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# 1 From radical contention to deference

## A sociogenesis of intelligence oversight in the United States (1967–1981)

*Félix Tréguer*

### Introduction

A few years ago, taking stock of the controversies around intelligence surveillance sprung by the disclosures of NSA whistleblower Edward Snowden, I identified a so-called “Snowden Paradox.”<sup>1</sup> The notion stemmed from the observation that, in many countries, scandals around the surveillance practices of intelligence agencies unleashed by Snowden had essentially led to the legalisation and the almost continuous extension of their surveillance capabilities.

But subsequent experience has led me to reconsider whether the Snowden case was in that regard a specific one. As an engaged researcher who, for the past decade, has been involved in sustained efforts by civil society actors aimed at litigating these legalisation processes in Europe, I have slowly come to the conviction that the engagement of human rights advocates in these issues has systematically failed. Sure, there are many cases where thanks to human rights advocacy, pockets of illegality have been addressed. But even in those few cases where the language of rights apparently prevailed over the reason of state, the “victories” of human rights defenders have actually come down to a growing proceduralisation of human rights, as lawmakers or courts have sought to compensate for the continuous extension of the breadth and depth of surveillance powers by enacting new transparency or oversight requirements. In the process, they have overlooked the fact that such “procedural fetishism”<sup>2</sup> comes at the expense of the substantive values that the rule of law is supposed to serve.

Rather than a “Snowden paradox,” there seems to be a kind of script at play, a script which with few exceptions or variations keeps repeating itself across time and space when it comes to scandals around state surveillance. Drawing on the sociology of Pierre Bourdieu and taking stock of how his concepts can be mobilised in the context of sudden political changes,<sup>3</sup> that script can be summarised as follows. It first starts with a rapid expansion of the surveillance powers of intelligence agencies, typically in the context of security crises (or at least processes of securitisation). Possibly in partnership with other fields – especially the political field –, intelligence professionals resort to old habitus of surveillance in rather covert ways. If the security crisis

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is significant enough, they might also be pressed to resort to new, innovative and/or particularly derogatory means, giving way to new configurations between intelligence and other fields.

The second stage of the script sees nascent insider debates around this expansion of surveillance powers scale up, leading to public denunciations and sudden processes of politicisation. Secret arrangements and practices are being brought to public attention through the media and the doxa of intelligence is contested. The controversy thus degenerates into a scandal, or sometimes even full-blown political crises when it affects the whole “metafield” of power. Such a scandal is characterised by a “synchronisation of the different fields’ temporality and the harmonisation of their agenda,” which involves a loss of autonomy of the intelligence field and gives rise to “unexpected changes in the configuration of alliances” within and across fields.<sup>4</sup> Routines and habitus are in part suspended, as actors must think more strategically.

Finally, the third and last stage of the script takes place when the scandal fades away, as the legitimacy of intelligence practice is re-established through negotiations and transactions between the field of intelligence and other fields of power. Most often, such processes of symbolic re-legitimation involve legal codification of the contentious surveillance powers as well as the creation of new oversight structures, which in theory decrease the autonomy of the intelligence field.

So far, so good: that script overall matches the descriptions of sociologists who have looked closely at the intelligence field in distinct national and historical contexts.<sup>5</sup> But this chapter seeks to connect this script to a grounded hypothesis, namely, the fact that rather than a victory of the rule of law, intelligence law and oversight structures inherited from past surveillance scandals actually work to shield intelligence against its critiques. To unpack this hypothesis, we need to approach intelligence agencies as bureaucratic organisations dedicated to the practice of the secret and illegitimate violence of the state – both physical and symbolic violence.<sup>6</sup> As such, intelligence agencies are particularly scandal prone: when the opacity and secrecy that normally shield the world of intelligence from scrutiny and preserve the liberal state’s official truth are pierced, when previously unknown and inadmissible facts come to public light, a scandal is likely to take place, as various actors join or oppose denunciations of the really existing world of intelligence. As the key locus of illegal and illegitimate state action, the world of intelligence is thus bound to face recurrent legitimacy crises.

