

It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to

First Principles.

THOMAS PAINE

NATIONAL SECURITY AND CIVIL LIBERTIES

The Impact of Nuclear Power on Civil Liberties: The West German Example

By Petra Shattuck

Editor's Note: Last April, First Principles published an article on "Nuclear Power and the Intelligence Community," which surveyed the intelligence operations which have been brought against groups which are protesting the development of nuclear power in America. In this issue, FP goes somewhat further afield—to West Germany, where the combination of recent terrorism, a weakening of constitutional restraints, a thriving nuclear industry, and growing popular criticism of nuclear power all combine to provide a case study of the impact that nuclear power may have on the right to criticize official policy.

In West Germany, as in most other countries, conflicts over nuclear policy have until recently centered on the technological and environmental dangers. Lately, however, German opponents of their country's nuclear energy program have begun to shift the focus of the debate by raising fundamental questions about the compatibility of nuclear development with democratic institutions, values, and procedures.¹ It is argued that expansion of nuclear production to supply the ever larger share of the energy needed to support economic growth will result in security programs of such scope and intensity that the existing constitutional order will be undermined.

Reliance on nuclear power, therefore, means the creation not only of a nuclear economy but also the establishment of the

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Order and CHAOS:

New Material Documents Domestic Aspects of CIA Operation

by Jay Peterzell

The account of the CIA's Operation CHAOS contained in the final report of the Church Committee¹ was informative, but it was incomplete. Documents released recently in *Halkin v. Helms*,² a lawsuit brought by the ACLU Project on National Security for damages for alleged illegal surveillance conducted during CHAOS, show that the operation was under broader and more explicit instructions to collect "purely domestic information" than previously realized. The documents also contain new information about the targets and purpose of "Project 2," a related program which contributed information to CHAOS. The new material also illustrates the process whereby CHAOS exceeded its mandate to collect information about foreign connections to protest movements in the United States.

Purely Domestic Information

Operation CHAOS began in 1967 and was terminated in 1974. By any measure it was the largest of the CIA's intelligence operations with "domestic aspects." The major problem CHAOS posed for CIA Director Richard Helms and the counterintelligence officer in charge of the program, Richard Ober, was simple. From 1967 onward, Presidents Johnson and Nixon pressured the Agency to find out whether protest movements in the United States were being controlled or directed by foreign powers. But the National

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nuclear state. That state will be closer to a police state than a constitutional democracy.

Growing reliance on nuclear energy will lead to increasing demands for security measures to protect reactors and waste disposal sites. Critics claim that to safeguard the nuclear industry from the error or disaffection of those working on the inside or from outside sabotage and terror, or to insulate it from growing popular opposition, will require quantitative and qualitative changes in police authority and power. Such changes would be wholly inconsistent with individual rights and political liberty. As nuclear security needs and constitutional guarantees conflict, critics warn that it will be the Constitution and not nuclear security policy which will be changed.²

The critics' fear for the future is founded on the experience of the past. During the last decade the implementation of Germany's nuclear program has been accompanied by a massive—and often violent—use of force against demonstrators and extensive political manipulation, by intensive surveillance and harassment of nuclear critics and by a pervasive disregard for individual rights and constitutional principles of political liberty.

Direct Use of Force

The all-out offensive of the government against opponents of the West German nuclear program—one of the largest in Europe³—is not surprising; the size and strength of the anti-nuclear movement could indeed pose a formidable obstacle to the realization of Bonn's ambitious nuclear plans. The government is still accustomed to unquestioned acceptance of its nuclear energy policy. In the past, the government's nuclear goals were adopted without public debate and without critical participation—much less opposition—by West Germany's political parties.⁴ As a result the growth of a persistent extra-parliamentary challenge must appear an unwarranted and unwelcome interference. Anti-nuclear action, like the occupation of the reactor site at Wyhl, is considered a total political threat. "If Wyhl is allowed to set an example," declared Prime Minister Filbinger of Baden-Wuerttemberg, "this state will become ungovernable."⁵

The government's sense of beleagerment is reflected by the scope and intensity of force used against anti-nuclear protests. Demonstrations at reactor or disposal sites have been met by deployment of massive police forces and para-military units of the border police. After the successful occupation of the construction site of the reactor at Wyhl in 1975, demonstrations in Brokdorf and Grohnde in 1976 and 1977 also tried to stop reactor construction already under way. In Brokdorf serious clashes occurred between police and small groups of militant demonstrators—an estimated 3000 out of 30,000—who came equipped and determined to break through chain link and barbed wire barriers encircling the building area.⁶ 81 police and 80 to 100 demonstrators were wounded. While the minister president of Schleswig-Holstein congratulated police and border protection units on their "responsible and courageous action," this view was not echoed by the protestors. An SPD (Social Democratic Party) state representative who had participated in the demonstration filed suit for assault against the police and the crew of a border police helicopter which, he said, had flown regular attacks against peaceful demonstrators far away from the building site.⁷

A Pattern of Overreaction

It was the protest against the fast breeder reactor at Kalkar, however,⁸ which provided a preview of what police-citizen confrontations may be like in the nuclear state of the future. The protest, organized by over 100 anti-nuclear groups from Germany, Holland, France and Belgium, was met by police operations of unparalleled scale and scope. According to German press accounts, on the day of the demonstration checkpoints were established throughout the Federal Republic and West Berlin. Persons assumed to be en route to the demonstration were identified and searched. A Bundesbahn train was stopped on the open track by border police units flown in by helicopter and travellers had to get out to be searched. According to police statistics a total of 146,909 persons and 74,489 cars were controlled, 141 arrests were made, and 8,000 "weapons and other dangerous articles" were confiscated, among these about 5,000 protective helmets and face masks along with sticks, crow bars, chains and two Molotov cocktails. Police at the checkpoints and those at the site in Kalkar were equipped with machine guns, helicopters and anti-personnel carriers in addition to the regular equipment of nightsticks, tear gas, and water cannons.⁹

The arrests and the confiscation of "weapons and dangerous objects" were widely regarded as justification for the police operation, which lacked any legal authority under German law. Not only was there no legal basis for the preventive search of those 35,000 demonstrators who actually came together at Kalkar, but by the police's own count four-fifths of the persons controlled had apparently nothing to do with the demonstration.

Yet the protest at the Kalkar site was entirely peaceful—as organizers had vouched it would be all along. It was held in the shadow of a 10 foot high and one kilometer long concrete wall erected to secure the construction; the wall was protected by a deep moat; and the moat was protected by 8,000 policemen.⁹ Such fortifications make the checkpoint system seem quite unnecessary.

Other events have proved that police preparation for nuclear demonstrations need have little relation to political reality. The Bavarian police demonstrated how quickly police build ups, originally justified by reference to emergency and exceptional circumstances, becomes routine. Informed by the events of Brokdorf and Grohnde, the Bavarian police prepared for nuclear protests against a reactor near Ohu in the spring of 1977 by installing a planning task force of 53 officers. This group prepared alternate "small" and "big" solutions calling for 5 to 15 police divisions, 100 to 400 police detectives, 100 to 200 regular police, 80 police dogs, and so on. They also provided for support from police units from other states (Laender) and the establishment of control and check points outside as well as inside Bavaria, far from and near the reactor site. Special communications, Red Cross and hospital units were readied. On the designated day 1,600 demonstrators showed up; their behavior during the march and rally gave no cause for police intervention.¹⁰

The argument that the police operations at Kalkar or Ohu were caused by the violence of prior demonstrations is not reassuring. Anti-nuclear opposition—and with it violence—may grow as Germany continues to expand its nuclear program in the face of public criticism and fear. To the extent that real or imagined anti-nuclear violence by some groups—however small—is allowed to become justification for the

police's large scale, deliberate and unremedied, disregard of law and constitutional norms, the critics' fear that a liberal-democratic order and nuclear development are incompatible will be proved correct. To critics, the massive, disproportionate and illegal use of police and military power already outlines the contours of a nuclear garrison state.

Political Manipulation and Police Disruption

The German anti-nuclear movement has a broad base of popular support and participation which cuts across class and political divisions and enlists radical activists as well as conservative farmers and vintners. Local "Citizens' Initiatives for Environmental Protection" have been organized in hundreds of places; they are loosely affiliated on the national level as the BBU (The National Citizens' Initiative) which has about 1,000 member groups.

The Quest for Extremists and Outside Agitators

Yet far from regarding the wide spectrum of support for the Citizen's Coalitions for Environmental Protection as proof of the deep popular concern over nuclear energy, the government has worked to divide and discredit the coalition. Repeatedly, the leaders of the anti-nuclear movement have been accused of being either inspired or duped by communists and extremists.¹¹ It is a propaganda campaign which tries to capitalize on the dogmatic anti-communism of post World War II with its nearly habitual identification of dissent with disloyalty and opposition with treason. For example, planned nuclear protests at Gorleben, an area selected for nuclear waste disposal, were the target of a press release issued by the Department for Internal Affairs of Lower Saxony entitled "Report on Political Extremism and the Defense against Espionage in Lower Saxony."¹²

Germany's recent terrorist incidents provide the government with ample opportunity to blame the anti-nuclear movement in advance for facilitating nuclear sabotage and are used to justify drastic preventive measures. Initiation and organization of demonstrations are routinely attributed to small groups of professional outside agitators from whom the police must protect both "innocent citizens coalitions" and local residents. Thus the surveillance of a Citizens' Initiative in Hameln was justified by the need to protect "real" citizens (whose right to debate the government found "most welcome") from subversion by extremists.¹³

Where the commitment of anti-nuclear leaders to peaceful and passive resistance cannot be impugned, they have been labelled "non-violent extremists" whose activities, "could be even more dangerous than those who use force," as the Secretary for Internal Affairs, Maihofer, told a parliamentary committee.¹⁴ Consequently, quite in keeping with government policy, someone such as Robert Jungk, Germany's best-known nuclear critic and author, is accused of "corrupting young people of good will and leading them astray."¹⁵ In March 1978 the highest revenue divisions of state and federal governments decided that "Citizens Initiatives against the Building of Nuclear Reactors" were no longer tax exempt.¹⁶

The government's public relations campaign to discredit and divide the anti-nuclear movement has been seconded by direct police action. To provide support for the oft-repeated allegation that anti-nuclear protests are not supported by local

residents,¹⁷ police have concentrated on arresting only non-local participants from among thousands of local demonstrators. In Kaiseraugst the selectiveness was so clear that the local court dismissed the arrests as arbitrary and capricious.¹⁸ Police warn local residents against outside agitators and ask them to report to police the arrival and activities of strangers.

