

# UNCHECKED and UNBALANCED

Presidential Power in a Time of Terror

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## Revelations of the Church Committee

In August 1963, more than 250,000 men and women, black and white, marched in the nation's capital to demand civil rights. At this March on Washington, in a speech that still echoes today, Dr. Martin Luther King Jr. told the country of his "dream" that:

all God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing, in the words of the old Negro spiritual, "Free at last, free at last, thank God Almighty, I'm free at last."<sup>1</sup>

Dr. King's speech resonates not only as a cry for civil rights but as a hymn to the American dream. In the bowels of FBI headquarters in Washington, officials of the FBI's Domestic Intelligence Division concluded that King's "powerful demagogic speech" established him as the nation's "most dangerous and effective Negro leader." The FBI therefore decided to "take him off his pedestal" and secretly to select and promote its own candidate to "assume the role of the leadership of the Negro people."<sup>2</sup>

In later years, using language reminiscent of George Orwell's *Newspeak*, the Bureau—in secret, internal documents—characterized King's organization, the Southern Christian Leadership Conference, or SCLC, as a "Black Nationalist *Hate* Group." (The SCLC was a civil rights group largely consisting of black Southern preachers.) Bureau headquarters told field agents that King had to be destroyed because he was a potential "messiah" who could "unify and electrify" the "black nationalist movement." King was a threat because he might "abandon his supposed 'obedience' to white liberal doctrines (non-violence)."<sup>3</sup> Thus, an apostle of nonviolence had to be secretly attacked and destroyed as insurance against the possibility he might abandon nonviolence.

In the words of the Bureau officer in charge of the FBI's "war" against King, "no holds were barred." In April 1962, King had been secretly characterized as a "subversive" because he had signed, with 350 other citizens, a petition to abolish the House Un-American Activities Committee (HUAC),



which investigated—often irresponsibly—purported communist influence in the United States. One month later, the FBI put King on a secret list of citizens to be rounded up in a national emergency. With 26,000 other targets, King was again classed a “subversive” who was in “a position to influence others against the national interest.”<sup>4</sup>

MLK -  
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The Bureau also sought to undermine Dr. King's organization by attempting to scare away SCLC funders. It got the Internal Revenue Service to engage in intrusive and burdensome audits. Without a judicial warrant, but with the knowledge and approval of Attorney General Robert Kennedy, the Bureau tapped the telephones of King, several of his advisors, and the SCLC office. Also, without warrants, the FBI bugged hotel rooms in which King stayed. Justifying its warrantless spying as a way of investigating possible Communist influence, the Bureau nonetheless paid only desultory attention to possible Communist links. Instead, government spying focused on King's civil rights work. FBI agents collected political intelligence for the White House about the plans of King and the broader civil rights movement. Worse, Bureau agents sought and exploited personal information about King in an effort to discredit him with, among others, the Pope, churches in America and Paris, universities, the press, funders, and public officials. (The assault on King's reputation continued even after his death.)<sup>5</sup>

The FBI campaign against King hit a low in November 1964. King had previously been critical of Bureau effectiveness in protecting civil rights. To explain why, he sent FBI Director J. Edgar Hoover a telegram saying that he “sincerely questioned the effectiveness of the FBI in racial incidents, particularly where bombings and brutality against Negroes are at issue.” The following day, the Bureau mailed King a cassette tape of recordings—from bugs placed in hotel rooms—containing personal and intimate communications. According to Bureau records, the tape was “sterilize[d] . . . to prevent it being traced to the Bureau.” With the tape came an anonymous letter, which told King, “You know you are a complete fraud . . . an evil, vicious one at that . . . your end is approaching.” It concluded:

King, there is only one thing left for you to do. You know what it is. . . .  
You are done. There is but one way out for you. You better take it before  
your filthy, fraudulent self is bared to the nation.

Dr. King and his associates interpreted the letter as an attempt to induce him to commit suicide.<sup>6</sup>

A Bible in one hand and the Declaration of Independence and Bill of Rights in the other, King urged America to “live out the true meaning of its creed.” How could the American government come to the point of trying to

destroy Dr. King? J. Edgar Hoover's personal found distaste for the social changes played important roles. But without bias would not have taken the form of harassment campaign. The war against checks and balances are abandoned. during the Cold War, operated under rules or adequate independent oversight. inal chief, the attorney general. In particular biases could become official upon to justify the lawfulness or propriety reau aggressively exploited the fuzzy illicit activities, such as the campaign

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destroy Dr. King? J. Edgar Hoover's personal animus against King, and his profound distaste for the social changes pressed by the civil rights movement, played important roles. But without an institutional underpinning, Hoover's bias would not have taken the form of a massive, multiyear surveillance and harassment campaign. The war against King highlights what happens when checks and balances are abandoned. The FBI, like other intelligence agencies during the Cold War, operated under a shroud of secrecy, without clear legal rules or adequate independent oversight by either Congress or the FBI's nominal chief, the attorney general. In the absence of these restraints, Hoover's particular biases could become official policy. FBI officials were not called upon to justify the lawfulness or propriety of their programs. Rather, the Bureau aggressively exploited the fuzzy boundaries of its legal mandate to justify illicit activities, such as the campaign against Dr. King.

While the King story is particularly vicious, it exemplifies the pathologies that enabled the executive branch during the Cold War to violate the law repeatedly and act in ways fundamentally inconsistent with America's best traditions. Thus, when questioned about tactics used against Dr. King, the FBI official in charge of domestic intelligence echoed the rationale of General Doolittle's 1954 presidential task force: intelligence is "a rough, tough business. . . . We have used that technique against Soviet agents. They have used it against us." Asked by Senator Walter "Fritz" Mondale at a Church Committee hearing whether anybody had objected to the tactics used against Dr. King, the FBI official testified, "As far as legality is concerned, morals or ethics, [these were] never raised by myself or anybody else."<sup>7</sup>

The Church Committee's multivolume reports and hearings document countless examples of abuses along the lines of those perpetrated against Martin Luther King by the major intelligence agencies, including the FBI, the CIA, and the National Security Agency, or NSA. The records of Cold War abuse show how the nation dealt with an earlier generation's crisis, and how presidents, attorneys general, and other high-ranking executive branch officials—as well as Congress—fell short of their obligations to oversee and control the intelligence agencies.<sup>8</sup>

The Committee found that all too often, executive branch actions—taken in the name of nebulous concepts like "national security," or "subversion," shielded by secrecy, and without the guidance of clear laws—were not "governed and controlled in accord with the fundamental principles of our constitutional system of government." As a result, the Committee's report concluded, America's secret government did far too many "illegal, improper or unethical" deeds that did not reflect "the ideals which have given the people of this country and of the world hope for a better, fuller, fairer life."<sup>9</sup>

Secret intelligence action was used to harass, disrupt, and even destroy law-



abiding domestic groups and citizens. Too many people were spied on with excessively intrusive techniques often known to be illegal. Intelligence agencies conducted secret surveillance and infiltration of entirely lawful groups. Mail was illegally opened. Without their knowledge, Americans were dosed with dangerous drugs to test techniques being developed to combat the Soviets. Congress received incomplete or misleading intelligence on subjects of national concern, such as whether the civil rights movement or anti-Vietnam War protests were controlled from overseas. Presidents solicited intelligence agencies to spy on political opponents. The CIA attempted for years to assassinate Fidel Castro—among other assassination plots—even enlisting the Mafia in its efforts.

It is necessary not only to know the details of *what* happened, but also to understand *how* it happened, so that we can prevent it happening again. The elementary lesson still pertinent today is that in times of crisis, zealous government officials are prone to overreacting, forgetting or rejecting the Constitution's diffusion of power between the branches. Institutions go awry. An absence of checks permits abuse of intelligence powers, harming innocent Americans. During the Cold War, the agencies charged with protecting the nation slipped from legal and ethical moorings. The resulting overreaction stained the nation's reputation and made its citizens no safer.

Recently, as America begins to question how our nation should react to the new crisis caused by terrorism, references back to abuses during the Cold War period began to circulate. The public and media tended to identify abuses with the Nixon years, or even reduce them to a solitary event: Watergate. This reflexive habit hides much more than it explains. Richard Nixon and longtime FBI Director J. Edgar Hoover make convenient, larger-than-life villains. But no single man, no single party, no single administration caused the abuses and overreaching of the Cold War period. Rather, administrations from Franklin Roosevelt's through Richard Nixon's all sanctioned overly broad investigations, lawless conduct, and departures from America's ideals.<sup>10</sup> The abuses revealed by the Church Committee, moreover, were first and foremost long-standing institutional failings, as the governmental safeguards—like clear laws and congressional oversight—meant to constrain abuses simply collapsed.

## Our Secret Police State

Charged with domestic intelligence collection, the FBI during the Cold War conducted a broad range of abusive and unjustifiable actions. Bureau officials relied on their mandate to combat “subversion,” the fuzzy term Franklin De-lano Roosevelt first let loose in a secret instruction. This fuzzy legal mandate,

which lacked clear boundaries, put entirely innocent Americans, their families and friends, in jeopardy. The policies and those who promoted them were a direct result of the War. Without clear guidelines and the implementation of permanent secrecy, abuses expanded.

In perhaps the most significant aspect of the program (Counterintelligence Program), a police state than to the United States. COINTELPRO lasted from 1956 to 1971. It was instituted only out of fear of public opinion and reaction with "counterintelligence." Rather than being a reaction to the situation and meted out secret punishment, it was a reaction to America tactics previously used on

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The FBI defined each of these "Communist Party" program swept up in the net. Among others, members of the National Un-American Activities Committee were labeled "anti-Communist." Under



which lacked clear boundaries, permitted tactics to migrate from real suspects to entirely innocent Americans, particularly those who opposed administration policies and those who protested racial discrimination or the Vietnam War. Without clear guidelines and meaningful oversight, and with the expectation of permanent secrecy, abuse of the Bureau's powers began and steadily expanded.

In perhaps the most significant action, the Bureau developed COINTELPRO (Counterintelligence Program), an ugly program using tactics more suited to a police state than to the United States. Without the public's knowledge, COINTELPRO lasted from 1956 to April 1971. FBI Director Hoover terminated it only out of fear of public exposure. The program had nothing to do with "counterintelligence." Rather, the bureau conducted illegal investigations and meted out secret punishments. COINTELPRO "brought home" to America tactics previously used only overseas in combating the Soviets.<sup>11</sup>

According to FBI agents who participated in it, the first COINTELPRO program—directed against Communist Party members—was prompted by frustration with Supreme Court rulings that made criminal prosecution of party members "ineffective" or "impossible." These landmark Court rulings used the First Amendment to interpret the 1940 Smith Act, which criminalized advocacy of revolutionary violence, making it difficult to obtain convictions based on radical speech alone. Rather than comply, the FBI secretly circumvented the Court's decisions. The Bureau then expanded COINTELPRO to other dissident groups against whom, the Bureau concluded, "there were not adequate statutes" to deploy.<sup>12</sup> Indeed, when asked whether, during COINTELPRO's fifteen-year history, anybody at the FBI had discussed the program's constitutionality or legality, the former head of the Bureau's Racial Intelligence Section, George Moore, answered, "No, we never gave it a thought."<sup>13</sup>

COINTELPRO's growth exemplified the mission creep that happens when clear boundaries are lacking. The FBI moved incrementally from the Communist Party to the Socialist Workers Party, to "White Hate Groups," to "Black Nationalist Hate Groups," and on to the "New Left," a vague catch-all phrase that covered emerging protest groups, mostly of young people. Bureau agents used COINTELPRO as a way secretly to "disrupt" and "neutralize" all these groups.<sup>14</sup>

The FBI defined each of these targets extremely broadly. Thus the "Communist Party" program swept up not only Communist Party ranks, but also, among others, members of the National Committee to Abolish the House Un-American Activities Committee and civil rights leaders tagged as insufficiently "anti-Communist." Under the Bureau's label of "Black Nationalist



Hate Groups" fell organizations as varied as the Black Panthers, Dr. King's Southern Christian Leadership Conference, and most black student groups at universities.

COINTELPRO disruption of the "New Left" also lacked defined boundaries. Under that rubric, FBI agents targeted groups as varied as Students for a Democratic Society (or SDS), the entire student body of Antioch College, publishers of underground newspapers, and college students protesting university censorship of student publications.<sup>15</sup> Having secretly decided to step over the limits imposed by the First Amendment, the Bureau enjoyed few restrictions on its activities.

