

## US Intelligence, Domestic Surveillance, and the Time of Troubles

David Robarge

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**The IC’s protective “old guard” on Capitol Hill that had run the oversight committees since the late 1940s had largely dwindled through retirements, electoral defeats, and deaths. Replacing it was a younger, more liberal cadre of members much more inclined to criticize what the IC was doing.**

*After a prolonged debate, in April 2024 Congress approved a two-year extension of Section 702 of the Foreign Intelligence and Surveillance Act (FISA).<sup>a</sup> Concerns about the risk to privacy of US citizens versus the Intelligence Community’s role in defending against terrorism, cyber, and foreign malign influence and other threats with domestic components recalled revelations during the 1970s of domestic spying. Fifty years ago the political fallout led to lasting changes in IC practices and executive and congressional oversight.*

The 1970s was a difficult decade for the IC, as it suddenly found itself under political attack from many quarters for conducting activities that, although presidentially sanctioned, were no longer considered appropriate for intelligence agencies or about which Congress and the US public had been unwitting. The IC was caught up in the nation’s growing distrust of government caused by official evasion and prevarication about the Vietnam War and the Watergate scandal. In addition, the IC’s protective

“old guard” on Capitol Hill that had run the oversight committees since the late 1940s had largely dwindled through retirements, electoral defeats, and deaths. Replacing it was a younger, more liberal cadre of members much more inclined to criticize what the IC was doing. CIA, NSA, FBI, and Army activities that involved technical and physical surveillance and collection against Americans and appeared to violate departmental charters or constitutional limitations caused the greatest alarm when they were disclosed through media exposés and official investigations in 1974–76.

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### ***Opening the Mail***

For varying lengths of time between 1952 and 1973 in four US cities, CIA conducted four programs to cover (i.e., to record the sender and recipient) and open mail sent between the United States and the Soviet Union, China, and Cuba.<sup>b</sup> The purpose of the programs was to acquire information about Soviet and Chinese intelligence activities in the United

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a. According to the Director of National Intelligence Section 702 Overview, “Section 702 is a key provision of the FISA Amendments Act of 2008 that permits the [US] government to conduct targeted surveillance of foreign persons located outside the United States, with the compelled assistance of electronic communication service providers, to acquire foreign intelligence information. The government uses the information collected under Section 702 to protect the United States and its allies from hostile foreign adversaries, including terrorists, proliferators, and spies, and to inform cyber-security efforts.” (Source: <https://www.dni.gov/files/icotr/Section702-Basics-Infographic.pdf>)

b. The postmasters general and chief postal inspectors concurred with the mail covering, but only one inspector—a former CIA officer—clearly knew about the mail opening.

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The views, opinions, and findings of the author expressed in this article should not be construed as asserting or implying US government endorsement of its factual statements and interpretations or representing the official positions of any component of the United States government.

States, conditions inside denied areas, and tradecraft and potential counterintelligence leads. The programs took place in New York City (1952–73), Hawaii (1954–55), New Orleans (1957), and San Francisco (1969–71). The Soviet Union was the target of the New York project, known as SRPOINTER by the Office of Security and HTLINGUAL by the Counterintelligence (CI) Staff. Because the CI Staff directed the operation longer, the latter cryptonym is better known.

Soviet Russia Division in the Directorate of Plans (the Directorate of Operation's predecessor) and the Office of Security ran the program at first, and the CI Staff took it over in 1955. At that time, James Angleton, head of the CI Staff, proposed that CIA review all mail to and from the Soviet Union that went through New York and open about 2 percent of the letters (approximately 400) monthly. Richard Helms, then the CIA's second-ranking operations manager and later Director of Central Intelligence (DCI), approved this phase of the program, which began in early 1956.

The FBI became aware of HTLINGUAL in 1958 and began receiving information and levying requirements soon after. CIA's Technical Services Division opened a facility in New York in 1961 to work exclusively on mail opening. According to CIA records that were disclosed to Congress in the mid-1970s, more than 2,700,000 letters were covered and more than 215,000 were opened during HTLINGUAL's 21 years of operation.

