anointed de facto impunity. This has nothing to do with the CIA's mandate to further national security. No one has shown that the freedom to commit crimes enhances the CIA's ability to protect national security. The CIA has not sought impunity to better carry out its legal mission. It wants to commit crimes and is committing crimes for other reasons and has sought impunity to avoid being prosecuted and stopped from committing those crimes. It is that simple. One can argue as to the true objectives of these crimes, but there is no doubt that they do not serve national security.

The September 11, 2001, terrorist attacks in the United States show that criminal impunity, one hundred thousand extremely serious crimes a year, and the use of terrorists in the guise of informants, have not worked. Even Vincent Cannistraro, former chief of CIA counterterrorism operations has written that, "The catastrophe resulting from the terrorism attacks on the Pentagon and the Twin Towers demonstrates that the United States has made little progress in under-

standing and deterring the threat from the various fundamentalist extremes."[29] If anything, the CIA's creation and use of terrorists such as the former Afghan rebels has undermined U.S. national security.

The CIA made its first attempt to gain *de jure* impunity on March 1, 1954. On that day, CIA General Counsel Lawrence Houston wrote a memorandum of understanding to Deputy Attorney General William Rogers giving the CIA the right to police itself in violation of federal law.[30] Rogers never responded, but the CIA took the memo as a blank check as Houston revealed twenty years later to then-Representative Bella Abzug. Asked whether he thought the memorandum of understanding gave the CIA authority to "give immunity to individuals who happened to work for the CIA for all kinds of crime, including murder," Houston responded, "It could have that effect, yes." "Did it have that effect?" asked Abzug. "In certain cases it did," admitted Houston.[31]

This was the same Lawrence Houston who wrote in 1947, two months after the CIA was established, that "In our opinion, however, either activity (covert operations and black propaganda) would be an unwarranted extension of the functions authorized in section 102 (d) [paragraphs] (4) and (5). This is based on our understanding of the intent of Congress at the time these provisions were enacted."[32] Houston was responding to an inquiry from CIA Director Roscoe Hillenkoetter, who wanted to know whether the CIA could undertake black propaganda (then known as Morale Operations/M.O.) and covert operations (then known as Special Operations/S.O.). Secretary of Defense James Forrestal had requested that the CIA launch covert operations in Europe. Only months before, Forrestal had testified under oath before Congress that the CIA would only coordinate intelligence. It would not even collect intelligence, let alone conduct operations. Houston continued,

> A review of debates indicates that Congress was primarily interested in an agency for coordinating intelligence and originally did not propose any overseas collection activities for the CIA. The strong move to provide specifically for such collections overseas was defeated, and as a compromise, sections 102 (d) (4) and (5) were enacted, which permitted the National Security Council to determine the extent of the collection work to be performed by CIA. We do not believe there was any thought in the minds of Congress that the Central Intelligence Agency under this authority would take positive action for subversion and sabotage. A bitter debate at about the same

> time on the State Department's Foreign Broadcast Information Service tends to confirm our opinion. Further confirmation is found in the brief and off-the-record hearings and appropriations for the CIA [and] unvouchered funds for M.O. (black propaganda) or S.O. (covert operations) work. . . . We believe this would be an unauthorized use of the funds made available to the CIA. It is our conclusion, therefore, that, neither M.O. or S.O. should be undertaken by CIA without previously informing Congress and obtaining its approval of the functions and the expenditure of funds for these purposes.[33]

Speaking of the use of Section 105 as a possible source of authority for covert operations, Houston added, that "Taken out of context and without knowledge of [the act's] history, these sections could bear almost unlimited interpretation."[34] This, of course, is exactly what the National Security Council (NSC) did. In December 1947, the NSC "under the authority of Section 102 (d)(5) of the National Security Act" directed the CIA to undertake a program of covert psychological warfare against the Soviet Union. In June 1948, NSC directive 10/2 cited the same so-called authority and expanded the CIA's covert action programs to include paramilitary operations, economic warfare, and political action programs. These programs were expanded in 1955 by NSC 5412/2, again under the presumed authority of Section 102.