In Gorleben—a nuclear waste disposal site—the nuclear company building the facilities, DWK, (Corporation for Nuclear Recycling), sent their own security teams out to surveil strangers, record their license plates and follow them around. Only after vacationers in the area complained to state and federal representatives about being followed and harassed by WAKO (Wach-Kommando) agents, and after local stores and hotels complained about losing their vacation business did DWK recall its hired guardians of nuclear peace.¹⁹ Local police assured citizens in the meantime that they would now take over the surveillance function. For that very purpose a study and planning group had already been set up in secret to prepare lists of expected outside agitators. Given the nature of police concern it was not surprising that the names of the national leadership of the Citizens' Initiative were on those lists.²⁰

Police routinely surveil anti-nuclear demonstrators: participants are photographed, license plates recorded, and files established.²¹ In Gottingen undercover agents, equipped with false identification papers and tear gas grenades, infiltrated an anti-nuclear group. According to the director of the state criminal police, danger to public order and security legitimizes such tactics "even if small tricks are required."²²

A German Version of COINTELPRO?

In addition, more disruptive techniques are apparently used. On the eve of the demonstrations against the reactor at Brokdorf, Holger Stroh, a well known author, frequent speaker, and organizer of nuclear protests,²³ was visited by three men who claimed to be police but refused to provide identification. They warned him not to participate, much less speak, at the demonstration unless he wanted drugs to be found in his apartment or possibly be "accidentally" injured in the course of his arrest. When Holm protested publicly, a criminal investigation was initiated against him for "false accusations and slander."²⁴

In Wilster, the site of the Brokdorf reactor, letters with anti-nuclear stickers were not delivered; organizers of the march had great difficulty finding facilities; a widely distributed forged leaflet, falsely attributed to the Communist Party (KPD), urged demonstrators to burn the barns and tractors of local farmers.²⁵

As a result of a privately lodged complaint, a disciplinary investigation was initiated against Hans Guenter Schumacher, a senior civil servant with the administration of the army. Schumacher—who is also treasurer and board member of the BBU, the National Association of Citizens' Initiatives—was accused of having violated his official duties by participating in the planning of the demonstration at Kalkar and of not having shown "the requisite loyalty to the energy policy of Federal Republic, his employer."²⁶

To what extent these and other efforts to intimidate and impede the anti-nuclear movement are part of a deliberate "COINTELPRO" strategy, or merely reflect the unrestrained zeal of the industry's own security force is not clear. Germany

lacks FOIA type legislation, and the public has no access to information about police, military, and private nuclear security programs. Parliament has shown no inclination to investigate.

Security Controls on the "Inside" of the Nuclear Industry

Surveillance and control of staff and employees working inside nuclear facilities have also been of great importance. Political investigation and constant on-the-job surveillance are necessary components of domestic nuclear security policies. Private industry—the government informed a committee of Parliament—and police co-operate in providing "in-depth defense" against "secret perpetrators and secret thieves" inside the facilities.²⁷ The necessary internal controls are carried out by professional work-security teams (Werkschutz).

The state of Bavaria prides itself on having recognized early on the need for thorough checks on temporary and regular cleaning ladies. The state's failsafe system involves initial political and criminal investigation of the women by state police, the federal criminal police, and the office for the protection of the Constitution (*Verfassungsschutz*); it then proceeds to a physical search for weapons "or other dangerous articles," and a complete change of clothes ("they walk in practically naked" reported the Bavarian Director for Legal Questions Concerning Nuclear Energy) and then the women work in groups of three or four under constant supervision.²⁸

The Traube Case

But political surveillance is not limited to the blue collar employees of the industry. The investigation and firing of Dr. Klaus Traube shows that the nuclear industry will also take action against non-conforming high level insiders.

As if to prove the incompatibility of nuclear safeguards and civil liberties, the Traube case demonstrated in great detail the lack of constitutional scruples in investigating terrorist danger to nuclear safety—however remote and ill-substantiated such a threat might be.

Dr. Klaus Traube, an engineer employed by the nuclear energy corporation, *Interatom*, held a position which gave him neither access to nor knowledge of the location of nuclear materials.²⁹ He was acquainted with a woman, who, in turn, had a friend—Hans-Joachim Klein—who turned out to be one of the terrorists involved in the Vienna kidnapping of OPEC ministers. That indirect and fleeting association—Traube had met Klein only five times in five months and always in the company of a larger group of friends—sufficed to turn Traube into what Secretary for Internal Affairs, Maihofer, described as the "greatest security risk in the FRG."³⁰ Traube's mildly unconventional life style further contributed to scenarios of danger, terror, and nuclear catastrophe which alarmed the *Verfassungsschutz* so deeply that they read his mail, investigated, surveilled, wiretapped, bugged, followed and harassed him for nearly a year.

The fact that in all that time none of the many intrusive investigatory methods ever provided any evidence substantiating the suspicion of terrorist intent or connection did not deter the investigation. In fact, the very failure to discover crime and wrongdoing seemed to confirm the suspicion that Traube must be particularly dangerous or cunning. The

investigation proceeded with increased zeal; no evidence was discovered.

In January of 1976—nearly 9 months after the unsuccessful investigation had begun—officials of the Department for Internal Affairs and agents of the Office for the Protection of the Constitution suggested to *Interatom* that Traube should be dismissed. Documents published in *Der Spiegel* a year later show that everyone agreed that Traube must not get a similar position again either in Germany or abroad. A year after he was fired Traube found out through the press what had happened to him.³¹

The publication of the secret Traube file caused a furor in Germany: the government initially insisted on the correctness and reasonableness of its investigation and concentrated on accusing *Der Spiegel* of endangering national security. Yet in response to strong criticism the Secretary for Internal Affairs eventually had to admit "that no further reasons for suspicion of Dr. Traube exist."³² Subsequently the source of the leak for the *Spiegel* story was found and a criminal prosecution was initiated against him and the journalist who received the information. Eventually these prosecutions were dropped.³³ No effort was ever made to start disciplinary or criminal proceedings against the agents of the *Verfassungsschutz* who had broken the law on a massive scale.

For Traube his employment by a nuclear energy company turned into a Kafkaesque nightmare where innocence confirmed guilt. For the police the investigations of Traube and others merely confirm that "new forms of endangerment of public security can no longer be met with traditional means and that the limits of the rights of citizens on the one hand and the barriers to [police] intervention on the other must be redefined continually."³⁴

Redefining rights in the Nuclear State

So far police appear to have a monopoly on the "redefinition" of both citizens' rights and police powers. By referring to the extraordinary security needs of the nuclear state, the new techniques expand the arsenal of governmental and police power.

The public prosecutor of Itzehoe, in charge of criminal prosecutions for the protests at Brokdorf, demonstrated one of the ways in which constitutional rights must be modified in the effort to assure the safety of nuclear power plants. He subpoenaed a journalist to turn over film and all other information of a demonstration in order to initiate a criminal investigation against "unknown" participants.³⁵

In 1977 a decision by the highest administrative court of Lower Saxony (*Oberverwaltungsgericht Lüneburg*) pointed authorities to another novel strategy for dealing with anti-nuclear demonstrations. In a case unrelated to nuclear protest the court decided—in what may yet turn out to be the most devastating blow to the right to protest—that squatters who had seized a condemned building were required to pay for the costs of their forcible removal by police.³⁶

The state governments of Lower Saxony and Schleswig-Holstein quickly seized on the ruling to charge nuclear demonstrators for the costs of police operations "caused" by their protest activities. Thus 21 occupants of the "anti-nuclear village" in Brokdorf were billed 5,400 DM each for the 100,000 DM expenses police incurred in clearing their village.³⁷ Some or all of the 270 demonstrators identified at Grohnde were to be charged with the more than 2 million DM in costs for

police operations there.³⁸

Personal financial liability of demonstrators is appropriate, the government of Lower Saxony has argued, because "the general public cannot be expected to bear the costs of police operations caused by the illegal behavior of a few individuals."³⁹ But if demonstrators are to be responsible for costs of police operations "triggered" by them, and if it is up to the police alone to decide when and where to intervene, the police will determine how costly the exercise of political freedom will be for German citizens of the nuclear state.