The consensus of senior CIA officers was that HTLINGUAL produced some useful information about Soviet

secret writing and censorship techniques and some counterintelligence leads but did not provide enough intelligence to warrant the effort it required and the "flap potential" it possessed. Angleton claimed the operation had been valuable, but internal reviews in the 1960s reached the opposite conclusion. DCI James Schlesinger terminated HTLINGUAL in 1973, agreeing with operations chief William Colby's judgment that the "substantial political risk [was] not justified by the operation's contribution to foreign intelligence and counterintelligence collection."

### *CIA's "Domestic Espionage"*

On August 15, 1967, under presidential direction, CIA began investigating possible links between US antiwar protesters and hostile foreign governments.<sup>2</sup> Codenamed MHCHAOS, the program expanded to include overseas collection on the foreign contacts of other radical groups and a few operations inside the United States targeting American citizens. The program was publicized in 1974 and became one of the focuses of congressional and media scrutiny of CIA that further eroded public trust in the CIA during its "time of troubles" in the 1970s.

Seeing the growing intensity of domestic opposition to the war in Vietnam, especially from American youth in urban areas and on college campuses, President Lyndon Johnson became convinced that such dissent was not possible without foreign (and likely Communist) backing. In August 1967, Johnson tasked the CIA, NSA, and FBI with tracking down the links he presumed to exist between the protesters and foreign

governments—the Soviet Union and the PRC, but possibly also North Korea, North Vietnam, Algeria, and others—and what the secret funding and other support was being used for. DCI Richard Helms remembers Johnson saying, "Can't [the CIA] find out what's going on here? Look at these people in the streets; we can't imagine that good Americans do things like this."

Helms initially believed that CIA could support Johnson's request and stay inside the terms of its charter as long as it concentrated on the foreign countries or networks and deferred to the FBI on the domestic side. Because MHCHAOS was so fraught with potential controversy, however, Helms placed it inside the secretive CI Staff and had the program chief report directly to him.

CIA gave its first response to President Johnson in November 1967. The operation had uncovered no significant foreign support for the protests. Several months later, the agency concluded that the radicalism of many of US and other nations' youth stemmed from genuine domestic social and political factors and was not the result of manipulation from abroad. These findings, however, only made the White House keener to uncover foreign connections, which supposedly were so sophisticated that CIA would have to use more creative methods to find them.

At the behest of both the Johnson and Nixon White Houses, CIA pursued MHCHAOS more vigorously, including engaging in domestic espionage. In those instances—only a tiny part of the overall program—CIA officers recruited three US citizens as agents to penetrate dissident groups,

**A CHRISTMAS APPEAL: NEW YORK'S NEEDIEST CASES FUND: PAGE 22**

"All the News  
That's Fit to Print"

# The New York Times

**LATE CITY EDITION**

SECTION ONE

Weather: Partly sunny today and tonight. Cloudy skies tomorrow. Temperature range: today 32-44; Saturday 31-42. Details on Page 39.

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Vice President Rockefeller and President Ford conferring yesterday at the White House

## ROCKEFELLER GETS KEY JOB GUIDING DOMESTIC COUNCIL

Ford Gives Him Major Role 'Explaining' Domestic and Foreign Programs

**2 MEET AT WHITE HOUSE**

Vice President Will Study System of Presidential Scientific Advisers

By LINDA CHARLTON  
Special to The New York Times

WASHINGTON, Dec. 21—The White House announced today that President Ford was appointing Vice President Rockefeller vice chairman of the Domestic Council and expected him to play a major role in "explaining" the President's domestic and foreign programs "throughout the country."

The first official announcement about Mr. Rockefeller's role was made by the White House press secretary, Ron Nessen, after Mr. Rockefeller and the President met, both alone and with members of both of their staffs, for about 90 minutes late this afternoon.

Earlier, the President held a meeting with a group of his economic advisers to receive final recommendations for a new attack on inflation and recession, with a limited tax cut reportedly under consideration.

"Although today's announcement outlined, at least for the moment, Mr. Rockefeller's official duties and responsibilities,

## HUGE C.I.A. OPERATION REPORTED IN U.S. AGAINST ANTIWAR FORCES, OTHER DISSIDENTS IN NIXON YEARS



Richard Helms      James R. Schlesinger      William E. Colby

The New York Times

By SEYMOUR M. HIRSCH  
Special to The New York Times

WASHINGTON, Dec. 21—The Central Intelligence Agency, directly violating its charter, conducted a massive, illegal domestic intelligence operation during the Nixon Administration against the antiwar movement and other dissident groups in the United States, according to well-placed Government sources.