COINTELPRO's methods were as diverse as its targets. Its tactics ranged from promoting violence to breaking up the marriages of civil rights workers and of Ku Klux Klan members. FBI agents sabotaged political campaigns. They falsely labeled intended victims as government informers to provoke reprisals against them. Agents succeeded in stopping citizens from speaking, teaching, writing, or publishing. All of this was done secretly without authorization by statute, review by courts, or oversight from Congress. FBI headquarters approved operations so long as they would not "embarrass the Bureau"—which meant so long as the Bureau's role could be kept concealed.<sup>16</sup>

In a faint precursor to post-9/11 practices such as extraordinary rendition, violence against some targets during this period was outsourced. For example, the Bureau forged a letter purporting to come from the Chicago Black Panthers and sent it to the leader of the Blackstone Rangers, a "black extremist organization in Chicago." The letter falsely said the Panthers had "a hit out" on the Rangers' leader. Predicting that the letter would lead to "reprisals" against the Panthers' leadership, the internal Bureau request for approval explained that agents believed that the Rangers were prone to "violent type activity, shooting and the like."<sup>17</sup>

In the same vein, the San Diego FBI office boasted that it fomented violence in the "ghetto":

Shootings, beatings, and a high degree of unrest continues to prevail in the ghetto area of southeast San Diego. Although no specific counterintelligence action can be credited with contributing to this overall situation, it is felt that a substantial amount of the unrest is directly attributable to [COINTELPRO].<sup>18</sup>

Another favored FBI method involved falsely labeling a target as a government informer, a technique known as the "snitch jacket." Asked by the Church Committee about the dangers of this technique, the chief of the Bureau's Racial Intelligence Unit told the Committee that while snitch jackets were used in his

area of work, he was not aware added, he could not be certain what just happened that way, I am sure after two suspected informers without Bureau involvement).<sup>19</sup>

COINTELPRO targets were Dr. King or those on the fringes of the Klan. Among the hundreds of members of the Unitarian Society, the Society's minister and some members of the House Un-American Activities Bureau sent anonymous lodging Chicago for the 1968 Democratic "less journeys." Nonviolent citizens because they gave "aid and comfort" to the cause, ing respectability to their cause.<sup>20</sup>

Without doubt, the government acts by, for example, the Black Panther Party to justify the FBI's decision to use the tactics of judge and jury.<sup>21</sup>

COINTELPRO disruption efforts included surveillance by wiretaps, bugs, break-ins, and the harassment of citizens. The FBI justified its intrusive actions by an ambiguous mandate handed down by the Supreme Court. Legally, intelligence agencies using wiretaps and bugs usually broke the law. And, as happened in the case of the Black Panthers, the result was the net of surveillance.

For fifty years, the federal government has used wiretaps and bugs on Americans without the Supreme Court's approval. In 1967, the Supreme Court began requiring wiretaps to be secretly ordered the FBI to continue to use wiretaps, claiming exceptions to the Fourth Amendment's elastic terms such as "national security." The committee's exposure of decades of abuse led to the passage of the Foreign Intelligence Surveillance Act, which Congress, in 1978, passed to regulate electronic surveillance of Americans.

Electronic communications, of course, are protected by the Constitution's framing. But because the government tapped the phone or in the bugged homes of American colonists had about so-called "wiretaps," which the British king's rev-

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area of work, he was not aware of anyone being killed as a result. But, he added, he could not be certain whether this was due to "luck or planning": "It just happened that way, I am sure." Snitch jackets, however, continued in use after two suspected informers were killed by one of the target groups (albeit without Bureau involvement).<sup>19</sup>

COINTELPRO targets were not limited to famous political figures such as Dr. King or those on the fringes of law-abiding society such as members of the Klan. Among the hundreds of innocent individual citizens targeted were members of the Unitarian Society of Cleveland, who became targets because the Society's minister and some members had circulated a petition calling for the dissolution of the House Un-American Activities Committee. Similarly, the Bureau sent anonymous lodging "disinformation" to protesters traveling to Chicago for the 1968 Democratic Convention, causing them "long and useless journeys." Nonviolent citizens opposed to the Vietnam War were targeted because they gave "aid and comfort" to violent demonstrators solely by lending respectability to their cause.<sup>20</sup> *Un-Targeted FANS!*

Without doubt, the government has a right and duty to prosecute lawless acts by, for example, the Black Panthers or the Ku Klux Klan. But this cannot justify the FBI's decision to use COINTELPRO to secretly usurp the functions of judge and jury.<sup>21</sup>

COINTELPRO disruption efforts often relied on the fruits of secret surveillance by wiretaps, bugs, break-ins, and mail opening targeting American citizens. The FBI justified its intrusive surveillance programs by relying on the ambiguous mandate handed down from the White House. On some occasions, intelligence agencies using these techniques knowingly and intentionally broke the law. And, as happened often during the Cold War, mission creep resulted in the net of surveillance being cast wider and wider.

For fifty years, the federal government secretly sought to preserve its power to wiretap and bug Americans without a warrant from a court.<sup>22</sup> After the Supreme Court began requiring warrants, presidents and attorneys general secretly ordered the FBI to continue using electronic surveillance without warrants, claiming exceptions to the Supreme Court decisions under the usual elastic terms such as "national security." It was only after the Church Committee's exposure of decades of abusive and excessive surveillance of Americans that Congress, in 1978, passed a law that finally put an end to warrantless electronic surveillance of Americans (or at least so it seemed until after 9/11). *Warrant Required*

Electronic communications, of course, did not exist at the time of the Constitution's framing. But because taps and bugs pick up everything said on the tapped phone or in the bugged room, they raise the same worries the American colonists had about so-called "writs of assistance" or "general warrants," which the British king's revenue officers used to conduct "unrestricted,



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indiscriminate searches of persons and homes." The colonial administrations' use of general warrants was one of the primary reasons for the Fourth Amendment's requirement of judicial warrants before most government searches. Despite Supreme Court Justice Louis D. Brandeis's warning that "writs of assistance and general warrants" are "but puny instruments of tyranny and oppression when compared with wire tapping," the Supreme Court, in 1928 in the *Olmstead* case initially resisted Brandeis's insight.<sup>23</sup>

Six years after *Olmstead*, Congress filled the gap in legal protection by making it a crime for "any person" to "intercept and divulge or publish" the contents of wire and radio communications.<sup>24</sup> But despite the new law and a Supreme Court ruling that it applied to federal agents as well as ordinary citizens,<sup>25</sup> the Justice Department secretly concluded it could continue to engage in warrantless wiretapping but would "comply" with the law by not distributing its intercepts outside the government. Only when Attorney General Robert Jackson took office in 1940 did the FBI cease warrantless wiretapping.<sup>26</sup> But President Roosevelt soon overruled Jackson. In a confidential memorandum, Roosevelt said that he was "convinced" the Supreme Court did not mean to apply its decision to "grave matters involving the defense of the nation." (Roosevelt's conviction found no justification in the opinion the Supreme Court in fact issued.) Therefore, he secretly ordered government agents to continue intercepting communications of "persons suspected of subversive activities."<sup>27</sup> As in his earlier order to Hoover, however, Roosevelt did not explain what "subversive" meant, or why judicial warrants could not be sought for such interceptions.

In 1954, the Supreme Court reaffirmed that a bug placed in a house during a warrantless break-in violated the Fourth Amendment. The Court seemed particularly offended by the placement of a microphone in a bedroom, and forwarded the case file to Attorney General Herbert Brownell to determine whether the federal criminal statute had been violated.<sup>28</sup> Even after this clear judicial signal of disapproval, however, Attorney General Brownell sent a secret memo to Hoover authorizing continued "unrestricted use" of bugs whenever the Bureau concluded it was in the "national interest."<sup>29</sup> As with Roosevelt's order to Jackson, Brownell's secret order, based on the open-ended term "national interest," manifested clear disregard for the law and the courts. It also opened the door to many abuses, including the bugging of Dr. King's hotel rooms.

Thirteen years later, in 1967, the Supreme Court revisited *Olmstead* and held that the Fourth Amendment barred warrantless electronic surveillance. In a footnote, however, the Court declined to extend its decision to cases "involving the national security."<sup>30</sup> The Court did not elaborate on that abstract caveat, seemingly unaware that those very terms had been long used by the

government to circumvent earlier ten years of excessive spying. In further constrained government, the president's constitutional authority in cases involving claims of threats is edged that the government's position to protect "national security" force," but it still held that warrants for those Attorney General Jackson and Powell explained:

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government to circumvent earlier judicial rulings and already had underwritten years of excessive spying. In 1972, in the so-called *Keith* case, the Court further constrained government surveillance powers by holding that the president's constitutional authority did not allow for warrantless taps or bugs in cases involving claims of threats to "domestic security." The Court acknowledged that the government's position that warrants might sometimes make efforts to protect "national security" more difficult might have some "pragmatic force," but it still held that warrants were needed. Expressing concerns akin to those Attorney General Jackson had voiced thirty years earlier, Justice Lewis Powell explained:

History abundantly documents the tendency of government—however benevolent and benign its motives—to view with suspicion those who most fervently dispute its policies. Fourth Amendment protections become the more necessary when the targets of official surveillance may be those suspected of unorthodoxy in their political beliefs.<sup>31</sup>

The Court cautioned, however, that it did not decide what the rules would be for warrantless electronic surveillance in cases where there was a "significant connection with a foreign power, its agents or agencies."<sup>32</sup>

At every opportunity during the Cold War, the executive branch secretly used vague, fuzzily worded loopholes to allow it to continue conducting warrantless searches in spite of repeated signals from Congress and the courts to desist. In 1976, moreover, the Church Committee "abundantly document[ed]" a "history" that went far beyond that alluded to by Justice Powell. The record, compiled by the Committee, "clearly show[ed]" that imprecise and open-ended terms like "'national security,' 'domestic security,' 'subversive activities,' and 'foreign intelligence,'" when "coupled with the absence of any outside scrutiny, has led to improper use of intrusive techniques against American citizens who posed no criminal or national security threat to the country."<sup>33</sup>

In some cases, the Bureau deployed even more aggressive, and clearly illegal, techniques: break-ins and mail opening. The CIA also illegally opened letters in the United States.<sup>34</sup> The Bureau called its warrantless break-ins and burglaries "black bag jobs." FBI officials recognized that these "techniques" "involve[d] trespassing" and were "clearly illegal." Nonetheless, the officials justified the actions to Hoover as valuable tools in their war against "subversion." The label "subversion" served, for example, to justify as many as ninety warrantless break-ins at the offices of the Socialist Workers Party between 1960 and 1966 alone. The Bureau later conceded that the party was committing no crimes, and that its overheated but constitutionally protected rhetoric fell far short of incitement to violence.<sup>35</sup>

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 Nebulous terms such as "national security" were, moreover, cynically employed after the fact to shield obviously illegal break-ins. In 1973, President Nixon and White House counsel John Dean discussed on tape a White House-ordered break-in at the office of a California psychiatrist in search of a patient's files. This patient, Daniel Ellsberg, was responsible for leaking to the *New York Times* the Pentagon Papers, an unflattering multivolume history of the Vietnam War prepared by the Defense Department itself. When the President asked what could be done if the break-in were revealed, Dean suggested, "You might put it on a national security grounds basis." Later in the conversation, the President took up Dean's suggestion, saying "the whole thing was national security." Dean replied, "I think we could get by on that."<sup>36</sup>

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 Similarly, for over twenty years the Bureau engaged in a massive illegal mail-opening program. The FBI official involved said it was his "assumption" that "what we were doing was justified by . . . the greater good, the national security."<sup>37</sup> In 1966, the FBI halted its own illegal mail-opening program, thereafter relying on the CIA's program. Meanwhile, at least four internal CIA memoranda recognized that the CIA's mail-opening program had "no legal basis"; that "federal statutes preclude the concoction of any legal excuse"; and that exposure could "give rise to grave charges of criminal misuse of the mails by government agencies." Instead of shutting down the program, however, the CIA's inspector general (tasked with policing legal and ethical violations within the Agency) suggested fabricating a false "cover story" given the "possibility that the operation might be blown." The deputy chief of the CIA's Counterintelligence Staff responded that it would be "relatively easy to 'hush up' the entire affair, or to 'explain' falsely that the mail opening was actually 'legal mail cover activities conducted by the Post Office at the request of authorized Federal agencies.'" But, the deputy chief added, if these tactics didn't work, "it might be necessary, after the matter has cooled off during an extended period of investigation, to find a scapegoat to blame."<sup>38</sup>

At its start, the CIA's "watch list" of names of people and organizations whose mail was to be illegally opened contained fewer than twenty names. But, in another instance of mission creep, by the late 1960s the watch list had grown to approximately six hundred, including many citizens and organizations engaged in purely lawful and constitutionally protected protest against government policies. Among the domestic organizations on the CIA's list were Clergy and Laymen Concerned About Vietnam, *Ramparts* magazine, the Student Nonviolent Coordinating Committee, and the American Friends Service Committee. It was not only the mail of citizens on the watch list that was opened, however. The CIA opened the letters of many others, including Senator Frank Church and author John Steinbeck. And, during the 1968 presidential campaign, it even opened a letter passing between Richard Nixon and

a speechwriter. The CIA's illegal a computerized index of nearly

The NSA captured even more until 1975, by agreement with the copies of every cable sent by its overseas locations. This far-reaching employees as an effort to obtain e But, like other programs, it soon communications of Americans, against the Vietnam War and for c the NSA lacked a statutory chart fair game.<sup>40</sup>

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a speechwriter. The CIA's illegal mail-opening program ultimately generated a computerized index of nearly one and a half million names.<sup>39</sup>

The NSA captured even more communications of Americans. From 1945 until 1975, by agreement with the major cable companies, the NSA secured copies of every cable sent by individuals or businesses from this country to overseas locations. This far-reaching surveillance initially was justified by NSA employees as an effort to obtain encrypted messages sent by foreign embassies. But, like other programs, it soon expanded and ended up sweeping in the communications of Americans, including the leaders of demonstrations against the Vietnam War and for civil rights. Absent any legislative oversight—the NSA lacked a statutory charter—every single international cable became fair game.<sup>40</sup>

The NSA never even considered whether it was bound by the Fourth Amendment, court rulings, or congressional statutes. It simply assumed it was exempt from Supreme Court precedents and laws prohibiting warrantless surveillance because it labeled its spying “foreign intelligence,” even when the communications covered protest activities of Americans in the United States who happened to send cables overseas.<sup>41</sup> The NSA thus operated without any independent restraint from another branch of government. Similarly, another Defense Department intelligence component, the Army Security Agency, was told by the Federal Communications Commission that its monitoring of radio communications to and from amateur radio operators was illegal, but it nonetheless plowed ahead with that monitoring.<sup>42</sup>

The Church Committee concluded that the secret decisions by the FBI, CIA, and NSA to discard or circumvent clear legal rules by relying on fuzzy, open-ended labels like “subversion,” “national security,” or “foreign intelligence” led to too much being collected from too many for too long:<sup>43</sup> millions of law-abiding Americans were spied upon by their government in secret and without the safeguard of a judicial warrant; the information collected was often wholly irrelevant to any lawful governmental purpose—indeed, sometimes, as with Dr. King, the government's principal purpose was to collect embarrassing personal information. Surveillance often continued long after it became clear no legitimate end was being served.