However, the legal frameworks developed around intelligence since the 1970s in Western liberal regimes to codify and regulate intelligence powers act as potent stabilisers in the event of scandals. They do so not only by reconciling the “abnormal” secret violence of the state with a reductionist version of the rule of law, giving it a legal façade; most crucially, and although they also arguably reinforce the dependence of intelligence on the dominant players in the legal and political fields, but they also form a set of social structures guaranteeing a large degree of autonomy for the intelligence field

against its most radical critiques. Construed in this way, most policies developed in the name of intelligence oversight thus reinforce the field of power – which is formed by dominant actors in various fields<sup>7</sup> – and the role that intelligence agencies play within it. They may also be said to overdetermine the failure of anti-surveillance advocacy.

This chapter aims to explore this hypothesis. Against the tendency of a large part of Intelligence Studies to analyse the history of intelligence surveillance scandals and their aftermath as a linear and cumulative progress of the rule of law,<sup>8</sup> it seeks to frame the institutional response to intelligence scandals as a power tactic weakening opposition to state surveillance. In order to support this interpretation, I will be focusing on a seminal case: that of the US intelligence agencies confronting the social movements of the New Left in the 1960s and 1970s and the ensuing scandals which culminated in 1975, when the US Congress started paving the way for modern-day intelligence oversight.

The “Year of Intelligence” – an expression coined by the *New York Times* in February 1975 in reaction to the launch of committee investigations on Capitol Hill<sup>9</sup> enjoys a particular status within Intelligence Studies, a sort of point of origin of this academic field, but also a moment when after a series of embarrassing revelations, modern oversight mechanisms were established to reconcile the US “intelligence community” with democratic accountability. Loch Johnson, a leading figure of Intelligence Studies and former staff member of the Church committee, for instance writes that “the Church Committee did nothing less than revolutionize America’s attitudes toward intelligence supervision.”<sup>10</sup> His point could have been even broader: post-1975 oversight arrangements around intelligence powers actually set a standard that other liberal regimes would follow, so that the developments in the US can be said to have had transnational repercussions.

But as this sociogenesis will show, the Church committee and the “Year of Intelligence” – which too many authors tend to analyse as a silo, failing to place it in a longer and older sequence of events – actually crystallised a set of normative assumptions about what proper intelligence oversight looks like. Ensuing regulations of intelligence drew a boundary around the world of intelligence, delimiting what could be said and what could not. They instituted “rules of the game” for intelligence oversight that protected the official truth and disqualified radical critiques. The “Year of Intelligence” was, in essence, a moment of democratic foreclosure.

Going back to what Bourdieu called “the clarity of beginnings,” a sociogenesis of intelligence oversight in the US is “theoretically interesting because what will become taken-for-granted, and will therefore be destroyed in the invisibility of this taken-for-granted” was then “still conscious, still visible.”<sup>11</sup> It can help us understand intelligence oversight as a legitimising device, an institutional shield protecting the field of intelligence by setting up a stage through which political struggles around intelligence abuse can be made more manageable. From that perspective, this case study may contribute to a genealogy of authoritarian liberalism, or more precisely of the neo-liberal reaction to the emancipation

movements of the 1960s.<sup>12</sup> It also places the “Snowden paradox” into a larger paradox, namely the fact that scandals and political crises, which various schools of constructivist political sociology typically address in terms of social transformation, can actually end up reinforcing the political *status quo*.

The chapter unfolds with the three-stage script outlined above while adopting an analytical lens grounded in field theory. Drawing on range of archival sources including declassified documents from intelligence agencies (particularly the Central Intelligence Agency (CIA)) and building on the work of intelligence historians, it starts by surveying the formidable extension of intelligence surveillance powers in the 1960s, the extent to which it focused on internal dissent, – in particular various social movements part of the “New Left” –, as well as the increasing resort to computers for surveillance purposes. It then shows how the growing power of intelligence and its strong influence on various social fields was “scandalised,” becoming part of a widespread political crisis and leading to the creation of an “interstitial field” dedicated to intelligence oversight. Third, it follows the 1975 congressional investigations and the power plays of the executive branch, showing how intelligence reform eventually contributed to a form of institutionalised deference towards the world of intelligence.