The Future

The role German authorities and police have played so far in protecting Bonn's nuclear program does not argue well for the durability of constitutional rights in the nuclear state. To be sure, abuses of police power and violations of rights have not been limited to politics surrounding nuclear policies; they have also occurred in response to terrorist kidnapping and assassination, mass student protest, and the suspected political disloyalty of civil servants. But nuclear security operations are different from the role police have played during past crises in German politics. What is new about domestic nuclear security policy is that "exceptional" abuses become standard operating procedures.

The vulnerability of nuclear installations provides police with a lasting and convenient justification for emergency action. In the aftermath of anti-nuclear demonstrations several state governments asked for increases in regular and special police in order to protect nuclear installations, and requested additional allocations for better police equipment.⁴⁰ With the continued growth of nuclear programs, danger to nuclear safety becomes a permanent component of nuclear development. The emergency which justifies and excuses violations of constitutional norms is institutionalized and abuses of police power are routinized. For nuclear security policy the exception will, therefore, become the rule. When this happens little will remain of the constitutional order. It is here that the significance of the Traube case and Kalkar lie.

West Germany has not yet reached the point where police abuse has not yet become the rule. Courts have recently imposed limiting conditions on nuclear initiatives; the political parties may take a more critical positions; nuclear accidents like that of Three-Mile-Island may provide the anti-nuclear movement with legitimacy it has so far lacked. That, at least, appears to be the message of the large, peaceful protest march at Gorleben in the spring of this year.⁴¹

On the other hand German nuclear development is still in its infancy. The logic of further nuclear expansion prevails.⁴² If the constitutional abuses of the past are a guide to the future, then the growth of the nuclear state will indeed be antithetical to the values, procedures and commitments of the liberal constitutional order. ■

Footnotes

1. See, for example, Holger Stroh, *Friedlich in die Katastrophe* (Berlin: Verlag Association, 1975); Werner Biermann, *Plutonium und Polizeistaat* (Berlin: SPAK-Publikationen, 1977); H.H. Wuestenhagen, *Buerger gegen Kernkraftwerke. Wylt—der Anfang* (Hamburg: Rowohlt, 1975). See also the monthly journal *BBU Aktuel* published by the National Association of Citizens' Initiatives.
2. Robert Jungk, *Der Atomstaat* (Muenchen: Kindler, 1977).
3. During the first four months of 1979 nuclear power stations in the FRG increased their output by 12.5 percent compared to the same period in 1978; nuclear energy production of the European Community increased by only 9.7 percent. By mid-1979 nuclear energy made up 14 percent of West Germany's total energy consumption. *The Week in Germany* (German Information Center), Sept. 7 and 20, 1979.
4. D. Nelken and M. Pollak, "Political Parties and the Nuclear Energy Debate in France and Germany," *Comparative Politics*, Vol. XII, No. 2 (January 1980).
5. "Materialien zum Atomstaat-Polizeistaat." Working Papers. CILIP, no date.
6. *Tagesspiegel*, 10/31/76; 11/21/76; *Frankfurter Rundschau*, 7/22/77.
7. *Tagesspiegel*, 11/16/76.
8. CILIP, Nr. 2 (March 1978), pp. 26-28.
9. *Ibid.*, p. 26.
10. *Polizei, Technik, Verkehr*, July 1978; Sonderausgabe "Bayern und seine Polizei," pp. 163-165.
11. *Frankfurter Allgemeine Zeitung*, 5/27/77.
12. *Presseinformation*. Der niedersaechsische Minister des Inneren. 3/31/78.
13. Niedersaechsischer Landtag—Achte Wahlperiode. Antwort auf eine kleine Anfrage. Nr. 2534, 4/27/77.
14. *Woche im Bundestag*, No. 14 (7/14/74), p. 13.
15. *Bild der Wissenschaft*, No. 1 (1978), p. 7.
16. *Frankfurter Rundschau*, 3/6/78.
17. *Polizei, Technik, Verkehr* (July 1978) p. 165.
18. Bezirksgericht Rheinfelden/Schweiz; Entscheidung vom 24. Januar, 1977.
19. *Frankfurter Rundschau*, 5/16/78.
20. *Stader Tageblatt*, 7/21/78.
21. *Tagesspiegel*, 11/21/76; 6/23/78; 7/18/78.
22. *Extradients*, 1/5/79.
23. *Friedlich in die Katastrophe*, (Berlin: Verlag Association, 1975).
24. *Stern Magazin*, Nr. 30, 7/14/77; *Deutsches Allgemeines Sonntagsblatt*, Nr. 17, 4/24/77.
25. "Bilanz und Perspektiven zum Widerstand gegen Atomanlagen," BBU Hamburg, September 1978.
26. *Frankfurter Rundschau*, 11/21/78.
27. "Oeffentliche Anhörung zu Fragen des Umweltschutzes." Innenausschuss. Bonn, Sept. 26 and 27, 1977. Beitrage zum Fragenkomplex IV: "Sicherheit des Entsorgungszentrums."
28. *Frankfurter Rundschau*, 3/26/77.
29. For details of the Traube affair, see K. Traube, "Lehrstueck Abhoeraffaire," in W.-D. Narr (ed.), *Wir Buerger als Sicherheitsrisiko* (Hamburg: Rowohlt, 1977), pp. 61-78.
30. *Spiegel*, 3/7/77.
31. *Spiegel*, 2/28/77.
32. Traube, *op cit.*, p. 61.
33. CILIP, Vol. I, No. 1 (August/September 1978) pp. 6-10; *Tagesspiegel*, 7/13/78; *Frankfurter Rundschau* 7/14/78.
34. *Polizeiarchiv*, Vol. I, No. 304 on Par. 32 StGB, Blatt 1.
35. H.-C. Buchholtz, et. al. *Widerstand gegen Atomkraftwerke* (Wuppertal 1978), p. 204.
36. *Frankfurter Allgemeine Zeitung*, 5/7/77, *Frankfurter Rundschau*, 5/7/77.
37. *Tagesspiegel*, 11/10/77.
38. *Sueddeutsche Zeitung*, 11/9/77; *Tagesspiegel*, 11/10/77.
39. *Weser Kurier*, 8/27/77.
40. *Frankfurter Allgemeine Zeitung*, 5/7/77 and 5/27/77.
41. *Pressestimmen, fuer oder gegen Gorleben*. Arbeitsgemeinschaft Umweltschutz (Hannover: Selbstdruck, 1979).
42. The German Chancellor, Helmut Schmidt, strongly reaffirmed the FRG's commitment to nuclear energy right after the nuclear accident at Three-Mile-Island. *The Week in Germany* (German Information Center), April 26 and May 10, 1979.

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Security Act of 1947 bars the CIA from performing internal security functions. Helms and Ober tried to resolve this conflict by drawing several fine distinctions which, they hoped, would "define" CHAOS into something more palatable than the domestic spying operation it appeared to be.

The first of these distinctions formed the basic rationale for CHAOS, and was included in the policy guidelines Ober sent to all CIA stations participating in the program. Ober directed that information was to be collected on the political activities of U.S. citizens, but that the purpose of the collection would be to understand possible foreign connections to that activity, rather than to understand the activity itself. It was therefore not strictly improper.

But this rationale was quickly violated in the day to day conduct of the Operation. Ober directed foreign stations spying on Americans to collect "information on plans and programs in the United States as well as on any foreign aspects."³ On at least one occasion he explored the possibility of using foreign agents to penetrate political groups in the United States.⁴ And in still other cases the stated rationale for CHAOS activities was turned directly upside down; foreign links to domestic organizations were targeted in order to obtain purely domestic information. For example, communications between the Communist parties of the U.S. and the Soviet Union were intercepted because

old CPUSA hacks like () and () keep their Soviet counterparts supplied with antiwar movement news and publications which are often useful for background information and which we frequently do not obtain through other channels.⁵

"Background information" was a CHAOS euphemism for domestic intelligence.⁶

A similar foreign rationale was given for the operations of CIA agents working under leftist cover in the United States. Helms testified—and the Church Committee took him up on it—that American CHAOS agents in the United States were not employed for the purpose of penetrating domestic groups, but only for purposes of cover-building and training. This included the acquisition or enhancement of "radical credentials" by associating with leftist groups, and assessment of the agents' reporting skills by their CHAOS case officer.⁷ (The only exception to this rule was the case of agents residing in this country between overseas assignments.)

But this explanation fares little better than the general rationale for CHAOS. Helms' claim that agents penetrated domestic organizations in order to acquire leftist credentials is contradicted by every other official who testified on this topic, including the case officer who handled all CHAOS agents in the U.S. They maintain that CHAOS agents were recruited from dissident circles rather than inserted into them, and therefore already had "radical credentials." Ober testified that he could think of no exceptions.⁸

Helms' second claim, that agents reported on domestic events only so that the agency could assess the accuracy of their reporting, also fares poorly against the recollections of the case officer, who was unable to give any other explanation of the actions of an agent who attended the 1971 May Day demonstrations in Washington D.C. than that they were for operational purposes. The agent's reports were considered so timely that they were disseminated to the FBI by telephone.

The case officer admitted that several CHAOS agents were "trained" in the United States for "anywhere from months to years."⁹

Finally, in the sensitive area of collection of political information by domestic components of the CIA such as the Domestic Contact Service, Ober attempted to draw a distinction between active investigations of domestic groups and mere "passive" reporting of information obtained in the course of other business.