In no uncertain terms, Houston said that the CIA had no authority to conduct any covert operations. He repeated this legal opinion in 1962, singling out the CIA's 1954 coup in Guatemala and invasion at the Bay of Pigs, Cuba, as criminal operations. "There is no specific statutory authority to any agency for the conduct of such activities (covert operations)," wrote Houston. "When the National Security Act of 1947 was enacted in 1947, the consideration of Section 102, which established the Central Intelligence Agency, was restricted 'to the performance of intelligence functions.' The language of paragraph (5) of section 102 (d), '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,' was intended to be the basis for giving the Agency a charter in the field on clandestine intelligence and counterintelligence."[35]

In other words, all CIA operations have been illegal from the get-go and continue to be since the charter remains unchanged in this regard. It should also be noted that the National Security Council has no legal policy-making authority. CIA General Counsel Lawrence

Houston admitted in secret that all CIA covert operations were crimes and then proceeded to delegate to the CIA prosecutorial immunity from criminal liability. The CIA did not discover during the course of its operations that crimes were necessary for national security. Quite the opposite. The CIA undertook criminal operations from its inception and then wrapped the flag around them and gave itself immunity.

A 1975 study by the Intelligence Community Coordinating Staff, which included members of the CIA, also found that until 1974, "there was serious doubt that the CIA had authority to engage in covert operations involving the use of political and military force."[36] This means that thousands of CIA "authorized" operations were illegal, and that the deaths and damage resulting from them were unprosecuted crimes against humanity. A report by the ACLU's Center for National Security Studies also concluded "that until the mid-1970s covert operations were conducted without proper authority"; that is, no recognized authority or legal basis.[37]

In 1975, Congress passed the Hughes-Ryan amendment in an attempt to exercise minimal control over the CIA. The law required that the president sign a finding before each covert operation and notify Congress when he did so. The CIA conveniently misconstrued these notifications to Congress to mean that Congress was being informed of, and not objecting to, covert operations. This then, was further misconstrued as legal authorization from Congress to conduct covert operations. The CIA's leaps in logic in these instances are particularly absurd because the purpose of the amendment was to make them more—not less—controllable. To construe the amendment as a process for authorizing covert operations was nothing short of outrageous. The CIA's covert operations have had no legal basis for twenty-seven years—and still do not. Congress acknowledges this every year in its appropriations bill: "The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States."[38]

After Houston's 1954 memo of understanding was found to be invalid by the Justice Department, the CIA continued its attempts to acquire *de jure* immunity from criminal liability. In 1981, CIA Director William Casey wrote a letter to Attorney General William French Smith urging that the U.S. criminal code be revised to exempt all CIA employees from criminal liability for any authorized operations.[39]

Casey did not even pretend there was a national security need. Three years later, Casey tried to get the CIA exempted from a proposed anti-assassination conspiracy bill. Then-Deputy Assistant Attorney General Mark M. Richard testified before Congress that Casey vehemently opposed making assassination conspiracies illegal: "Casey wanted assurances that this proposal would not reach authorized conduct of the agency."[40] The Justice Department obliged Casey by providing the assurances he wanted in a secret letter. But according to Richard, "the agency had taken the position that the letter was not acceptable and that they would only go along with an express provision in the statute exempting authorized intelligence activities."[41]

The Justice Department refused to go along with Casey's demand and instead dropped the antiassassination provision of the bill. In effect, Casey achieved his goal because it was still not illegal to conspire in the United States to assassinate someone overseas. A few months later, Casey himself conspired in Washington to assassinate Sheik Mohammed Fadlallah of Lebanon. No fewer than three death squads were formed to track him down. On March 8, 1985, a car packed with explosives detonated outside of Fadlallah's apartment building, killing eighty innocent people and wounding two hundred. Fadlallah was unscathed. The CIA was not investigated or prosecuted.[42]