The Church Committee's investigation yielded many examples of wholly legitimate political and social groups subjected to illicit surveillance. Thus, FBI informers infiltrated the NAACP for twenty-five years from 1941 to 1966, even though from the outset of the surveillance the Bureau had no information to suggest that the NAACP's purposes were anything but lawful.<sup>44</sup> Individuals in the civil rights movement also faced seemingly endless investigations. The FBI directed three COINTELPRO actions against Bayard Rustin, a civil rights leader, principal organizer of the 1963 March on Washington, and occasional



advisor to Dr. King. He was wiretapped for many years as a suspected Communist "sympathizer," even though a lengthy investigation by the Bureau's New York field office concluded that he in fact had no Communist connections. Hoover nevertheless ordered that the investigation continue because, "while there may not be any evidence that [Rustin] is a communist, neither is there substantial evidence that he is anti-communist."<sup>45</sup>

The FBI in the late sixties and early seventies also conducted broad investigations of what it called the "Women's Liberation Movement." Without any evidence of wrongdoing, the Bureau infiltrated women's rights activist groups around the country and generated voluminous reports detailing political and social beliefs. Once spying started, it kept going despite the clear absence of any lawful government interest. One lengthy FBI report concluded the purpose of an infiltrated women's gathering had been to "free women from the humdrum existence of being only a wife and mother." Following this report, Bureau officials instructed the field to keep on investigating. Worse, the CIA, which had no mandate to spy in the United States at all, also investigated the "Women's Liberation Movement."<sup>46</sup>

For about forty years, government informants infiltrated the Socialist Workers Party (SWP), even though, as Bureau officials conceded, the party had not committed any crimes and its rhetoric fell short of incitement to violence. According to the agent leading the investigation, FBI reporting covered the party's positions on the "Vietnam War," "food prices," "racial matters," "U.S. involvement in Angola," and its efforts to support a non-SWP candidate for electoral office—all speech at the core of the First Amendment's protection.<sup>47</sup>

These roving inquiries into the NAACP, women's rights groups, the Socialist Workers Party, and Bayard Rustin illustrate how investigations, coupled with intrusive surveillance, continued far beyond any conceivable justifiable scope in the absence of clear limits set by law and any meaningful oversight. Former Attorney General Nicholas Katzenbach told the Church Committee how such endless investigations could occur:

The custom [had been] not to put a time limit on a tap, or any wiretap authorization. Indeed, I think the Bureau would have felt free in 1965 to put a tap on a phone authorized by Attorney General Jackson before World War II.<sup>48</sup>

The pervasiveness of domestic surveillance was also reflected in the sheer volume of Americans spied upon. The FBI opened more than 500,000 domestic intelligence files, each typically including several individuals' names. The army investigated more than 100,000 Americans for political reasons between the mid-1960s and 1971. (Army investigations included matters of such

vital national importance as a Catholic in Colorado and a Halloween party targeted because the army suspected part of Operation CHAOS—a domestic request of the Johnson and Nixon administration for proof that antiwar protest groups. CIA obtained information about the indexed into computer records.<sup>50</sup> international cables as part of the "affecting Americans" during the Cold War.

Having collected all this information, the process—intelligence agencies were to yield. Excess surveillance led to excess. FBI distributed to all military intelligence the Defense Department and two units of the on the picketing of an Industries of workers." Included in the report was distributed at a local United Church of army and air force intelligence and sponsored by a group developing faculty on the college's plans for a course of

An excess of such reports impeded issues. Flooded with reports, intelligence they got from each other. Thus, ten percent of the material it got from "junk" most of the material it got from legal mail-opening program.<sup>53</sup>

Collecting information on legitimate dangerous plans. Drawing on its surveillance of 26,000 citizens to be rounded up. The list included Dr. King and author of the list thanks to his "subversive activities" included "professors, teachers, and editors; writers, lecturers, newsmen and doctors and lawyers," all slated for Amendment activities.<sup>54</sup> In a vicious surveillance of constitutionally protected a further illicit end: plans for mass protected opinions.

Mission creep was not limited to The Internal Revenue Service also



vital national importance as a Catholic priests' conference on birth control in Colorado and a Halloween party for Washington, D.C., schoolchildren, targeted because the army suspected a local "dissident" would be present.)<sup>49</sup> As part of Operation CHAOS—a domestic spying operation, begun at the request of the Johnson and Nixon White Houses, looking (unsuccessfully) for proof that antiwar protest groups were controlled by foreign interests—the CIA obtained information about hundreds of thousands of Americans that it indexed into computer records.<sup>50</sup> And the NSA obtained copies of millions of international cables as part of the "largest governmental interception program affecting Americans" during the Cold War.<sup>51</sup>

Having collected all this information—violating numerous laws in the process—intelligence agencies were hardly about to do nothing with their yield. Excess surveillance led to excess dissemination. For example, in 1970 the FBI distributed to all military intelligence agencies, two other units of the Defense Department and two units of the Secret Service, a sixteen-page report on the picketing of an Industries of the Blind plant by a group of "blind black workers." Included in the report was a copy of a handbill supporting the strike distributed at a local United Church of Christ. Similarly, the Bureau sent to army and air force intelligence and to the Secret Service a report on a "tea" sponsored by a group developing faculty-student dialogue at a junior college and on the college's plans for a course on "The History of the American Negro."<sup>52</sup>

An excess of such reports impeded attention to more important security issues. Flooded with reports, intelligence agencies disparaged the information they got from each other. Thus, the Secret Service destroyed more than 90 percent of the material it got from the FBI. And the FBI characterized as "junk" most of the material it got on "the domestic scene" from the CIA's illegal mail-opening program.<sup>53</sup>

Collecting information on legitimate speech also led the Bureau toward dangerous plans. Drawing on its surveillance files, the FBI drew up a secret list of 26,000 citizens to be rounded up and detained in a "national emergency." The list included Dr. King and author Norman Mailer, with the latter making the list thanks to his "subversive associations and ideology." The list also included "professors, teachers, and educators; labor union organizers and leaders; writers, lecturers, newsmen and others in the mass media field, scientists, doctors and lawyers," all slated for detention because of their lawful First Amendment activities.<sup>54</sup> In a vicious logic, an initially illicit activity—here, the surveillance of constitutionally protected activity—thus found justification in a further illicit end: plans for mass detentions on the basis of constitutionally protected opinions.

Mission creep was not limited to agencies dedicated solely to intelligence. The Internal Revenue Service also embarked on many thousands of tax inves-

IRS



tigations based upon pressure from presidents—starting with John F. Kennedy—and from intelligence agencies to investigate individuals or entities that opposed government policies. The IRS itself requested lists of targets for audits of “dissident or extremist” groups from the FBI and the Justice Department—who provided the lists in order to “deal a blow” to dissidents. People and organizations singled out for IRS investigations for ideological reasons included the Ford Foundation, the Urban League, singer Joan Baez, actor Sammy Davis Jr., actress Shirley MacLaine, columnist Jimmy Breslin, *Rolling Stone* and *Playboy* magazines, and antiwar senators Charles Goodell and Ernest Gruening.<sup>55</sup>

### Political Uses of Intelligence Information

Unrestrained and secret use of intelligence agencies’ awesome powers of surveillance and intrusion gave the executive branch a tremendous amount of information. Executive officials mined this information in ways that opened the door to political abuse of two kinds. First, inaccurate intelligence information supplied selectively to politicians influenced social policy and political action on important national issues such as civil rights and the Vietnam War, distorting democratic decision making. Second, presidents and other senior executive officials asked for and used intelligence information for naked political ends.<sup>56</sup> The threat, in other words, morphed from “threats to the nation” to “threats to the party.”

The first problem is illustrated by FBI reporting on the civil rights movement. The Bureau never found any evidence to rebut its initial conclusion, based on secret infiltration of the NAACP, that communist efforts had not succeeded in steering the civil rights movement; nevertheless, the Bureau hinted elusively to the White House in 1956 that communist or communist-front organizations were to blame for “a marked deterioration in relationships between the races.” FBI Director Hoover subsequently briefed the Eisenhower cabinet on alleged communist influence upon civil rights groups. According to one historian, this briefing “reinforced the President’s . . . passivity” on civil rights legislation.<sup>57</sup>

In 1963, the Bureau’s Domestic Intelligence Division submitted to Hoover a memo detailing Communist Party “efforts” to exploit black Americans’ discontent with race relations. The memo concluded these efforts were an “obvious failure.” Hoover was dissatisfied. He made it clear to the Division that “we had to change our ways or we would all be out on the street.” A new memo was generated. “The Director is correct,” it said; Dr. King was the “most dangerous Negro” from the “standpoint of communism . . . and national security.” It was “unrealistic” to limit FBI analysis to “legalistic proofs or definitely conclusive evidence.” Communist Party influence over Negroes

“one day could become decisive.” Hoover promulgated outside the Hoover represented that communist organizations in fact was “vitaly

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The force of presidential press[ure] quests he knew to be improper. “internal security functions,” He the “peculiar sensitivity” of CIA Writing later to Henry Kissinger Helms referred to the CIA’s dome that “[t]his is an area not within t what the CIA was doing, Helms for all concerned.”<sup>61</sup> Known illeg for stopping illegal conduct.

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"one day could become decisive." Yet even this was not quite the message Hoover promulgated outside the Bureau. Subsequently testifying to Congress, Hoover represented that communist influence among Negroes and civil rights organizations in fact was "vitally important."<sup>58</sup>

Intelligence reflecting political ideology rather than facts was not limited to domestic issues. In 1965, President Johnson told Hoover he had "no doubt" communists were behind demonstrations against the Vietnam War. Hoover agreed. Back at the FBI, Hoover told his associates he knew the Bureau might not be able to "technically state" what the President wanted, but what Hoover said he wanted—and what he got—was a "good, strong memorandum" for the President that made communist "efforts" read like communist successes.<sup>59</sup>

Intelligence agencies were also keenly attuned to politicians' desires. Much of the CIA's secret domestic spying, including Operation CHAOS, responded to pressure from the Johnson and Nixon White Houses for intelligence about foreign influence on anti-Vietnam War protest groups in America. CIA chief Richard Helms testified that President Johnson was "after this [kind of information] all the time." CIA reports suggesting that foreign elements played "no significant role" in antiwar protests met with skeptical resistance from both White Houses. In response, the CIA expanded its intrusion on Americans' First Amendment activities, albeit without ever changing its conclusion.<sup>60</sup>

The force of presidential pressure is shown by Helms's compliance with requests he knew to be improper. Conscious of the law barring the CIA from "internal security functions," Helms cautioned the Johnson White House of the "peculiar sensitivity" of CIA surveillance of protest groups in America. Writing later to Henry Kissinger, then Nixon's National Security Advisor, Helms referred to the CIA's domestic spying as "extremely sensitive," and added that "[t]his is an area not within the charter of this agency." If anyone learned what the CIA was doing, Helms warned, it "would prove most embarrassing for all concerned."<sup>61</sup> Known illegality was cause for heightened secrecy—not for stopping illegal conduct. //

Rather than furthering American intelligence efforts, the cloak of secrecy allowed the intelligence services to become politicized and lose sight of their proper mission. Although all administrations from Roosevelt to Nixon asked for and received political information from the FBI,<sup>62</sup> the Johnson and Nixon administrations exploited the Bureau to the greatest extent. During the closing days of the 1964 presidential election campaign, the Johnson White House sought information on all the employees of Republican candidate Barry Goldwater's Senate office. It sought information about vice presidential candidate Spiro Agnew's long distance telephone calls during the 1968 presidential campaign, and about seven senators critical of America's bombing of North Vietnam. The Bureau also supplied information on nonpoliticians, including



people who signed letters to Oregon Senator Wayne Morse supporting his criticism of the Vietnam War, and many mainstream journalists, including NBC anchor David Brinkley, *Life* magazine's Washington bureau chief Richard Stolley, and authors of books critical of the Warren Commission report (about the assassination of President Kennedy).<sup>63</sup> The nexus between collecting intelligence and White House political interests reached its acme during the 1964 Democratic Convention in Atlantic City, New Jersey. President Johnson directed the assignment of an FBI "special squad." Originally justified by vague reference to possible civil disorders, the squad's mandate expanded to cover surveillance of political activities. The special squad thus generated many memos to the White House on the political plans of Dr. King and the Mississippi Freedom Democratic Party, a new black party challenging convention delegates from the old-line, segregationist Mississippi Democratic Party.<sup>64</sup>

These practices continued under the Nixon White House, which pushed for information on, for example, CBS reporter Daniel Schorr and the chairman of Americans for Democratic Action. Vice President Spiro Agnew also sought information on Ralph Abernathy, Dr. King's successor as head of the Southern Christian Leadership Conference. An internal Bureau document reporting the request explained that Agnew's purpose was "destroying Abernathy's credibility."<sup>65</sup> No one at the Bureau thought to protest that this was an improper goal.

