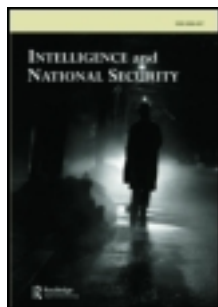


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# The Church Committee and a New Era of Intelligence Oversight

FREDERICK A.O. SCHWARZ, JR

*Thirty years ago, the Church Committee completed what was and still is the most exhaustive look at any government's secret intelligence agencies. The Committee showed that in times of crisis, even constitutional democracies are likely to violate their laws and forget their values. In this reflection, the Committee's Chief Counsel states that by examining the full record over time, the Committee found that it was insufficient to blame abuses solely on intelligence agencies. Ultimate responsibility was properly fixed with the presidents, attorneys general, and other high executive branch officials. Seven general lessons, including the danger of excess secrecy, are drawn from his experience. These lessons are valuable for the present struggle with terrorism.*

Thirty years ago, the Church Committee completed what was and still is the most exhaustive look at our government's (or any government's) secret intelligence agencies. The Committee's hearings and reports to the US Senate and to the American public revealed much that broke America's laws and did not honor America's values.<sup>1</sup>

Not knowing a single senator, I was honored to be asked, and privileged to serve, as the Committee's chief counsel. Now, 30 years later, when America again faces and fears a ruthless enemy, I am frequently asked about the Church Committee and whether its lessons are important in a time of terror. They are. Most important, in its extensive review of excess and abuse over the course of approximately 30 years during the Cold War, the Church Committee showed that in times of crisis even constitutional democracies are likely to violate their laws and forget their values. This was a lesson as old as the Alien and Sedition Acts and as recent as the internment of Japanese Americans during World War II. But the Church Committee analyzed the toxic elements of secrecy and the extensions of a climate of fear for decades instead of the shorter periods involved in the earlier times of excess.

The danger signals raised by an indefinite war on terror are obvious. Whether an oversight committee can make a difference is affected to a considerable extent by whether it and the country it serves is overly partisan or not. In 1975–76, the climate was far less partisan than today. Although there were some differences among Church Committee members, these were not major, focusing mainly on details of recommendations and whether some material should be made public (e.g., the Assassinations Report, or the names of companies that turned over all their cables to the National Security Agency – NSA). These differences were not partisan, and the Committee never divided on partisan lines. The less toxic atmosphere of the day helped. And so did the Committee’s willingness to expose facts concerning – and criticize icons of – both parties.

Today, public comment looking back tends to identify Cold War abuses with the Nixon years, or even just Watergate. This hides more than it explains. Richard M. Nixon makes a convenient larger-than-life villain. But as revealed by the Church Committee, no single man, no single administration, no single party caused the abuses and overreaching of the Cold War period. In fact, overly broad investigations, lawless conduct, and a departure from America’s ideals haunted all administrations from Franklin D. Roosevelt through Nixon.<sup>2</sup> Lack of congressional oversight was one of the causes of these failures. This lack, coupled with excessive secrecy and the use of fuzzy standards in administrative directives, and sometimes in the laws themselves, was the fertilizer for abuse and excess.

Today, compared with the era of the Church Committee, not only are we more partisan as a nation and in government, but the problem of oversight during the war on terror is that oversight must necessarily be of a sitting administration. This makes it much harder. Nonetheless, principles that the current administration has advocated – such as that presidents are above the law – raise concerns that our founders understood and guarded against and create precedents that are dangerous in the hands of a president of any party. So the question is whether those who are responsible for oversight have the wisdom and the courage to rise above the moment and together take a long term, nonpartisan view of what best serves our country.

#### CREATING THE COMMITTEE

On 27 January 1975, the US Senate created a Select Committee to investigate the intelligence agencies of the United States, including the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). The Committee’s mandate was to investigate the full range of government intelligence activities. The two most basic questions were (1) the extent to which the agencies’ actions had been ‘illegal, improper or unethical’, and

(2) oversight: 'the nature and extent of executive branch oversight' and the 'need for improvement' of congressional oversight.<sup>3</sup> The Committee became known as the Church Committee for its chair, Idaho's Frank Church (D), elected 19 years earlier at the age of 32.

The Committee issued its final reports in April 1976. Here are just two examples of the disclosures. First, internal FBI documents used Orwellian language to label Martin Luther King Jr. the leader of a 'Black Nationalist Hate Group'. Then the Bureau set out secretly to destroy King, including sending an anonymous letter with an enclosed tape that appeared to be designed to induce him to commit suicide.<sup>4</sup> A second revelation was the years of CIA assassination plots, including the hiring of Mafia members to try to kill Fidel Castro.<sup>5</sup>

Other examples of intelligence agency misconduct are mentioned below. Beyond exposure of agency misconduct, the Committee highlighted grave deficiencies of presidents, attorneys general, and other high executive branch officials. The same went for Congress.

#### HOW DID THE INVESTIGATION HAPPEN?

Powerful, secretive intelligence agencies do not like their dirty laundry exposed. Presidents do not want executive branch responsibility examined. Congress traditionally had shied away from its intelligence oversight responsibilities. Why, then, in 1975 did the Senate – and later the House – launch major investigations of the intelligence agencies?

For the investigation to happen, pent-up interest in what America's hidden government had been doing was necessary. There had been rumors of assassination plots. A break-in to an FBI office in Pennsylvania had found documents suggesting secret harassment of dissidents. And finally, in December 1974, Seymour Hersh wrote a series of *New York Times* articles exposing 'massive' CIA domestic spying and illegal intelligence operations directed against antiwar activists and other American dissidents.<sup>6</sup>

Coupled with interest in what our secret government had been doing was increased public mistrust of government. This stemmed from the Vietnam War and Watergate. Many senators and members of Congress also worried about their country and about the balance of power between the executive and legislative branches.

But while the interest and the increased mistrust were *necessary* for the investigation, neither would have been *sufficient* to unleash or allow the Church Committee investigation. Three factors helped.

First, Gerald R. Ford had recently become our first unelected president. He had pardoned Richard Nixon. Having taken over from a man discredited and disgraced for violating the law and abusing his power – including attempting

to co-opt the CIA and the FBI – President Ford had a problem. On the one hand, he wanted to appear open or, perhaps more important, did not want to appear to be hiding impropriety. On the other hand, powerful advisors like Henry Kissinger opposed any meaningful cooperation. Ford had to be pushed – repeatedly – to allow the Committee access to the crucial raw files and relevant witnesses. Nonetheless, ultimately he chose not to face a public fight with the Senate committee over access.<sup>7</sup>

Second, after directing the FBI for almost 50 years, J. Edgar Hoover was dead. With good reason, public officials feared Hoover, as well as the general public's reverence for the FBI. The Church Committee came across a striking example of Hoover's power. After understanding the colorful details of the Castro assassination plots (and others), the crucial question became whether Presidents Eisenhower, Kennedy, and Johnson had authorized the plans. In the case of Kennedy, the Committee uncovered the fact that a mistress of the Mafia don hired by the CIA to kill Castro was at the same time one of JFK's mistresses. Was she a go-between? We concluded no. But in the course of examining this case, we came upon a letter from Hoover to the White House and Attorney General Robert Kennedy that revealed that Hoover knew about the joint mistress.<sup>8</sup> After this, it surely would have been difficult for President Kennedy or his brother to replace Hoover or even effectively control him. Similarly, it seems unlikely that with Hoover alive, Congress would have unleashed a major investigation of the FBI.

Third, in contrast to today's Congress – where partisan diatribes chill debate and make wise action more difficult – Congress was then more collegial. Evidence was the decision by Majority Leader Mike Mansfield (D-MT) that the Select Committee's membership be six Democrats to five Republicans, at a time when regular committees were divided more favorably to the Democrats. It is also possible that some senators assumed revelations of presidential misconduct would be limited to the already disgraced Nixon. As it turned out, however, one of the Committee's most important contributions was to show that all presidents, starting with FDR, had failed in their duty to supervise the secret government. Moreover, most had themselves been complicit in abuse.