#### **Facing the New Left: The expansion of intelligence powers**

It was a chilly night of late September 1968 when five sticks of dynamite went off and shattered the office of a CIA recruiting outpost nearby the campus of the University of Michigan in Ann Arbor.<sup>13</sup> Two weeks later, another bomb exploded, this time on campus, blasting the Institute of Science and Technology Building. Observers quickly concluded that the building had been targeted for its classified research into infrared sensory devices allegedly used to track guerillas around the world.<sup>14</sup> Later on, the bombings would be attributed to an anarchist and community-organising group called The White Panther Party, founded earlier that year in the city in solidarity with the Black Panthers.<sup>15</sup>

Since the mid-sixties, Ann Arbor had been one of the hotbeds of the New Left, the multi-faceted movement of student radicals, Black Power activists, feminists, revolutionary Marxists, and anarchists who gained prominence during the decade. “Everything was abuzz,” remembers Bill Ayers, a leading local figure of the Students for a Democratic Society (SDS) and of the revolutionary organisation Weather Underground:

Some of us organized in poor and working-class neighborhoods; some of us built counter-institutions (schools, clinics, work co-ops) to provide models for a new, more just society inside the decaying husk of the old; some of us built mobilizations against the war [in Vietnam]; some of us stopped US Marines and CIA recruiters on campus and exposed and opposed the war-related research that we thought was immoral and yet enriching our institutions; some of us fought for open admissions for Black students (...).<sup>16</sup>

After two decades of post-war conformism and ideological lockdown, capitalism and structural racism now faltered. The institutions embodying them – including corporations, the military, intelligence, law enforcement as well as science and technology – were subject to an intense critique and numerous assaults.

*Intelligence as a “libertarian mode of repression”*

In the midst of this generalising political crisis, intelligence agencies appeared as the single most important element of the state’s response. Military intelligence as well as other agencies like the Department of Justice’s Federal Bureau of Investigation (FBI) and the CIA vastly expanded the spying of American citizens and social movements deemed “subversive.”

This response built on prior experience, as multiple security crises had already established intelligence agencies and their political espionage activities as a key pillar of the executive branch. The presidency of Franklin D. Roosevelt was a significant moment in this regard, with a potent domestic intelligence appearing as an acceptable – even necessary – tool of the modern liberal state. For many liberals of the late 1930s, in the build-up to the Second World War, the FBI’s aggressive monitoring of groups on the margins of the political spectrum – in particular communist, fascist, and isolationist groups – was indeed seen as a natural and rights-preserving, all in all, a reasonable response compared with the outright repression of dissent through criminal penalties for seditious speech. In the words of Frank Donner, a long-time ACLU lawyer, law professor, and key actor in the controversies around intelligence and surveillance in the sixties and seventies, surveillance appeared as “a libertarian mode of repression,” a democratic alternative to the more overtly authoritarian practices in place in other countries or advocated by some US conservatives – such as preventive arrests, deportations or forced internment.<sup>17</sup>

In partnership with private corporations, the federal government had brought “social security” to the population – e.g. with the Social Security Act of 1935.<sup>18</sup> It now sought to establish “national security” – an expression that took off in the late 1930s – both at home and abroad,<sup>19</sup> including by warding off threats to the socio-economic order and putting radical demands for socio-political reforms under the seemingly all-seeing eye of the FBI for targeted interventions and disruptions when necessary. Largely secret and illegal practices of political surveillance – wiretaps, mail-opening, infiltration, etc. – were thus established as one of the pillars of the US’ own blend of “authoritarian liberalism,” even though the process did not go without strong dissensions from isolated voices in the political and legal fields – e.g. from lawmakers wary that the FBI was turning into an “American Gestapo,” or from the Supreme Court when legal backing for these surveillance powers was being sought.