Bureau reports to the Nixon White House about the fruits of warrantless wiretaps placed from 1969 to 1971 on three newsmen and fourteen executive branch employees at Henry Kissinger's request show how politicization and mission creep went hand in hand. Information obtained and disseminated concerned matters unrelated to the purported reason for the taps, which were supposed to uncover the source of leaks to the media from the White House. Instead, they yielded political information for the White House: a report on Senator Edward Kennedy's planned speech on Vietnam; the expected timing of Senator William Fulbright's hearings on Vietnam; Senator Mondale's "dilemma" about a trade bill; and what former President Johnson had said about Senator Edmund Muskie's campaign for the Democratic Party nomination for president. The taps continued on two targets even after they left the government to work on Senator Muskie's presidential campaign. Revealingly, the resulting memos began to flow to H.R. Haldeman, Nixon's political advisor, rather than to Kissinger, his national security advisor, even though it had been Kissinger who had first demanded the warrantless wiretaps for "national security reasons."<sup>66</sup>

## The CIA: Covert Action

The National Security Act of 1949 gave the CIA the authority to conduct covert action. Shortly after the act's passage, the CIA began to dominate the CIA's portfolio. In the early 1950s, in response to Soviet threats in Europe, covert actions were used to secretly influencing governments and carrying out hundreds of discreet actions. Covert actions were ongoing in forty-eight countries by 1960 for a variety of purposes. For example, in the late 1950s, the CIA worked to beleaguer democratic parties in Latin America in the face of challenges from robust communist parties. The CIA also took the offense with covert actions in the Caribbean, such as in Guatemala, for example, as well as in the Middle East.

The very existence of American covert action was secret, known only to a select few. Covert action became a source of power. By the 1960s, it had spread within branches of government, and the CIA's checks and balances our Constitution were being tested. foreign policy. What followed was a series of the Church Committee concluded that the CIA's actions were "successful" when they were "consistent with the national interest which have emerged from a national security government."<sup>68</sup> As time passed, the use of covert action came widespread. According to the Church Committee, this resulted in "our country [being] in a state of emergency every internal difficulty that has arisen in the past few years."

Two covert actions suggest how the CIA's interpretation of the National Security Act's initial plan the CIA's actions. The CIA's efforts to assassinate Fidel Castro; the CIA's efforts to overthrow democratic government in Chile.

The CIA began plotting to kill Castro in 1954. The efforts lasted through 1965. Only during the 1960s, the greatest tension, when Cuba stood at the height of its power. Soviet placement of missiles on the Cuban coast led the Cuban regime temporarily suspended its operations. The CIA was surprised to find a fog of ambiguity about the CIA's actions. Presidents Eisenhower, Kennedy, and Johnson all embarked on several Castro assassination attempts. That Johnson did not authorize the CIA to assassinate Eisenhower and Kennedy, the author of the CIA's actions.



## The CIA: Covert Action Abroad and at Home

The National Security Act of 1947 established the CIA but did not mention covert action. Shortly after the agency's birth, however, covert action rose to dominate the CIA's portfolio. Initially a limited, ad hoc response to specific Soviet threats in Europe, covert action "soon became a routine program secretly influencing governments and covertly exercising power, involving literally hundreds of discreet actions each year." By 1953, major covert operations were ongoing in forty-eight countries. As their volume increased, they shifted purpose. For example, in the late 1940s the CIA provided concealed support to beleaguered democratic parties in France and Italy facing stiff electoral challenges from robust communist parties. But as time passed, the CIA increasingly took the offense with covert action, overthrowing governments in Iran and Guatemala, for example, as well as many other less spectacular efforts.<sup>67</sup>

The very existence of America's covert action programs was meant to be secret, known only to a select few within the executive branch. This secrecy became a source of power. By forestalling serious policy debate among and within branches of government, secrecy allowed presidents to circumvent the checks and balances our Constitution installs even for decision making about foreign policy. What followed were certainly not uniformly wise decisions. As the Church Committee concluded, covert actions were generally more "successful" when they were "consistent with, and in tactical support of, policies which have emerged from a national debate and the established processes of government."<sup>68</sup> As time passed, knowledge of some CIA covert actions became widespread. According to former Secretary of Defense Clark Clifford, this resulted in "our country [being] accused of being responsible for practically every internal difficulty that has occurred in every country in the world."<sup>69</sup>

Two covert actions suggest how untethered from the 1947 National Security Act's initial plan the CIA's activity became: one was the unsuccessful efforts to assassinate Fidel Castro; the other, the successful campaign to subvert democratic government in Chile.

The CIA began plotting to kill Fidel Castro in the summer of 1960; its efforts lasted through 1965. Only during the fall of 1962—the period of highest tension, when Cuba stood at the nub of a major global crisis thanks to Soviet placement of missiles on the island—were all covert actions against the Cuban regime temporarily suspended.<sup>70</sup> The Church Committee was surprised to find a fog of ambiguity about final responsibility for the Castro plots. Presidents Eisenhower, Kennedy, and Johnson were in office while the CIA embarked on several Castro assassination plots, although the Committee found that Johnson did not authorize the plots during his administration.<sup>71</sup> For Eisenhower and Kennedy, the authorization question proved more nettlesome.

COVERT  
PROGRAMS -  
SECRET -  
EVALUATED  
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BY  
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By itself, the Committee's finding that the chain of authorization for such a vital decision as assassinating a foreign leader was not crystal clear was revealing. As the Committee was to discover, uncertainty was built into the national security decision-making system to ensure "plausible deniability."<sup>72</sup>

Determining whether Eisenhower or Kennedy had authorized or knew about assassination plots proved difficult because both men were dead, as was Allen Dulles, chief of the CIA when the plots were initiated. Nonetheless, two high-ranking CIA officials, Richard Bissell and Richard Helms, testified to their belief that the two presidents indeed authorized killing Castro. While their reasoning was inconsistent and other evidence was conflicting, Bissell and Helms both described textbook examples of plausible deniability.

Bissell was head of the CIA's Directorate of Plans—a euphemistic title for the CIA department running clandestine activities, including covert action—from before initiation of the assassination plots until mid-1961, when he was pushed out by President Kennedy in the aftermath of the failed Bay of Pigs invasion of Cuba. During the Castro plots Helms was in the Directorate of Plans. After Bissell's departure, Helms became its head.<sup>73</sup>

Bissell "went on the assumption" that both presidents knew about the plots. According to Bissell, Dulles would have advised the two presidents of the assassination plots in a "circumlocutious" and oblique way. Circumlocution would have been used "to shield the President . . . in the sense of intimating or making clear that something of the sort was going forward, but giving the President as little information about it as possible." Dulles thus would "leave [the President] in a position to deny knowledge of the operation if it should surface." Bissell also cautioned that neither he nor anyone else in the CIA would be told about such a conversation between the Agency's chief and a president. This would "hold to the absolute minimum the number of people who knew that the President had been consulted, had been notified and had given, perhaps only tacitly, his authorization."<sup>74</sup>

Helms also assumed killing Castro was authorized by the two presidents but doubted Bissell's assumption that they were told anything. It would not be appropriate, Helms explained, "to embarrass a President of the United States [by] discussing the assassination of foreign leaders in his presence." Nonetheless, Helms insisted that the Agency had authority to kill Castro even in the absence of a specific directive or authorization. Both President Kennedy and his brother Robert exerted "very intense" pressure to overthrow Castro, and "if killing him was one of the things that was to be done in this connection, that was within what was expected."<sup>75</sup>

In the course of Helms's testimony before the Church Committee, Senator Charles "Mac" Mathias drew an historical analogy with the twelfth century English King Henry II and Thomas Becket, archbishop of Canterbury, who

was a thorn in Henry's side, and Cathedral by Henry's courtiers:

SENATOR MATHIAS: Let me draw Becket was proving to be "Who will rid me of this man and murder him." He said go at that.

MR. HELMS: That is a warning

SENATOR MATHIAS: You feel that

MR. HELMS: I think it does, sir.

SENATOR MATHIAS: And that is be said, which might be taken presidential authorization to

MR. HELMS: That is right. But it grows up in [the] tradition would have found it very difficult of the U.S. I just think keep those things out of the

SENATOR MATHIAS: Yet at the same transmitted, that that was w

MR. HELMS: Yes, and if he had have been unhappy.<sup>76</sup>

The Committee's study of the as its investigation of other covered, or encouraged, "the most levels of government with the lea

From Chile's independence in democratically elected government military coup d'état, the country cratic rule, experiencing only thr During the Cold War, the United capita than any other country in between 1962 and 1968 alone. Bes deeply involved in covert action Allende, who ran for Chilean pr nally succeeding in 1970. Allend of income, nationalization of ma form, and strengthened relations



was a thorn in Henry's side, and who was stabbed to death in Canterbury Cathedral by Henry's courtiers:

SENATOR MATHIAS: Let me draw an example from history. When Thomas Becket was proving to be an annoyance, as Castro, the king said, "Who will rid me of this man?" He didn't say to somebody, "Go out and murder him." He said "Who will rid me of this man?" and let it go at that.

MR. HELMS: That is a warming reference to the problem.

SENATOR MATHIAS: You feel that spans the generations and the centuries?

MR. HELMS: I think it does, sir.

SENATOR MATHIAS: And that is typical of the kind of thing which might be said, which might be taken by the Director or by anybody else as presidential authorization to go forward?

MR. HELMS: That is right. But in answer to that, I realize that one sort of grows up in [the] tradition of the time and I think that any of us would have found it very difficult to discuss assassinations with a president of the U.S. I just think we all had the feeling that we're hired to keep those things out of the Oval Office.

SENATOR MATHIAS: Yet at the same time, you felt that some spark had been transmitted, that that was within the permissible limits?

MR. HELMS: Yes, and if he had disappeared from the scene they would not have been unhappy.<sup>76</sup>

The Committee's study of the Castro (and other) assassination plots, as well as its investigation of other covert actions, revealed a foolish system that allowed, or encouraged, "the most sensitive matters to be presented to the highest levels of government with the least clarity" to maintain plausible deniability.<sup>77</sup>

From Chile's independence in 1818 until September 11, 1973, when the democratically elected government of Salvador Allende was overthrown in a military coup d'état, the country enjoyed a remarkable continuity of democratic rule, experiencing only three brief interruptions and none since 1932.<sup>78</sup> During the Cold War, the United States gave Chile more financial aid per capita than any other country in Latin America—well over a billion dollars between 1962 and 1968 alone. Besides this overt aid, the United States became deeply involved in covert action in Chile. Most was directed against Salvador Allende, who ran for Chilean president three times, starting in 1958 and finally succeeding in 1970. Allende's electoral platform involved redistribution of income, nationalization of major industries (especially copper), agrarian reform, and strengthened relations with socialist and communist countries.<sup>79</sup>



During the 1970 election, acting with the approval of the White House, the CIA waged secret "spoiling" operations against Allende's coalition with about one million U.S. taxpayer dollars. Despite this, Allende won a plurality. But, because he did not win a majority, under Chile's constitution the Chilean Congress had to choose the president from between the two top vote getters.<sup>80</sup>

*Allende* Just after the Chilean election but before the Chilean Congress's action, President Nixon called CIA chief Richard Helms to the White House for a meeting with National Security Advisor Henry Kissinger and Attorney General John Mitchell. The President instructed Helms to foment a coup by the Chilean military before the Chilean Congress could select a winner. Helms's notes from the meeting included "\$10,000,000 available, more if necessary" to subvert Chile's democratic election. As Helms later testified to the Church Committee, Nixon "came down very hard that he wanted something done, and he didn't care how. . . . If I ever carried a marshal's baton in my knapsack out of the Oval Office, it was that day." But Helms was also instructed not to tell the 40 Committee (the body established by the White House to review covert actions) or the Defense or State Departments about the plan for a coup.<sup>81</sup>

The CIA cultivated support for a coup among high-ranking Chilean military officers, with the exception of General Rene Schneider, commander in chief of the Chilean army, who insisted that the Chilean constitution be followed and presidential selection left to the Congress. Frustrated by Schneider, military leaders of the prospective coup decided to kidnap him. The CIA supplied them with weapons (including machine guns and tear gas) though they were apparently not used.<sup>82</sup> The initial kidnap attempt was unsuccessful, and Schneider was severely wounded resisting a second attempt. Two days later, the Chilean Congress followed their usual practice and confirmed Allende as president. Schneider died of his wounds the next day.<sup>83</sup>

CIA officials testified to the Church Committee that they were "told" by the White House to "continue our efforts," now aimed at Allende's ouster from the presidency. Dr. Kissinger "totally" disagreed, claiming that if "there was any further contact with military plotting, it was totally unauthorized."<sup>84</sup> In any event, the CIA officials explained they were "sure" that "the seeds that were laid in [the coup attempts] in 1970 had their impact in 1973" when Allende was overthrown. The system of deniability, having been temporarily abandoned during the meeting at President Nixon's office, reared its head again.