#### AT HOME AND ABROAD: THE COMMITTEE'S DUAL FOCUS

The Church Committee covered domestic and foreign issues, as indicated by the titles of its main reports: *Alleged Assassination Plots Involving Foreign Leaders*, an Interim Report; *Foreign and Military Intelligence, Final Report Book I*; *Intelligence Activities and the Rights of Americans, Final Report Book II*; and *Detailed Staff Reports on Intelligence Activities and the Rights*

of Americans, *Final Report Book III*. There were, of course, many common themes and questions. Had excessive secrecy facilitated abuse and caused mistakes harmful to the national interest? The same question was asked with respect to vague, ambiguous, or open-ended authorizing language voiced by presidents or contained in statutes. Had the executive branch exercised proper control? Did Congress have appropriate oversight? Had the programs and policies served the national interest? Finally, the most fundamental question: should the United States, when faced with crisis, react by adopting ‘the tactics of the enemy?’ In addition, the evidence, particularly as developed in questions by Senator Walter ‘Fritz’ Mondale (D-MN), who led the work focused on the rights of Americans, showed that attitudes developed in foreign intelligence operations seeped through at home. Thus, disregard for the ‘niceties of law’ was ‘brought home’ from war by some of the FBI officials who were responsible for examples of despicable conduct at home, including the effort to destroy Dr. King.<sup>9</sup>

Despite the similarities, there were also fundamental differences between the Committee’s approach to domestic and foreign issues. This is partially explained by the different standards applicable to intelligence activities affecting the rights of Americans, as opposed to intelligence activities overseas. To simplify, the former can be held to the US Constitution, the Bill of Rights, and the majesty of the law. But the latter can best be held to the more general early words of the Declaration of Independence: ‘a decent respect to the opinions of mankind’. In addition, reflecting a number of factors, the reports other than Book I were based on the supposition that detailed facts drive reform and thus were more fact-based and reflective of investigation. In contrast, Book I was more policy-oriented. Loch K. Johnson’s book, *A Season of Inquiry* discusses the differences in approach in more detail.<sup>10</sup>

#### THE INGREDIENTS OF SUCCESSFUL OVERSIGHT

Frank Smist, in his book *Congress Oversees the United States Intelligence Community, 1947–1989*, divided *oversight* into two categories: ‘institutional’ and ‘investigative’. The institutional model sees oversight as a ‘cooperative relationship between the legislative and executive branches’. The investigative model views oversight as involving an ‘adversarial relationship’ between the two branches.<sup>11</sup> Of all the congressional committees responsible for intelligence oversight from 1947 through 1989 reviewed by Smist, the Church Committee was the only one characterized as ‘Investigative and Institutional Oversight Combined’.<sup>12</sup> Oversight by the permanent Intelligence Committees created after the Church Committee are, generally speaking, examples of institutional oversight.

Recognizing the limits of my experience, I nonetheless tender five elements needed for successful oversight: a historical perspective; delving deeply and comprehensively into the facts; handling secrecy sensitively; having empathy for but also maintaining distance from the agencies; and being nonpartisan and sharing core values. (Discussion of the first four elements follows immediately; the last is discussed in the section on values.)

### *The Need to Understand History*

One of the Church Committee's tasks was to assess how well our government had balanced liberty and national security during a time of crisis – the Cold War, roughly a 40-year period. What happened during earlier crises was also instructive. There was a pattern of overreaching, including the Alien and Sedition Acts at the dawn of our Constitution, the Palmer Raids after World War I, and the internment of Japanese Americans in World War II. The Cold War period was different from these in two respects: first, the crisis was much longer; and second, unlike the earlier periods, most of what the government did was secret. For the Church Committee to fulfill its mandate, it had to understand both the similarities to and the differences from the earlier eras.

In addition to remembering episodes from much earlier times, it was valuable to understand the historical origins of the programs reviewed by the Committee. For example, consider how the FBI went from investigating possible criminal conduct to enormously broad spying on Americans who had done nothing to threaten their country. This, too, required a look at history.<sup>13</sup>

Harlan Fiske Stone was appointed attorney general by President Calvin Coolidge in 1924. Later he described the conduct of the Justice Department and the Bureau of Investigation (the original name of the FBI) before he took office, as 'lawless, maintaining many activities which were without any authority in federal statutes and engaging in many practices which were brutal and tyrannical in the extreme'. Shortly after taking office, Stone set a new standard for the Bureau. He warned that 'a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power that are not always quickly appreciated or understood'. He then announced that the Bureau 'is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only such conduct as is forbidden by the laws of the United States'.<sup>14</sup>

Stone cleaned house and – with the support of the American Civil Liberties Union (ACLU) – promoted J. Edgar Hoover to direct the Bureau. Eight years later, Hoover was still marching to Stone's drum, telling Congress that



because the Bureau was subject to ‘the closest scrutiny’, it should not investigate matters which ‘from a federal standpoint, have not been declared illegal’.<sup>15</sup>

But then, leading up to World War II, President Franklin Roosevelt issued a series of conflicting and confusing directives to Hoover. Some were consistent with the Stone standard, referring to investigation of conduct ‘forbidden by the laws of the United States’ such as espionage, sabotage, and violations of the neutrality regulations. Others added the loose term ‘subversion’. The President, Attorney General Homer Cummings, and Hoover explicitly decided not to seek legislation about their plans for expanded domestic intelligence; ‘in order to avoid criticism or objections’, the plans ‘should be held in the strictest confidence’, not even revealed to Congress.<sup>16</sup>

What was actually done during the Roosevelt years usually was appropriate investigation of possible criminal conduct by Nazis or Nazi sympathizers. But the Bureau did, on occasion, investigate perfectly lawful conduct of entirely legal groups such as the League for Fair Play, formed, according to the Bureau, by ‘two ministers and a businessman for the purpose of furthering fair play, tolerance, adherence to the Constitution, democracy . . . and good will among all creeds, races and classes’. The FBI also started a decades-long infiltration of the National Association for the Advancement of Colored People (NAACP), even though it was clear from the outset that its purposes were entirely lawful. And at the Roosevelt White House’s request, the Bureau opened files on all who had sent telegrams to the White House expressing approval of a speech by Charles Lindbergh, one of the President’s leading critics.<sup>17</sup> Still, what was most important about the Roosevelt era was that the vague word subversion, and the decision to keep secret the fundamental change in approach, planted seeds for the abuses highlighted by the Church Committee.

### *The Importance of Facts*

Without facts, oversight will be empty. Moreover, the facts must be detailed and cover a wide range. Only with that kind of record can one be sure one understands patterns or be confident of conclusions.

### *An Emotional High Point: Senator Phillip Hart Shows How Facts Can Change Minds*

On 18 November 1975, the Committee began its public hearings on the FBI. Reflecting the Committee’s bipartisan approach, Senator Church and Vice Chairman John Tower (R-TX) opened the hearings by stressing the importance of ‘periodic public scrutiny’ (Church) and ‘establishing a complete and open record’ (Tower).<sup>18</sup> Further demonstrating the bipartisan

nature of the inquiry, the hearing started with Chief Counsel Schwarz and Minority Counsel Curtis Smothers jointly providing a lengthy opening presentation of evidence and what it showed about the Bureau, presidents, and attorneys general.<sup>19</sup>

After counsel provided a detailed and disturbing litany of lawlessness, Chairman Church turned to questions and comments from senators, first recognizing Michigan's Senator Phillip Hart (D). Church expressed pleasure at Hart's return after 'some weeks of absence'. What Church did not say – but everyone knew – was that Hart had been away being treated for the cancer that killed him the next year.

Noting that he did not 'recommend that others pursue the course I took to get this advantage' of commenting first, Hart began by telling how he had for years rejected claims of FBI impropriety: 'As I'm sure others have, I have been told for years by, among others, some of my own family, that this is exactly what the Bureau was doing all of the time, and in my great wisdom and high office, I assured them that they were – it just wasn't true. It couldn't happen. They wouldn't do it.' Then Hart described how the facts recounted by counsel had changed his mind and set out the two broad challenges facing the Committee:

What you have described is a series of illegal actions intended squarely to deny first amendment rights to some Americans. That is what my children have told me was going on.

