

## CHAPTER 5

Stopping an Illegal  
CIA Mail-Opening Campaign

*A shot in the dark in preparing the FAS newsletter hits paydirt by frightening the Postal Service into halting its cooperation with the CIA in illegally opening mail not only from foreigners to Americans but also from Americans to foreigners. Meanwhile, the Soviet Union is eavesdropping on American society without much sign of Justice Department interest in stopping it. A topsy-turvy world.*

Entrepreneurial activists are probably born, not made, and one of their distinguishing characteristics might be an inability to fit in with establishments—with respect to which they become dissidents—and an impatient restlessness with the requirements of traditional occupations such as teaching or research. For ten years after receiving my Ph.D., I anguished over my inability to fit in at such institutions as the Stanford Research Institute, the Hudson Institute, the Harvard Center for International Affairs, Pomona College, Stanford University (in economics), and the Council on Foreign Relations. How happy I am, however, in retrospect, that these deficiencies of ability or motivation were shunting me into an organization that was far more “me.” Activists need a home.

After becoming director (later termed president) of FAS in June of 1970, I spent much time rejuvenating the nearly defunct organization. A significant part of the FAS’s meager budget turned out to come from roughly seven thousand dollars in annual dividends from an Ohio insurance company—dividends that were realized from the FAS group life insurance program when our

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members defied the actuarial tables and lived longer than expected.

I was still so spooked by reading about *Encounter* that I flew to Ohio to make sure that these dividends were deserved and not some under-the-table contribution from the intelligence community.<sup>52</sup> (I was never against the CIA, especially not against the “white side” of the CIA that did estimates as opposed to covert operations. But I certainly wanted to make sure we were not embarrassed by an improper association with the agency.)

In 1968, as chairman of the FAS nominating committee, I had induced Herbert F. York, chancellor of the University of California at San Diego and once a high-ranking Pentagon official, to run for FAS vice chairman (and chairman-elect), so he became chairman in 1970 just when I needed distinguished and brilliant leadership. He reluctantly agreed to my paying myself at a full-time rate, even though FAS lacked the money to do so and he feared breaking the FAS bank. I managed to scrape through by paying myself back-pay later.

I began by redesigning the monthly newsletter with more original material in an attempt to make it more attractive to members than it had been before.<sup>53</sup> And I persuaded a distinguished former deputy director of the CIA (and assistant director of ACDA), Herbert Scoville Jr., to chair a Strategic Weapons Committee.<sup>54</sup> The committee promptly denounced a report of the conservative American Security Council that claimed that the United States was falling behind the Soviets; we responded that the United States was “ahead, not behind, the Soviet Union in any important measure of strategic force effectiveness.”<sup>55</sup> Our report got national exposure, most notably in an article by William Beecher in *The New York Times*, for its allegation of “scare tactics.” So at least something was happening.

Meanwhile, I was recruiting FAS sponsors to our masthead: John Kenneth Galbraith; Nobel Prize winners Hans Bethe, Owen Chamberlain, Donald A. Glaser, Harlow Shapley, and Harold C. Urey; and presidential science advisers Jerome B. Wiesner and

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George B. Kistiakowsky. Organizationally, we were looking much better.

The February 1971 newsletter, the fourth one I prepared, was on "Privacy of Communications in American Life: Eavesdropping and Mail Covers." This newsletter was instrumental in persuading the CIA to stop a twenty-year-old—and illegal—practice of opening

THE VOICE OF SCIENCE ON CAPITOL HILL

## F. A. S. NEWSLETTER

FEDERATION OF AMERICAN SCIENTISTS—Founded 1946—  
A national organization of natural and social scientists and  
engineers concerned with problems of science and society.