An extensive investigation by The New York Times has established that intelligence files on at least 10,000 American citizens were maintained by a special unit of the C.I.A. that was reporting directly to Richard Helms, then the Director of Central Intelligence and now the Ambassador to Iran.

In addition, the sources said, a check of the C.I.A.'s domestic files ordered last year by Mr. Helms's successor, James R. Schlesinger, produced evidence of dozens of other illegal activities by members of the C.I.A. inside the United States, beginning in the nineteen-fifties,

## FILES ON CITIZENS

Helms Reportedly Got Surveillance Data in Charter Violation

### Shah Bids Americans Push For Big Contracts in Iran

By SEYMOUR TOPPING  
Special to The New York Times

TEHRAN, Iran, Dec. 21—wearing a dark lounge suit and Shah Mohammed Reza Pahlavi, white polka-dot tie, was inter-challenged American business-viewed in the large, chandeliered today to become "more tiered audience chamber in the aggressive and dynamic" modern Niavaran Palace in a

### 2D LONDON STORE IN 3 DAYS BOMBED

Harrods Gets Shoppers Out and Police Begin Search for 2 More Explosives

### INFLATION CURBS CHRISTMAS SALES

Shorter Shopping Season Also Cited by Stores as Buyers Stretch Funds

By BEADORE BARMASH  
Inflation, unemployment, layoffs and concerns over what the national economy holds next year have produced generally disappointing Christmas sales so far for merchants across the

### Extensive Abuses Found In Court-Hiring Practices

By RALPH BLUMENTHAL

The role of political patronage in the appointment of state-court aides and employees has come under official investigation in connection with the indictments of five law secretaries.

Alleged abuses cited by the State Bar Association and law-enforcement authorities include the appointment of political party officials and leaders and their relatives as law secretaries

"recommended" as judges proffered to say, by the local party organization before being hired by the judges.

Usually, the judge's only discretion is to reject his prospective employees. In such cases, the organization then provides him with another choice or several choices, the survey showed.

In many of the cases checked, the law secretaries were known

Seymour Hirsch's revelations marked a turning point in the IC's relationship with the media and congressional oversight. (Source: *New York Times*)

collected intelligence on antiwar and other left-wing groups, and amassed files on US citizens engaged in purely domestic activity (most of the content came from the FBI and open sources, not CIA clandestine collection). CIA served as the clearing house for the information that it, FBI, and NSA collected. This comprised eventually 300,000 names in its computer index and approximately 7,200 files on US citizens and 6,000 on political groups. Despite the huge amount of material obtained, the idea that the antiwar movement was a massive influence operation run out of the Soviet Union or China was not demonstrated.

### Family Jewels

One of the most consequential journalistic exposés in CIA's history appeared on December 22, 1974, when the *New York Times* disclosed details about a secret compilation of alleged CIA charter violations known as the Family Jewels.<sup>3</sup> The leak prompted White House and congressional inquiries into some of the agency's more controversial espionage, covert action, and technical operations. As a result, CIA's political standing declined precipitously, its operational activities were curtailed significantly, and major, lasting

changes occurred in the oversight process.

After hearing that CIA officers had earlier contact with the White House "Plumbers" unit that conducted the Watergate break-in, DCI James Schlesinger on May 9, 1973, ordered CIA employees to report any activities that seemed to violate CIA's charter.<sup>4</sup> The Office of Security staffer in charge of the project flippantly dubbed the hundreds of pages of collected material the Family Jewels. Schlesinger's successor, William Colby, felt obliged to tell CIA's congressional oversight committees about the compilation, and *Times*

### **Myths and Misconceptions About the Family Jewels**

For 50 years, the Family Jewels have clouded CIA's reputation, even though most of their contents have long been known from official reports and ad hoc disclosures. Colby, who oversaw the compilation of the Family Jewels while serving as the agency's operations chief and director-designate, is the source of some durable misconceptions about them. In his memoir *Honorable Men*, he wrote that they consist of "693 pages of possible violations of, or at least questionable activities in regard to, the CIA's legislative charter"; that among the contents are "bizarre and tragic cases wherein the Agency experimented with mind-control drugs"; and that accompanying them was "a separate and even more secret annex" that "summarized a 1967 survey of CIA's involvement in assassination attempts or plans against [Fidel] Castro, [Congo's Prime Minister Patrice] Lumumba and [the Dominican Republic's President Rafael] Trujillo."