The trick now, as I see it, Mr. Chairman, is for this Committee to be able to figure out how to persuade the people of this country that indeed it did go on. And how shall we insure that it will never happen again? But it will happen repeatedly unless we can bring ourselves to understand and accept that it did go on.<sup>20</sup>

Johnson's book about the Committee describes this as an 'emotional high point' – Hart's weakened voice, tears in the eyes of staffers, and 'in the opinion of many observers, the Committee's finest moment'.<sup>21</sup>

#### *Access to Facts and Witnesses*

But of course, there can be no mind changing unless one has the facts.

Reports about the facts by the government agency itself are often useful but seldom sufficient. A good example of where internal reports can be insufficient, indeed misleading, arose in the Committee's investigation of the FBI's Counterintelligence Program (COINTELPRO) – 'an ugly little acronym which would have been at home in any police state'.<sup>22</sup> After hints about COINTELPRO appeared, Attorney General William B. Saxbe asked for an internal report. Revealingly, even though the Bureau was part of the

Justice Department, it resisted letting the Attorney General's office see the COINTELPRO files, claiming that to do so would jeopardize national security. Instead, the Bureau said it would summarize the facts of each COINTELPRO action. These summaries were often extremely misleading. For example, one described a letter, purporting to come from the Chicago Black Panthers, that was sent by the FBI to the leader of the Blackstone Rangers, a 'black extremist organization in Chicago'. The Bureau's summary described the letter's purpose as to 'hopefully drive a wedge between' the two groups. The actual letter, however, said the Panthers had 'a hit out' for the Rangers' leader. And the actual cover memo that supported sending the letter said that the Rangers were prone to 'violent type activity, shooting and the like'. The cover memo predicted the letter may lead to 'reprisals' against the Panthers' leadership.<sup>23</sup>

Development of a serious factual record also requires access to the actual contemporaneous documents and to witnesses, at both high and low levels. On this, the CIA proposed that an agency monitor should accompany any current or former intelligence official called in for questioning, including preliminary questioning by staff. In addition to observing, the monitors could give the witness 'advice'. Again showing the Committee's bipartisan approach, Senator Richard Schweiker (R-PA) said if this were allowed, 'we'd be the laughing stock of the Hill', and Vice Chair Tower made the motion leading to a unanimous vote to reject.<sup>24</sup> Witnesses thereafter always appeared untethered.

### *Handling Secrecy Sensitively*

Investigating secret government programs requires access to secrets. It forces analysis of the overuse of secrecy stamps and of the harm caused by excessive secrecy. Ultimately, it may require describing and revealing secrets. Nonetheless, obviously there are legitimate secrets. Oversight or an investigation that is heedless of that is doomed, as well as irresponsible.

The Church Committee worked out reasonable arrangements with the agencies and the White House. There were two key agreements. First, when the agencies were producing documents, they could, in the first instance, redact – or black out – the names of informers (not agents). Thus, the Committee would learn about the fact of FBI infiltration of the NAACP or what the FBI called the Women's Liberation Movement and see the reports of the informers, without getting the informer's name. Then, if the Committee felt it was important to have the name, it would press for it. Second, the Committee agreed that before it issued its reports, it would let agencies see them to be able to argue that more details were being released than necessary or appropriate.

The Committee's reports are enormously detailed. They reveal much information that had been secret. No improprieties were withheld. But sensible limits were placed on the details disclosed. For example, the actual names of lower-level undercover agents who had been tasked by bosses to do unseemly or illegal acts were not used in the reports; the bosses' names, however, were included. Another example is shown by the introduction to the Staff Report on Covert Action in Chile, 1963–75, which noted that: 'With few exceptions, names of Chileans and of Chilean institutions have been omitted in order to avoid revealing intelligence sources and methods and to limit needless harm to individual Chileans who cooperated with the Central Intelligence Agency.'<sup>25</sup> These sensible agreements did not get in the way of the Committee's mission. The Committee was also helped by its record of avoiding leaks.<sup>26</sup> In contrast to the Church Committee, the parallel House committee floundered at the outset and floundered at the end on issues of secrecy.<sup>27</sup>

*Having Empathy for but Maintaining Distance from the Agencies being Overseen*

The Church Committee started with the premise that 'properly controlled and lawful intelligence is vital to the nation's interest'. It is used, for example, to 'monitor potential military threats... to verify compliance with international agreements... and to combat espionage and international terrorism'.<sup>28</sup> In addition, fairness also required understanding for the difficult problems of the men and women who worked for the intelligence agencies. The government gave them assignments that were in many ways impossible to fulfill. They were expected to predict or prevent every possible crisis, respond immediately with information on any question, act to meet all threats, and anticipate and respond to the demands of presidents. Under that kind of pressure, is it any wonder that some cut corners? An additional point of perspective is that the illegal, improper, indecent, and silly conduct of some should not and does not indict whole agencies like the FBI and CIA that in the past and today perform vital work for this country.

Nonetheless, while understanding and respect are both necessary and appropriate, distance is also required. Many oversight bodies stumble by becoming too close to or advocates for the agencies they are meant to oversee. Moreover, agencies may try to divert overseers from their job – as FBI headquarters did in their first meeting with the Committee's chief counsel by showing pictures of severed heads on a city street. Certainly, the world of intelligence deals with many dangers. But the issue for oversight remained whether the agencies had been 'governed and controlled in accord with the fundamental principles of our constitutional system of government',

and whether they had done things that were 'illegal, improper and unethical'.<sup>29</sup>

#### A SUMMARY OF THE FACTS CONCERNING THE RIGHTS OF AMERICANS

The Church Committee concluded that too much was collected from too many for too long. What was collected was distributed far too broadly. Excessively intrusive (and often knowingly illegal) techniques were used to gather intelligence. Covert action – secret punishment – was used to harass, disrupt, discredit, and destroy law-abiding citizens and domestic groups. Vague language in statutes and instructions by high officials facilitated abuses. There was waste and inefficiency. There was political abuse of intelligence information by presidents and by the intelligence agencies, who sometimes distorted the facts on important national issues like civil rights and the Vietnam War. Finally, the law and the US Constitution were repeatedly violated and often simply ignored. Extensive documentation of all these findings is in the Committee's reports and hearings. Here are just a few illustrative examples.

##### *Too Much Was Collected from Too Many for Too Long*

The NAACP was infiltrated by government informers for 26 years, even though it was clear from the outset that its purposes were entirely lawful.<sup>30</sup> The FBI also conducted a broad-scale investigation of the Women's Liberation Movement. Meetings of women all over the country were infiltrated. Voluminous reports were filed on their beliefs. And once this spying started, it just kept going in blind disregard of its total irrelevance to any lawful government interest. Thus, one lengthy report concluded that the purpose of the infiltrated women's gathering had been to 'free women from the humdrum existence of being only a wife and mother'. Based on that, was the investigation stopped? No, the recommendation was to keep on investigating.<sup>31</sup> The CIA's Operation Chaos also investigated the Women's Liberation Movement, even though the CIA was barred by the act that created it from 'internal security functions'.<sup>32</sup>

The Socialist Workers Party was infiltrated by government informers for 40 years – even though bureau officials conceded it had not committed any crimes and that its rhetoric fell far short of incitement to violence. When the man in charge of that investigation was asked what sort of information was passed back to the FBI, he replied that it included their political positions on the 'Vietnam War', on 'food prices', on 'racial matters', on 'U.S. involvement in Angola', and on any of the party's efforts to support a non-party candidate for office.<sup>33</sup> That is a pretty wide net.

The numbers of people affected are further proof of how pervasive the government's surveillance network became.