Vol. 24, No. 2  
February, 1971

Herbert F. York, Chairman  
Marvin L. Goldberger, Vice Chairman  
Jeremy J. Stone, Director

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### PRIVACY OF COMMUNICATIONS IN AMERICAN LIFE: EAVESDROPPING AND MAIL COVERS

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

—Fourth Amendment, U.S. Constitution

COURT-ORDER EAVESDROPPING

Reports of court-orders show that state and local law enforcement agents are usually using wiretaps, at great expense, in criminal cases they could normally solve in other ways. Thus in the most common cases, lives of gambling and drugs, hundreds of incriminating conversations are overheard and much business is going on. These cases could be solved without bugging by undercover agents. In cases of extortion, the party being victimized can permit eavesdropping, or make recordings himself. Is wire-tapping often really necessary? Since a lot of police work can be done for the \$1,000 the median tap costs, tapping may not even be cost-effective.

Presumably, there are cases which can be solved in no other way. But the advantages of permitting these solutions must be balanced against the political costs. Once we permit state and local agents to do any wiretapping legally, they must be permitted the right to buy the equipment. And once they have the equipment, it is evident that they cannot be trusted to monitor their own compliance with legal safeguards. They are cops, not attorneys, and catching criminals is their professional interest. From their point of view, unauthorized wiretapping is a "crime without victims." They engage in it in the higher interest of protecting society. No police bureaucracy is going to prosecute its officers for being overly zealous in tapping phones. Even if the public could catch these officers in the act systematically, the FBI is not going to pursue such cases, and the Justice Department attorneys are not going to prosecute.

In addition, permitting, as the law does, "any officer of a State or political subdivision thereof, who is empowered by law to conduct investigations..." to buy wiretapping equipment keeps Spy Shops in business. These shops sell bugging equipment under the counter, to private detectives and anyone else, in violation of law. We know that other crimes without victims, such as gambling and prostitution, are

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### FAS NO-ABM RESOLUTION HITS SENSITIVE NERVE

On December 27, at its national council meeting, FAS called for an initial separate SALT agreement on ABM— one which would preclude missile defenses or limit them drastically. A related press release arguing for agreements of this kind was widely distributed. On January 9, the New York Times and Washington Post both carried stories revealing that the Soviet Union had earlier offered to discuss just such a separate ABM agreement in the secret SALT talks, if the United States would agree in principle to the idea.

The notion of a separate ABM agreement is a hard one for the Administration to avoid. An ABM limitation has been a presupposition of all other progress in the SALT talks and, unlike agreements on offensive weapons, could be resolved by itself. Many U.S. arms controllers have called for this kind of agreement for years. Indeed, it was the Soviet Union that earlier insisted on the principle that offensive weapons be discussed also.

Furthermore, the talks are now deadlocked on issues

involving offensive weapons, such as whether those European-based U.S. aircraft capable of striking the Soviet Union should be covered in any agreement on strategic weapons. Even if the contemplated agreement on numbers of offensive weapons could be reached, the agreement might be no more than a "stalemate" permitting all-important qualitative improvements — as FAS pointed out in an earlier statement.

An initial ABM agreement would undermine motivation for offensive weapons by precluding the defenses that neutralize them. It would save large resources and the Governmental debating time absorbed by the ABM each year. The agreement would be far more significant strategically than the Partial Test Ban Treaty. The information that the Soviet Union is prepared to discuss an ABM agreement is bound to influence the Senate debate this year. Copies of the Federation statement calling for an ABM agreement are available, in limited quantities, at the national office.

(See also page 5)

See page 4 for discussion of mail covers.

*The front page of the FAS newsletter of February 1971, the preparation of which led to the termination of the CIA's secret mail-opening program, HTLINGUAL*

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foreign mail. I knew nothing about my letter's impact at the time. But it typifies political chaos theory at work in Washington: An FAS butterfly flapped its wings, and a storm broke out inside the government.

It was not until four years later, in June of 1975, that the Rockefeller Commission released its report on the CIA's domestic activities and referred vaguely to an "association of scientists" that had started a chain of events. An alert *Science* magazine reporter called us and quickly ascertained that we were the association in question.