Following its failure to obtain written *de jure* immunity for assassinations, the CIA resumed making its own laws through a perverted interpretation and application of "findings." A " finding" refers to the president finding that an individual or group threatens U.S. national security, and that this threat requires CIA attention. Following such a finding, the president signs an order for a CIA response and notifies Congress. As former CIA General Counsel Stanley Sporkin testified before Congress, "A finding is a determination by the President of the United States that a certain activity in a foreign country, which is undisclosed, is in the interest of national security."[43]

As noted, this does not constitute legal authorization, certainly not the Congressional authorization necessary to make any covert operation legal, particularly since Congress is sometimes not notified and has no veto power over the covert operation. Even if findings conferred authorization, Sporkin revealed that the CIA, not the president, creates findings to fit preordained covert operations and sends the findings to the president as a *fait accompli* for his signature. In five years of writing findings, Sporkin never once talked to President

Reagan, not even on the phone. Sporkin also disclosed that an untold number of covert operations had been carried out without findings, and he himself had written a finding for at least one major covert operation after it had been launched. Sporkin, who was the first U.S. judge ever sworn into office at CIA headquarters, added that this finding provided "retroactive ratification"—a concept that has no standing in law.

Even if findings went as they are supposed to, they have no basis in law. Nowhere is it written that the president or the CIA or anyone can unilaterally launch a secret governmental program or operation on the basis of a mystical finding created by the CIA. This process is no more different from, or legal than, the attorney general summarily deciding that school prayers are in the national interest and then providing grants to schools that initiate praying. Again, Lawrence Houston had written as early as 1947 that the CIA had no authority for any operations, period. Later he added that presidents directing the CIA to carry out covert operations (as had happened from time to time) still did not constitute legal authorization, particularly since Congress did not even know about the operations, let alone consent to them. According to Houston, the process was illegal. Creating and signing findings does not legalize the process.

It was clear from Sporkin's testimony that the CIA uses findings to create its own operations and to give them "a legal coloring," as one senator put it.[44] Cloaking covert operations in presidential authority is an illegal smokescreen to begin with because the president by himself has no such authority. In fact, even Congress cannot legally authorize many of the CIA's operations because they are crimes, including crimes against humanity. The Third Reich and Hitler "authorized" Nazi operations. That did not make them legal, and the rest of the world did not treat them as such.

Sporkin's testimony means that the CIA is, in effect, self-authorizing. Using the president as a strawman, he testified that "You can't straitjacket the president. If the president calls in someone and says, 'We've got to move today. Go out and do it.' I think that somebody can be able to go out and do it then later on you do the paperwork. That's what covert operations are; they give the president an opportunity to, through a different regime . . . to do it that way."[45]

Sporkin took this concept a step further and argued that findings allow the president, and through the president the CIA, to legally vio-

late laws. Most, if not all, of the covert operations covered by Sporkin's findings violated serious laws, including the law to notify Congress about any finding. In the finding " authorizing" the arms for hostages, Sporkin himself wrote that the president should not notify Congress. "I do think," he said, " there are instances where you would have non-notification. I think it is built into the statute [requiring the president to notify Congress in advance about covert operations] itself. It's built into the Constitution."[46] In other words, according to Sporkin, a law requiring the CIA to notify Congress in advance about covert operations simultaneously gives the CIA the right not to notify Congress when it chooses, and this right stems from the Constitution.