- The FBI opened over 500,000 domestic intelligence files, each of which typically contained names of several individuals.<sup>34</sup>
- The NSA obtained copies of millions of international cables. Indeed, from 1947 until 1975 it obtained copies of every single cable sent by individuals or businesses from the US to overseas locations.<sup>35</sup>
- The Army investigated some 100,000 Americans for political reasons between the mid-1960s and 1971. These included such vitally important matters as a Catholic priests' conference on birth control in Colorado, and a Halloween party of Washington schoolchildren which was investigated because the Army suspected a local 'dissident' would be present.<sup>36</sup>
- The CIA's illegal mail opening program produced a computerized index of nearly 1.5 million names.<sup>37</sup>

Against these huge numbers, the FBI's secret list of 26,000 citizens to be rounded up in the event of a national emergency pales by comparison. But how broad the Bureau's version of the threat was perceived to be is illustrated by two names on that list – Dr. King and Norman Mailer. Mailer was on a list of persons who would have to be locked up because of 'subversive associations and ideology'. This list included: professors, teachers, and educators; labor union organizers and leaders; writers, lecturers, newsmen and others in the mass media field, scientists, doctors and lawyers. King was also characterized as subversive.<sup>38</sup>

### *Surveillance Techniques*

In addition to infiltrating many lawful domestic groups like the NAACP, the Socialist Workers Party, and the Women's Liberation Movement, intelligence agencies used techniques like break-ins, mail opening, wiretaps, and bugs.<sup>39</sup> Break-ins and mail opening were both conceded as illegal. Nonetheless, they were justified internally by the vague words subversion and national security.<sup>40</sup> In each case, the illegal program followed the pattern of expanding enormously as time went on. Thus, for example, the CIA's watch list for opening letters started with fewer than 20 names, but by the late 1960s had grown to approximately 600, including many citizens and organizations engaged in purely lawful and constitutionally protected protest against government policies. Among the domestic organizations on the list were Clergy and Laymen Concerned About Vietnam, *Ramparts* magazine, the Student Non-Violent Coordinating Committee, and the American Friends Service Committee. But it was not just people on a watch list who had their mail opened. Many others had their letters unsealed and read, including

Senator Frank Church and author John Steinbeck. During the 1968 presidential campaign, the CIA opened a letter passing between a speech writer and Richard Nixon.<sup>41</sup>

Warrantless wiretaps and bugs can be seen as a more complicated story. But the essence is simple. Every time Congress or the Supreme Court curbed the use of these techniques, the executive branch secretly evaded the restrictions. For example, after the Supreme Court applied to federal agents a congressional limit on warrantless wiretaps, Attorney General Robert Jackson ordered the FBI to stop such wiretaps. But President Roosevelt overruled his attorney general, saying (in a 'confidential memorandum') that he was sure the Court did not mean to require warrants for 'persons suspected of subversive activities against the United States'. As with his earlier order to FBI Director Hoover, however, Roosevelt did not explain what he thought 'subversive' meant or why warrants could not be sought. A decade later, the Supreme Court reaffirmed that evidence obtained from a warrantless bug that had been placed in a house through a break-in could not be used in a criminal prosecution. The Court was particularly offended by the microphone being planted in a bedroom. But just after this ruling, Herbert Brownell, attorney general in the Eisenhower administration, sent a secret memo to Hoover authorizing the continued 'unrestricted use' of bugs whenever the Bureau concluded it was in the 'national interest'. Brownell said the FBI did not even have to inform the attorney general. This secret order, using fuzzy phrases like 'national interest', again manifested a clear disregard for the law and opened the door for many abuses, such as the bugging of Dr. King's hotel rooms.<sup>42</sup>

Congress, supposedly responsible for overseeing the FBI, failed to uncover any of this for decades. But as the Church Committee concluded after its exhaustive look at all important activities of the intelligence agencies over more than three decades: 'The imprecision and manipulation of labels, such as "national security", "domestic security", "subversive activities" and "foreign intelligence" have led to unjustified use' of methods like wiretaps and bugs, and excessive surveillance of Americans.<sup>43</sup>

### *Domestic Covert Action*

Echoing the COINTELPRO effort to cause 'violent reprisals' against the leader of the Chicago Black Panthers, the San Diego FBI office boasted about how our most respected law enforcement agency was fomenting violence: 'Shootings, beatings, and a high degree of unrest continues to prevail in the ghetto area of southeast San Diego. Although no specific counter-intelligence 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>44</sup>

There was much more to the FBI's campaign to destroy Martin Luther King than a note intended to provoke a suicide. After King's 'I Have a Dream' speech, the FBI's Domestic Intelligence Division concluded that this 'demagogic speech' established Dr. King as the nation's 'most dangerous Negro leader'. The FBI decided to 'take him off his pedestal'. It decided to secretly select and promote its own candidate to 'assume the role of the leadership of the Negro people'. Later, Bureau headquarters explained to the field that King must be destroyed, because he was seen as a potential messiah who could 'unify and electrify' the 'black nationalist movement'. King was then described as a threat because he might 'abandon his supposed "obedience" to white liberal doctrines (non-violence)'.<sup>45</sup> In short, a nonviolent man was to be secretly attacked and destroyed as insurance against his abandoning nonviolence.

The effort to destroy King was part of COINTELPRO, which meant illegal investigations and secret punishment, administered not by a court but by the government's chief law enforcement agency. Its aim was not a public arrest or a judicial trial, but a secret program to 'harass and disrupt' dissidents and others deemed to be unacceptable. COINTELPRO's tactics were designed, for example, to break up marriages of civil rights workers, get teachers fired, destroy reputations of lawyers, sabotage political campaigns, encourage violent retribution by falsely and anonymously labeling intended victims as government informers, and stop citizens from speaking, teaching, writing, or publishing.<sup>46</sup>

COINTELPRO 'resulted in part from frustration with Supreme Court rulings limiting the government's power to proceed overtly against dissident groups'.<sup>47</sup> The government had the right and duty to prosecute lawless acts done, for example, by the Black Panthers or the Ku Klux Klan. But it had no right to secretly usurp the functions of judge and jury by covertly taking the law into its own hands. It had no right to try to foment deadly gang warfare against the Black Panthers. And it had no right to send dirty anonymous letters to the wife of a Klan member seeking to break up her marriage.<sup>48</sup>

The targets of COINTELPRO were not limited to the famous like Dr. King or those on the fringes of law-abiding society like members of the Klan or the Black Panthers. Thus, among hundreds of examples:

- The Unitarian Society of Cleveland was targeted because its minister and some members had circulated a petition calling for the abolition of the House Un-American Activities Committee.<sup>49</sup>
- 'Disinformation' concerning housing was sent to demonstrators coming to Chicago for the 1968 Democratic National Convention to cause them 'long and useless journeys'.<sup>50</sup>
- Nonviolent citizens who were against the Vietnam War were targeted because they gave 'aid and comfort' to violent demonstrators by lending respectability to their cause.<sup>51</sup>



### *Political Abuse*

All administrations from Franklin Roosevelt to Richard Nixon asked for and got political information from the FBI.<sup>52</sup> But there was a marked increase during the Johnson and Nixon administrations. Much of the information obtained was derogatory and personal. Most of the information reflected the FBI's having collected and filed too much from too many for too long.