All of this began on January 13, 1971, when, as part of preparation of the newsletter, I wrote to the chief postal inspector, W. J. Cotter, asking, among other things, whether the Postal Service was permitting any other agency to open the mails improperly. It was essentially a shot in the dark, based on no more than vague suspicions.<sup>56</sup>

His February 10 response to me denied any wrongdoing:

The U.S. Postal Service has traditionally considered the seal on first-class mail sacred. This Department has no knowledge of any efforts by State or Federal agencies to induce postal officials to violate mail cover regulations or to allow any class of mail to leave the custody of official postal channels for the purpose of permitting other agencies to obtain the information contained therein.

But guess what? Cotter knew all about it. In fact, he had been given his job as chief postal inspector expressly to ensure that the CIA would not be deterred from borrowing foreign mail from the Postal Service to look it over before delivery. Cotter was well qualified for the assignment—he had been working in the very CIA field office that ran the mail intercept. The program was called HTLINGUAL.

Nevertheless, my letter spurred an alarmed Cotter to call the CIA's director, Richard Helms, demanding that the program be stopped and observing that he now worked not for the CIA but for the Postal Service.<sup>57</sup> Helms asked for a month's respite, during which time he persuaded Attorney General John Mitchell to call

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the postmaster general, Winston Blount, and to instruct him to tell his chief postal inspector to lay off.

On May 19, 1971, in the deepest secrecy, the high command of the CIA met for forty-five minutes to discuss what to do about the threat I posed to their project. We now know exactly what they concluded: Let's continue unless we decide that Stone really knows something and we are about to get caught.

We know this thanks to another weird chain of circumstances, seven years later, worth recounting as an example of Washington at work.

It began in 1978 when I asked the CIA (and the FBI), under the Freedom of Information Act (FOIA), for information gathered about me. Later, I complained to the CIA that given my five trips to the Soviet Union, they must have more than I had received.

On October 22, 1975, out of the blue, a CIA FOIA liaison officer to whom I had complained called and said the CIA had, indeed, found something further mentioning me and was, in fact, sending it over by messenger! The agency's suddenly solicitous attitude and special delivery raised my eyebrows.

When I saw the memo, which recounts a decision by government officials to persist in activities they knew to be illegal, I immediately walked over to the Senate Select Committee to Study Governmental Operations to show it to the committee's director, my friend from the ABM campaign William G. Miller. He said, "Oh yes, we are having a hearing today for Cotter to explain his role in this. And we have this memo already." Indeed they were responsible for having it declassified.

The CIA had assumed that the chairman of the committee, Senator Frank Church of Idaho, would release the memo that very day at the hearings and decided that they had better preemptively fulfill my FOIA request. At the last minute, however, Church decided that it would violate the privacy of a person mentioned in the memo (Herbert Scoville), and he decided not to release it after all. By that time, however, the CIA messenger had already brought it to me.

The memo detailed the exchanges in a meeting of the highest

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CIA officials. Besides Helms (described as the DCI or Director of Central Intelligence), there was the DDP (director of plans, or covert activities); the C/CI and the DC/CI (the chief and the deputy chief of counterintelligence); the D/S (the director of security), and the C/CI/Project (the head of the mail-opening project).

Written in urbane fashion, the memo said that the DCI opened the meeting with a “reference to an inquiry as to possible mail tampering by Government agencies, addressed to the Chief Postal Inspector, Mr. Cotter, by Dr. Jeremy J. Stone on behalf of the Federation of American Scientists.” The officials noted that Scoville “had been briefed” on the project but “had not been a consumer of HTLINGUAL material for many years.” The DCI was not, the memo said, “overconcerned about Scoville.”

The operation, begun in 1953, had been revealed to the FBI in 1958. The DDP was “gravely concerned” about bad publicity and “opined that the operation should be done by the FBI because they could better withstand such publicity, inasmuch as it is a type of domestic surveillance.” But the counterintelligence staff wanted to continue the practice and considered it “*foreign* surveillance.”

(In fact, I know from personal experience that this policy included surveillance of Americans at home because a later FOIA request of mine, in 1978, produced several chatty letters that I had sent to people in Russia: Nina Shakova, the poet Evgeny Yevtushenko, the Cambodia expert Dmitry Muravyev, and the *Pravda* editor Yuri Zhukov [letters that, in fact, are now helping me date events for this book]. So CIA was opening *outgoing* mail of Americans and not just *incoming* mail of Russians.)

