Interview: Christopher Pyle

Threat of the 'Total Information Project'

Christopher H. Pyle is a former Captain in U.S. Army Intelligence, who in 1970 first exposed the existence of the Army's domestic surveillance program directed at American citizens. He served on the staffs of the Senate Select Committee on Intelligence Activities (the "Church Committee") and Sen. Sam Ervin's Subcommittee on Constitutional Rights in the 1970s. Pyle now teaches Constitutional law and civil liberties at Mount Holyoke College in South Hadley, Massachusetts. He was interviewed by EIR *Law Editor Edward Spannaus on Nov. 26.*

EIR: What is your impression of John Poindexter's "Total Information Project"?

Pyle: The Poindexter Plan seems to be one more manifestation of "data mining" that is going on all over the government. We seem to be developing four or five intelligence centers—at the FBI, the Pentagon, the Homeland Security Department, the Army's Intelligence and Security Command, and perhaps the Army's Northern Command—each employing its own group of analysts to collect personal information on citizens and aliens, often with only the most tenuous ties to terrorism.

These centers are going to end up competing with each other, to see who can get the hottest stuff, who can amass the largest archive, and who can make the most useful lists. For example, if the FBI comes up with yet another watch list, it will be shared with other agencies, which will almost instantly supplement it with thousands of names from their own files, and then send it along to other agencies that might do interviews, or maintain potential round-up lists of aliens from countries, like Iraq, who are considered enemies of the United States.

EIR: Do you expect the new Department of Homeland Security to collect intelligence as well as consume it?

Pyle: Yes. In the old days, collection was mainly done on the street. Today, much of it can be done in the office, with a computer and Internet connection. So analytical units will be their own collectors. And, because private industry has computerized so much personal information about travel, pur-

The "Total Information Project" would be headed by Adm. John Poindexter, here being arraigned in March 1988 for lying to Congress, of which he was convicted.

chases, and associations, counter-terrorism analysts will have lots of creative choices as to what kind of information to amass on people.

EIR: Do you see "data mining" as raising the specter of the kinds of political surveillance that you exposed in the 1970s?
Pyle: Yes, but it will be a much more potent weapon in the hands of someone who—like J. Edgar Hoover—wants to discredit or harass people he doesn't like. As an FBI official at the ABA's [American Bar Association's] conference on national security law said recently, in the old days, it would have taken the Bureau thousands of man-hours to collect what it can now download in 2.7 seconds with the help of an Internet search engine like Google.

That is very serious on two levels. First, it gives the government an enormous, and essentially unchecked, capacity to violate liberty and privacy. Second, the sheer volume of this information is likely to swamp analysts with more information than they can possibly comprehend. What we are developing here, it seems to me, is the fiber-optic equivalent of the Alaska pipeline, connecting Federal agencies, and then feeding police departments, FBI field offices, the Border Patrol, and all the rest. When this gets going, tens of thousands of government employees are going to have computerized access to this material, with little to prevent them from looking up their friends and neighbors, or personal enemies. We will have not developed audit trails to find out who is poking around in these files without authority; and, even if we do, the hacking will get out of control.

Remember the FBI's first watch list after Sept. 11, which the *Wall Street Journal* examined? The FBI meant it simply as a list of "persons of interest"—people it wanted to interview. But it sent the list to the security departments of gambling casinos, airlines, travel agencies, and credit card companies. They shared it with others, and soon it became 50 lists, not of persons to question, but alleged terrorists.

EIR: Do you anticipate any problems with the quality of this intelligence?
Pyle: Yes, there is another aspect of this inter-agency pipeline that bothers me, and this comes from reading 15 volumes of intelligence reports on, of all groups, the Church of Scientology. You might call it the "confirmed rumor problem." The same thing may have happened to you in the LaRouche group. A rumor would develop in France about the Church. It would be put in a Surété report and sent to Interpol, or to Britain's MI6. These agencies would then rewrite the report, leaving off its source, as they were instructed to do, and would send it down their pipelines to MI5, or the FBI, the CIA, or German intelligence. These reports would circulate through the pipeline, settle in each agency's archive, and come out to confirm each other. Thus a mere rumor would, through extensive circulating, become common knowledge, "known" to everyone.