- Examples of information asked for by the Johnson White House: during the closing days of the 1964 campaign, on all persons employed in the Senate Office of Senator Barry Goldwater (R-AZ); in the 1968 campaign, on vice presidential candidate Spiro Agnew's long-distance telephone calls; on seven senators who criticized bombing of North Vietnam; on all people who signed letters to Senator Wayne Morse (D-OR), supporting his criticism of the Vietnam War; on many mainstream journalists, including NBC anchor David Brinkley and *Life Magazine's* Washington Bureau chief; and on authors of books critical of the Warren Commission report on the assassination of President Kennedy. For the Democratic Convention in Atlantic City in 1964, President Johnson directed the assignment of an FBI 'special squad'. Perhaps the original purpose was to guard against civil disorders. But as so often was the case, what started modestly grew beyond the pale. For example, the FBI sent many memos to the White House from the convention reporting on the political plans of the Mississippi Freedom Democratic Party and of Dr. King.<sup>53</sup>
- Examples of information asked for by the Nixon White House: on CBS reporter Daniel Schorr; on the Chairman of Americans for Democratic Action; on Ralph Abernathy (Dr. King's successor as head of the Southern Christian Leadership Conference) for the purpose of 'destroying his credibility'. The administration also received the fruits of warrantless wiretaps, lasting from 1969 to 1971, in a leak investigation of three newsmen and 14 executive branch employees. Again this shows a widening of surveillance far beyond the purported reason for seeking the taps. The information reported was not focused on leaks but included: a report on a plan of Senator Edward Kennedy (D-MA) to give a speech on Vietnam; the planned timing of Senator J. William Fulbright's (D-AR) hearings on Vietnam; Senator Mondale's 'dilemma' about a trade bill; and, what former President Johnson had said about the candidacy of Senator Edmund Muskie (D-ME) for the Democratic presidential nomination. The wiretaps continued on two targets after they left government to work on Muskie's campaign. (Revealingly, the memos began to be sent to H.R. Haldeman, the President's political advisor, rather than Henry Kissinger, who had first demanded the warrantless wiretaps for 'national security reasons'.)<sup>54</sup>

The FBI also used intelligence information to influence social policy and political action on the most important national issues, including civil rights and Vietnam.

In 1956, the FBI sent memos to the White House about the NAACP (which it had secretly infiltrated). In general, it suggested that communist or communist-front organizations were causing 'a marked deterioration in relationships between the races'. Director Hoover briefed the Eisenhower Cabinet on alleged communist influence in the civil rights movement. According to one historical account, this briefing 'reinforced the President's passivity' on civil rights legislation.<sup>55</sup>

In 1963, the Bureau's Domestic Intelligence Division submitted to Hoover a memo detailing the Communist Party's 'efforts' to exploit black Americans. It concluded the efforts were an 'obvious failure'. Hoover was not pleased. He made clear 'we had to change our ways or we would all be out on the street'. A new memo was sent: 'The Director is Correct.' Dr. King was the 'most dangerous Negro' from the 'standpoint of communism... and national security'. It was 'unrealistic' to limit ourselves to 'conclusive proofs'. Communist Party influence over Negroes 'one day *could* become decisive'. When Hoover subsequently testified to Congress, he said communist influence was 'vitaly important'.<sup>56</sup>

On Vietnam, President Johnson told Hoover he had 'no doubt' communists were behind the demonstrations against the Vietnam War. Hoover agreed. Back at the FBI, Hoover told his associates that he knew the Bureau might not be able to 'technically state' what the President wanted. But he wanted and got a 'good, strong memorandum' that made communist 'efforts' sound like communist success.<sup>57</sup>

### *The Law: Breaking It, Ignoring It and Fuzzy Words Replacing It*

The Church Committee uncovered lots of illegal, improper, and immoral conduct, which can only be touched on here.<sup>58</sup> What did the actors think about what they were doing? Did the vague and fuzzy secret instructions and the pressure they got from presidents and other high officials open the door to misconduct?

Many never gave a thought to the law or the Constitution. As the man who headed the FBI's Domestic Intelligence Division for ten years testified: '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.'<sup>59</sup> Similarly, the White House author of the Huston Plan, where the heads of the major intelligence agencies proposed to President Nixon knowingly illegal mail opening and break-ins (not saying the proposed actions were already actually being done), testified that nobody at

the meetings ever objected to undertaking illegal acts – indeed legality or constitutionality was never discussed.<sup>60</sup>

The first reaction of the National Security Agency's general counsel to learning that the Committee had found out that for decades the NSA had illegally obtained every single cable sent out of the United States by Americans was that the Constitution and the law did not apply to the NSA because it worked on 'foreign' intelligence. Similarly, when asked if he was concerned about the legality of the NSA's warrantless interceptions of electronic communications, the agency's deputy director replied: 'That particular aspect didn't enter into the discussions.'<sup>61</sup>

And when the former head of the Bureau's Racial Intelligence Section was asked whether during COINTELPRO's history anybody at the FBI discussed its constitutionality or legality, he answered, 'no, we never gave it a thought'.<sup>62</sup>

Of course, there were many others who did think about legality and who clearly knew their actions were illegal. For example, at least four internal 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'.<sup>63</sup> Similarly, despite receiving advice from the Federal Communications Commission that its monitoring of the radio communications of amateur radio operators was illegal, the Army Security Agency plowed ahead with the monitoring.<sup>64</sup>

The CIA's experiments with the effect of drugs such as LSD started with volunteers but moved to unsuspecting victims – or in the Agency's sterile jargon, 'unwitting subjects' – at 'all social levels, high and low, native American and foreign'. Recognizing that drugging unknowing subjects was illegal and potentially dangerous, Richard Helms, who later became Director of Central Intelligence, successfully sought approval: 'While I share your uneasiness and distrust 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.' One of the subjects was Dr. Frank Olson, a scientist working with the US Army Biological Center. At a conference of CIA and Army scientists, he was given a dose of Cointreau laced with LSD. He later died.

Knowledge of the CIA's illegal and unethical drug experiments was kept secret for decades, because, as the CIA's Inspector General wrote:

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.

After Olson's death had dramatized the dangers, the Agency continued to experiment with unwitting subjects for ten years. Those involved in Olson's doping were given a letter from CIA Director Allen Dulles that criticized them for not giving 'proper consideration to the rights of the individual to whom it was being administered'. But Helms was instructed to inform them that the letter was 'not [a] reprimand', and that no personnel file notation was made.<sup>65</sup>

#### OBSERVATIONS REGARDING OVERSIGHT OF AMERICA'S FOREIGN INTELLIGENCE AGENCIES

Given space limitations (and the fact that after completion of the Assassinations Report, I did not focus on foreign intelligence), I make only a few points about foreign intelligence here. To begin with, before the Church Committee, congressional oversight of the CIA and other foreign intelligence agencies was an embarrassment. The Senate and House intelligence oversight subcommittees lacked written records, and often they asked no questions; never did they ask tough questions. As Clark Clifford reflected later, 'Congress chose not to be involved and preferred to be uninformed.' A longtime CIA general counsel concluded that the lack of congressional oversight ultimately caused *problems* for the Agency because 'we became a little cocky about what we could do'.<sup>66</sup>

William Colby, CIA director during most of the Church Committee investigation, reached a similar conclusion. The congressional investigations were 'necessary' and 'effective'. 'This year's excitement', he wrote in a February 1976 *New York Times* op ed piece, 'has made clear that the rule of law applies to all parts of the American Government, including intelligence... this will strengthen American intelligence.'<sup>67</sup> In its *Final Report*, Book I, the Church Committee provided extensive analysis of the strengths and weaknesses of America's foreign intelligence agencies, calling, for example, for more attention to be given to human intelligence – that is, regular spying.

#### VALUES SUSTAIN INVESTIGATIONS

Having obtained and disclosed the facts, the Committee had to answer two big questions that depend on values.

- Should the United States, faced with a powerful, often unscrupulous, and sometimes vicious enemy adopt the enemy's tactics?
- Should Congress – and the American public – be trusted with the truth?

The Committee first publicly addressed these questions in its report on assassinations.

On 20 November 1975, the Senate convened in executive session to discuss the Committee's *Interim Report* on assassination plots. All 11 Committee members had signed the report. However, President Ford and CIA Director Colby opposed its public release. At this executive session, the first crack in the Committee's unity began to appear. Senator Barry Goldwater said he had signed the report only as 'an act of gratitude for the hard work done by the Committee and the staff'; public release of the report would be a 'spectacle of public self-flagellation' that would hurt America's reputation abroad. On the Senate floor, Senator Tower who, along with Senators Church and Gary Hart (D-CO), had been the Committee members on a subcommittee that worked for weeks on the report before it was presented to the full Committee, said he was 'distressed and sorry', but he wanted 'to publicly disassociate [himself] from public release of the report' because a number of senators had decided they did not want to vote on the issue of public release.<sup>68</sup> After several hours of discussion, but without any vote against (or for) release, the report was issued when the Senate adjourned shortly after 1 p.m.<sup>69</sup>

Beyond the fascinating stories about plot details and beyond the question of presidential authorizations lay key principles – key then and key today. Should the United States, when faced by unscrupulous enemies, adopt their tactics? Should the American people be allowed to know what their government had been doing? Would doing so harm our reputation in the rest of the world?