Regarding violating "general laws," Sporkin said, "you've got to be able, under covert operations, to be able [*sic*] to do these things [break laws]. I think that an argument could be made that you can override the specific statute by a covert finding. . . . It's in the interest of our country that you can do these things." (Sporkin did not explain why.)[47]

Sporkin was describing the activities of a government of men, not of laws as provided by the Constitution. As long as the decisions to override the law are made by the "right kind of people," it's okay, he concluded: ". . . what I wanted was to make sure that this was being—these requests were coming from the top. . . . These are very important decisions that were being made and they had to be made at the highest levels . . . You don't want a government operating where you have—and I don't want to use the word 'low-level.' . . . But somebody that is beneath a high official . . . making some very, very sensitive kind of decision that could affect the entire country. You wanted to get these [decisions from] . . . the highest levels all the time."[48]

Nowhere did Sporkin indicate the need for the advice or consent of Congress. On the contrary, he made it clear that he and the CIA did not even consider Congress or its elected officials to be sources of authority. The "highest level" sources who Sporkin deemed had the proper authority to make decisions about illegal covert operations included five people: the CIA director, the secretary of defense, the secretary of state, the attorney general, and the national security adviser.[49] Perhaps it was an oversight, but Sporkin did not list the president.

Ironically, a 1975 secret study commissioned by former CIA Director William Colby aptly described the use of CIA covert operations as described by Sporkin as an undermining of the Constitution.

"Using covert operations to implement foreign policy within the context discussed herein," read the study, "independent of any Congressional grant, affects the equilibrium sought by the framers of the Constitution in providing for the separation of governmental powers. If this authority were recognized as independently existing in the Executive Branch, it would permit the president to secretly 'legislate' foreign policy and then secretly execute it, using covert means in doing so."[50]

This situation, apparently, was not worthy of media coverage. Soon, it may not be possible for the press to cover it. As part of the 2001 Intelligence Authorization Act, Congress passed the first "Official Secrets Act" criminalizing certain press coverage of the CIA. At the last moment, Clinton was embarrassed into vetoing the act. But the CIA said it would go back to the drawing board and continue "crafting" newer versions.

The first Bush administration pushed the legal envelope even further off the charts by reinterpreting Executive Order 12333, which bans CIA assassinations altogether. In fact, an official legal opinion by the U.S. Army judge advocate general reinterpreted the order out of existence with these words: "... if the president has determined that the individual(s) in question pose such a threat to U.S. citizens or the national security interests of the United States as to require the use of military force, it would be legally permissible to employ (e.g.) an airstrike against that individual or group rather than attempt his, her, or their capture, and [it] would not violate the prohibition against assassination."[51]

Shortly after Executive Order 12333 was reinterpreted, President George Bush signed a secret finding authorizing the CIA and the special forces to conduct an attack on alleged Colombian drug lord Rodriguez Gacha. Instead of capturing him alive, the CIA/Special Forces team, hovering overhead in a helicopter, shot and killed Gacha, his seventeen-year-old son, and five bodyguards as they were fleeing Gacha's compound. According to a published report, the nonassassinations came "in the wake of the new interpretations of laws and executive orders by attorneys from the CIA, Army and the Justice Department that have a collective effect of easing restrictions on operations that may result in the death of foreign nationals." The report added that according to the CIA, deaths resulting from "disruptive activities aimed at narcotics traffickers" are not assassinations "even if a particular individual's death could be [*sic*] reasonably have been predicted in advance."[52]

These and other efforts to reinterpret the law, along with Casey's actions and Section 308, show that gaining immunity from prosecution is the CIA's long-sought goal. The CIA's activities show exactly why the agency is working so hard to get that immunity. The CIA could then legally establish itself as the arbiter of life itself in the name of national security. It is within this context that one can see the chilling impact of Section 308 and congressional sanctioning of CIA crimes and terrorist informants upon democracy, global security, and the rule of law.

There is something fundamentally wrong with the idea that protecting national security requires exempting the CIA—or any branch of the U.S. government for that matter—from all ethical, legal, and constitutional principles. This is a qualitative leap from defending Americans against the "Evil Empire" to the Vietnam War policy of destroying a village to save it. The world needs to know that this is the institutional operating principle of the CIA, not just a few cowboys or rogue agents, and that the CIA now has the statutory right to carry out all manner of crimes anywhere in the world.