After the adoption of the National Security Act in September 1947 which reorganised US military and intelligence agencies and led to the creation of

the CIA, the installation of the Cold War meant that the “red hunt” could continue unabated, despite the fact that actual communist influence in the US had by then be reduced to a minimum. Intelligence kept being seen as a much lesser evil than the despicable vigilantism practices by outrageous anti-communists like Senator Joseph McCarthy. By the 1950s, the FBI and the CIA enjoyed a broad-ranging support among power elites, a support that, according to political scientist William Keller, tended “to disable rational public debate and legislative oversight of the national security apparatus.”<sup>20</sup>

That was particularly true of the US Congress, whose role in overseeing intelligence agencies was, in the words of historian Harry Howe Ransom, “best defined in the dictionary’s other meaning of the word – ‘overlooking’ or the absence of careful attention.” “Such attention,” wrote Ransom in 1975, “was sporadic, unsystematic, incomplete, and at times casual.”<sup>21</sup> Congress’ watchdog function fell on the oversight subcommittees of the Armed Services and Appropriations Committees of both houses but, as Ransom sums up, “they appear to have been co-opted by the intelligence system and do not seem to function as independent critics.”<sup>22</sup> While a minority congressmen did show some willingness to improve the system of oversight with more than 200 bills tabled to that end between 1947 and 1974, these were systematically rejected – often because of presidential pressure and despite the fact that those pushing for more oversight agreed to abide by rigorous secrecy.<sup>23</sup> With the Cold War and the nuclear age, deference to the executive branch and its secretive intelligence agencies increased, as illustrated by the accelerating decline in widely publicised congressional investigations of the administration from 1946 on.<sup>24</sup> Most people in the power elite seemed happy to allow the White House to centralise power by making unilateral decisions when it came to national security or even by withholding information from Congress.<sup>25</sup>

CIA director Allen Dulles and FBI director J. Edgar Hoover also successfully secured support through informal transactions with politicians on the Hill. Hoover was particularly successful in turning members of Congress into clients, imparting his rising symbolic capital with friendly politicians – especially those sitting on congressional anti-subversive committees which were heavily staffed with FBI agents.<sup>26</sup> Meanwhile, the propaganda flair of intelligence officials helped them secure public opinion and further immunise them from critics. A romanticised and heroic image of intelligence agents as Cold Warriors was conveyed by popular culture, through newspapers, magazines, films, and novels.<sup>27</sup> Cross-socialisation between intelligence and media power holders, who knew each other from their time together in Ivy League schools, was also key in securing public confidence in intelligence agencies.

In some cases, criticisms nevertheless surfaced and embarrassing leaks occasionally appeared in the media. But in the short-term, they mostly served to reinforce the consensus around intelligence agencies and to re-enact the rules of the game. For instance, after his dismissal by Kennedy in 1961 and the failure of the Bay of Pigs operation in Cuba, Dulles insisted that secrecy

was legitimate, saying he trusted Congress and was “confident” that the “American press” would stick to policy of “self-discipline” and “self-censorship” in reporting intelligence-related news.<sup>28</sup> Finally, the very power granted by intelligence collection – information gathering, disruptive tactics such as smearing campaigns, blackmail, harassment, etc. – also proved crucial when intelligence officials had to respond to occasional criticisms. These were used to threaten the few critical congressmen who dared to express concerns regarding the surveillance practices of the US government. Judges, including Supreme Court justices, also had dossiers in Hoover’s files.<sup>29</sup> Surveillance of other power holders and political blackmail were thus another tool in the struggle for maintaining the autonomy of the intelligence field.

