

THE TWO OATHS OF RICHARD HELMS

On February 7, 1973, as a follow-up to his confirmation hearings for the Ambassadorship to Iran, Richard Helms, former Director of the CIA, was called to testify before an executive session of the Senate Foreign Relations Committee. During this testimony, Helms was asked by Senator Stuart Symington of Missouri, "Did you try in the Central Intelligence Agency to overthrow the Government of Chile?" Helms replied, "No, sir." Symington then asked, "Did you have any money passed to the opponents of Allende?" (Marxist president of Chile, 1970-1973), and Helms again replied, "No, sir." Symington continued, "So the stories you were involved in that war are wrong?" Helms answered, "Yes, sir. I said to Senator Fulbright many months ago that if the Agency had really gotten behind the other candidates and spent a lot of money and so forth the election might have come out differently."¹ As a result of this testimony, Helms was convicted (on October 31, 1977) on one of two counts of a criminal information for failing to testify fully and accurately before the United States Congress.

On March 6, 1973, Helms was called back to testify before the same Committee. This testimony, also given in executive session, remains classified. Yet it is known that Senator Church asked Mr. Helms, "following the [1970 Chilean popular presidential] election and up to the time that the Congress of Chile cast its vote installing Allende as the new President, did the CIA attempt in any way to influence that vote?" Helms asked, "Which vote?" Church explained, "the vote of the Congress," and Helms replied, "No, sir."² An informed source who examined the entire text of the March 6 hearing claims that Helms attempted to mislead the committee concerning the CIA's role in Chile. As a result of this testimony, Helms was convicted on the second of two counts of a criminal information, again for failing to testify fully and accurately.

The CIA in Chile

The facts concerning the CIA's involvement in Chile appear to contradict Helms' testimony. According to the Senate Select Committee to Study Governmental Operations with respect to Intelligence Activities, "The CIA spent between \$800,000 and \$1,000,000 to affect the outcome of the 1970 [Chilean] presidential election."³ This election, held on September 4, 1970, pitted Popular Unity candidate Allende against two more conservative candidates, former president Jorge Alessandri of the National Party and Christian Democrat Radomiro Tomic. The CIA and its superiors in the executive branch considered Allende's election to be against the best interests of the United States.

CIA money went largely towards an anti-Allende propaganda, though no CIA money was passed directly to either of the two conservative candidates.⁴ Helms made this point in his January 22, 1975 attempt to explain his response to Symington. In the 1964 election, the CIA had given money to the candidates opposing Allende. Helms argues that it was his intention to assure Symington that the same action had not been taken in 1970. Yet Symington's question concerning the opponents of Allende could easily have been construed as referring to opposition groups, especially opposition newspapers, Helms' decision

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to construe it so narrowly suggests that he wished to withhold information from the committee.

Despite these CIA efforts, Allende received a plurality in the popular election, gaining 36.3 percent of the vote, followed closely by Alessandri who received 35.5 percent. The Chilean constitution requires the Chilean Congress to choose between the top two presidential candidates in the event that no candidate receives a majority. During the period, between the popular election on September 4 and the Congressional election on October 24, the Senate Select Committee reports that "the CIA, at the direction of the 40 Committee [the executive branch's supervisory and policy making body for intelligence, of which Helms was a member] mobilized an interlocking political action, economic, and propaganda campaign" to prevent Allende from taking office.⁵ With regard to propaganda alone, "726 articles, broadcasts, editorials, and similar items directly resulted from Agency activity."⁶

Under normal conditions, a failure to tell the truth before a duly constituted Senate committee would be a clear case of perjury. Legally, perjury is defined as the willful statement of a material matter which the witness does not believe to be true. Congress' ability to legislate wisely depends upon its ability to obtain complete and accurate information and attempts to mislead Congressmen undermine the principle of democracy. Nevertheless, Helms' decision to withhold information regarding CIA activity in Chile is defended not only by Helms himself but also by the vast majority of CIA members, Senator Eugene McCarthy, and many members of the national press. Helms agreed with his lawyer's assessment of the conviction as "a badge of honor." CIA sentiment is that charges against Helms should never have been pressed. Senator McCarthy argues that "Helms properly denied that his agency was participating in efforts to overthrow the Allende government. he could not have taken the Fifth, and he could not have refused to answer without prejudicing the secrecy of the action." And even the Washington Post concludes its editorial on the case by stating "that [Helms] chose in his dilemma to remain faithful to his commitment to the CIA at the expense of his obligation to a committee of the Congress does not diminish our estimate of him as an honorable man."

The Helms Defense

An important argument advanced in support of Helms' decision to testify as he did is based on his CIA oath. All CIA members are required to take an oath of secrecy upon entering the agency (see Appendix). Helms explained to the court. "I found myself in a conflict on this occasion [the occasion of his testimony]. I had sworn my oath to preserve certain secrets from unauthorized disclosure. . . . I didn't want to lie. I didn't want to mislead the committee. I was simply trying to find my way through a very difficult situation in which I found myself." Nevertheless, Helms was also under oath in his testimony to the committee. Furthermore, the CIA secrecy oath forbids only unauthorized disclosure. It permits disclosure of secrets in the performance of official duties and in accord with the laws of the United States. One of these laws requires witnesses to tell the truth before Congressional committees. Another authorizes the Senate Foreign Relations Committee to ask anything it deems advisable of ambassadorial nominees. Thus, it may be argued that on a strictly legal basis Helms' oath to the Committee should have taken precedence over his oath to the CIA. From Helms' perspective, however, the question of conflicting oaths is more complex than strictly legal interpretation would suggest.