These misstatements were repeated at least in part in several widely read works, including Thomas Powers's *The Man Who Kept the Secrets*, John Ranelagh's *The Agency: The Rise and Decline of the CIA*, G.J.A. O'Toole's *Encyclopedia of American Intelligence and Espionage*, and Norman Polmar and Thomas Allen's *Spy Book*. Less informed observers also have suggested that the Family Jewels included details about political and paramilitary covert actions and definitive proof that Angleton ran MHCHAOS.

The declassification and release of the Family Jewels in 2007<sup>19</sup> should have ended much of the mythology about them. To begin with, the compendium is not a 693-page catalog of crime and immorality. Repetitive reports, duplicate documents, blank pages, file dividers, cover sheets, distribution lists, and news clippings comprise approximately 30 percent of the total. Among the remaining roughly 500 pages of substance, except for an account of the use of Mafioso Johnny Roselli in a plot to kill Castro, there are only passing references to already disclosed assassination plots and drug-testing programs and next to nothing of importance about purely foreign operations.

That should not be surprising because the whole point of Schlesinger's order that produced the Family Jewels was to get information about possible charter violations. Consequently, the collection is nearly all about activities involving US citizens or occurring inside the United States—most of the latter, as a CIA officer noted in one of the documents, were "completely innocent, although subject to misconstrual [sic]" in the political atmosphere of 1973—and includes many pages about CIA contact with the Plumbers and now-obscure characters such as fugitive financier Robert Vesco. The hypersensitivity at the time about anything that could be interpreted as having domestic political implications—or perhaps simply the bureaucratic instinct for self-protection—might explain the inclusion of the lengthy set of mundane documents about a small CIA expenditure for postal services on behalf of the White House and a memo about the Office of Logistics disposing of the National Security Council's classified trash.

investigative reporter Seymour Hersh began to work on the story soon after.<sup>a</sup> (The source of his information is still unknown.) When Colby learned in early December 1974 that Hersh was looking into some potentially controversial operations the Agency had conducted in the United States—particularly MHCHAOS—he met with the journalist to try to set the record straight.

Instead, Hersh went far beyond what the DCI had told him and described a "massive, illegal" operation against US dissidents run by Angleton's CI Staff. In response to Hersh's story, Colby forced Angleton

into retirement, the White House quickly initiated an inquiry led by Vice President Nelson Rockefeller, and the Senate and the House of Representatives set up investigative committees led by Frank Church and Otis Pike, respectively. By the time the public furor subsided around 1977, the agency's budget had been cut, some of its operations were restricted, and two permanent congressional committees oversaw its activities.

### ***NSA and SHAMROCK***

During this same time frame, NSA was investigated for its surveillance of US citizens through two programs.<sup>6</sup> SHAMROCK, started in 1945 by NSA's predecessor and active until 1975, involved collecting microfilm copies of telegraphic messages from the major US communications companies coming into, transiting, or being sent from the United States and reviewing them for actionable intelligence or law enforcement information, which was then passed to CIA, the FBI, the Secret Service, the Justice Department, or the Defense Department. At

a. Hersh was one of a new cohort of investigative journalists working the national security beat that included Bob Woodward, Carl Bernstein, Daniel Schorr, and Jack Anderson later in his career. They moved beyond the gossipy reportage of Drew Pearson and made sensational scoops—often driven by leaks—about real and perceived government malfeasance and ineptitude.

SHAMROCK's peak, NSA collected 150,000 messages a month. The program had no court authorization and did not operate under any warrants.