The Committee's work as a whole stands as answers to these questions. Those answers were first expressed publicly in the assassinations report whose last words, in an epilogue, were:

The Committee does not believe that the acts which it has examined represent the real American character. They do not reflect the ideals which have given the people of this country and of the world hope for a better, fuller, fairer life. 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. 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>70</sup>

There have been, of course, those who say the tactics of the enemy *should* be adopted. They claim necessity. Thus, for example, in 1954 the secret

report of a special committee, formed to advise President Eisenhower on covert activities, said the United States may have to adopt tactics ‘more ruthless than those employed by the enemy’. ‘Hitherto acceptable norms of human conduct do not apply.’ ‘Long standing American concepts of American fair play must be reconsidered.’<sup>71</sup>

The Church Committee noted that ‘it may well be ourselves that we injure most if we adopt tactics more ruthless than the enemy’s’.<sup>72</sup> And the Committee’s *Foreign and Military Intelligence Report* concluded that those planning covert actions ‘rarely noted’ the possible harm the actions could cause to ‘this nation’s ability to exercise moral and political leadership throughout the world’.<sup>73</sup>

Throughout, the Church Committee’s view was that the United States must not adopt the tactics of the enemy. On this, the Committee members never wavered, never split.

On the second big question – whether the American public could be trusted with the truth – the Committee also remained united that the embarrassing and unseemly revelations in the report on *Intelligence Activities and the Rights of Americans* should be made public. Indeed, Senators Robert Morgan (D-NC) and Howard Baker (R-TN) in their additional statements commented (in a bipartisan way) on the favorable impact of making the *Rights of Americans* Report public.

- Morgan: ‘Releasing this report is a great testament to the freedom for which America stands.’ He added, ‘It is my 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.’<sup>74</sup>
- Baker: While disagreeing (articulately as always) with a number of the Committee’s recommendations for reform, Baker opined that the abuses being ‘fully aired to the American people’ would have a ‘cathartic effect’ on the FBI and CIA. (He supported this conclusion by quoting the article by former CIA Director Colby that said ‘this year’s excitement’ will ‘strengthen American intelligence’.) Baker added: ‘It is important to disclose to the American public all of the instances of wrongdoing we discovered.’<sup>75</sup>

Earlier, Senator Charles M. Mathias (R-MD) provided eloquent and concise views on both the two big values questions:

- ‘Painful political problems are seldom solved by silence. As crude as the story unfolded here may seem, it can be the source of important lessons for the future.’ And, quoting James Madison, he said, ‘Knowledge will

forever govern ignorance and a people who mean to be their own Governors must arm themselves with the power which knowledge gives', adding, the Committee 'sought to stop the erosion of society's values caused by excessive secrecy and unchecked Executive power by making the factual record as accurate and clear as possible'.

- 'History 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>76</sup>

#### WRESTLING WITH RESPONSIBILITY

On the question whether presidents, attorneys general, and other high-level officials in the executive branch were responsible for the many acts of agency misconduct recounted in the Committee's reports, the Committee's thinking evolved toward a 'yes' answer.

Early in the assassinations investigation, Senator Church speculated to the press that the CIA may have acted as a 'rogue elephant on a rampage', conceiving and carrying out the plots without authorization from outside the agency. In contrast, other senators, also speculating, opined that the CIA 'took orders from the top'.<sup>77</sup>

When the assassinations report was issued several months later, the Committee rejected both theories, demonstrating that there was support for either conclusion but saying the conflicting evidence made it impossible to be sure whether Presidents Eisenhower and Kennedy (both dead for many years) had authorized the plots during their administrations. (The Committee found that President Johnson had not.)<sup>78</sup>

Five months later, when it issued its final reports covering the gamut of its investigation, the Committee was ready to fix responsibility at the top. In the *Final Report on Foreign and Military Intelligence* (Book I), the Committee concluded: '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>79</sup>

The *Final Report on Intelligence Activities and the Rights of Americans* (Book II) reached the same ultimate conclusion with more details. Though intelligence agencies did, on occasion, fail to reveal their programs or acts to their superiors, '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>80</sup> The Committee elaborated: fault at the top was shown by 'demanding results' without paying attention to means, 'failing to inquire further' after receiving indications that improper activities had been occurring, delegating broad authority using fuzzy phrases like 'national security' or 'subversion' and then failing to require adequate guidelines or procedural checks on what actually was done, and 'exhibiting a reluctance to know about secret details of programs'.<sup>81</sup>

The change in emphasis as the Committee's work progressed was the product of exposure to the whole record. Looking at specific agency acts individually sometimes did show the agencies acting on their own, or even misleading their superiors. But when the full record, over many years, was examined, ultimate responsibility was properly fixed with the presidents, attorneys general, and other high executive branch officials for the sorts of reasons already outlined. To the Committee's chief counsel looking backward 30 years later, it seems there were also at least three more reasons to fix that ultimate responsibility with higher authority. The power of the FBI was such that, although it was wrong, it was not surprising that attorneys general exercised only weak oversight. But they knew that was what they were doing. The doctrine of plausible denial was originally designed to implement covert actions overseas in a way calculated to conceal American involvement if the actions were exposed. The doctrine was then extended to the internal decision-making processes of the government itself. As explained by Richard Bissell (the principal CIA architect of the assassination plots), the Director of the CIA (Allen Dulles, who was dead) was supposed to have informed the presidents of the plots (and other covert actions) by talking 'circumlocutiously'.<sup>82</sup> The Committee described the doctrine of plausible deniability as 'a delusion and at times a snare'.<sup>83</sup>

One consequence of plausible denial was that witnesses before the Committee constantly confronted it with a bureaucratic shell game. High-level officials, generally outside the agencies, repeatedly disclaimed knowledge of improper or illegal activities – and suggested that agency personnel were concealing their own nefarious acts. Officials within the agencies consistently said they had the *tacit* approval of their superiors, and suggested the superiors were dissembling about their knowledge and approval. The Committee found both accusations to be true at times. But it found in all cases that the authorization and responsibility facts were confused. It seems likely that both bosses and operatives found that useful. It is certain that ambiguity as to authorization increases the risk of abuse.

However one cuts through the fog of plausible deniability to decide who was responsible for any given action, what is crystal clear is that the presidents, national security advisors, and other high executive branch officials knew about the plausible deniability system. Therefore, if – and this



is a big if – they did not know about a particular action, they were nonetheless culpable because they had knowingly turned a blind eye to what was going on.

Finally, presidents and other high-level executive branch officials also knew that all intelligence activities, domestic and foreign, were smothered in layers of excess secrecy. They knew that Congress and the courts played no meaningful role. And they knew (or should have known) that the combination of excessive secrecy, the absence of checks and balances, and the use of fuzzy, vague authorizations were (as they remain today) a recipe for excess and abuse.

### SOME GENERAL LESSONS

First, prolongation of crisis is particularly hard for constitutional democracies. There were more than 30 years between Franklin Roosevelt's re-institution of an open-ended, secret (indeed concealed), and poorly controlled security regime and Nixon's fall. For all this time, America was at war, or in a Cold War. It felt beleaguered. To refer again to the language of the Church Committee report on assassinations, crisis 'makes it tempting to ignore the wise restraints that make men free', and to use means that are wrong – means that lessen 'our inner strength, the strength that makes us free', as well as undermining the reputation that helps make us strong.

Second, a perfect storm of institutional shortcomings stirred a brew of immoral or illegal acts that could not be squared with a 'decent respect to the opinions of mankind'. It was not evil that caused us to do what we ought not to have done. It was zeal, fostered by excessive secrecy; vague instructions and implicit nudges or winks joined to pressure for results without attention to means; and oversight that was either lacking altogether, empty, or knowingly chose to turn a blind eye.