On September 11, 1973, Allende was overthrown by a military coup, committing suicide before he could be captured. The Church Committee staff report found "no hard evidence of direct U.S. assistance to the coup." At the very least, however, "the United States—by its previous actions [to foment a

military coup in 1970], its existing and the nature of its contacts with the impression that it would not look

In Chile, Cuba, and elsewhere, particular covert action were always 'All too often, however, U.S. government the long-term impact of covert action reputation. For example, many in the seventeen-year regime of General Allende's overthrow and death. In the midst of popular backlash against the "Commission" determined that thousands of people during his rule, appeared." The 2004 report of the Imprisonment and Torture catalog

Victims were humiliated, threatened, cold, to heat and the sun until they sleep deprivation; they were subjected to the point of asphyxiation; electric shocks to sensitive parts of their bodies; they were men and animals, or forced to work ones.<sup>87</sup>

The attendant costs to America's reputation were reckoned.

As with other secret tactics, there was a back into the United States. The CIA experiments administering dangerous drugs with the Agency moving from government to "unwitting" subjects. The secrecy and lack of oversight, were amounting to violating the law.<sup>88</sup>

During the 1950s and 1960s, the CIA used psychotropic drugs such as LSD for intelligence. Russians might use the drugs on captives. The CIA itself want to use them either on captives or orient targets of interest. The Agency recruited from federal prisoners served in the CIA, ironically (or callously), rewarded



military coup in 1970], its existing general position of opposition to Allende, and the nature of its contacts with the Chilean military—probably gave the impression that it would not look with disfavor on a military coup.”<sup>85</sup>

In Chile, Cuba, and elsewhere, advocates in the executive branch for a particular covert action were always “passionate” about a given short-term goal.<sup>86</sup> All too often, however, U.S. government officials paid insufficient attention to the long-term impact of covert actions on targeted nations—and on America’s reputation. For example, many in both Chile and America were dismayed by the seventeen-year regime of General Augusto Pinochet that followed Allende’s overthrow and death. In 1990, after Pinochet stepped down in the midst of popular backlash against his military regime, a “Truth and Reconciliation Commission” determined that the government killed more than three thousand people during his rule, one thousand of whom were listed as “disappeared.” The 2004 report of the Chilean National Commission on Political Imprisonment and Torture catalogued 28,000 cases: *Prove*

Victims were humiliated, threatened, and beaten; exposed to extreme cold, to heat and the sun until they became dehydrated, to thirst, hunger, sleep deprivation; they were submerged in water mixed with sewage to the point of asphyxiation; electric shocks were applied to the most sensitive parts of their bodies; they were sexually humiliated, if not raped by men and animals, or forced to witness the rape and torture of their loved ones.<sup>87</sup>

The attendant costs to America’s reputation and moral standing went unreckoned. ✓

As with other secret tactics, there was seepage of dangerous CIA practices back into the United States. The Church Committee found that the CIA’s experiments administering dangerous drugs displayed the familiar mission creep, with the Agency moving from giving them to volunteers to administering them to “unwitting” subjects. The CIA’s drug experiments, facilitated by secrecy and lack of oversight, were another example of an agency knowingly violating the law.<sup>88</sup>

During the 1950s and 1960s, the CIA sought to understand the effects of psychotropic drugs such as LSD for both defensive and offensive reasons. The Russians might use the drugs on captured American agents, or the CIA might itself want to use them either on captured Russian agents or to disrupt and disorient targets of interest. The Agency initially gave drugs only to volunteers recruited from federal prisoners serving sentences for drug violations. The CIA, ironically (or callously), rewarded these volunteers with a dose of their



own drug of choice. The Agency subsequently drifted into the secret administration of psychotropic drugs to unsuspecting civilian victims. In the Agency's sterile jargon, "unwitting . . . subjects" at "all social levels, high and low, native American and foreign" were to receive narcotics without knowing it. Recognizing that this practice was illegal and also potentially dangerous, Richard Helms, at the time a midlevel CIA executive, nonetheless secured approval for maintaining the program. He explained:

While I share your uneasiness and distaste for any program which tends to intrude on an individual's private and legal prerogatives, I believe it is necessary that the agency maintain a central role in this activity, keep current on enemy capabilities [concerning] the manipulation of human behavior and maintain an offensive capability.<sup>89</sup>

One of the CIA's "unwitting" subjects was Dr. Frank Olson, a specialist in aerobiology working at the Army Biological Center at Camp Detrick, Maryland. At a 1953 conference of CIA and army scientists at a lake cabin, Dr. Sidney Gottlieb, a CIA scientist, gave Dr. Olson a dose of Cointreau laced with LSD. It killed him.<sup>90</sup>

Knowledge of the CIA's illegal and unethical drug experiments was kept secret for decades. The CIA's inspector general wrote in 1957:

✓ Precautions must be taken not only to protect operations from exposure to enemy forces, but also to conceal these activities from the American public in general. The knowledge that the Agency is engaging in unethical and illicit activities would have serious repercussions in political and diplomatic circles and would be detrimental to the accomplishment of its mission.<sup>91</sup>

After Olson's death, the Agency continued to experiment with "unwitting" subjects for another decade. Dr. Gottlieb and others responsible for Olson's doping received a letter from then CIA chief Allen Dulles gently criticizing them for not paying "proper consideration to the rights of the individual to whom [the drug] was being administered." But Helms was told by Dulles to inform Gottlieb and the others that the letter was "not [a] reprimand," and that no personnel file notation was being made.<sup>92</sup> To the contrary, Dr. Gottlieb soon received a promotion, and in 1960 he participated in a plot to assassinate the Congo's Patrice Lumumba by using a deadly toothpaste Gottlieb himself concocted.<sup>93</sup>

As we have seen, illicit business was often accompanied by euphemisms that

fostered plausible deniability. Furthermore, they themselves also used euphemisms to distance themselves from themselves, what they were doing. Helms recommended that the CIA use "unwitting" subjects, he used sanitized, euphemistic and "tends to intrude" to describe the program and "phemisms sterilized other deadly words. Helms worked on assassinations could not use honest and direct words to describe what they testified to the Church Commission. Helms "get rid of" or "eliminate" a foreign target. Helms FBI's unbelievable classification of the group as a black nationalist hate group.<sup>95</sup> Perhaps Helms wanted to feel better about what they were doing.

And whatever the explanation, the CIA used euphemisms, to describe or justify illegal activities, to describe illicit and immoral deeds by their agents and legal acts.

## Consequences and Responses

Underlying all the Cold War abuses was the assumption that the government's actions were necessary. Initially, agents developed vague plans. Helms CIA's plan to "find a scapegoat to blame for the war" was exposed. Intelligence agencies were concerned of public exposure. A handful of officers were But they were exceptions. In general, decision makers acted on the assumption that the war was shrouded in secrecy. Thus, they failed to consider the damage to America's reputation among other nations when abuses inevitably saw the light of day.

✓ Implicit here is the question of responsibility. A committee devoted considerable attention to the issue, and other high-level executive officers were involved. The findings on responsibility demonstrated the need to get into the facts.<sup>96</sup>

At the inception of the Committee on Assassinations, executive branch officials was not clear. The committee's investigation, Senator



fostered plausible deniability. Further hindering accountability, CIA officials themselves also used euphemisms or sterilized words to disguise, perhaps even from themselves, what they were doing. Thus, for example, when Richard Helms recommended that the CIA continue to give hallucinogens to "unwitting" subjects, he used sanitized, lifeless words such as "uneasiness," "distaste," and "tends to intrude" to describe stark risks to health and life itself.<sup>94</sup> Euphemisms sterilized other deadly activities as well. CIA officers who had worked on assassinations could not bring themselves, even many years later, to use honest and direct words to describe what they had plotted to do. Instead, they testified to the Church Committee about decisions to "dispose of" or "get rid of" or "eliminate" a foreign leader. Such obfuscations echoed the FBI's unbelievable classification of Martin Luther King Jr. as the leader of a black nationalist *hate* group.<sup>95</sup> Perhaps by using these words, some hoped deep down to feel better about what they set out to do.

And whatever the explanation for the use of euphemisms, or simple falsehoods, to describe or justify illegal acts, it seems likely that each failure to call illicit and immoral deeds by their rightful names increased the incidence of illegal acts.

### Consequences and Responsibility

Underlying all the Cold War abuses and excesses at home and abroad was the assumption that the government's role would remain forever secret. Occasionally, agents developed vague plans to deal with "flap potential," such as the CIA's plan to "find a scapegoat to blame" if its decades-long illegal mail opening was exposed. Intelligence agencies did cancel a few programs out of fear of public exposure. A handful of officials resisted misuse of intelligence assets. But they were exceptions. In general, a small coterie of executive branch decision makers acted on the assumption that improper actions would remain shrouded in secrecy. Thus, they failed to consider the harm to the government, to America's reputation among other nations, and to our own self-esteem when abuses inevitably saw the light of day.

✓ Implicit here is the question of responsibility. Indeed, the Church Committee devoted considerable attention to the roles of presidents, attorneys general, and other high-level executive officials. The evolution of the Committee's findings on responsibility demonstrates the importance of in-depth inquiry into the facts.<sup>96</sup>

At the inception of the Committee's investigation, the role of senior executive branch officials was not clear. In the summer of 1975, early in the assassination plots investigation, Senator Church speculated to the press that the



CIA may have acted like a "rogue elephant on a rampage," conceiving and carrying out the plots without clear authorization. Other senators, also speculating, opined that the CIA "took orders from the top."<sup>97</sup> When an interim report documenting the Committee's findings on assassinations was issued in November 1975, midway through the whole investigation, the Committee declined to adopt either theory. The interim report presented substantial evidence for both views, saying the conflicting evidence made it impossible to be certain whether or not Presidents Eisenhower and Kennedy authorized the assassination plots during their administrations.<sup>98</sup>

In April 1976, by which time the Committee had completed investigations into many other intelligence actions, it was ready in its final report, to fix responsibility at the top for abuses at home and abroad. As the Committee explained with respect to foreign intelligence:

On occasion, intelligence agencies concealed their programs from those in higher authority; more frequently, it was the senior officials themselves who, through pressure for results, created the climate within which the abuses occurred.<sup>99</sup>

While intelligence agencies occasionally failed to reveal domestic programs or acts to their superiors, the Committee concluded "the most serious breaches of duty were those of senior officials who were responsible for controlling intelligence activities and generally failed to assure compliance with the law."<sup>100</sup> Fault at the top was shown by "demanding results" without "carefully limiting the means." Senior executive branch officials, moreover, gave de facto endorsement of wrongdoing by "failing to inquire further" after receiving indications that improper activities had been occurring, as well as by "delegating broad authority" through open-ended mandates and terms such as "national security" or "subversion" and then failing to set forth adequate guidelines or procedural checks on how their wishes were carried out. Finally, senior officials "exhibit[ed] a reluctance to know about secret details of programs."<sup>101</sup>

The Committee's conclusions on responsibility evolved due to the clarity produced by exposure to the whole record. Specific agency acts, examined in isolation, sometimes suggested that an agency acted on its own, even misleading political superiors. But the fuller record of many years and many agencies made clear that ultimate responsibility was properly fixed with presidents, attorneys general, and other high executive branch officials. Looking backward thirty years later, it seems there were at least three further reasons to fix ultimate responsibility on higher authorities.

First, although the FBI's power exercised only weak oversight, the a were doing; and so must receive a for acts they did not see.

Second, however one cuts through who was responsible for any given tional security advisors, and other exploited plausible deniability. Th ticular action, their willful ignoran

Finally, presidents and other high that all intelligence activities, both layers of excess secrecy. They knew ingful checking role. And they knew secrecy, the absence of checks and l authorizations were, as they are tod

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Even where there were abuses, which play many vital roles unrelate standing, not solely criticism. Age almost impossible to fulfill. They we ply immediately information on any demands of presidents. Under that l of the Soviet threat, it is no surpris dates as expansively as possible.

As we have seen, assumptions of ev the executive branch. Under a shro nored, flouted, and sometimes know and domestic intelligence activities a of the Executive to resort to cover bureaucratic, congressional and publ nent secrecy and no effective oversi Sullivan, who headed the FBI's Dor admitted:



First, although the FBI's power under Hoover meant attorneys general exercised only weak oversight, the attorneys general knew that was what they were doing, and so must receive a substantial measure of responsibility even for acts they did not see.