More troubling in the context of the times was MINARET, a parallel program to the CIA's MHCHAOS, run from 1967 to 1973. It developed from a watch list begun in 1962 after the Cuban Missile Crisis to monitor who was traveling to Cuba and violated customary SIGINT rules by including information about US citizens along with that of foreigners. As dissent and violence intensified in the United States in the late 1960s, NSA expanded the watch list to include domestic terrorist and foreign radical suspects, drawing mainly on FBI information. Nearly 6,000 foreigners and 1,700 organizations and US citizens eventually were included on the lists, which were used for screening intercepted messages. NSA's Director, Lew Allen, testified in 1975 that the NSA had issued over 3,900 reports on the watch-listed Americans. Like SHAMROCK, MINARET had no court authorization and did not operate under any warrants.

### **COINTELPRO**

The FBI began COINTELPRO in 1956 to disrupt the activities of the Communist Party of the United States.<sup>7</sup> In the 1960s, it was expanded to include a number of other domestic groups, such as the Ku Klux Klan, the Socialist Workers Party, the Black Panther Party, the American Indian Movement, and anti-Vietnam War organizers. All COINTELPRO operations were ended in 1971. Although

### **Did CIA Spy on Martin Luther King, Jr.?**

No. MHCHAOS investigated the foreign connections of, among other targets, Black civil rights activists and Black organizations such as Stokely Carmichael, Eldridge Cleaver, and the Black Panthers, but that is as far as CIA went in looking at the civil rights movement in an organized fashion. The best treatment of MHCHAOS, by Frank Rafalko, who worked on the program, does not mention King as a target. In his book *The FBI and Martin Luther King, Jr.: From SOLO to Memphis*, historian David Garrow references CIA memos written in 1975 that contain denials that the CIA ever engaged in electronic surveillance or mail covers against King and state that no CIA representatives reported on his activities when he was overseas. The FBI, through its COINTELPRO (Counterintelligence Program, below) activities, surveilled and harassed King.

it represented a tiny fraction of the FBI's workload over those 15 years, it developed an outsized notoriety and was later criticized by Congress and the public for abridging First Amendment rights and in some cases using highly questionable methods, including forging documents, sending anonymous poison-pen letters, and falsely labeling members of a violent group as police informers.<sup>a</sup> FBI techniques did not include warrantless searches and electronic surveillance. COINTELPRO remained secret until March 8, 1971, when the Citizen's Commission to Investigate the FBI burgled the FBI field office in Media, Pennsylvania, took several files, and passed the material to news outlets.

### **Army Surveillance Program**

Starting around 1966, the US Army began tracking anti-war, civil rights, and other protesters in a program that grew over several years to include more than 1,500 overt and undercover operatives who monitored and infiltrated domestic groups and cataloged their members in a computerized database shared with service intelligence units throughout the country.<sup>8</sup> The program originated

in an effort to gather logistics information for the army's use during civil disturbances it might be called on to help quell. As riots and protests intensified in the later 1960s, it expanded well beyond those parameters. Run out of Fort Holabird, Maryland, the program appears to have been conducted with little or no oversight by civilian leaders in the army and the Department of Defense.

A former army intelligence officer exposed the operation in a magazine article in 1970 that prompted further journalistic investigations and, in 1971, a hearing of the Senate Judiciary Committee's Subcommittee on Constitutional Rights, chaired by Sam Ervin (D-NC) of later Watergate Committee fame. By that time, the press coverage had prompted Pentagon officials to curtail the program. Ervin, angered at its evident violations of constitutional rights, held the hearing anyway, taking testimony from top-ranking civilian and military officials of the Departments of the Army, Defense, and Justice along with that of former intelligence agents, analysts, and other witnesses. The subcommittee later issued two publications: "Federal Data Banks, Computers, and the Bill of Rights" in

a. The FBI also ran a subsidiary operation to COINTELPRO called COMINFIL, which involved investigating legitimate non-Communist organizations that it suspected had been infiltrated by Communists to determine the extent to which they were influenced.

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**President Gerald Ford on January 4, 1975, established the President's Commission on CIA Activities within the United States, better known as the Rockefeller Commission after its chairman, Vice President Nelson Rockefeller.**

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1972 and "Military Surveillance of Civilian Politics" in 1973.

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**Investigations**

Soon after Hersh's article ran, the Ford administration and members of Congress mobilized in response. The White House's principal motive was damage control. Members of Congress had various purposes. Critics of US intelligence sought to expose IC excesses as a way to promote reform and meaningful oversight; friends of the IC wanted to protect it from what they saw as a threat to its operational effectiveness.