Here again, increasing demands for domestic information led to violations of the distinction. The Domestic Contact Service (DCS) systematically conducted active investigations of CHAOS targets. After two and a half years of this, DCS officers became worried about the propriety of these investigations, and demanded that any future requirements from Ober's office be put in writing. Ober's deputy replied that "if it was necessary to spell out in black and white the rationale for such a sensitive requirement, [he] would prefer to withdraw the requirement." A source of domestic information which had proved "extremely valuable" for CHAOS purposes was sacrificed to Ober's reluctance to leave a paper trail.

Helms and CHAOS

In short, CHAOS generated a momentum which quickly overwhelmed its managers' attempts to draft a mandate for the Operation which would make it legal. After CHAOS began in 1967, the CIA prepared a series of reports for President Johnson which concluded that the antiwar and black protest movements in the U.S. were reactions to domestic political frustrations and found no evidence of foreign funding or control. Additional reports were prepared for Nixon, all of which reached this same conclusion. But neither President bought the story. Instead, they pressed the Agency to look harder. Helms told the Rockefeller Commission that after Nixon moved into the White House this pressure became "about as much as the law would allow, and by that I mean next to hitting me over the head with a baseball bat."¹¹

Two steps were taken in response to this pressure. First, CHAOS began to recruit its own agents to report on the political activities of Americans.¹² Second, Helms made a policy decision that "Operational priority of CHAOS activities in the field is in the highest category, ranking with Soviet and Chicom [Chinese Communist]."¹³ An internal security function by any other name, Operation CHAOS had assumed equal prominence with the CIA's more traditional functions.

In one sense, this steady expansion was inevitable. The only way Helms could have shut down CHAOS would have been to prove conclusively that significant foreign connections to the U.S. protest movement *did not* exist. This was impossible, since Johnson and Nixon could simply reply that the CIA had not looked hard enough, which was just what they did. The project was framed in such a way that its basic assumption could not be falsified.

But Helms should not be painted too heavily as the victim of Presidents who refused to believe that their policies could arouse genuine domestic opposition. The bureaucratic momentum behind increased domestic spying swung in both directions. In his memoranda to Johnson accompanying reports on foreign connections to the U.S. peace movement, Helms consistently reinforces the message that, while no significant connections had been found, "there are significant

holes in the story."¹⁴ For instance, radical student leaders in the U.S. "are certainly visible and active enough for monitoring." In another memorandum, Helms tells Johnson:

I am emboldened to make a suggestion which lies outside the range of my responsibilities: recognizing that the Federal Bureau of Investigation operates at present on a restricted basis in collecting information on United States radicals, you may wish to consider having the Bureau authorized to use more advanced investigative techniques in dealing with this problem.¹⁵

No doubt this was a sincere attempt by Helms to bounce the ball back to the FBI, which at that time had prohibited its agents from committing burglaries and recruiting informants less than 21 years old. After Johnson left office, an attempt was made in the form of the Huston Plan to lift these prohibitions.

But official dissatisfaction with the FBI reflected substantive problems as well as "investigative techniques." The Rockefeller Commission was informed repeatedly and by several different sources that the FBI's unfocused collection and inability or refusal to analyse domestic political intelligence was a major reason for involving other agencies in domestic spying. This applied both to Operation CHAOS and to interagency efforts such as the Intelligence Evaluation Committee, to which CHAOS contributed. That being the case, however, it is not clear whether Helms' push for increased domestic intelligence collection had the effect of increasing FBI activities or of justifying those of his own agency, which were already underway and expanding.

As the CIA began assuming certain domestic intelligence functions through CHAOS, Helms made sure to remain closely informed. Although he normally adhered strictly to bureaucratic procedures, when it came to CHAOS he instructed Richard Ober to report in some cases directly to him, bypassing the normal chain of command through Counterintelligence Chief James Angleton and Deputy Director for Plans Thomas Karamessines. "If there was ever a Director's personal program, I guess you'd have to say it was CHAOS, because of the way it was created and managed," a former assistant to Helms later commented. This former official goes on to explain that, while Helms' personal interest was largely based on "the sensitivity of going to work on Americans," an additional motivation may have been a desire to cut Angleton partially out of the picture. Angleton had developed a reputation for seeing foreign subversion where others could not—he would have "described Haley's comet as having some meaning that eventually goes back to the KGB"—and the former counterintelligence chief's early reports for CHAOS concerning racial violence in the United States bear this out. To his credit, Helms wanted reporting for CHAOS to be unbiased, and kept a direct line to Ober partly in order to achieve the accuracy of reporting that repeatedly frustrated the White House.

Project 1, Project 2

There were however a number of real contacts at this time between domestic protest groups and foreign powers, and it is instructive to see how the Agency treated them. In 1967 and early 1968 groups of American antiwar activists met with North Vietnamese representatives in Czechoslovakia, Cuba,

and Cambodia. The meetings were well publicized at the time, and presumably did not require a major counterintelligence effort to uncover. But whatever efforts were made by CHAOS to penetrate behind the scenes at these meetings, the Agency's interest may have been focused as much on the possibility of using these contacts to collect positive foreign intelligence as it was on counterintelligence concerns. In 1968, Karamessines approved a proposal, submitted jointly by the Far East Division of the Directorate for Plans and the Office of Security, aimed at recruiting Americans to collect intelligence on foreign targets by joining "New Left" groups in touch with those targets. Limitations on domestic reporting were written into the project, which in fact may have never become operational. Together with a reading of an earlier draft of the proposal, the history of the period suggests that the project was designed to recruit agents in antiwar groups in touch with the North Vietnamese.¹⁷ The Far East Division conducted another project between 1970 and 1974 which trained agents in the U.S. for assignment overseas under leftist cover, and in the process provided information to CHAOS. The Rockefeller Commission referred to these operations as "Project 1" and "Project 2," but did not identify the area division involved.¹⁸

Domestic Reporting and Police Liaison

The *Halkin* documents also expand the official picture of CHAOS's reporting and liaison to domestic agencies. For example, Ober's office contributed to studies by the interagency Intelligence Evaluation Staff of potential violence at the 1972 Democratic and Republican conventions in Miami.¹⁹ It also participated in "a big study" on the unauthorized disclosure of classified information begun in July 1971, apparently in response to the publication of the "Pentagon Papers."²⁰ In addition to these and to the studies of domestic dissidence discussed in the Church Report, such as *Restless Youth*, the CIA also prepared papers on possible links between radical black movements in the Caribbean and militant blacks in the United States (no significant links were found).²¹

At Helms' request, a CIA officer attended and wrote a report on the 1967 Congress of the National Student Association (NSA), held at the University of Maryland. This Congress occurred several months after CIA funding of the NSA was revealed in the press. The resulting public criticism and the recommendations of the Katzenbach commission had forced the Agency to sever its financial ties with the NSA, but the Agency's case officer apparently remained active in the organization. In his cover memorandum forwarding the report to Walt Rostow and HEW Secretary John Gardner, Helms notes that the paper is not being widely circulated because "the Agency should not be reporting at all on domestic affairs of this sort."²²

Reporting on domestic affairs of the sort had begun by at least 1962, five years earlier than reported by the Church Committee, according to other *Halkin* documents.²³

CHAOS liaison with U.S. police was also broader than previously realized, operating at both the national and the 'grass roots' levels. Ober maintained liaison with the Law Enforcement Assistance Administration²⁴ (unbeknownst, at least for a time, to Angleton) while at the same time obtaining local intelligence reports through the Domestic Contact Service. According to the CHAOS case officer, DCS maintained informal relationships with many police depart-

ments. "In fact," the case officer informed the Commission, "it was probably the rule rather than the exception that the DCS would have an ongoing relationship with local police forces. . . ."25

The Record of CHAOS—Still Incomplete

But despite the addition of the material released in *Halkin* to the official record of the Rockefeller and Church reports, the public picture of CHAOS and related intelligence operations is incomplete. It is astonishing how much can be learned from declassified government documents concerning the structure and type of activities involved in CHAOS without revealing anything about specific operations. The picture is abstract and schematic, and any possible injury or other effects of the program remain hypothetical.

Finding out what Division was responsible for "Project 2" allows a few inferences to be drawn about alleged CIA agents active under leftist cover in the United States and Europe during this period, and from there to begin filling in the known account of CHAOS.

Even so, far more is known about the information gathering aspects of CHAOS than about the "operational" ones. The new material shows that derogatory information was collected, and that on at least one occasion the Agency approved a propaganda operation directed against a U.S. citizen by a foreign intelligence service. Documents and other sources confirm that a "counteraction capability" was built into Operation CHAOS. But what about the counteraction itself? Did CHAOS include a program of disrupting or manipulating political activity?

One source for this information would be the "soft" files on specific CHAOS operations which CIA stations were instructed to maintain outside the Agency's official records system.²⁶ Another, perhaps, is the 85% of the "Family Jewels" (a collection of accounts of improper activities) which has not yet been made public, although the Rockefeller Commission had access to the Jewels and used them to guide its investigation. A third are the "Operations" memoranda sent by Ober's office to the FBI to alert the Bureau to planned operations by CIA agents.²⁷

The Rockefeller and Church reports were good; the documents released in *Halkin* are better. Still more must be made public before the full impact of CHAOS can be understood. Every release of new information adds a margin of order to CHAOS. When the subject is spying on Americans, the public interest in restoring that order weighs heavily against the risk of disclosing intelligence sources, methods—and targets. ■

All documents referred to in this article are available from the Center for National Security Studies.