The result was very bad intelligence, which wasted an enormous amount of time, and made life miserable for innocent people who have the misfortune to be caught up in this information maelstrom.

EIR: What are the implications of the Poindexter Plan for the military's duty, under the Posse Comitatus Act, to keep out of civilian law enforcement?
Pyle: Serious. Someone needs to look very closely at the Army's new Northern Command (NORTHCOM). It is supposed to back up police departments and the Federal Emergency Management Agency (FEMA) by providing perimeter security, disaster relief, and vaccinations in case of a terrorist attack. But it is planning to hire 150 intelligence analysts—more than it is ever likely to need if it takes its orders, information, and direction from civilian agencies. That intelligence staff looks like an over-reaction just waiting to happen.

For example, back in the 1960s, the Army was told to be ready to put down riots and protests if they exceeded the capacities of the police and state-led Guard units. But no one told the Continental Army Command that it did not need to know the identity of a single rioter or protester in order to do its job, which was to clear streets and enforce curfews. Driven by vivid imaginations and over-zealous anti-Communism, Army Intelligence presumed that if there was a riot or a demonstration, then some conspiracy must be behind it. The military police produced a remarkable training film that shows sinister Communists in the windows of apartment buildings, radioing instructions to agitators in the street below. And then a phalanx of military police, in crisp uniforms and fixed bayonets, marches forward and drives the Commies from the streets, while counter-intelligence agents race up stairwells to capture the evil organizers. It was utter fantasy! Nothing remotely like it had ever happened, but Army intelligence

wasn't taking any chances.

That kind of over-reaction could happen again, as gung-ho military commanders with no sense of history or protest politics, imagine conspiracies behind every crowd of anti-war protesters in the near future.

But once the military begins to think that it has to identify anyone who might engage in a protest or riot, it will again cross the line into law enforcement. It will violate the Posse Comitatus Act.

Reconsideration of that law has been proposed by Senator John Warner (R-Va.), and by General Bernard Eberhardt of NORTHCOM. Defense Secretary Rumsfeld and his lawyers are opposed, if only because they don't want the military to be expected to provide free services to civilian law enforcement on a routine basis. The Posse Comitatus Act protects the military from being presumed upon, far more than it protects civilians from the militarization of law enforcement. Politicians are always looking for a quick fix, so they are willing to break down the wall that separates military and civilian power.

EIR: To listen to Senators berate the FBI for trying to maintain its law enforcement focus, you would think that the domestic intelligence abuses of the 1960s never happened, and were never exposed by Senator [Frank] Church's committee in the 1970s.

Pyle: Yes. It's amazing, but the half-life of scandals these days is very short. What seems so vivid to those of us who worked for the Church Committee, or for Senator Ervin's Subcommittee on Constitutional Rights, is ancient history to most Americans today. Take the Army, for example. My disclosures, and Senator Ervin's hearings in the early 1970s, were the source of excruciating embarrassment. The Pentagon had to abolish the entire U.S. Army Intelligence Command and to destroy all of its files on domestic politics. Today, however, most officers don't even know that happened.

Some of the Pentagon's lawyers remember, but they are confined to the top of the system—which is no hierarchy. The problem with the Army's spying in the 1960s is that it did not start at the top. It started within the intelligence bureaucracy and operated quietly there for years. The Secretary of the Army did not know the scale of that surveillance, or the extent to which his people were collecting, instead of receiving, information about lawful civilian politics. When Secretary Stanley Resor learned the truth early in 1969, he saw the potential for embarrassment and tried to shut the operation down. He asked the incoming Nixon Justice Department to stop the spying. His letter went to William H. Rehnquist, then an assistant attorney general. Rehnquist conveyed the request to Attorney General John Mitchell, and he turned it down. As a result, the Army was severely embarrassed when my first article disclosed the surveillance in January 1970.

'A Requiem for the Fourth Amendment'

EIR: At the ABA conference [on Nov. 20], one panelist, a former General Counsel for the National Security Agency, accused William Safire of the *New York Times* of exaggerating the threat posed by the Poindexter Plan. Did Safire exaggerate?