**Rockefeller Commission**

President Gerald Ford on January 4, 1975, established the President's Commission on CIA Activities within the United States, better known as the Rockefeller Commission after its chairman, Vice President Nelson Rockefeller. The commission was charged with investigating the allegations in Hersh's exposé. Ford also hoped to forestall a congressional investigation into US intelligence, but the Senate and the House of Representatives soon began their own inquiries (see below).

The Rockefeller Commission examined CIA activities such as HTLINGUAL, MHCHAOS, and mind-control and drug-testing experiments on unwitting subjects (part of MKULTRA). It also reviewed CIA documents concerning the assassination of John F. Kennedy that

CIA had withheld from the Warren Commission.

The commission issued its final report on June 6, 1975. Although defending the need for secret intelligence and concluding that some of CIA's domestic activities were legal, the report said that some CIA operations were "plainly unlawful and constituted improper invasions upon the rights of Americans."<sup>9</sup> The commission recommended that CIA be more clearly restricted to foreign intelligence activities and that it receive greater legislative and executive oversight. It found no credible evidence of CIA involvement in the Kennedy assassination.

The commission concluded this about MHCHAOS:

*It was probably necessary for the CIA to accumulate an information base on domestic dissident activities in order to assess fairly whether the activities had foreign connections.... But the accumulation of domestic data in the Operation exceeded what was reasonably required to make such an assessment and was thus improper.*

*The use of agents of the Operation on three occasions to gather information within the United States on strictly domestic matters was beyond the CIA's authority.*

The commission's report at the time was considered by many to be

a whitewash, not least because its conclusions on CIA domestic surveillance were rather sympathetic. For example, the rebuke of the MHCHAOS operation depicted it as serving a valid foreign intelligence purpose and for being so compartmented that it was not subject to oversight. However, the commission did not address whether CIA should have been ordered to undertake the operation, which eventually violated the agency's charter by involving it in infiltrating domestic dissident groups.

**Church Committee**

Three weeks after the Rockefeller Commission was established, the Senate initiated its own investigation into the IC.<sup>a, 10</sup> On January 21, 1975, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities—better known as the Church Committee, after its chairman, Frank Church (D-ID)—came into existence and was the first significant probe into the IC's activities that Congress had ever made. It lasted 15 months; held 126 full-committee hearings, 40 subcommittee meetings, 250 executive hearings, and 21 days of public hearings; conducted over 800 interviews; amassed 110,000 pages of documentation; issued 14 volumes of hearings and reports; and made 183 recommendations to the Senate.

Church started off the committee's work with his allegation that CIA was a "rogue elephant rampaging out of control" and with the intention to investigate any "illegal, improper, or unethical" behavior by the IC, including "the conduct of domestic intelligence or counterintelligence operations against American citizens." Much of the committee's effort

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a. See David Robarge, "Interview with Former US Senator Gary Hart," *Studies in Intelligence* 65, No.4 (December 2021).

went toward examining CIA activities in the Family Jewels, but it also addressed other sensational charges, such as assassination plots against foreign leaders and drug testing on unwitting Americans, as well as some covert actions and the IC budget. NSA and the FBI got their share of the investigatory spotlight for their domestic surveillance activities.

In its multi-volume final report issued in April 1976, the Church Committee concluded that rather than being out of control, CIA operated under presidential authorization—sometimes vague, sometimes explicit—but that congressional review of the IC had been lax. Among its more significant recommendations were the establishment of a standing Senate oversight committee, permanent intelligence agency charters, and controls on potential violations of individual rights.

The committee investigated COINTELPRO at length, including in a separate set of hearings over seven days. It concluded:

*Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that. The unexpressed major premise of the program was that a law enforcement agency has the duty to do whatever is necessary to combat perceived threats to the existing social and political order.... [T]he Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment*

*rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence.*

#### **Pike Committee**

The Pike Committee, established on February 19, 1975, is the common name for the House Permanent Select Committee on Intelligence during the period when it was chaired by Otis Pike (D-NY).<sup>11</sup> The committee's inquiry was the first significant House investigation of the IC since CIA's creation in 1947. Pike and his colleagues had a mandate, set to expire on January 31, 1976, to investigate similar subjects as the Church Committee, but unlike their Senate counterparts, they generally avoided sensational operational topics and focused on more strategic matters like the IC's analytical, operational, and budgetary effectiveness.