Footnotes

1. *Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities*, United States Senate, (94th Congress, 2d Session, Report No. 95-755, Government Printing Office, April 23, 1976) (Hereinafter *Church Report*) See Book III, pp. 679-732.
2. U.S. District Court for the District of Columbia, C.A. 75-1773
3. Memorandum from Ober to Station, 7 November 1969 (document #6)
4. Memorandum from Ober to Station, 20 October 1969 (document #5)
5. Undated unsigned memorandum (document #8)
6. See *Church Report*, Book III, pp. 694, 702; Memorandum from Director of Domestic Contact Service (DCS) to Chief () (document #13); and "Notes of meeting between DCS officers and CI/SO staff" (document #18)
7. Deposition of Richard McGarrah Helms, 24 April 1975, pp. 48, 59 (Note: page numbers for material release in *Halkin* refer to internal pagination and not to original page numbers of the Rockefeller Commission transcripts, which in many cases are absent from the *Halkin* material)
8. Memorandum to File, 11 March 1975 (document #40); interview of Robert D. Brown, 25 February 1975; Testimony of Richard Ober, 27 January 1975, pp. 59, 77; Deposition of Richard Ober, 28 March 1975, pp. 239-240
9. Memorandum to File, 11 March 1975 (document #40)
10. Memorandum for the Record, 4 February 1971 (document #18)
11. Deposition of Richard McGarrah Helms, *op. cit.*, p. 48
12. *Church Report*, Book III, p. 701
13. Memorandum for the Record, 23 May 1969 (document #11a)
14. Memorandum from Richard Helms to The President, 15 November 1967 (Helms Deposition p. 33)
15. Memorandum from Richard Helms to The President, 4 September 1968 (Helms Deposition p. 38)
16. Memorandum from James Angleton to Deputy Director for Plans Karamessines, " [CHAOS] Progress Report No. 2 (1-30 September 1967)" (document #3)
17. Memorandum from Howard J. Osborn to DCI Richard Helms, 16 February 1968 (document #50); Memorandum from () to DDP Karamessines, 30 April 1968 (document #44)
18. *Report to the President by the Commission on CIA Activities Within the United States*, (Government Printing Office, June, 1975) pp. 137-139
19. Testimony of Richard Ober, *op. cit.*, p. 101
20. *ibid.*, p. 105
21. Memorandum from Richard Helms to Tom C. Huston, 6 July 1970 (document #48); Deposition of Richard McGarrah Helms, *op. cit.*, p. 105
22. Memorandum from Richard Helms to Walt W. Rostow, 1 September 1970 (document #49)
23. Memorandum to Chief, Security Research Staff, OS, 31 January 1962 (document #28)
24. Testimony of Richard Ober, *op. cit.*, p. 14
25. Memorandum to File, 11 March 1975 (document #40)
26. Memorandum for the Record, 23 May 1969 (document #11a)
27. Deposition of Richard Ober, *op. cit.*, p. 244

New Report from CNSS

Operation CHAOS Comparison of Documents released in *Halkin v. Helms* with the Final Report of the Church Committee (see page 15 for order form)

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In The News

SOURCE KEY

FP: *First Principles*
 NYT: *The New York Times*
 WSJ: *The Wall Street Journal*
 WP: *The Washington Post*
 WS: *The Washington Star*

ARMY/BIOLOGICAL WARFARE. The Army in 1950 tested the use of contaminated turkey feathers dropped from an airplane as a means of delivering biological warfare agents. (WP, 10/9/79, p. A6)

ASSASSINATIONS/LETELIER. The Chilean Supreme Court refused to reverse its decision not to extradite or try in Chile three Chilean army officers indicted here for the murder of Orlando Letelier. (NYT, 10/2/79, p. A4) U.S. Ambassador George W. Landau was recalled for consultation, and the State Dept. deplored the release of "the three terrorists." Sec. of State Vance tentatively decided to cut back U.S. aid to Chile and reduce the U.S. embassy staff, but not to put pressure on U.S. businesses and banks which invest in or loan money to Chile. (WP, 10/3/79, p. A9; NYT, 10/3/79, p. A4; WP, 10/18/79, p. A1) One of the indicted men, former DINA Chief Gen. Contreras, last December withdrew \$25,000 from an account at Riggs National Bank and the money has been traced to an employee of the government-owned Chilean airlines. FBI investigators believe the money may have been used to pay defense costs for three men convicted last January of involvement in the Letelier assassination. (WP, 10/10/79, p. A3) A Chilean emissary reportedly offered earlier this year to turn over to the U.S. two of the three indicted Chilean officers. (WS, 10/23/79, p. A1)

ASSASSINATIONS/PARK/KCIA. South Korean President Park Chung Hee was allegedly assassinated by the Director of the Korean Central Intelligence Agency. (NYT, 10/28/79, p. A42; NYT, 10/29/79, p. A1; WP, 10/31/79, p. A1)

CIA/DECLASSIFIED REPORTS. In appearances before the House Intelligence Oversight subcommittee, former CIA Director William Colby and Dep. Dir. of the CIA's National Foreign Assessment Center John J. Hicks, endorsed the present trend of releasing unclassified CIA reports. Colby cited the public's "need to know" information relevant to policy debates. Former CIA Director Richard Helms opposed releasing such reports because he did not see what the Agency would gain from "this public relations campaign." (WP, 10/23/79, p. A1; WS, 10/23/79, p. A2; NYT, 10/23/79, p. B13)

CIA/NAMES OF AGENTS. Members of the House Intelligence Committee unanimously introduced a bill making it a crime to disclose the names of CIA employee working overseas, regardless of whether the information was obtained from classified or unclassified sources. (WP, 10/18/79, p. A5; H.R. 5615, *Federal Register*, October 17, 1979, p. H9331)

CIA/OIL REPORTS. A recent secret CIA report shows that during this year's "energy shortage" the U.S. imported 250,000 barrels a day more oil than in the same period of the year before, despite the loss of Iranian supplies. The report also shows that U.S. companies cut back domestic production by 150,000 barrels a day as compared with the previous year. (WP, 10/8/79, p. DC11)

CUBA/SURVEILLANCE. The U.S. sent an SR-71 reconnaissance plane over Cuba to photograph Soviet troops stationed there. (NYT, 10/7/79, p. A18)

DEA/"EPIC" INTELLIGENCE CENTER. The Drug Enforcement Administration's El Paso Intelligence Center (EPIC), connected to the Customs Service, Coast Guard, I&NS, Federal Aviation Administration, Bureau of Tobacco and Firearms, and forty state police departments, monitors and disseminates information concerning worldwide drug traffic. (WP, 10/7/79, p. C4)

DEMETRACOPOULOS/CONNALLY. A derogatory letter concerning exiled Greek journalist and junta critic Elias Demetrapoulos circulated in 1972 and ostensibly written by former Mayor John P. Rousakis of Savannah, Ga. was largely drafted on Democrats-for-Nixon stationery. John Connally then headed the organization. [Demetrapoulos has also been the object of a 1977 CIA effort to discredit him. See FP, Jan. 1978, p. 4-5. Ed.] (WP, 9/22/79, p. E47)

DRAFT. The Army is investigating alleged cheating by recruitment officers under pressure to meet recruitment quotas. (WP, 10/16/79, p. A3) For the first time since 1973 all the U.S. armed services failed to meet their recruiting goals for a twelve-month period. (WP, 10/20/79, p. A6)

ESPIONAGE. Navy Yeoman Eugene Lee Madsen was sentenced to eight years for stealing top secret Pentagon documents and selling them to an FBI agent. (WS, 10/26/79, p. A7; SP, 10/27/79, p. C1)

FBI/ATTACKS ON FORMER AGENT. The FBI attempted to discredit former Special Agent William Turner after he left the FBI and published books and articles critical of the Bureau. (WP, 10/9/79, p. A5; see documents available from CNSS, file no. 1-18.)

FBI/CORRUPTION/INFORMANT PAYMENTS. One FBI agent was suspended and another fired due to allegations that the pair had stolen money earmarked for informants and were involved in a theft ring they were supposed to investigate. Evidence against them was gathered through an FBI wiretap. Less than a week after being fired one of the agents was found dead, an apparent suicide. (NYT, 10/18/79, p. B12; WP, 10/20/79, p. A1)

FBI/FOREIGN SERVICE/ROSTENKOWSKI. In 1970 the FBI collected and disseminated to Polish intelligence agents confidential information on Rep. Daniel Rostenkowski and eight Chicago attorneys who specialized in immigration cases, and on officials of Polish descent working in the Chicago office of I&NS. All the information was "cleared" for release by FBI headquarters. The Bureau was reportedly aware that the information might be used to pressure the Americans into working for Polish intelligence. On one occasion, the FBI sent a letter to the Chicago I&NS office, reportedly in order to impair one of the lawyers' ability to represent his clients before that agency. All the information was reportedly disseminated in order to boost the credibility of an FBI informant working as a double agent for the Polish service, and the Justice Dept. has placed unusual secrecy restrictions on a lawsuit filed by one of the immigration lawyers. Justice Dept. lawyers familiar with the case said the FBI did not receive significant intelligence in exchange for the information furnished to the Polish service. (*Chicago Sun-Times*, 10/14/79, p. 1; *Chicago Sun-Times*, 10/15/79, p. 1) Rep. Rostenkowski met with FBI officials and said afterwards that he was satisfied that no derogatory information concerning him was passed to the Polish intelligence service. (NYT, 10/17/79, p. D23)

FBI/HOOVER. Rep. Fortney Stark introduced a bill to remove the name of former Director J. Edgar Hoover from the FBI building. (WP, 10/31/79, p. A7; H.R. 5743, *Federal Register*, October 30, 1979, p. H 9970)