Pyle: I think Safire described what would happen if Poindexter's plan comes to fruition. Of course, it hasn't gone into effect yet. Cooler heads may prevail. Or, members of Congress may torpedo the program the way Rep. Dick Armey sank Ashcroft's TIPs program (of citizen informants).

What impressed me most about that ABA panel was: Here we have a bunch of government people who are eager to catch terrorists any way they can. They have been developing a new technology of data mining to do it, but are beginning to realize the danger that data mining poses to liberty and privacy. Back in the 1970s, nobody in the FBI worried about rights of privacy, or civil liberty. But these people were worried. It was like they had been to the future and found it frightening, so they were talking about the need for safeguards.

Of course, the safeguards they have in mind are administrative, not judicial. The oversight they want would also be more administrative than Congressional. But they seemed to recognize the need to do something before we all lose out to this new version of Big Brother.

Curiously, I found myself almost agreeing with them. Administrative safeguards may be the most effective. The Fourth Amendment, as a mandate for judicial supervision of government investigators, is dead. It has been eroded from all sides by Congress, the executive, and our increasingly conservative judiciary. Moreover, the information revolution has rendered most privacy protections obsolete. One of these days we should have a Requiem Mass for the Fourth Amendment.

EIR: Isn't it true that most administrative measures to limit investigative zeal were adopted to head off restrictive legislation?

Pyle: Yes. The Attorney General's Guidelines on Domestic Surveillance, adopted in 1976, were meant to obviate the need for an FBI Charter that Senator Church's committee was proposing. But Congress has itself defeated efforts to restrict government investigators. The Crime Control Act of 1968 watered down the Fourth Amendment's warrant requirement. The Foreign Intelligence Surveillance Act of 1978 (FISA) watered it down even further. And now the FISA Court of Review has demolished the wall of separation that the FISA court and the FBI had erected between intelligence work and criminal investigations.

When the FISA statute was negotiated, the focus was on facilitating FBI efforts to counter the work of foreign intelligence agents, most of them working out of embassies. The FBI rarely prosecuted foreign intelligence agents; it tried to turn them into double agents or simply expelled them. So it made sense to preserve some remnant of the Fourth Amendment standards for criminal investigations, by not letting criminal investigators direct intelligence operations.

But now our chief problem is terrorists. We need intelligence to prevent their crimes from happening, and we want evidence to put them behind bars. And so the impetus is to break down the last remnants of the old Fourth Amendment wall and allow criminal investigations to be as invasive of privacy as intelligence operations.

The FISA court's wall of separation was like the exclusionary evidence rule. It gave the gummy Fourth Amendment a little bite. But the regime in power today, like its conservative judges, has never liked the exclusionary rule. It has never liked the idea that there should be legal limits on how the government obtains the evidence it uses to prosecute "bad guys."

New Name for 'Subversive' Is 'Terrorist'

EIR: But the FISA Review Court ruled that the distinction between intelligence and law enforcement was never intended by Congress—that it was an arbitrary, bureaucratic measure.

Pyle: I testified against the FISA statute precisely because it undermined the distinction between intelligence and law enforcement enshrined in the Fourth Amendment. The resulting law was a compromise between civil libertarians and counter-spies. It allowed the Attorney General to do an end run on the Fourth Amendment's warrant clause, but only when the target of the investigation is a foreign power, or one of its agents.

With all due respect, the three judges on the FISA Review Court have no institutional memory at all. Indeed, they have no institutional existence. They came together once, to decide one case. By contrast, the seven-member FISA court has a long institutional memory. So, too, do some FBI and Justice Department people, who appreciate the need to keep intelligence from watering down the privacy protections of the Fourth Amendment, if only to save the FBI from repeating the abuses of the Hoover era, when domestic intelligence operations gobbled up much time and energy.

But now we are in a new era. Congress, and to a lesser extent the public, wants to start up the old Hoover vacuum cleaner. In Hoover's day the target was "subversives"—people so evil, we were told, that they did not deserve the protections that the Constitution grants us all. Now the target is "terrorists"—people so evil that the President and Attorney General say they don't deserve Constitutional protections.

And so history seems primed to repeat itself. Only later will we discover that the term "terrorist" is as imprecise and political-freighted, as "subversive" was during the Cold War.