One swallow does not a summer make, but one hundred thousand extremely serious crimes a year makes the CIA a criminal organization. Even if it did not, a suspension of the Constitution exempting the CIA from observing all international treaties and agreements screams for press coverage. So does Congress's sanctioning of CIA crimes against humanity under the well-worn "national security" banner. In fact, there is next to no meaningful coverage ever of the CIA in the mainstream media, let alone analysis. The few exceptions prove the rule, and when they occur, the rest of the media gang up on the exception, side with the CIA, and obliterate the story often before it's published. Point in case: Gary Webb's articles on the CIA's involvement with drugs.

In 1984, I was involved in one such exception. ABC hired me to help produce a story that I had sold about Bishop, Baldwin, Rewald, Dillingham & Wong (BBRD&W), an investment firm in Hawaii that was heavily involved with the CIA. I had earlier provided the same story to BBC's *Newsnight*, which had aired a thirty-five-minute program that included an interview with me. I had also given an interview and worked with CBS on the same story. The story was fully documented, and nobody, including the CIA, was able to disprove the charges. After the CBS program aired, the CIA called CBS and disparaged me but did not counter any charges made in the program.

The ABC show provoked a more brutal response from the CIA. Part of the ABC report charged, based on two videotaped interviews, that the CIA had plotted to assassinate an American, Ron Rewald, the president of BBRD&W. Immediately the lights went out as the CIA demanded a full retraction without providing any counterproof other than their denial. At the center of the uproar was Scott Barnes who said on camera that the CIA had asked him to kill Rewald. The CIA denied any association with Barnes, but later it was uncovered that the CIA had earlier admitted working with him.

The BBC had placed Barnes at the scene of the potential crime. They had documented that Barnes got himself hired as a chaplain's assistant at the Oahu Community Correctional Center in Honolulu where Rewald was imprisoned, awaiting trial for financial fraud. Barnes had written to Rewald as "Reverend Scott Barnes" in an attempt to get close to him. Barnes then became a volunteer at the prison, but quit when he discovered that volunteers could not visit Rewald's section of the prison. He then became a prison guard and visited the local coroner's office posing as a medical student seeking information about toxic drugs. It was at this time that Barnes claimed that the CIA asked him to kill Rewald. He said he refused and fled the island.

The CIA was invited to appear on the ABC program, but declined. After the show aired, CIA officials met with *ABC News* executive David Burke. They were unhappy with it, but presented no evidence to counter the charges made in the program. They did present some newspaper articles critical of Barnes. Nonetheless, Burke was sufficiently impressed "by the vigor with which they made their case" to order an on-air "clarification" in which Peter Jennings acknowledged the CIA's position but stood by the story.[53] But that was not enough for the CIA. Casey then called ABC Chairman Leonard H. Goldenson. The call led to three meetings between ABC officials, and, guess who, Stanley Sporkin, CIA general counsel. On November 21, 1984, despite all the documented evidence presented in the program, despite ABC standing by the program in a second broadcast, Peter Jennings reported that ABC could no longer substantiate the charges, and that "We have no reason to doubt the CIA's denial."[54] He presented no evidence supporting the CIA's position.