FBI/IPS. The FBI agreed to pay court costs and not to engage in illegal surveillance of the Institute for Policy Studies. The bureau admitted that it used at least 62 informants to infiltrate IPS and engaged in other forms of surveillance, but the case did not disclose evidence of the use of techniques which were illegal at the time. (WP, 10/5/79, p. C8; NYT, 10/7/79, p. A75) (See In the Courts)

FBI/KING/REPARATIONS. Coretta King and former Attorney General Ramsey Clark in October 1977 proposed to the Justice Dept. that the government atone for FBI harassment of Martin Luther King by contributing public funds to further Dr. King's work. Former Attorney General Griffin Bell said the idea "never got off the ground" because payment of reparations would create a precedent. (NYT, 10/29/79, p. A15)

FBI/MISSING URANIUM. The FBI is investigating the apparent loss at a Knoxville nuclear fuel plant of 20 lbs. of bomb-grade uranium. (WP, 10/12/79, p. A6)

FBI/PAUL ROBESON. FOIA documents indicate a pattern of wiretapping, mail intercepts, and sabotage directed at singer and activist Paul Robeson, according to Robeson's son. (NYT, 10/17/79, p. B4)

FBI/SWP. The Supreme Court refused to review a U.S. Circuit Court of Appeals decision nullifying a district court's contempt citation against former Attorney General Bell for refusing to comply with an order to disclose 18 informant files to attorneys for the Socialist Workers Party. (WP, 10/10/79, p. A4) (See In the Courts)

FOREIGN SERVICES/YOUNG MEETING. Rep. Les Aspin, chairman of a House Intelligence subcommittee, reported that he had found no evidence that U.S. intelligence agencies bugged Andrew Young's meeting with a representative of the PLO. A detailed account of the meeting was earlier mistakenly reported to have been available in the State Dept. several days after the meeting. The detailed account may have been of a meeting held elsewhere earlier that day. (WS, 10/20/79, p. D5; WP, 10/29/79, p. A22; NYT, 10/29/79, p. A8)

FBI/WEATHERMEN/CHARGES DROPPED. The FBI has abandoned its search for six fugitive members of the Weather Underground, and Federal charges against the six have been dropped. Warranted remain on state charges in Illinois. (WP, 10/21/79, p. A32; NYT, 10/28/79, p. A65)

HUMAN RIGHTS/BRAZIL. Execution by police death squads and torture during interrogation have reportedly become routine methods of dealing with ordinary criminal suspects as well as political prisoners. (NYT, 10/5/79, p. A10)

I&NS/FOURTH AMENDMENT. A U.S. District Court ruled that the Immigration and Naturalization Service may not enter businesses in Washington, D.C. to search for illegal aliens without naming and describing each person sought. (WP, 10/5/79, p. A1) The House passed a bill creating an office of the Inspector General for I&NS. (WP, 10/17/79, p. A7; H.R. 3303, Congressional Record, October 16, 1979, p. H 9224)

NSA/FONDA/HAYDEN. Jane Fonda and Tom Hayden lost an FOIA appeal for NSA documents concerning them. (NYT, 10/31/79, p. A16) (See In the Courts)

NUCLEAR SABOTAGE/SURRY. Two former Vepco employees were convicted and given minimum sentences for damaging nuclear fuel rods at a power plant in Surry, Va. The pair said they committed the sabotage to draw attention to unsafe design and operating procedures at the plant. (WP, 10/11/79, p. A14; WP, 10/12/79, p. C1; WP, 10/16/79, p. B1; WP, 10/17/79, p. A1; WP, 10/18/79, p. C6)

PRIOR RESTRAINT/PROGRESSIVE. The Justice Dept. is considering whether government scientists acting as expert witnesses for the defense in *The Progressive* case leaked classified information to the authors of two articles on fission weapons published last month. Lawyers for *The Progressive* asked for a ruling that the Atomic Energy Act, on which the government's prior restraint case was based, is unconstitutional. (NYT, 10/2/79; WP, 10/2/79) Energy Dept. officials told a Senate subcommittee that neglect of normal procedures during a declassification program in 1971-76 resulted in the erroneous declassification of at least eight "highly sensitive" documents concerning thermonuclear weapons. (NYT, 10/3/79; WP, 10/3/79)

REFORM/FBI CHARTER. The ACLU, Sen. Howard Metzenbaum, Coretta King, and chairman of the U.S. Civil Rights Commission Arthur S. Flemming criticized the proposed FBI charter in hearings before the Senate Judiciary Committee for, among other things, failing to provide enforcement mechanisms such as civil liability for violations of charter provisions. (NYT, 10/11/79; WS, 10/25/79, p. A3; WP, 10/25/79, p. A24)

REFORM/PRIVACY/FBI CHARTER. The Carter Administration has proposed in the Fair Financial Information Practices Act that privacy protections for individuals' credit and insurance records be increased. The Act would require companies to inform customers what information will be collected about them and give customers the right to make corrections in their files and to challenge requests for information made in the course of civil suits. It would also require the government to obtain a court order to examine electronic funds transfers. The administration's proposed FBI charter would allow the FBI to obtain some of these same records under somewhat looser standards. (NYT, 10/3/79, p. A16; WP, 10/3/79, p. D8) A survey by the University of Illinois found that in 1978 large banks in the U.S. received requests from the government for information concerning an average of 483 customers. The banks said that all the requests had been granted. (NYT, 10/22/79, p. B5)

SCIENTOLOGISTS. Nine members of the Church of Scientology were found guilty of various roles in a conspiracy to spy on the government and obtain government documents. According to evidence presented in the case, Church members infiltrated and committed break-ins at the Justice Dept. and IRS, and on one occasion bugged a meeting at IRS. The nine

agreed to be found guilty without a public trial and plan to appeal the legality of FBI searches of Church offices which resulted in the government obtaining the evidence on which its case was based. (NYT, 10/9/79, p. A21; WP, 10/26/79, p. A1; NYT, 10/27/79, p. A8; WS, 10/28/79, p. A2) Government offices have tightened security procedures as a result of the infiltration by Church members. (WS, 10/28/79, p. A2)

TERRORISM/ITALY. Sixty one leftist workers were fired by Fiat in a disciplinary action which the company described as anti-terrorist. Fiat has not said that the workers were terrorists, but a company spokesman explained that "the line between terrorism and extremist political activism is very vague. If left unpunished, who's to say that these workers will not take the next step and use a gun?" (WS, 10/18/79, p. A2)

WHITE HOUSE/TAPING/EISENHOWER. Former Pres. Eisenhower tape recorded conversations in the Oval Office from 1953 to 1958, according to records at the Eisenhower Library. (WP, 10/21/79, p. A32)

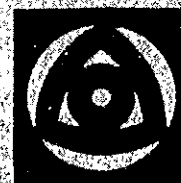
WIRETAPS/NIXON/KISSINGER. The Justice Dept. will ask the Supreme Court to overturn a ruling that former Pres. Nixon, Sec. State Kissinger, Atty. Gen. Mitchell, and White House aide H.R. Halderman could be liable for thousands of dollars in damages for the 1969 wiretapping of Morton Halperin and others. (NYT, 10/27/79, p. A17; WP, 10/27/79)

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In The Courts

FBI/SURVEILLANCE. *Institute for Policy Studies v. Mitchell*, Civ. Action No. 74-316 (D.D.C., settlement of Oct. 3, 1979). Lawsuit for illegal surveillance settled, with government agreeing, *inter alia*, to conduct only lawful investigations and placing limits on use of investigative techniques such as electronic, physical, and photographic surveillance; informants; mail covers; interviews; trash covers. First amendment information collected in the past surveillance may be used or disseminated pursuant to court orders; FOIA/PA requests; for security clearance investigations, and authorized foreign intelligence or law enforcement activities. Plaintiffs are also to be awarded costs.

FOIA/CIA/EXEMPTION (b)(3). *Military Audit Project v. Colby*, No. 75-2103 (D.D.C., decided October 4, 1979). In an FOIA suit seeking access to CIA documents concerning the Hughes Glomar Explorer, the court held that certain withheld material was exempt from disclosure under FOIA exemption (b)(3) because it was specifically exempted by the National Security Act of 1947. The court rejected plaintiffs' argument that the CIA "should reveal or confirm information that may already be in the public sphere," holding that "the fact that information still sought may already have been disclosed does not alter its classifiable character."

FOIA/CIA/SANCTIONS FOR WITHHOLDING DISCLOSURE. *Jaffe v. CIA*, No. 76-1394 (D.D.C., decided October 29, 1979). In an FOIA suit in which the Department of Justice has failed to comply with three separate court orders relating to plaintiffs' requests for their personal CIA and FBI files (see *FP*, Sept. 1979, p. 12), the court (paramagistrate) holds that a citation for contempt "seems inappropriate" where "the deficiency in the agency's performance may be attributable merely to an inherent tendency to resist disclosure." The court, however, recommends that an *in camera* inspection of the withheld documents be conducted to provide a sufficient basis for a responsible *de novo* ruling on the claims of exemption.