Helms grilled his staff about who had knowledge of the practice outside the CIA (“only the FBI”) and at the Postal Service (“the little grey man” who got a “\$50 monthly bonus for this duty”). The memo continued:

The previous Chief Postal Inspector, Mr. Montague, had never wanted to know the extent of examination actually done, and was thus

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able to deny on oath before a congressional committee that there was any tampering. Mr. Cotter would be unable to make such denial under oath.<sup>58</sup>

The memo concluded with Helms asking the chief of the project to “monitor the operation most discreetly, and bring any problem or difficulty to him.”

So the project continued for two more years. But later, in 1973, Attorney General John Mitchell was in jail for his role in the Watergate scandal, and Postmaster General Blount had retired. Cotter seized the occasion to complain again. Helms had been fired by Nixon in December 1972, and the issue was turned over to the new CIA director, James Schlesinger, and his deputy director for operations (i.e., covert operations), William Colby. They finally stopped the program.

It later turned out that at least one CIA staffer, Dr. Melvin Crain, had tried to stop the project from inside but reported that “officials of the CIA told me they knew it was illegal and unconstitutional but it was needed to achieve our mission.” Crain revealed that highly sophisticated equipment based in post offices in New Orleans and in New York had permitted the CIA to “open, copy, reseal letters and send them on their way without any telltale signs of tampering,” and so quickly that “the normal flow of the mail was not disturbed.”<sup>59</sup>

## Soviet Eavesdropping

Not only was the government engaging in (unauthorized) espionage against its own citizens, but it was also failing to resist Soviet espionage. The Rockefeller Commission on CIA Activities Within the United States had revealed that the Communist countries were able to eavesdrop on private U.S. telephone conversations with an “extraordinary degree of technology and sophistication.”<sup>60</sup>

I immediately wrote to the Justice Department, which contains the

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FBI and is responsible for preventing espionage, asking why electronic countermeasures were not being used to prevent this spying on Americans. After two months of delay, the department responded that it could not make a “final determination as to any specific course of action” and that the government’s “course of action must be determined on a national policy level.” Put another way, the Justice Department would prosecute you or me for listening in on telephones—indeed, the government itself could not do so without judicial warrants—but it was not about to lift a finger to stop the Russians from doing so. Aghast, we charged that the National Security Agency (NSA), which had interests in listening in on the Soviet Union, was not eager to start a “jamming war” and preferred a tacit agreement not to do so. The government, of course, was protected by secretly scrambled phones. Only the American public was being left out to dry.<sup>61</sup>

Another anomaly arose in November 1975, when I finally spoke to Cotter and asked him whether the letter he had sent me was “deliberately misleading” or “knowingly false.” He said, “Of course, it was knowingly false since I was witting.” I well knew that a private citizen could go to jail for up to five years for lying to a federal official, even if not under oath.<sup>62</sup> Such a law had been used against someone who denied to a police officer that he was a Communist. The Cotter letter raised the reverse question: Could a federal official lie to a private citizen with impunity? According to the law, the answer was yes. We persuaded Senator Kennedy to offer a proposal that would make it a crime for federal officials to make knowingly false statements. But it was not passed.<sup>63</sup>

In sum, mail opening, wire tapping, and lying all offered clear evidence for the insight James Madison conveyed to Thomas Jefferson on May 13, 1798: “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.”

Bureaucracies seem often to engage in a kind of preemptive surrender of difficult terrain, especially when pressed from the outside



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with the danger of exposure. Under circumstances of protective secrecy, however, few will ever know what motivated the shift. By its nature, therefore, public interest activists normally get little credit for their success when wrestling with modern bureaucratic systems. For example, we have no way of knowing whether our letters to the Justice Department, our press release, and our interviews to the press ever had any impact on Soviet eavesdropping. But after the mail-opening affair I never doubted that the effects on policy matters of my activities might be far in excess of any echoes of these effects I might receive.