Second, however one cuts through the fog of plausible deniability to decide who was responsible for any given action, it is crystal clear that presidents, national security advisors, and other high executive branch officials knew of and exploited plausible deniability. Thus, even if they did not know about a particular action, their willful ignorance cannot absolve them of responsibility.

Finally, presidents and other high-level executive branch officials also knew that all intelligence activities, both domestic and foreign, were smothered by layers of excess secrecy. They knew Congress and the courts played no meaningful checking role. And they knew—or should have known—that excessive secrecy, the absence of checks and balances, and the use of fuzzy, open-ended authorizations were, as they are today, an invitation for excess and abuse.

To be sure, presidents and other high-ranking executive branch officials who bore responsibility for abuses and for failing to prevent improper acts also had great accomplishments. They seldom acted with bad intent. Their zeal often arose from unthinking and misplaced patriotism. Love for country, however, cannot dissolve responsibility for negligent oversight or illegality. Indeed, as Louis Brandeis warned, the "greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."<sup>102</sup> *Brandeis*

Even where there were abuses, the men and women of the agencies—which play many vital roles unrelated to abuse—deserve a measure of understanding, not solely criticism. Agents received assignments that were often almost impossible to fulfill. They were expected to predict every crisis, to supply immediately information on any issue, and to anticipate and respond to the demands of presidents. Under that kind of pressure, and acting in the shadow of the Soviet threat, it is no surprise agents interpreted their ambiguous mandates as expansively as possible.

As we have seen, assumptions of everlasting secrecy facilitated the abuses by the executive branch. Under a shroud of secrecy, the law was repeatedly ignored, flouted, and sometimes knowingly broken.<sup>103</sup> Secrecy masked foreign and domestic intelligence activities alike. It fostered "a temptation on the part of the Executive to resort to covert operations [overseas] in order to avoid bureaucratic, congressional and public debate."<sup>104</sup> The expectation of permanent secrecy and no effective oversight led many to ignore the law. William Sullivan, who headed the FBI's Domestic Intelligence Division for ten years, admitted:



MEANS & ENDS

Never once did I hear anybody, including myself, raise the question: "Is this course of action which we have agreed upon lawful, is it legal, is it ethical or moral." We never gave any thought to this line of reasoning, because we were just naturally pragmatic. The one thing we were concerned about, will this course of action work, will it get us what we want, will we reach the objective we desire to reach.<sup>105</sup>

\*/// Like the Church Committee, we do not doubt that secrecy plays an essential role in delicate intelligence work. But while the classification of proper "sources and methods" of intelligence agencies—as Congress in 1947 anticipated—has its proper place, it cannot justify submerging in shadow entire programs, sweeping policy changes, important shifts in law, or acts that subvert the ideals of America.

Most of the detailed facts needed by Congress for oversight of Cold War intelligence agencies were classified. But fair analysis of the government's security programs requires that members of Congress have access to secrets. It also requires that members of Congress assess the overuse of secrecy stamps and the harm caused by excess secrecy, sometimes determining that the nation is best served by a secret's revelation. The Committee's investigation made clear that the executive branch frequently abused its classification power, keeping secret all of the misconduct that the Committee revealed. These were not genuine secrets. Much was reflexively kept "secret" without thought, or with only the thought of avoiding embarrassment. Nevertheless, some secrets are legitimate. Oversight without heed to this is doomed, as well as irresponsible.<sup>106</sup>

In the first instance, it was ambiguous laws and fuzzy instructions that allowed intelligence agencies to expand their activities and adopt increasingly aggressive tactics. As the Church Committee concluded, mandates stemming from labels such as national security, domestic security, subversive activities, and foreign intelligence were both imprecise and easy to manipulate.<sup>107</sup>

Ambiguous and fuzzy mandates in turn led to "mission creep." Although the agencies' improprieties and overreaching behavior took root as early as Franklin Roosevelt's administration, mission creep generally meant that as time passed, the breadth of the improprieties widened, a concept colorfully captured in a comment by former White House aide Tom Charles Huston. In 1970, Huston had coordinated from the White House the abortive "Huston Plan," by which the CIA, NSA, and other intelligence agencies sought presidential sanction for ongoing illegal break-ins and mail-opening programs as well as warrantless wiretaps and bugs. Five years later, however, Huston testified to the Church Committee that intelligence activity risked unthinking expansion in the absence of a clearly defined mandate: a "move from the kid

with a bomb to the kid with a pie sign to the kid with the bumper sign just keep going down the line."<sup>108</sup>

The question for America today is a novel and deadly enemy is whether we are succumbing to the same instincts that have eroded America's freedoms and undermined its institutions. The Committee's comprehensive investigation is an inquiry.

Assuming facts can be uncovered, the branches of government, genuine questions about how a nation should conduct itself in terms of national values: What kind of country address two basic questions: with an implacable, immoral, and inhuman system of careful restraints? Should we have an enemy? In words that echo today, the Committee said "power must be checked and balanced." It requires the restraint of laws, and not just the acts that the Committee exposed. Given the people of this country, a fairer life." It explained:

The United States must not adopt a policy as important as ends. Crisis makes it difficult that make men free. But each time we use are wrong, our inner strength is lessened.<sup>110</sup>

Senator Charles Mathias, a Republican, was a leading advocate for creating the Commission on the subject of some relevance thirty years ago.

History also shows that men and women are the compelling force of ethical principles. The adjunct of the courts themselves is recognizing the sacredness of human rights. Barbarisms, barbarisms that have led to the destruction of the leaders and



with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate. And you just keep going down the line."<sup>108</sup>

The question for America today as citizens once again are fearful and face a novel and deadly enemy is whether the new threat can be confronted without succumbing to the same institutional pathologies that curtailed America's freedoms and undermined its values during the Cold War. The Church Committee's comprehensive investigation provides a starting point for that inquiry.

Assuming facts can be uncovered and secrecy handled responsibly by all branches of government, genuine debate ought to be possible. Such a debate about how a nation should conduct itself in a time of crisis must be framed in terms of national values: What kind of country is America? This demands that the country address two basic questions. First, should the United States, faced with an implacable, immoral, and insidious enemy, weaken the Constitution's system of careful restraints? Should we, indeed, adopt the tactics of the enemy? In words that echo today, the Committee concluded that, even in crisis, "power must be checked and balanced, and that the preservation of liberty requires the restraint of laws, and not simply the good intentions of men."<sup>109</sup> The acts that the Committee exposed "did not reflect the ideals which have given the people of this country, and of the world, hope for a better, fuller, fairer life." It explained:

The United States must not adopt the tactics of the enemy. Means are as important as ends. Crisis makes it tempting to ignore the wise restraints that make men free. But each time we do so, each time the means we use are wrong, our inner strength, the strength which makes us free, is lessened.<sup>110</sup>

Senator Charles Mathias, a Republican from Maryland who had been a leading advocate for creating the Committee, added a historical allusion to a subject of some relevance thirty years later:

History also shows that men and governments have come to recognize the compelling force of ethical principles. The torturer who was once an adjunct of the courts themselves is today an international outlaw. By recognizing the sacredness of human life, mankind has sought to shed such barbarisms, barbarisms that have usually led to further violence and often to the destruction of the leaders and nations who resorted to them.<sup>111</sup>



X Referring to the 1954 Doolittle Commission report, the Church Committee commented that "it may well be ourselves that we injure most if we adopt tactics 'more ruthless than the enemy.'" <sup>112</sup> For example, the Committee also found that those planning covert actions "rarely noted" the possible harms the action could cause, particularly to "this nation's ability to exercise moral and political leadership throughout the world." <sup>113</sup>

The second pivotal question is whether the American public should be trusted with the truth. Three decades ago, the Church Committee concluded, again in words that echo today:

Despite our distaste for what we have seen, we have great faith in this country. The story is sad, but this country has the strength to hear the story and to learn from it. We must remain a people who confront our mistakes and resolve not to repeat them. If we do not, we will decline; but if we do, our future will be worthy of the best of our past. <sup>114</sup>

The Committee was unanimous that its embarrassing and unseemly findings about abuse at home should be made public. In "Additional Statements" to the final report on *Intelligence Activities and the Rights of Americans*, Democratic Senator Robert Morgan and Republican Senator Howard Baker commented in unison on the *favorable* impact of making facts, however embarrassing, public. Senator Morgan explained that "releasing this Report is a great testament to the freedom for which America stands," and expressed his "sincere hope that the Report . . . will rekindle in each of us the belief that perhaps our greatest strength lies in our ability to deal frankly, openly and honestly with the problems of our government." Senator Baker predicted the abuses being "fully aired to the American people" would have a "cathartic effect" on the FBI and the CIA. Baker supported this conclusion by quoting former CIA chief William Colby, who, in a 1976 *New York Times* opinion piece, said "this year's excitement" from the investigation could "strengthen American intelligence." <sup>115</sup>

Expressing agreement on values is, of course, easier when partisan motives are not ascendant. "Fundamental issues concerning the conduct and character of the nation deserve nonpartisan treatment." <sup>116</sup> Of course, there were some differences among Church Committee members. Senators Barry Goldwater and John Tower were most likely to dissent, although generally on the extent of proper disclosure and on remedy questions rather than on factual conclusions. But there was no partisan divide or bitterness, and large agreement on the Committee's basic task. <sup>117</sup> Indeed, among the Church Committee's key contributions was showing not only that intelligence oversight is a bipartisan duty, but also that intelligence excesses were not the product of any single

party or presidency. Every administration turned the tools and agencies of n

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party or presidency. Every administration, starting with Franklin Roosevelt's, turned the tools and agencies of national security to unwise or illegal use.

It remains true today that it is only through robust, open debate, grounded in a full picture of all relevant facts, that the American public can understand whether its government has erred, either out of patriotic zeal or a desire to enhance the powers of the presidency. And it is only through this debate that citizens can have confidence that our government is conducting itself in a way that merits our trust.

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## Reform and Resistance: Consequences of the Church Committee

The Church Committee's recommendations led to reforms, some significant and lasting, others transitory. The Committee's reports arrived as Congress, and to some extent the nation, was repudiating what Arthur Schlesinger famously termed "The Imperial Presidency." Along with laws regulating war powers and promoting government openness, Congress was, in the 1970s, enacting laws barring warrantless surveillance by the executive and limiting the FBI director's tenure. Congress also established permanent oversight committees for intelligence matters.<sup>1</sup>

Starting in the 1980s, the executive branch and its supporters began pushing back against legislative limits and reporting rules. Additional reforms promoted by the Church Committee foundered when supporters of broad executive power took control of the intelligence committees after 1980. Absent comprehensive reforms, intelligence agencies, acting in secret and exploiting new loopholes in the law, repeated familiar mistakes.<sup>2</sup>

### The Church Committee's Reform Agenda

The Church Committee made more than 180 detailed recommendations seeking to curb abuse and increase intelligence agencies' efficiency.<sup>3</sup> Despite the reform agenda's length, its unifying idea was simple: unchecked power is prone to unwise, inefficient application, and it leads inescapably to abuse. At home, therefore, the Committee, for example, urged elimination of the open-ended FBI authority to investigate "subversives." "[T]he Committee's examination of forty years of investigation into 'subversion' . . . found the term to be so vague as to constitute a license to investigate about any activity of practically any group that actively opposes the policies of the administration in power." Similarly, the Committee observed, security was ill-served by instructions that could be interpreted broadly according to officials' subjective ideas:

The national interest would be better served if Bureau resources were directed at *terrorism*, hostile foreign intelligence activity, or organized

crime, all more serious and p  
versives."<sup>4</sup>

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pects ahead of its time.)

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Colby agreed, explaining that con  
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crime, all more serious and pressing threats to the nation than "subversives."<sup>4</sup>

(As even this list of ignored threats revealed, the Committee was in some respects ahead of its time.)

In the foreign intelligence arena, the Committee called for intelligence reorganization to realize efficiencies sought (but not achieved) by the 1947 National Security Act.<sup>5</sup> Similarly, it expressed concern about the danger of assuming that "technical collection systems"—i.e., spy satellites and sophisticated electronic listening devices—could replace "clandestine human collection." Used properly, human spies provide "valuable insight concerning the motivations for activities or policies of potential adversaries, as well as their future intentions," that technical collection systems cannot.<sup>6</sup> It was a lesson the nation had to relearn at high cost after 9/11 and again in the run-up and aftermath to the poorly planned 2003 invasion and occupation of Iraq.