FOIA/DEPARTMENT OF STATE/BIOGRAPHIC REGISTER. *Simpson v. Department of State*, No. 79-0674 (D.D.C., decided June 15, 1979). In an FOIA suit seeking disclosure of the Department of State's Biographic Register, the court held that the Register meets the "similar files" requirement of exemption (b)(6) and that disclosure would constitute a "clearly unwarranted invasion of personal privacy" within the meaning of the exemption. Although the Register was an unclassified document available to the public from the nineteenth century until 1974, the court struck a balance against disclosure based on evidence that "Foreign Service employees of late have been particularly vulnerable to terrorist actions and other acts of violence."

FOIA/DEPARTMENT OF STATE/FOREIGN AFFAIRS MANUAL. *Zamnik v. Department of State*, No. 79-1072 (D.D.C., decided August 28, 1979). The court held that portions of a State Department Foreign Affairs Manual, which pertain to methods for identifying individuals who may pose a threat to government officials protected by the Secret Service, are exempt from disclosure under the FOIA as (b)(7)(E) investigative techniques and procedures because release of such information "might place potential assassins on notice of the Secret Service's investigative capacity and allow them to possibly avoid detection." The Manual portions were also held exempt under the (b)(2) exemption.

FOIA/FBI/ATTORNEY FEES. *Tzaneff v. FBI*, No. 79-0333 (D.D.C., decided September 28, 1979). The court held that the plaintiff in an FOIA suit was entitled to reasonable attorney fees and costs because the litigation "could not have been resolved amicably," the plaintiff "had a legitimate interest in the records sought," and the plaintiff's "financial circumstances are marginal." However, the court applied "a discount factor of 50 percent" to the fees and costs claimed "because of the very limited success achieved, some duplication of effort shown by time charges, the routine nature of the case, and the good faith with which the FBI processed the papers."

FOIA/FBI/CONFIDENTIAL SOURCES. *Halprin v. Webster*, No. 78-1149 (D.D.C., decided September 12, 1979). In a FOIA suit seeking access to any files the FBI has concerning the plaintiff, the court upheld the government's exemption (b)(7)(D) claim for withholding information which would reveal the identities of witnesses interviewed by the FBI under an "implied assurance of confidentiality" before the enactment of the FOIA. The court concluded that prior to the FOIA "the state of the law was such that investigatory files compiled for law enforcement purposes were deemed exempt from disclosure" and that it is therefore "reasonable to infer that these five witnesses provided information under an assurance of confidentiality and are thus confidential sources under (B)(7)(D)." The court also held that a search of FBI field offices "was not encompassed by the scope of plaintiff's original request."

FOIA/FBI/FIELD OFFICE FILES. *Peck v. FBI*, C79-486 (N.D. Ohio, decided August 31, 1979). In an FOIA suit in which the plaintiff sought copies of all FBI records pertaining to him, the court ruled that plaintiff's failure to specifically request a search of the local FBI field office did not relieve the FBI of the duty to make such a search where information in the Bureau's central files "suggested the likelihood" that further references to plaintiff exist in the field office files.

FOIA/NSA/EXEMPTIONS 1&3. *Hayden v. National Security Agency*, Nos. 78-1728 and 1729 (D.C. Cir., decided October 29, 1979). In an appeal of consolidated FOIA suits brought against

NSA by Tom Hayden and Jane Fonda, the court of appeals upheld the lower court decision which found the requested documents to be exempt from disclosure under FOIA exemptions (b)(1) and (b)(3). The court of appeals held that the trial court did not abuse its discretion when it excluded plaintiffs' counsel from its *in camera* review of NSA's classified affidavit explaining the reasons for non-disclosure, nor did the court act improperly in upholding NSA's national security classification decision without examining the documents in question. The court of appeals also construed Public Law 86-36 to be an even broader exempting statute for NSA under FOIA exemption 3 than the one usually invoked for the same purpose by the CIA.

TERMINATION OF TAIWAN TREATY/SEPARATION OF POWERS. *Goldwater v. Carter*, No. 78-2412 (D.D.C., decided October 17, 1979). In a suit filed against President Carter by 25 present and former members of Congress, the court enjoined the Secretary of State from implementing the President's notice of termination of the 1954 Mutual Defense Treaty Between the U.S. and the Republic of China until such notice receives the approval of two-thirds of the Senate or a majority of both houses of Congress to make it "effective under our Constitution." (See also *Point of View* on p. 16.)

In The Literature

CENTRAL INTELLIGENCE AGENCY

Agee, Philip. "How the Director of Central Intelligence Projected U.S. Intelligence Activities for 1976-1981," *Covert Action Information Bulletin*. Oct., 1979, pp. 13-26. Reprinted is what is purported to be a classified CIA document which projects the problems likely to be put before the entire intelligence community in the coming five years. The probable date of the document is 1975.

Agee, Philip. "The CIA's Blueprint for Nicaragua," *Covert Action Information Bulletin*. Oct., 1979, pp. 10-12. The author anticipates clandestine CIA intervention in Nicaragua similar to the destabilization programs carried out by the CIA in Chile, Angola, Portugal, and Jamaica.

Davis, Deborah. *Katharine the Great*. New York: Harcourt Brace Jovanovich, 1979. 280 pp., \$10.00. A biography of Washington Post publisher Katharine Graham which focuses on the Post's coverage of Watergate. The author alleges, among other things, that James Angleton's deputy for counterintelligence at the CIA, Richard Ober, was Deep Throat and that numerous members of the media were "owned" by the CIA.

Ellsworth, Robert F. and Kenneth L. Adelman. "Foolish Intelligence," *Foreign Policy*, Fall, 1979, pp. 147-159. The authors predict that the CIA's errors in estimating Soviet military strength will give rise to another wave of intelligence agency criticism. The failure is laid to the emphasis of the CIA's Operations Directorate over the analytical branch of the CIA.

Goldberg, Jeff. "Who Killed John Paisley?" *Inquiry Magazine*, Oct. 15, 1979, pp. 11-16. The CIA calls his death a suicide, but the evidence suggests that the former intelligence analyst was another casualty in the war over the Russian "mole" inside the CIA.

Roosevelt, Kermit. *Counter coup: The Struggle for the Control of Iran*. New York: McGraw Hill, 1979. 217 pp., \$12.95. A former CIA operative's account of his supervision of the 1953 coup in Iran which toppled the Prime Minister Mossadeq and returned Shah Mohammed Reza Pahlavi to the Peacock throne. The book has recently been recalled from book stores by the publisher at the request of British Petroleum, which is described in Roosevelt's book as having aided in organizing the coup.

Stockwell, John. "A C.I.A. Trip—from Belief, to Doubt, to Despair," *The Center Magazine* (Center for the Study of Democratic Institutions), Sept./Oct., 1979, pp. 18-29. A former CIA case officer in Africa describes the growth of his disillusionment with the CIA's covert operations, leading to his resignation from the CIA.

DRAFT REVIVAL

Gross, Bertram M. "The Drive to Revive the Draft," *The Nation Magazine*, Oct. 20, 1979, cover and pp. 360-365. National security would be better strengthened by other policies than the pending proposals for registration and draft, the build-up of the Selective Service System's computers, and of the trial balloons concerning a "national youth service."

FEDERAL BUREAU OF INVESTIGATION

McClory, Rep. Robert (R-Ill.). "FBI Counterterrorism," *Congressional Record*, Oct. 16, 1979, pp. H9219-9221. The congressman reprints a letter from FBI Director William Webster which responds to four questions regarding the FBI's FY 1980 authorizations for counterterrorism. Included is a detailed report on terrorism in the U.S.

Preyer, Rep. Richardson (D-NC). "Duplication and Management Error in FBI Computer Systems," *Congressional Record*, Nov. 2, 1979, pp. H10241-2. Analyzed is a General Accounting Office report on two criminal justice record systems maintained by the FBI which concluded that there is substantial duplication in the two systems, and that the FBI failed to follow federal procurement policies in leasing basic computer systems.

HUMAN RIGHTS

Christiano, David, ed. *Human Rights Organizations and Periodicals Directory, 1979-80*. Berkeley, Cal.: Meiklejohn Civil Liberties Institute, 1979. 189 pp., \$10.00. A resource for information on groups and publications—nationwide—concerned with law, education, health, labor, women, and minority rights.

Goldstein, Robert Justin. "An American Gulag? Summary Arrest and Emergency Detention of Political Dissidents in the United States," *Columbia Human Rights Law Review*, Vol. 10, No. 2 (1978), pp. 541-573. Historically, the use of and planning for summary arrest and emergency detention has occurred during times of social and political unrest; the threat posed by such activities is likely to increase with the development of the national security state.

INTELLIGENCE COMMUNITY

Kahn, David. "Cryptology Goes Public," *Foreign Affairs*, Fall 1979, pp. 141-159. The current debate on cryptology, which includes both signal security and signal intelligence, focuses on methods of security and possible government regulation of public R & D in a field that was until recently a highly secret government monopoly.

U.S. House of Representatives, Permanent Select Committee on Intelligence. *Security Clearance Procedures in the Intelligence Agencies*. Committee Print, Sept., 1979. 34 pp. Reviews the authorities and procedures employed for background security investigations by the CIA, State Dept., DOD, NSA, and DIA. Finding a lack of consistency among the agencies, the report recommends the development of common investigative standards and establishing a single agency to handle such investigations.

MISCELLANEOUS

Kissinger, Henry. *White House Years*. Boston: Little, Brown, 1979. 1521 pp., \$22.50. Kissinger's account of his four years as Nixon's National Security Adviser.

NUCLEAR SECURITY

Shattuck, John H.F. "Nuclear Power and The Constitution," *The Nation Magazine*, Nov. 3, 1979, pp. 430-433. Three Mile Island, the *Progressive* and Silkwood cases, and other recent incidents have shown that secrecy, official deception, violations of due process, and political spying are major byproducts of nuclear power development.