Despite that more measured approach, the Pike Committee had contentious relations with CIA and the White House over the committee's demand for voluminous documents, insistence on its own declassification authority, and propensity for leaking. Its final report was never officially published due to opposition from House members troubled by the potential effect on CIA activities. However, unauthorized versions of the final draft were leaked to the press, appearing first in *The Village Voice*. A full copy of the draft was later published in England.<sup>12</sup> Like Church, Pike backtracked from his initial contention that CIA was out of control and concluded that it operated under presidential authority. Among

the committee's recommendations was one for a standing committee in the House that would have jurisdiction over all intelligence-related legislation and oversight functions.

#### **Congressional Oversight**

The committees significantly added to the new political environment in which US intelligence agencies were moved out of the shadows and expected to adhere to high standards of accountability. The emergence of the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) amidst a growing climate of suspicion about US intelligence agencies marked a significant shift in public and congressional attitudes toward them and helped bring about a more regularized and professional oversight of intelligence.

#### **SSCI**

Believing Congress had not adequately monitored US intelligence services, the Church Committee in its final report in April 1976 proposed that a new body, the Senate Select Committee on Intelligence (SSCI), be created to provide the necessary degree of scrutiny.<sup>13</sup> The Senate moved quickly on that recommendation, taking up Senate Resolution 400 less than a month later. SR 400 stated that the IC members would keep the new committee "fully and currently informed" of their activities, including major anticipated ones.

On May 19, 1976, the Senate voted 72–22 in favor of the resolution.<sup>a</sup> The word "select" in the

a. The Senate's changing attitude toward oversight, reflective of the changing times, is demonstrated in its votes on various legislation. In 1956, it voted down a proposal for a joint oversight committee, 59-27, and did so again 10 years later, 61-28. Then in 1975, the Senate

name meant that SSCI's members would be appointed by the Senate majority leader and minority leader, who would choose eight and seven, respectively. In addition to being briefed on IC activities, SSCI also would review the IC's budget and hold hearings on nominees for director and deputy director (and, later, the inspector general and general counsel).

### *HPSCI*

At the urging of newly elected Speaker Thomas "Tip" O'Neill (D-MA), on July 14, 1977, the House passed a resolution creating HPSCI.<sup>14</sup> The lengthy delay in creating an oversight body on the House side is attributable in large part to the partisan rancor and confrontational approach of the Pike Committee. The less-than-overwhelming vote to establish HPSCI, 227 to 171, reflected lingering sentiments from that episode.

Despite a purported reluctance in the House to repeat the disagreeable experience of the Pike Committee, HPSCI was set up along distinctly partisan lines. Unlike the resolution that created SSCI, which mandated that no more than eight of the 15 members come from the majority party, the HPSCI resolution stipulated that membership of the committee would reflect the party strength in the House as a whole. Since 2003, the committee has had 11 members (excluding the chairman) from the majority party and nine from the minority party. Similarly, while the SSCI vice chairman was drawn from the minority party, the next ranking member of the majority party chairs

sessions in the absence of the HPSCI chairman.

### *Greater Accountability*

During the next few years, Congress rode the momentum to launch several investigations into various intelligence matters. The Senate looked into IC estimates of Soviet strategic weapons, the IC budget, and CIA covert action. The House set up probes into CIA's use of journalists as assets, its connection to the Kennedy assassination, and its crisis warning process, and it closely examined CIA's budget and covert activities. Congress also considered new charter legislation for the agency, and in 1980 it passed the Intelligence Oversight Act requiring that it be "fully and currently informed" about covert action programs.<sup>15</sup>

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### *FISA*

Although a broad statutory charter for what the IC could and could not engage in proved too difficult for Congress to enact, the administration of President Jimmy Carter, both chambers, and the IC were able to agree generally on the need for more congressional oversight of intelligence, especially in the area of domestic operations. Warrantless electronic surveillance undertaken within the United States for foreign intelligence purposes drew especially close attention on Capitol Hill. Members wanted to preserve Fourth Amendment protections against unreasonable searches of US citizens by instituting a review mechanism to ensure that only validated foreign intelligence targets were subject to non-consensual eavesdropping.