As a former Director of the CIA, Helms undoubtedly felt a strong allegiance to the Agency and to his men in the field. At the time of the confirmation hearings, the CIA was still conducting operations in Chile and any leak coming out of the committee as a result of Helms' testimony could have compromised these operations. Less likely but still

possible is that such a leak could have endangered the lives of particular agents. Finally, the belief within the CIA is that secrecy is to be maintained at all costs. For Helms to have revealed "company secrets" after leaving the Agency would have been viewed with disapproval by his former colleagues. However, it is impossible to separate these ethical motivations on the side of secrecy from Helms' desire to secure his ambassadorship (on February 7) and to hide his participation in what proved to be embarrassing actions for him, the CIA and the government.

Helms and his supporters also questioned the jurisdiction of the Senate Foreign Relations Committee. This committee is not responsible for the oversight of covert intelligence operations. That task was carried out throughout most of Helms' CIA career by a joint subcommittee of the Senate Armed Services Committee and the Senate Appropriations Committee chaired by Senator Russell. Helms explained that for 20 years there had been no problems between the CIA and the Senate, and that during this time he knew of no Director who told anything less than the full truth to this joint subcommittee. As hostility toward covert operations grew, Senators not in a direct oversight position began to use other means, such as the Foreign Relations Committee, to obtain information about covert intelligence. Thus, the jurisdictional argument is that while the CIA oath would have permitted Helms to reveal secrets to a committee responsible for direct oversight, the oath required him to remain silent when not performing this official function of briefing the Congress. Prior to the confirmation hearings, Helms had testified sixteen times before the Foreign Relations Committee about what has been described as "equally sensitive material." Never before had he raised the issue of jurisdiction, nor, so far as is known, had he failed to tell the truth. Nevertheless, the question of jurisdiction did make Helms' position more difficult.

Helms himself said later that "I made one mistake in the [February 7] testimony. Maybe it is a serious mistake, but I should have probably asked either to go off the record or to have asked to discuss this matter in some other forum, because, you will recall, at that time Allende's government was in power in Chile, and we did not need any more diplomatic incidents."⁸ He could have refused to answer the question on the grounds of executive privilege, falling back on his oath and leaving the issue to be decided by the courts. The problem here is that a refusal to answer might have been interpreted as an affirmative response implicitly admitting just those activities which Helms hoped to hide. A consistent policy of refusing to answer all questions concerning covert operations could have avoided this problem, but such consistency would have been difficult to establish because Helms previously had been willing to discuss confidential CIA activities before the Foreign Relations Committee.

The hearings on March 6 raised an even greater problem for Helms. These hearings were called at least partly in response to Jack Anderson's column concerning CIA connection to ITT activities in Chile, and apparently at the request of Senator Church who chaired the Senate Subcommittee on Multinational Corporations, which was investigating the Chilean affair. Helms argues that the questions posed by Church were deliberately outside of the jurisdiction of his hearing. Helms also maintains that he expected the hearing to be on another subject entirely. Yet once faced with a Senator intent upon questioning him in detail about the Chilean operation, Helms was forced to make quick decisions. Helms says now that he would have answered if Church had gone to the Chairman of the Oversight Committee and arranged a special hearing on the Chilean affair: "If I had gone before the Chairman of the Oversight Committee, who had responsibility for me, I would have answered all the questions fully. Then it would have been his responsibility whether Church leaked this information or not."⁹

Because this hearing specifically concerned Chile, Helms' refusal to answer would have been even more likely to imply that the CIA was involved in Chilean affairs. Helms did have the option of going off the record and attempting to explain his jurisdictional complaint in a way that would avoid suspicion. Given Helms' less than friendly relationship with Church, however, this would probably have been difficult to do. To protect the complete secrecy of the Chilean operation, then, Helms felt he could not fully answer Church's questions.

The final consideration in Helms' favor also stems from the question of jurisdiction. All of Helms' testimony took place in executive session (and was therefore closed to the public). Helms' willingness to testify under such conditions rightfully depended on his trust in the committee to keep his testimony confidential. Helms' CIA oath prohibits unauthorized disclosure, and while disclosure to a Senate committee may not break this oath, disclosure to the public certainly does. If Helms disclosed secrets to an oversight committee that had always maintained confidentiality in the past, and this committee then leaked the information, Helms could hardly be blamed for the unauthorized disclosure. Yet if Helms revealed confidential information to a committee that he distrusted and his committee leaked his testimony, then Helms would be partially responsible for a security leak. Thus, Helms' complaint about the Foreign Relations Committee's improper jurisdiction is linked to his doubts about this committee's dependability.