PRIVACY

Emerson, Thomas I. "The Right of Privacy and Freedom of the Press," *Harvard Civil Rights-Civil Liberties Review*, Summer, 1979 (Vol. 14,

No. 2), pp. 329-360. While freedom of the press has a long and well-established history in American law, the theoretical foundations of the right of privacy are unformed and the subject of much current controversy.

REFORMS

Boland, Rep. Edward P. (D-Mass.) "Introduction of the Intelligence Identities Protection Act," *Congressional Record*, Oct. 17, 1979, pp. H 9324-9326. The remarks accompanying the introduction of H.R. 5615, which would make the unauthorized disclosure of intelligence identities a criminal offense, even where that information is unclassified. A section-by-section analysis of the bill is included.

Justice Department Watch, Fall 1979. This issue discusses what can be expected from Attorney General Civiletti on intelligence reform and other issues, and contains an analysis of the proposed legislative charter for the FBI.

SECRECY

Continuing Problems in DOD's Classification of National Security Information. U.S. General Accounting Office (LCD-80-16), Oct. 26, 1979. 35 pp. DOD's failure to comply with the 1978 Executive Order on classification resulted in the improper use of classification authority, improper classification of information, and deficiencies in the marking of classified information. Recommended are improved training for DOD classifiers and inspection of classification procedures.

Rosen, Bob. "Nervous Leaks at the Pentagon," *Mother Jones*, November 1979, pp. 20-21. The Pentagon maintains the Security Police in an not-so-successful attempt to safeguard classified information among the 5,000 DOD employees who classify over 3,214,000 pieces of information per year and the 700,000 DOD employees who have access to that information.

"The H-Bomb Secret," *Progressive Magazine*, Nov., 1979. Most of the issue is devoted to Howard Morland's long-suppressed article, "The H-Bomb Secret," and to related material dealing with the question of nuclear secrecy and other aspects of the magazine's First Amendment case.

SURVEILLANCE

U.S. Senate, Select Committee on Intelligence. *Implementation of the Foreign Intelligence Surveillance Act of 1978*. Senate Report 96-379, Oct. 25, 1979. 8 pp., and U.S. House of Representatives, Permanent Select Committee on Intelligence. *Report Pursuant to Section 108(b) of the Foreign Electronic Surveillance Act*. House Report 96-558, Oct. 26, 1979. 11 pp. Both reports were filed in compliance with the Congressional oversight provisions of the Act, and both recommend that the Act continue in effect without amendment.

In The Literature

(continued)

THE RIGHT

Blum, Howard and Paul L. Montgomery. "U.S. Labor Party: Cult Surrounded by Controversy," *New York Times*. Oct. 7, 1979, p. A1, and Blum, Howard and Paul L. Montgomery. "One Man Leads U.S. Labor Party on Its Erratic Path," *New York Times*. Oct. 8, 1979, p. B1. A description of the right-wing U.S. Labor Party and its leadership. Among its activities is an intelligence network that provides information on left-wing groups to the FBI and local police.

TORT CLAIMS

Bell, Griffin B. "Proposed Amendments to the Federal Tort Claims Act," *Harvard Journal on Legislation*. Vol. 16, No. 1 (1979), pp. 1-17. The Dept. of Justice has proposed a series of amendments to the Act that would extend the liability of the U.S. to include all constitutional, as well as common law, torts committed by federal employees, would grant personal immunity to federal employees, and would provide for minimum damage awards to citizens whose rights have been violated by federal officers. The former Attorney General argues that litigation under current law neither serves the public interest nor provides adequate remedies for citizens whose constitutional rights have been violated.

New Documents

Now available, From Official Files: Abstracts of National Security and Civil Liberties Documents Available From the Center for National Security Studies Library. (See CNSS order blank on page 15).

I-64. FBI DOMESTIC TERRORIST DIGEST; May, 1970-June, 1976; 120 pages. The file contains 47 unclassified issues of an FBI bulletin published from September 1970 until July 1976 which reported on the activities of extremist groups under investigation by the FBI. Among the groups reported on were the Black Panther Party, the Ku Klux Klan, the Nation of Islam, the Weather Underground, the American Indian Movement, and the Symbionese Liberation Army. The Digest contained both information developed by the FBI and information reported to the FBI by local police. Also included in the file is a list of federal agencies to which the Digest was disseminated. (\$12.00/copy).

A-21. CONTROLLED OFFENSIVE BEHAVIOR—USSR; July 1972; 188 pages. A report prepared by the DIA concerning research in the Soviet Union on methods of influencing and controlling human behavior. The report examines research using drugs, hypnosis, sensory deprivation, light, sound and odor, electromagnetic effects, and propaganda and mass media techniques, as well as Soviet parapsychology research. It includes a list of Soviet institutions and individuals engaged in behavioral research. (\$18.80/copy).

A-22. SOVIET AND CZECHOSLOVAKIAN PARAPSYCHOLOGY RESEARCH; September 1975; 78 pages. A report prepared by the DIA concerning a range of parapsychological phenomena claimed to be under investigation in the Soviet Union. (\$7.80/copy).

New Documents

These documents are available from the Library of the Center for National Security Studies. Prepaid orders only; minimum order, \$0.50. Include CNSS File No. and document title with order. For a complete list of available documents, order the Abstracts from FP, p. 15. (Most documents contain deletions.)

Point of View: International Treaties (continued from page 16)

a unilateral act of the Congress knows that the Treaty is not necessary to accomplish its purpose. The PRC can have no doubt that the United States would intervene if force were used to change the status quo in the Taiwan Strait. Congress has joined the President in asserting a continued American strategic interest in the area and in committing American prestige.

Herein lies one clue to resolving the question of whether or not the President has the power to act alone in the areas of national defense and foreign relations. The rhetoric of the post-war period notwithstanding, the interest of the framers of the Constitution was to distribute the balance of power to insure that the nation would not be drawn into conflicts or alliances without due deliberation. Thus treaties required ratification by the Senate, and only the Congress can declare war and appropriate funds for the military.

On the other hand those who drafted the Constitution recognized that in some circumstances the President had to be free to act.

One of the most important reasons for rejecting proposals for a multi-person executive was the need for a leader who could act decisively and with dispatch in an urgent crisis. The President was, therefore, made the commander-in-chief and given the power to receive foreign envoys.

This is the principle—the degree of urgency—which should be invoked in deciding questions of presidential power not clearly decided by the Constitution. The basic presumption should be that power is to be shared between the Congress and the President except where the President can demonstrate in principle or in the specific case that he urgently needs to have the authority to act alone. Neither exception can or has been made here. In general, the termination or a treaty is not an act that needs to be taken quickly or in secret. There is generally time for public debate and for congressional concurrence.

Certainly that was true in this case. Indeed, the debate that might have preceded the decision to end the Treaty came afterwards, when Congress had to approve the

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But with the Taiwan Treaty there was no such need. Rather the Executive sought to reassert some of the presidential power lost as a result of Watergate. Liberals no less than conservatives should think twice before once again starting down that path. ■



First Principles is published by the Center for National Security Studies, jointly sponsored by the American Civil Liberties Union and the Fund for Peace, © 1979 by the Center For National Security Studies, 122 Maryland Ave., NE, Washington, D.C., 20002 (202) 544-5380. Christine M. Marwick, Editor-in-Chief.

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"Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger, real or pretended, from abroad."
JAMES MADISON TO THOMAS JEFFERSON, MAY 13, 1798

Presidential Power and International Treaties

By Morton H. Halperin

When a federal district court judge held recently that the President could not terminate a treaty without the concurrence of the Congress, the reactions were out of the 1950s.

The suit was brought by a group of conservative Republicans, evoking memories of the Bricker amendment and the struggle over the President's ability to negotiate treaties. Most of the liberal community seemed to view the suit as a nuisance. Clearly it was necessary to renounce the treaty with Taiwan in order to establish relations with the People's Republic of China. The President needed the freedom to act to carry out this sensible policy.

But the legal issue itself is a murky one—the Constitution says nothing about the renunciation of treaties and the practice is mixed, although the district court held that in most major cases the consent of the Congress had been secured by the President before he acted. What is more important is the scope of presidential power that lies behind the position of the President and his supporters.

The Justice Department in its briefs rolled out the usual litany of presidential power cases from *Marbury v. Madison* to *Waterman Steamship* to *Pink* and *Belmont*.

Point of View

The list is standard if somewhat aging. It is important to understand that these are the same cases that were used to defend warrantless wiretaps, domestic intelligence operations, and the bombing of Cambodia. They are, in short, the cases of the Imperial Presidency and of the national security state. They are invoked by this Justice Department and this President for the proposition that when the President decides that he needs to act to defend the national security he needs only so much consent of the Congress as is explicitly mandated by the Constitution. The Constitution, saying nothing about the renunciation of treaties, is said to leave the President free to act.

The Justice Department has appealed the case to the Court of Appeals for the D.C. Circuit, which is hearing argument *en banc* as this is being written. Its opinion is likely to be rendered before this piece is published.

The issues raised by the case, however, go far beyond the question of how to end the treaty with Taiwan. A majority of both houses, if not two thirds, of the Senate is ready to renounce the treaty (or rather to authorize the President to exercise the right to withdraw with the one year's notice specified in the treaty). And the Congress having reissued the security guarantee to Taiwan in

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