The result of congressional deliberations on this issue was the Foreign Intelligence Surveillance Act (FISA)—the first piece of legislation to emerge directly from the 1975–76 investigations.<sup>16</sup> The law passed easily in both houses, and President Carter signed it into law on October 25, 1978. FISA established a special tribunal, the Foreign Intelligence Surveillance Court (FISC)—located at the Department of Justice and operating in secret—to hear detailed applications and justifications for electronic surveillance warrants. The new law set forth standards upon which such applications would be granted.

The law did not mention CIA *per se* and did not directly affect its activities. However, if the agency wanted electronic surveillance to be carried out in the United States for foreign intelligence purposes—which it typically requested the FBI conduct—such requests would have to meet the criteria of the FISA. Notwithstanding this potentially negative effect on operations, CIA supported the new law.

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### *Executive Orders*

As a result of the Rockefeller Commission and Church-Pike Committees inquiries, President Gerald Ford issued the first executive order governing US intelligence activities, E.O. 11905, on February 18, 1976. This order was intended not only to create clear guidelines for the intelligence agencies but also to protect the IC from more drastic curtailments Congress appeared set to impose. In an effort to address the real and alleged excesses revealed

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approved setting up the Church Committee with minuscule opposition and the next year established the SSCI in an overwhelming vote. Four years later, the Senate passed the Intelligence Oversight Act by an 89-1 vote.



in the various investigations, particularly when US persons were involved, CIA, NSA, and Defense Intelligence Agency were prohibited from collecting information on US persons, engaging in searches and seizures within the United States or against US persons, opening or examining US mail, investigating tax returns, or experimenting with drugs on humans. The FBI, which the order excluded as not being a “foreign intelligence (collection) agency,” was not subject to these rules.

President Jimmy Carter’s issued the more restrictive E.O. 12036 on January 24, 1978. Intended to close loopholes in Ford’s order, E.O. 12036 demonstrated Carter’s strong distrust of CIA and the other intelligence agencies in his early years in office and the impact of the recent disclosures about the IC’s domestic operations. The new order contained provisions limiting certain collection activities in ways to “protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes.”

*No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt*

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***The US polity has never developed a societal consensus on how to balance trust and suspicion in the context of national security.***

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*within, the United States except as permitted by the procedures established [elsewhere in the E.O.].*

*No agency within the Intelligence Community shall use any electronic or mechanical device surreptitiously and continuously to monitor any person within the United States, or any United States person abroad, except as permitted by the procedures established [elsewhere in the E.O.].*

*No agency within the Intelligence Community shall open mail or examine envelopes in United States postal channels, except in accordance with applicable statutes and regulations. No agency within the Intelligence Community shall open mail of a United States person abroad except as permitted by procedures established [elsewhere in the E.O.].<sup>17</sup>*

the Alien and Sedition Acts and can be seen in episodes such the suspension of habeas corpus and press censorship during the Civil War, Red Scare after World War I, internment of Japanese-Americans during World War II, Second Red Scare in the late 1940s and early 1950s, the domestic surveillance during the 1960s detailed, counterintelligence vigilance practiced after the arrest of Aldrich Ames in 1994, and NSA’s post-9/11 communications and internet monitoring.

As each period of conflict or perceived threat subsides, the public gets “security fatigue” and swings in the other direction until the next outbreak of hostilities or the next security or counterintelligence scandal. The US polity has never developed a societal consensus on how to balance trust and suspicion in the context of national security. This bifurcated view, built into our civic culture, is an inevitable and unchangeable trait of the US political system. Apropos here is former DCI Robert Gates’s comment a week after Soviet and Russian spy Robert Hanssen was caught in 2001: “In any democratic society, counterintelligence [or counterterrorism] is decidedly difficult and will never be perfect. It wasn’t perfect in the totalitarian Soviet Union, and it certainly won’t be in America.”<sup>18</sup>

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**Conclusion**

Debates about Section 702 renewal are the latest manifestation of Americans’ vacillation between preferring an emphasis on liberty or on security. This pattern goes back to the earliest days of the republic with



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### Endnotes

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