The question of oversight of intelligence operations had been discussed by the Congress in anticipation of this security problem. Both in 1955 and in 1968, the Senate voted down attempts to establish channels for greater oversight of intelligence that would have made more Senators privy to confidential information. Thus, given his doubts about Church's willingness to maintain confidentiality, full and accurate testimony on Helms' part would have constituted an act of disclosure that the Senate itself had yet formally to sanction.

The Government Prosecutes

The Justice Department had a wide range of choices--from the prosecution of Helms for perjury (a felony) to the dropping of all charges. The dangers of prosecution included both the risk that Helms might have to disclose still more classified information to present an adequate defense and the difficulty of persuading a jury that Helms was indeed guilty of perjury given the unusual circumstances. Yet dropping all charges would be an admission that public officials have the right to use personal discretion in deciding when they must obey the law. Thus, the Justice Department was caught between its need to enforce the law and its desire protect as yet undisclosed national secrets even if it assumed that Helms was guilty.

The government's dilemma resulted in a plea-bargain between the Justice Department (principally, Attorney General Bell and Assistant Attorney General in charge of the Criminal Division Benjamin Civiletti) and the defense (Mr. Helms and his lawyer Edward Bennett Williams). The Justice Department agreed not to press perjury charges, conviction on each count of which could result in a prison term of up to five years and a fine of up to two thousand dollars. In exchange, Helms agreed to plead nolo contendere to two counts of failing to testify fully and accurately, a misdemeanor. Each of these counts was punishable by a maximum of one year in jail and a maximum fine of one thousand dollars. Helms was also under the impression that there would be no jail sentence, and that he would continue to receive his pension from the government.

Judge Barrington D. Parker, who heard the case on October 31, 1977, told Helms that the court did not feel bound by the Justice Department's agreement and postponed

sentencing until November 4. On that day, before a court filled with newsmen, Judge Parker gave Helms a long reprimand, telling him, "You now stand before this court in disgrace and shame." The judge then sentenced Helms to a two-year jail term, suspended the sentence to one year of unsupervised probation, and fined Helms two thousand dollars. Williams, Helms' lawyer, told the court that "Richard Helms will bear the scar of a conviction for the rest of his days."¹⁰ The New York Times called this resolution of the government's dilemma concerning the enforcement of the law and the protection of secrets one which payed "homage both to law and to secrets."¹¹

APPENDIX

Oath of Office
(Copy of Helms')

STRATEGIC SERVICES UNIT
WAR DEPARTMENT
WASHINGTON, D. C.

I, _____, do solemnly swear (or affirm) that, unless authorized in writing by the Director, SSU, I will not disclose or reveal either by word, by conduct, or by any other means, any information affecting the national interest or the national defense which I may obtain by reason of my employment by the Strategic Services Unit, War Department, and I will forever keep secret any information so obtained by me.

I do further solemnly swear (or affirm) that I have read and understand the Security Regulations of the Strategic Services Unit, in force at the date of taking this oath, and Sections 31 and 32 of Title 50, U.S.C., known as the "Espionage Act," and that I do hereby bind myself to abide and be governed by them and by any supplements or amendments thereto.

I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely; without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Appendix (continued)

CIA Termination Secrecy Agreement

1. I, _____, am about to terminate my association with the Central Intelligence Agency. I realize that, by virtue of my duties with that agency, I have been the recipient of information and intelligence that concern the present and future security of the United States of America.
2. I have read and understand the provisions of the espionage laws (sections 793, 794, and 798 of Title 18, United States Code) and I am aware that unauthorized disclosure of classified information relating to the national defense may subject me to prosecution for violation of those laws. Further, I am aware that the National Security Act of 1947 specifically requires the protection of intelligence sources and methods from unauthorized disclosure.
3. I will never divulge, publish or reveal by writing, word, conduct, or otherwise any classified information or any information, concerning intelligence or CIA that has not been made public by CIA, to any unauthorized person including but not limited to, any future governmental or private employer or official without the express written consent of the Director of the Central Intelligence Agency or his representative.

Notes

- ¹Hearings before the Committee on Foreign Relations, United States Senate, 93rd Congress, First Session, On the Nomination of Richard Helms, Former Director of the CIA . . . (Washington G.P.O., 1974), pp. 47-8.
- ²This testimony was read into the Congressional Record (January 22, 1975) during further questions of Mr. Helms by the Senate Foreign Relations Committee.
- ³Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities - Covert Action in Chile 1963-1973 - December 18, 1975, -(Washington G.P.O., 1975), p. 20.
- ⁴Ibid., p.20.
- ⁵Ibid., p.24.
- ⁶Ibid., p.25.
- ⁷Transcript of Meeting of Faculty Study Group, Cambridge, Mass. March 8, 1978, p.10.
- ⁸Richard Harris, "Reflections - Secrets", The New Yorker (April 10, 1978), p.46.
- ⁹Transcript of Faculty Study Group, p.25.
- ¹⁰Harris, p.72.
- ¹¹"Between the Law and the Secrets", New York Times (November 2, 1977).
- ¹²Anthony Lewis, "Mr. Helms and the Law" New York Times (November 3, 1977), p.35.
- ¹³Harris, p.72.

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