Unsurprisingly, one of the Committee's main points was the need for clear laws to guide and limit intelligence agencies. In 1976, the CIA, the NSA, and the FBI all lacked detailed statutory mandates. Some bare bones statutory provisions covered the CIA and FBI, but the NSA was entirely a creature of executive branch regulations. The Committee strongly recommended that Congress enact new laws describing and limiting all intelligence agency activities.<sup>7</sup>

The Committee also urged formation of a permanent Senate Committee on Intelligence, recognizing that "Congressional oversight is necessary to assure that in the future our intelligence community functions effectively, within the framework of the Constitution."<sup>8</sup> Vigorous oversight, in the Committee's view, would both limit abuse and increase effectiveness. Former CIA chief William Colby agreed, explaining that congressional involvement would "strengthen American intelligence."<sup>9</sup>

The obstacles to the new Senate committee illustrate the kinds of resistance that would face all reform and oversight efforts after the Church Committee. The first barrier to reform came from powerful senior senators who ran existing committees like Armed Services, Appropriations, Foreign Affairs, and Judiciary. All those committees had previously been responsible for overseeing a piece of America's intelligence activities. But the Church Committee concluded that none saw the full picture, and that all were lax. Still, in 1976, the heads of the congressional committees worried about losing turf, and tried to stall reform by calling for a fifteen-month study of congressional oversight of the intelligence agencies. After Majority Leader Mike Mansfield killed this ploy, the barons of the Armed Services Committee forced a vote on excluding defense intelligence from the jurisdiction of the new committee. Put to a vote, the measure lost by a more than two to one margin, and defense stayed within



the new committee's purview.<sup>10</sup> Existing committees, however, retained sufficient jurisdiction over military intelligence to prevent the new intelligence committee from exercising a full leadership role.

When procedural maneuvers failed to stop the new oversight committee, advocates for untrammelled executive power attacked the character of Church Committee members and staff. Senator Milton Young, the senior Republican on the Appropriations Committee and co-chair of its Subcommittee on Intelligence, argued that Congress could not be trusted with real oversight. Young claimed recent congressional investigations had "very adversely affected the operation of our intelligence system." Young insinuated that the Church Committee was responsible for "disclosure" of the name of Richard Welch, the CIA's station chief in Greece, leading to Welch's "murder" in December 1975, during the Church Committee's inquiries. But Senator Fritz Mondale immediately corrected Young. The Committee "never had" Welch's name, and had "never asked for it." Mondale also observed that the CIA "had urged Welch not to move into [his house], because it had been known in the community that the house had been the residence of the previous head of the CIA in Greece." Young's accusation, which sought to deflect attention away from abuses and to tar advocates of reform with false accusations, was entirely baseless.<sup>11</sup>

Young, however, was not the first to make this spurious claim: CIA chief George H. W. Bush also tried to exploit Welch's death.<sup>12</sup> After Welch's death, the CIA and the Ford Administration used the mourning around Welch's death to hamper the work of the Senate and House.<sup>13</sup> Shortly after Bush was confirmed as CIA chief, he came before the Church Committee for an executive session. While Bush had the floor, an aide whispered in his ear. Out of the blue, Bush then blurted out the accusation that the Committee was responsible for Welch's assassination. Soon, however, Bush returned to the Committee to concede that no evidence supported the accusation that congressional inquiries into intelligence activities had any "adverse impact on Mr. Welch's cover or any relationship to his tragic death."<sup>14</sup>

With accusations about Welch's murder refuted, the Senate proceeded to approve a new Senate permanent intelligence committee by a vote of 87 to 7. The new committee obtained budgetary authority over the intelligence agencies. The resolution also set forth the "sense of the Senate" that the executive branch would keep the committee "fully and currently informed" about intelligence activities, including covert action, and provide the committee with all requested documents and information. Modeled on the Church Committee itself, the new permanent intelligence committee was structured to reduce partisanship. The ratio of majority and minority party members was set at eight to seven—Church's had been six to five—rather than the majority's usu-

ally greater representation on reform who wielded real power, came from

The new Senate Intelligence Committee created one year later, empowered the Constitution's checks and balances. The intelligence oversight committee, however, As Frank Church explained:

continuing congressional oversight of the necessary job. Political will to do was to recommend that permanent that knowing that the Congress surveillance with whatever discretion makes for.<sup>16</sup>

The resolution creating the new within the Senate. As a one-house executive branch to keep the committee intelligence activities or to provide Congress filled the gap, and passed committees, making disclosure ob-

After addressing congressional need for new laws limiting and Congress passed important laws of the Church Committee. But problematic practices and inefficient most important new law was the or FISA. Both Senate and House the Church Committee's extensive reference to the Church Committee's in every administration since Fr consensus for the bill. FISA passed by a narrower margin, with Vice Signing the bill into law, President judicial warrant" was required for intelligence or counterintelligence pur communications of U.S. persons might be on signing the bill into law, FISA use electronic surveillance at home

Besides rejecting presidential c



ally greater representation on regular committees. Similarly, the vice chair, who wielded real power, came from the minority party.<sup>15</sup>

The new Senate Intelligence Committee, and a parallel House committee created one year later, empowered Congress to perform its proper role under the Constitution's checks and balances. Mere existence of a permanent intelligence oversight committee, however, hardly guarantees effective oversight. As Frank Church explained:

continuing congressional oversight is built into the woodwork. We did the necessary job. Political will can't be guaranteed. The most we could do was to recommend that permanent surveillance be established. We did that knowing that the Congress being a political animal will exercise its surveillance with whatever diligence the political climate of the time makes for.<sup>16</sup>

The resolution creating the new permanent committee fully empowered it within the Senate. As a one-house resolution, not a law, it could not *require* the executive branch to keep the committee "fully and currently informed" of intelligence activities or to provide documents or other information. In 1980, Congress filled the gap, and passed a law covering both the Senate and House committees, making disclosure obligations mandatory.<sup>17</sup>

After addressing congressional oversight, Congress turned to the pressing need for new laws limiting and channeling intelligence agencies' activities. Congress passed important laws reflecting the findings and recommendations of the Church Committee. But by no means did Congress respond to all the problematic practices and inefficiencies highlighted by the Committee. The most important new law was the 1978 Foreign Intelligence Surveillance Act, or FISA. Both Senate and House committee reports on FISA drew heavily from the Church Committee's extensive documentation of abuse. Presumably, reference to the Church Committee's finding that excessive surveillance occurred in every administration since Franklin Roosevelt's helped foster bipartisan consensus for the bill. FISA passed the Senate 95 to 1, and cleared the House by a narrower margin, with Vice President Mondale lobbying for passage. Signing the bill into law, President Carter explained that under FISA a "prior judicial warrant" was required for "all electronic surveillance for foreign intelligence or counterintelligence purposes in the United States in which communications of U.S. persons might be intercepted." As reflected in Carter's statement on signing the bill into law, FISA renounced all "inherent" executive power to use electronic surveillance at home in the absence of statutory authority.<sup>18</sup>

Besides rejecting presidential claims of "inherent authority," FISA also re-

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files

FISA



moved all ambiguous and open-ended words such as "subversion" and "national security" that had for decades been used to justify excessive electronic surveillance. Instead, FISA used carefully worded definitions that covered espionage and terrorism alone.

In FISA, Congress created a special federal court to hear and decide applications for foreign intelligence surveillance warrants. The law permitted only two temporary exceptions to the requirement that a judicial warrant be obtained prior to electronic surveillance involving an American. First, in emergencies, a limited period of surveillance (originally twenty-four hours, later amended to seventy-two hours) could be conducted before a warrant was obtained. Further, "following a declaration of war by Congress," warrantless searches would be lawful for up to fifteen days. Congress rejected a proposal that this exception last for a year, in the belief that fifteen days gave the president enough time to return to Congress and ask for any necessary changes in the law. Echoing Church Committee recommendations, FISA protected only United States citizens and aliens with permanent residency status.<sup>19</sup> The 9/11 hijackers, therefore, had no shelter from warrantless surveillance under FISA.

Although some predicted dire consequences before its passage,<sup>20</sup> FISA soon gained universal acceptance. In December 1981, President Ronald Reagan issued an Executive Order on United States Intelligence Activities emphasizing the need to comply with FISA.<sup>21</sup> Congress also amended FISA several times before and after 9/11. These changes, usually based on practical suggestions by the executive branch, preserved FISA's fundamental purpose while modifying the law based on experience and changes in technology. In many respects, FISA thus represented the checks and balances as they are supposed to work—a dialogue between branches of government.

Over time, other Church Committee recommendations found their way into law. Some new laws came quickly, such as an October 1976 law limiting the tenure of the FBI director to ten years. Never again would a director like J. Edgar Hoover dominate the Bureau for almost fifty years. Other reforms came slowly, such as the law strengthening the independence of the CIA inspector general. Some came so much later that the Church Committee's early contribution to the idea was largely forgotten. The law embodying the 9/11 Commission's proposals for reorganizing the intelligence community, for instance, echoed sentiments aired first by the Church Committee.<sup>22</sup>

*NO CLEAR  
STATUTORY  
CHARTER* One of the core Church proposals—enactment of comprehensive statutory charters for all the intelligence agencies—did not succeed. As a consequence, neither the FBI nor the CIA (let alone the NSA and the other Defense Department intelligence agencies) received detailed legislative guidance with clear operational mandates and specific limitations.

From its birth in 1976 through 1981, the Church Committee moved valiantly for this legislation. Its two final drafts, one by John Bayh, with the aid of former CIA director William F. Buckley, and "Dee" Huddleston, who led a subcommittee on intelligence committee staff director William J. Casey, were both drafts.<sup>23</sup> But by 1981, the very notion of a dead letter. That year, Barry Goldwater, who had been on the committee after party control of the Senate, expressed skepticism about any alone a comprehensive new statutory framework. His personal acquiescence with a new agreement was a stage for a new round of executive

Nevertheless, the cause for reform boiled down to one politician alone. The proposed bill was complex. Writing a technically difficult and politically sensitive bill in the memories of the Church Committee was a task the House mounted no parallel effort. Finally, Presidents Ford and Carter issued guidelines for intelligence activities, which limited limits for intelligence activities, which were issued new, detailed guidelines for intelligence activities. These initiatives were far from identical to the Church Committee's recommendations and the new permanent guidelines fell short of needed reform goals. But the Church Committee recommended.

Without doubt, the executive branch's resistance to tighter legislation was in part to forestall tighter legislation. The executive order was a cynical effort to delay. It argued that the order was "as much as possible" to maintain executive control of the reform movement. It dated reform pressures." Still another factor was that Levi's FBI guidelines were an "attempt to impose policy preferences of the executive branch."

Nevertheless, it would be incorrect to say that the Church Committee's efforts were in vain. Reacting to the merits of the Church Committee's proposals, which were issued shortly before publication, the Church Committee highlighted differences between its recommendations and executive orders and attorney general guidelines, which were weakened, by new presidents or attorneys general.



From its birth in 1976 through 1980, the new Senate committee struggled valiantly for this legislation. Its two first chairs, Senators Daniel Inouye and Birch Bayh, with the aid of former Church Committee member Senator Walter "Dee" Huddleston, who led a subcommittee working on charters, and intelligence committee staff director William G. Miller, produced several extensive drafts.<sup>23</sup> But by 1981, the very notion of comprehensive intelligence reform was a dead letter. That year, Barry Goldwater took over as chair of the Senate committee after party control of the Senate shifted in the 1980 election. Goldwater expressed skepticism about any congressional oversight of intelligence, let alone a comprehensive new statutory framework. The combination of congressional acquiescence with a new aggressive approach by the executive set the stage for a new round of executive branch overreach in the 1980s.<sup>24</sup>

Nevertheless, the cause for comprehensive legislation's failure cannot be boiled down to one politician alone, even one as powerful as Goldwater. The proposed bill was complex. Writing rules for intelligence agencies is always technically difficult and politically risky. Public pressure to act dwindled as memories of the Church Committee's revelations dimmed.<sup>25</sup> Further, the House mounted no parallel effort to prepare comprehensive legislation. Finally, Presidents Ford and Carter issued executive orders setting out rules and limits for intelligence activities, while Ford's Attorney General Edward Levi issued new, detailed guidelines for FBI investigations. These executive branch initiatives were far from identical to the new laws the Church Committee recommended and the new permanent committee sought. In many respects, they fell short of needed reform goals. But because they moved in the direction the Church Committee recommended, it became harder to press for legislation.<sup>26</sup>

Without doubt, the executive branch designed and issued these new guidelines in part to forestall tighter legislation. One commentator opined that Ford's executive order was a cynical effort to "prevent legislative action"; another argued that the order was "as much—and perhaps more—an attempt to maintain executive control of the reform movement as it was an attempt to accommodate reform pressures." Still another took the position that Attorney General Levi's FBI guidelines were an "attempt to delimit prospective reforms" to the "policy preferences of the executive branch."<sup>27</sup>

Nevertheless, it would be incorrect to dismiss these guidelines as mere gestures. Reacting to the merits of the Levi guidelines and the Ford order, which were issued shortly before publication of the Committee's final reports, the Church Committee highlighted differences in approach and shortfalls, but was generally positive. Its principal concern was prospective—that presidential executive orders and attorney general guidelines could easily be changed, and weakened, by new presidents or attorney generals acting on their own; this con-







regime—despite Reagan himself having labeled Iran a “terrorist” state. (Through student proxies, Iran had captured fifty-two American diplomats and other citizens in November 1979, holding them hostage for 444 days.) Nonetheless, Reagan hoped that providing arms to Iran would lead to the release of other American hostages in Lebanon.<sup>32</sup>