Third, foolish secrecy fertilizes the soil from which abuse grows. Clearly, there is much about intelligence work that is properly kept secret. Examples such as the names of agents and technological details of collection methods are obvious. Nonetheless, unnecessary secrecy served to inhibit and often prevent any sober review of the basic programs and practices themselves. If a tactic cannot survive the light of day, it likely should not be born. A related point is that seldom, if ever, were the consequences of exposure weighed before a program was begun. Similarly, a foolish expectation of perpetual secrecy increased the likelihood that the harmful effect on America's reputation of adopting the tactics of the enemy would be ignored.

Fourth, secrecy was the handmaiden of blinded oversight – or sometimes intentionally blind oversight. Congress played no meaningful role. Congress is not perfect, but it can add wisdom and help avoid mistakes. Because of

excessive secrecy, the good sense of the American public was also barred from any debate.

Fifth, whatever the explanation for the use of euphemisms or simple falsehoods to describe or justify dirty business, it seems certain that failure to call dirty business by its rightful name increases the chance of dirty business being done. Words about dirty business were often sterilized. For example, Bissell thought CIA directors should talk to presidents about killing using euphemisms or circumlocutious language. (Even years later, during the Committee's investigation, those who had worked on killings could not bring themselves to use simple, honest, direct words to describe what they had done. Instead, just as in the contemporaneous documents, they used phrases such as 'dispose of', or 'get rid of', or 'eliminate', or some such euphemism.) Similarly, when Richard Helms recommended that the CIA continue to experiment by giving drugs to unwitting subjects, he used sanitized, bleached, and lifeless words – 'uneasiness', 'distaste', 'tends to intrude' – about stark realities of death and lawlessness. Finally, when Bureau officials used Orwellian language to describe Martin Luther King Jr. as the leader of a black nationalist *hate* group, perhaps deep down they hoped to feel better about the dirty business they set out to do.

Sixth, every intelligence program we looked at started with investigating, harassing, or attempting to destroy targets who were on the fringes of law-abiding society and then moved progressively further toward mainstream dissidents and finally began to cover ordinary citizens. Thus, as shown, the CIA's knowingly illegal mail opening program was initially advocated as a way to catch foreign spies and ended up checking up on organizations like the American Friends Service Committee. COINTELPRO started by harassing the US Communist Party and ended by harassing hippies. The NSA started by decoding encrypted telegrams from foreign embassies and widened its net to include anti-Vietnam War and civil rights protestors.

In criticizing his own earlier efforts, Tom Charles Huston (White House coordinator of the Huston Plan in which the CIA, the NSA, and other intelligence agencies sought official sanction for lawlessness for things they had long been doing and which they continued to do after President Nixon rescinded his written approval) put well the tendency for the net to widen. There is, he testified to the Committee, the risk that governmental surveillance would: 'Move from the kid 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>84</sup>

Seventh, those who conclude that reform is necessary need to make their case based on facts exposing wrongdoing. Nonetheless, a 'Senate Committee is not a prosecutor, a grand jury or a court'. It is far better suited to determine how things went wrong and what can be done to prevent their

going wrong again, than to resolve disputed questions of individual ‘guilt’ or ‘innocence’.<sup>85</sup>

Congressional committees or citizen commissions that fail to recognize this distinction make splashes, but not waves. As the Church Committee said, they provoke a national debate on ‘who did it’, not on ‘how did it happen and what can be done to keep it from happening again?’<sup>86</sup>

#### NOTES

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- 1 The Church Committee reports cited most extensively are: *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate, Foreign and Military Intelligence* (Washington, DC: Government Printing Office 1976), hereafter Bk. I; Book II: *Intelligence Activities and the Rights of Americans* (Washington, DC: Government Printing Office 1976), hereafter Bk. II; Book III: *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans* (Washington, DC: Government Printing Office 1976), hereafter Bk. III; *Interim Report: Alleged Assassination Plots Involving Foreign Leaders* (Washington, DC: Government Printing Office 1975), hereafter *Assassinations*. The seven volumes of Church Committee hearings are *Hearings Before the Select Committee to Study Governmental Operations with Respect to Intelligence Activities of the United States Senate, Volume 1: Unauthorized Storage of Toxic Agents; Volume 2: Huston Plan; Volume 3: Internal Revenue Service; Volume 4: Mail Opening; Volume 5: The National Security Agency and Fourth Amendment Rights; Volume 6: Federal Bureau of Investigation; and Volume 7: Covert Action* (Washington, DC: Government Printing Office 1976). A full text archive of all reports and hearings of the Church Committee is available online at <<http://www.aarclibrary.org/publib/church/reports/contents.htm>>. Books on the Church Committee include Loch K. Johnson, *A Season of Inquiry: The Senate Intelligence Investigation* (Lexington: University Press of Kentucky 1985); Frank J. Smist, *Congress Oversees the United States Intelligence Community, 1947–1994* (Knoxville: University of Tennessee Press 1994) esp. chap. 2; LeRoy Ashby and Rod Gramer, *Fighting the Odds: The Life of Senator Frank Church* (Pullman: Washington State University Press 1994) esp. chap. 16, pp.453–92.
- 2 See Bk. II, p.viii.
- 3 Senate Resolution 21, 27 January 1975. The resolution is also an appendix to Johnson, *A Season of Inquiry*.
- 4 For the FBI’s treatment of King generally, see Bk. II, pp.11–12, 219–23, and Bk. III, ‘Dr. Martin Luther King, Jr., Case Study’, pp.79–184. For ‘hate group’, see Bk. III, pp.179–80. For effort designed to get King to commit suicide, see Bk. II, pp.11 and 220–21, and Bk. III, pp.158–61.
- 5 For Castro plots, see *Assassinations*, pp.17–180, 255, 257, 263–70, 270, 274–77.
- 6 See Johnson, *A Season of Inquiry*, p.9, for reference to various articles, including Hersh’s.
- 7 For a summary of these disputes and their resolution, see Johnson, *A Season of Inquiry*, pp.27–44, 45–8.
- 8 This incident is described in *Assassinations*, pp.129–30.
- 9 For ‘brought home’, see Bk. II, p.212n.7.
- 10 Johnson, *A Season of Inquiry*, pp.23–44, 86, 125–9, 273.
- 11 Smist, *Congress Oversees*, pp.19–24.
- 12 *Ibid.*, chap. 2, pp.25–82.
- 13 For the Church Committee’s history of the FBI, see Bk. II, ‘The Growth of Domestic Intelligence’, pp.21–136, and Bk. III, ‘The Development of FBI Domestic Intelligence