That same day, the CIA filed a formal complaint, written by Sporkin and signed by Casey, with the Federal Communications Commission (FCC) charging that ABC had "deliberately distorted" the

news. In the complaint, Casey asked that ABC be stripped of its TV and radio licenses.[55] In January 1985, the FCC dismissed the complaint out of hand, stating that the CIA had not presented sufficient evidence to even launch an inquiry.[56] In February, the CIA filed a second complaint asking for FCC penalties under the "Fairness Doctrine" which requires broadcasters to air at least two sides of "controversial issues of public importance." This complaint was also eventually dismissed. This was the first time in the history of the country that a government agency had formally attacked the press. Yet, there was no uproar.[57]

During this time, Capital Cities Communications was maneuvering to buy ABC. Casey was one of the founders of Cap Cities. He was also chief counsel and board director until 1981, when he became director of the CIA. At the time, he owned some 34,755 shares of stock in Cap Cities worth about $7.7 million, which he did not place in a blind trust despite his agreement with Congress to do so.[58] The *L.A. Weekly*, which along with the *Village Voice* provided the best coverage of the story, claimed that the CIA's protestations about ABC along with its FCC complaint "had the result of driving down the price of ABC stock in the public market."[59] In fact, in October 1984, the price of ABC's common stock was sixty-seven dollars per share. By November 1, it had dropped to sixty-four dollars, and by the end of the November—shortly after the CIA had filed its FCC complaint—it had dropped to fifty-nine dollars. While the second FCC complaint was still pending, Cap Cities bought ABC for $3.5 billion which was called a "bargain rate" by the trade media.[60]

Besides Casey, two other founders of Cap Cities, Lowell Thomas and Thomas Dewey, had extensive ties to the intelligence community. When Dewey was U.S. attorney in New York, he had a habit of threatening publishers with prosecution if they published books about the CIA. He actually suppressed several such books. Thomas Murphy, Casey's friend and head of Cap Cities, also had long-standing intelligence ties. Before buying ABC, Murphy invited investment guru Warren Buffett to buy 18 percent of the combined CC/ABC. At the time, Buffett controlled Berkshire Hathaway, then a $2-billion holding company that owned 13 percent of the Washington Post Company, on whose board of directors he sat until the ABC takeover was completed. Buffett was then replaced by Murphy's friend, financier William Ruane. Berkshire Hathaway also owned a large portion of *Time*, and *Newsweek*. Once Cap Cities became a network, it sold fifty-

three of its cable TV systems to the Washington Post Company.[61] So it is no wonder that none of these publications covered the story. Even if the financial links described above did not exist, it is unlikely they would have covered the story because they have enjoyed unconscionable, collaborative relationships with the CIA for decades. Pulitzer Prize-winner Carl Bernstein (among others) documented this in an October 20, 1977, article he wrote for *Rolling Stone* magazine entitled "The CIA and the Media."

The *L.A. Weekly* speculated that Casey's actions against ABC might have been intended to make ABC less likely to run stories critical of the CIA. I have no absolute proof that there was a connection, but within months, the entire investigative unit was dispersed, and the commentator on the Rewald program was assigned to covering beauty pageants. Needless to say, my contract was not renewed.

NOTES

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11. Cf. supra, no. 1, p. 205

12. Public Law 106-567, 106th Congress, 114 Stat. 2843 (27 December 2000), Sec 308, *Applicability to Lawful United States Intelligence Activities of Federal Laws Implementing International Treaties and Agreements.*

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15. House Permanent Select Committee on Intelligence, *Intelligence Authorization Act for Fiscal Year 2001*, Conference Report, 106th Congress, 2d Session, Report 106-969 (Washington, D.C., GPO, 11 October 2000), 45.

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19. Cf. supra, no. 15, p. 41.

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22. Cf. supra, no. 15, p. 41.

23. Cf. supra, no. 10.

24. Robert E. White, "Call Off the Spies," *Washington Post*, 7 February 1996, p. A19.

25. Ibid.

26. Ibid.

27. Tim Shorrock, *White House Feuding with CIA over Guatemala Killings*, InterPress Service, 14 June 1999.

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32. CIA General Counsel Lawrence Houston to Director of Central Intelligence Roscoe Hillenkoetter, 25 September 1947.

33. Ibid.

34. Ibid.

35. CIA General Counsel Lawrence Houston to Director of Central Intelligence John McCone, 15 January 1962.

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50. Cf. supra, no. 36.

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