Missiles moved into Iranian hands via the “Enterprise,” an offshore entity created by the White House’s National Security Council staff, led by Lieutenant Colonel Oliver North. The Enterprise had its own airplanes, ship service, secure communications capacities, and secret Swiss bank accounts. But in 1986, the Lebanese weekly *Al-Shiraa* published details of the Enterprise’s arms deals with Iran, some of which used Israel as an intermediary.<sup>33</sup>

The Contra funds and the Iran sales converged into the affair now known as “Iran-Contra.” Pursuant to instructions from the president’s National Security Council, supposedly a purely advisory body, the Enterprise secretly funneled to the Contras millions of dollars realized from the sale of missiles to Iran, allowing the executive to evade legal restrictions such as the Boland Amendment.<sup>34</sup>

Congress was not informed about either the sale of missiles to Iran or the use of those funds to pay the Contras. Those deliberate omissions violated a law enacted in 1980 that gave the congressional intelligence committees specific oversight responsibilities, as well as President Reagan’s December 1981 executive order, which mandated executive branch cooperation with Congress under the 1980 oversight provisions.<sup>35</sup> As Congress’s Iran-Contra Joint Committee concluded, secrecy was used “not as a shield against our adversaries, but as a weapon against our own democratic institutions.”<sup>36</sup>

Other executive branch pathologies similar to those revealed by the Church Committee were evident in the Iran-Contra affair.<sup>37</sup> Admiral John Poindexter, the President’s National Security Advisor, explained that he did not tell President Reagan about the diversion of proceeds from the missile sales to ensure the President had “deniability.” Echoing the Church Committee, the Iran-Contra Committee concluded it was a perversion of plausible deniability to deny knowledge of covert actions to the “highest elected officials of the United States Government itself.” Again echoing the earlier investigation, the Iran-Contra Committee concluded that “the common ingredients of the Iran and Contra policies were secrecy, deception and disdain for the law.” Moreover, “time and again we have learned that a flawed process leads to bad” decisions about national security. As was the case at the time of the Church Committee (and as is the case again after 9/11), those defending the Administration claimed matters labeled as foreign policy should be left to the president alone. But as the Iran-Contra Committee responded, “the theory of our



X Constitution is the opposite: policies formed through consultation and the democratic process are better and wiser than those formed without it."<sup>38</sup>

✓ Oliver North not only masterminded the Enterprise scheme, he also lied to Congress about the Administration's aid to the Contras in a 1986 briefing. Subsequently, on the first day of the Iran-Contra Committee's hearings, the telegenic North appeared dressed in a bemedaled Marine dress uniform. He and his counsel managed to turn the tables on the investigative committee by making North's patriotism the issue rather than the Administration's wrongdoing. He assailed Congress for leaks, and condemned elected officials who opposed aid to Contra "freedom fighters."<sup>39</sup> Thanks to his defiant violation of the law, Oliver North became a national hero in many circles. In 1994, he ran for a United States Senate seat in Virginia—and only barely lost.<sup>40</sup> North may have left another lesson for the post-9/11 future: if you're going to break the law and if it is uncovered, don't apologize. Instead, proclaim it loud and long, touting your "patriotic" motives.

X In response to Iran-Contra, Congress again amended the law requiring disclosure obligations for covert actions. Henceforth, presidents themselves had to find in writing that covert actions were necessary and important. The new law flatly stated that presidents could not authorize any action "that would violate the Constitution or any statute of the United States."<sup>41</sup>

Iran-Contra's political fallout was limited. Embarrassed by the Iran-Contra revelations, President Reagan apologized to the nation, saw his popularity drop, and changed his White House staff, bringing in former Church Committee member Howard Baker as chief of staff. The President's popularity recovered before he left office. Although Admiral Poindexter and Oliver North were both convicted of criminal offenses, their convictions were reversed on technical grounds, with the government declining to press fresh charges.<sup>42</sup>

Iran-Contra involved a deliberate decision by the executive branch to reject Congress's foreign policy choices and to conduct its own illegal policy. While the Church Committee documented a far greater volume of rights violations during the Cold War, these Reagan Administration foreign policy decisions evinced the same disdain for the role of Congress that past presidents had shown in letting loose intelligence agencies at home.

Central American foreign policy also spilled over the nation's borders to undermine the new limitations on surveillance of Americans at home. For more than two years in the early 1980s, the FBI spied on and infiltrated the Committee in Solidarity with the People of El Salvador, or CISPES, along with other advocacy organizations such as the Central America Solidarity Association and the Interreligious Task Force. The FBI never found evidence of criminal activity by these groups, but in its overlong and unbounded investigation, the

Bureau intruded repeatedly on the Americans, like the college students vocally opposed U.S. military aid.

Despite the FBI's threshold cor suggest CISPES was under foreign activity, the Bureau in October 198 location, leadership, and activities agents "not to investigate the exer CISPES did little outside the shel tions, FBI agents repeatedly found In Wichita, agents tore down flyers puzzled agents found themselves g order of Catholic nuns. The net re on the freedoms of Americans pre foreign policy decision of the fede

In another sad retread of earlier based on loose or nonexistent affil the sanctuary movement were pla tended CISPES-sponsored films, at professor who invited a suspicious question—found themselves unde of CISPES-affiliated organization ica, the Southern Christian Lead Conference.<sup>45</sup> It was mission creep

## The 9/11 Commission

Lessons from the Church Commi greatest intelligence disaster of the National Commission on Terrori monly known as the 9/11 Comm tween its recommendations and th 9/11 Commission's inquiry into e September 2001 attacks revealed intelligence agencies that recalled Most important among these wer such as failure to translate details o ary 2001, and an FBI analyst's ref understood" the rules governing t and intelligence investigations. Hi capacity, the 9/11 Commission a



Bureau intruded repeatedly on the First Amendment activities of law-abiding Americans, like the college students who largely comprised CISPES and who vocally opposed U.S. military aid to the government of El Salvador.<sup>43</sup>

Despite the FBI's threshold conclusion in 1981 that no evidence existed to suggest CISPES was under foreign control or implicated in any criminal activity, the Bureau in October 1983 ordered all its field offices to "determine location, leadership, and activities of CISPES." The FBI, to be sure, told agents "not to investigate the exercise of First Amendment rights." But since CISPES did little outside the shelter of the Constitution's free speech protections, FBI agents repeatedly found themselves spying on core political speech. In Wichita, agents tore down flyers posted in a public university. In Cincinnati, puzzled agents found themselves gathering information on the activities of an order of Catholic nuns. The net result was, once again, a far-ranging intrusion on the freedoms of Americans precisely because of their vocal opposition to a foreign policy decision of the federal government.<sup>44</sup>

In another sad retread of earlier mistakes, the FBI expanded its investigation based on loose or nonexistent affiliations to CISPES. Churches affiliated with the sanctuary movement were placed under surveillance. Individuals who attended CISPES-sponsored films, attended CISPES conferences—even a college professor who invited a suspicious class speaker and posed a suspicious exam question—found themselves under FBI scrutiny. The FBI also compiled a list of CISPES-affiliated organizations to spy on; the list included Oxfam America, the Southern Christian Leadership Conference, and the U.S. Catholic Conference.<sup>45</sup> It was mission creep of a depressingly familiar flavor.

### The 9/11 Commission

Lessons from the Church Committee went unheeded, setting the stage for the greatest intelligence disaster of the past half-century. The Final Report of the National Commission on Terrorist Attacks Against the United States (commonly known as the 9/11 Commission) is notable for the many parallels between its recommendations and those of its 1975–76 Senate predecessor. The 9/11 Commission's inquiry into events and government actions leading to the September 2001 attacks revealed numerous failures of coordination between intelligence agencies that recalled the institutional rivalries of the Cold War. Most important among these were "day-to-day gaps in information sharing" such as failure to translate details of an identification of one hijacker in January 2001, and an FBI analyst's refusal to share information because she "misunderstood" the rules governing the sharing of information between criminal and intelligence investigations. Highlighting these gaps in intelligence agency capacity, the 9/11 Commission argued for augmented leadership and infor-



mation sharing—not increases in surveillance or disruption powers.<sup>46</sup> Indeed, not one of the 9/11 Commission recommendations suggested the need for new coercive or intrusive government powers. On the contrary, the 9/11 Commission cautioned that

The burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security, and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties. If the power is granted, there must be adequate guidelines and oversight to properly confine its use.<sup>47</sup>

This formulation is strikingly similar to the test suggested by the Church Committee for assessing, for example, new forms of electronic surveillance. Thirty years later, in short, the 9/11 Commission still viewed institutional checks ensuring that the executive uses intelligence powers in a responsible fashion as vital for effective, focused national security policy consistent with America's constitutional values.

Parallels between the Church Committee's recommendations and those of the 9/11 Commission run even deeper. In November 1975, Senator Frank Church gave a speech calling for a stronger CIA with better analytic capabilities.<sup>48</sup> In its subsequent final report on foreign intelligence, the Church Committee also called for separating the Director of Central Intelligence from the CIA, allowing the director to advise the president more efficiently and objectively and manage the intelligence community without a conflict of interest or responsibility of running a major intelligence agency.<sup>49</sup>

In 2001, this call for reform had yet to be heeded. At the core of the 9/11 Commission's vision was a new "National Intelligence Director" position to supersede the Director of Central Intelligence post. This new position was needed, the 9/11 Commission argued, to overcome barriers that hindered intelligence agencies' cooperation; to find ways to bridge the gap between foreign and domestic intelligence; to set firm priorities; and to allocate resources accordingly. In 2004, despite initial reservations from the Bush Administration, Congress, under heavy public pressure, passed the Intelligence Reform and Terrorism Prevention Act, creating a Director of National Intelligence with some, but not all, of the powers recommended by the 9/11 Commission.<sup>50</sup>

Congress too had failed to heed the Church Committee's call to action. So, unsurprisingly, the 9/11 Commission's approach to oversight again echoed the Church Committee's. As we have seen, one of the Church Committee's core recommendations was far stronger—and more focused—congressional oversight to reassert the proper balance between the executive and legislative

branches and, as a consequence, foolish policies, and enhance efforts to the same conclusion. It pointed to congressional oversight of intelligence as often reflected age-old turf jealousies.

Of all our recommendations, be among the most difficult to implement by current congressional action. American people will not get the States needs a strong, stable, and America's national intelligence ship. . . . the other reforms with terrorism Center and a National if congressional oversight does not, effective management can be lost to oversight.<sup>51</sup>

Rather than acknowledging George W. Bush's Administration intelligence. It tried to politicize and nationalism. And it fought tooth and nail beyond the opaque walls of the

Power without accountability teaching of the Church Committee separated by almost thirty years. responsibly tend to improve our security go unheeded and instead are consequences that paper over existing

By denying the extent and scope of the intelligence community, critics of the Church Committee that would have yielded more to threats. This problem was to prevent intelligence agencies' analytic work in the run of intelligence.

That the lessons of the Church Committee and the 9/11 Commission report thus ought to be a matter of abiding concern the CISPES spying scandals revealed the excessive and inefficient use of spying and the absence of oversight contributed



branches and, as a consequence, to protect human liberty, reduce the risk of foolish policies, and enhance efficiency. The bipartisan 9/11 Commission came to the same conclusion. It pointed out, almost thirty years after Church, that congressional oversight of intelligence was still too fragmented, and still too often reflected age-old turf jealousies:

Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The United States needs a strong, stable, and capable congressional structure to give America's national intelligence agencies oversight, support, and leadership. . . . the other reforms we have suggested—for a National Counterterrorism Center and a National Intelligence Director—will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.<sup>51</sup>

Rather than acknowledging the need for improved oversight, President George W. Bush's Administration resisted effective congressional inquiries into intelligence. It tried to politicize intelligence reform questions to dissuade criticism. And it fought tooth and nail against any effort to ensure accountability beyond the opaque walls of the executive branch itself.

Power without accountability risks unwise and abusive exercise. This is the teaching of the Church Committee and the 9/11 Commission, two bodies separated by almost thirty years. Checks to ensure that power is exercised responsibly tend to improve our security, not corrode it. But these lessons often go unheeded and instead are countered with flawed, ideologically-driven responses that paper over existing problems.

By denying the extent and scope of problems in our intelligence community, critics of the Church Committee stymied important structural changes that would have yielded more coordinated and focused responses to true threats. This problem was to persist even after 9/11. It infected intelligence agencies' analytic work in the run-up to the Iraq war, as well as the use of that intelligence.

That the lessons of the Church Committee, invoked again in the Iran-Contra and the 9/11 Commission reports, were so often and so successfully resisted thus ought to be a matter of abiding national regret. As the Iran-Contra and the CISPES spying scandals revealed, the executive branch did not reject abusive and inefficient use of spying and intelligence powers. And as 9/11 revealed, the absence of oversight contributed to the unwise and inefficient functioning



of the intelligence services. Moreover, the spirit of contempt for Congress's laws animating Iran-Contra was never set aside.

Twenty-five years after its publication, the very first recommendation of the Church Committee's report on *Intelligence Activities and the Rights of Americans* remained wise counsel on September 10, 2001: "There is no inherent constitutional authority for the President or any intelligence agency to violate the law."<sup>52</sup>

It was wisdom that had added relevance and urgency in the years after September 11, 2001.

Adopting Ta