- Investigations', pp.373–38. The FBI's antecedents and its early history are in Bk. II, pp.23–28, and Bk. III, pp.378–400. For the Committee's history of the CIA, see Bk. I, pp.97–125.
- 14 For Stone's views on the Bureau and his policy announcement, see Bk. II, pp.23–4; Bk. III, pp.388–95.
- 15 See Bk. III, pp.384, 391.
- 16 The Roosevelt memos and Hoover's records of conversations with Roosevelt are set out in Bk. III, pp.391–406 and summarized in Bk. II, pp.24–7.
- 17 For the League for Fair Play, see Bk. II, p.32, and Bk. III, p.415. For the NAACP, see Bk. III, p.416. For Lindbergh, see Bk. II, p.33.
- 18 For 'periodic public scrutiny', see *Hearings Before the Selection Committee to Study Government Operations with Respect to Intelligence Activities of the United States Senate, Volume 6: Federal Bureau of Investigation* (Washington: Government Printing Office 1975), p.1. For 'establishing a complete and open record', see *ibid.*, p.3.
- 19 *Ibid.*, pp.4–40.
- 20 *Ibid.*, p.41.
- 21 Johnson, *A Season of Inquiry*, p.129.
- 22 For 'ugly little acronym', see Frederick A.O. Schwarz Jr., 'Intelligence Activities and the Rights of Americans', *The Record of the Association of the Bar of the City of New York* 32/1–2 (January/February 1977) pp.43, 46. For COINTELPRO generally, see Bk. II, pp.10–12, 65–94, 211–23. See also Bk. III, 'COINTELPRO: The FBI's Covert Action Programs Against American Citizens', pp.1–79.
- 23 Bk. II, pp.271–72n.20.
- 24 See Johnson, *A Season of Inquiry*, p.43.
- 25 See Staff Report on *Covert Action in Chile*, 1963–75, preface.
- 26 There were only two leaks stemming from the Church Committee. One included information about Kennedy's romantic relationship to the person whom the Committee's report described as a mutual 'friend' of the President and the mafia boss hired to kill Castro. The other involved a staff member who was overheard in a restaurant discussing a position that had been taken by a Senator (not on the Committee) in connection with oversight. (The staffer was fired.) Neither leak affected national security. See Smist, *Congress Oversees*, pp.38, 48–9.
- 27 See Smist, *Congress Oversees*, chap. 4, pp.134–213, particularly pp.136–7, 143, 156–7, 169–71, 175–6, 183–7, 211–13.
- 28 Bk. II, p.v.
- 29 Bk. II; Senate Resolution 21.
- 30 For general discussion of too much information being collected, see Bk. II, pp.6–10, 165–82. For NAACP, see Bk. II, pp.8, 179–80.
- 31 Bk. II, p.7.
- 32 *Ibid.*, p.102.
- 33 *Ibid.*, p.180.
- 34 *Ibid.*, p.6.
- 35 For the numbers, see Bk. II, pp.6, 12; Bk. III, p.740 ('the largest governmental interception program affecting Americans'). For the NSA generally, see Bk. II, pp.6, 12, 104, 210–12; Bk. III, 'National Security Agency Surveillance Affecting Americans', pp.733–83.
- 36 For the numbers, see Bk. II, p.6. For the birth control conference and Halloween party, see Bk. II, p.8. For Army investigations generally, see Bk. II, pp.77, 167, and Bk. III, 'Improper Surveillance of Private Citizens by the Military', pp.785–834.
- 37 See Bk. II, p.6. For the CIA (and FBI) illegal mail opening programs, see Bk. III, 'Domestic CIA and FBI Mail Opening', pp.559–677.
- 38 For general discussion of the Bureau's detention lists, see Bk. II, pp.54–6, and Bk. III, pp.436–47, 510–16, 542–8. For the categories of detention and 'subversive associations', see Bk. II, p.55. For Mailer's inclusion on the list, see Bk. II, p.56. For King's inclusion, see Bk. III, p.87.
- 39 For break-ins generally, see Bk. II, pp.61–2, 190–92, 204–5. See also Bk. III, 'Warrantless Surreptitious Entries: FBI 'Black Bag' Break-Ins and Microphone Installations', pp.353–71.

- For mail openings generally, see Bk. II, pp.58–9, 190–92, 203. See also Bk. III, ‘Domestic CIA and FBI Mail Opening Programs’, pp.559–677.
- 40 For illegal and combating subversion, see Bk. III, p.358; for national security, see Bk. II, for example, pp.141, 144, 145.
- 41 For growth in the CIA’s watch list and the people and organizations covered, see Bk. II, pp.208–9 and Bk. III, pp.573–74. For the letter to Nixon, see Bk. II, p.8. For nearly 1.5 million names in CIA databases derived from mail opening, see Bk. II, p.6.
- 42 See Bk. III, pp.278–9. Jackson reversed the Justice Department’s policy concerning wiretapping in Order No. 3343, issued 15 March 1940, prohibiting all FBI wiretapping. Bk. III, p.279, quoting memorandum from Roosevelt to Jackson, 21 May 1940; Bk. II, p.190, quoting memorandum from Brownell to Hoover, 20 May 1954.
- 43 Bk. II, p.205. See also Justice Robert H. Jackson’s opinion in *Youngstown Sheet and Tube* referring to the ‘loose and irresponsible’ use of ‘adjectives . . . without fixed or ascertainable meanings’ like ‘inherent’ or ‘war’ powers. *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 646–47 (1952).
- 44 Bk. II, p.218 (emphasis added).
- 45 For ‘most dangerous and effective Negro leader’, see Bk. II, p.11, and Bk. III, pp.107–9. For ‘take him off his pedestal’ and ‘assume the role of the leadership’, see Bk. II, p.11, and Bk. III, pp.136–7. For ‘hate group’, see Bk. III, pp.179–80. For ‘messiah’, see Bk. II, pp.11–12, and Bk. III, p.180.
- 46 For examples of COINTELPRO methods, see Bk. II, pp.216–19. See also Bk. III, pp.7–8. For ‘embarrass the Bureau’, see Bk. II, p.156, quoting the FBI Manual.
- 47 See Bk. II, p.211, and Bk. III, pp.10–11. For the Smith Act, see 18 U.S.C. §2385 (which remains on the books); *Yates v. United States*, 354 U.S. 298 (1957); *Watkins v. United States*, 354 U.S. 178 (1957).
- 48 See Bk. II, pp.216–17; Bk. III, COINTELPRO chapter, pp.51–2.
- 49 Bk. II, p.214n.14.
- 50 *Ibid.*, p.216n.34.
- 51 *Ibid.*, p.213. See also Bk. II, p.214n.19.
- 52 For political uses generally, see Bk. II, pp.225–52.
- 53 Bk. II, pp.228–31, 235–6.
- 54 *Ibid.*, pp.230–31, 235–6.
- 55 See Bk. II, pp.232–33. For ‘marked deterioration’, see Bk. II, p.233n.40. For Hoover’s subsequent briefing, see Bk. II, pp.250–51n.151a. For the historical account, see J.W. Anderson, *Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956–57* (Tuscaloosa: University of Alabama Press 1964) p.34.
- 56 Bk. II, p.250, emphasis added.
- 57 *Ibid.*, p.251.
- 58 The Church Committee’s first finding in *Intelligence Activities and the Rights of Americans* covered ‘Violating and Ignoring the Law’, Bk. II, pp.137–63.
- 59 Bk. II, pp.14 and 141.
- 60 *Ibid.*, p.141.
- 61 Author’s recollection of conversation with NSA general counsel. Testimony of NSA Deputy Director Benson Buffham, *Hearings Vol. 5: The National Security Agency and Fourth Amendment Rights*, p.45.
- 62 Bk. II, p.140.
- 63 *Ibid.*, pp.142–8.
- 64 *Ibid.*, p.144; and see generally Bk. III, ‘Improper Surveillance of Private Citizens by the Military’, pp.785–834.
- 65 For CIA drug experiments generally, see Bk. I, ‘CIA Drug Testing Programs’, pp.392–411. For ‘unwitting subjects’, p.391; Helms memo, p.394; Olson story, pp.394–9; I.G. memo, p.394; continuation, p.403; Dulles letter, pp.398–9.
- 66 The Clifford and CIA general counsel quotes are in Smist, *Congress Oversees*, pp.5 and 9.
- 67 William Colby, ‘After Investigating U.S. Intelligence’, *New York Times*, 26 February 1976, p.A30.
- 68 Johnson, *A Season of Inquiry*, pp.130–37.

- 69 Ibid.
- 70 *Assassinations*, epilogue, p.285.
- 71 See James Doolittle *et al.*, *The Report on the Covert Activities of the Central Intelligence Agency*, 30 September 1954, quoted in Bk. I, p.50, and *Assassinations*, p.259n.1.
- 72 *Assassinations*, p.259.
- 73 Bk. I, p.156.
- 74 Bk. II, pp.363–5.
- 75 Ibid., pp.373–5.
- 76 *Assassinations*, pp.345–6.
- 77 Johnson, *A Season of Inquiry*, p.57.
- 78 For authorization evidence and conclusions as seen in *Assassinations*, see pp.6–7, 51–70 (Lumumba), pp.91–180 (Castro).
- 79 Bk. I, p.137.
- 80 Bk. II, p.137.
- 81 Ibid., pp.139, 265.
- 82 *Assassinations*, pp.111, 118.
- 83 For plausible deniability generally, see *Assassinations*, pp.11–12, 277–8.
- 84 Bk. II, p.4.
- 85 Ibid., p.viii.
- 86 Ibid.