With such autonomy established, a deeply engrained habitus of surveillance came back to the fore when the US establishment entered the turbulent 60s. The crisis was due not only to the successes of the New Left, but also to what came to be perceived within the executive branch as an instance of intelligence failure. For the most part, intelligence officials failed to grasp the essence of the burgeoning unrest shaking the American socio-political order: their files were full of dossiers on ageing communists, and the new radical milieu – decentralised, self-organised, and evanescent – escaped most of their sensors.<sup>30</sup>

In 1965, as President Lyndon Johnson grew wary of the mounting opposition to the War in Vietnam and the growing interest of SDS and other student groups in anti-war activities, he instructed Hoover to look into it, hoping to find a connection between domestic radicalism and the Soviets.<sup>31</sup> But two years later, evidence of foreign influence was still elusive and the New Left was gaining strength. A frustrated president Johnson thus asked the CIA to investigate the peace movement. In November 1967, CIA director Richard Helms handed out his report, based on an “examination of the Agency’s own files as well as access to data in the hands of the Federal Bureau of Investigation and the National Security Agency.” Helms stated what should by then have become obvious, namely, that “the anti-war sentiment ha[d] taken root in separate sectors of the society having little else in common.”<sup>32</sup> Something else was obvious: “we lack information on certain aspects of the movement.” US intelligence was not even able to understand how these groups got their funds, much less find evidence of links to foreign embassies. In yet another sign of inter-agency rivalry, the director noted that such information “could only be met by levying requirements on the FBI, which we have now done.”

#### *Expanding and rationalising surveillance*

In Fall of 1967, Johnson’s advisers indeed told the FBI to find out “how and why demonstrators are so well organized,” in essence giving them a blank check to expand surveillance measures as well as more disruptive tactics.<sup>33</sup> The FBI’s COINTELPRO programme – started in 1956 to “increase factionalism, cause disruptions and win defections” within the weakened US



Communist Party – already covered the civil rights movement through wiretaps, informants, misinformation, and other such methods. In the summer of 1967, it was extended to so-called “Black Hate” groups, which included Martin Luther King and the Southern Christian Leadership Conference, and then to the white radicals of the New Left in October 1968.<sup>34</sup> As for the CIA, whose scope was supposed to be confined to foreign intelligence, it established new programmes focusing on the student movement.<sup>35</sup> From February 1967 onwards, the agency worked with college administrators and local law enforcement to identify activists (programme RESISTANCE). It developed a mail-opening capability directed at the foreign correspondence of persons and organisations placed on a watchlist (data which could then be shared with the FBI – programme HTLINGUAL) and mapped the alleged foreign collections of US radicals (project CHAOS). It even infiltrated peace groups on the pretence that they might pose a threat to security of CIA property and personnel (project MERRIMAC).<sup>36</sup>

The already powerful but still very secret National Security Agency (NSA) was also thrown into the mix and required by a Department of Defence directive to expand SHAMROCK, its secret programme for intercepting international telegraph traffic initially set-up with foreign intelligence purposes as a justification, to the anti-war and civil rights movements (a sub-programme that would be codenamed MINARET two years later). The FBI or the CIA would add items to the watchlist, and the NSA supplied them with the correspondence of the targets.<sup>37</sup> As for Army intelligence, in immediate response to the Black rebellions that had sparked in urban ghettos, it started setting up its “CONUS intel” programme in late 1967, with 1500 Army intelligence agents monitoring protest groups and events all over the country.<sup>38</sup> All this information-gathering effort ended up in the production of files of “subversive” people and organisations that were fed into the US Army Intelligence Command’s Investigative Records Repository.<sup>39</sup> Between 1967 and 1970, the Army had files on “at least 100,000” US citizens.<sup>40</sup>

There was another significant change for the world of intelligence: the growing computerisation of surveillance. Amidst widespread popular fears of computers,<sup>41</sup> the early 60s had seen an explosion of experimental and practical intelligence applications spearheaded by agencies closely tied to the military-industrial complex such as the Pentagon’s Advanced Research Projects Agency (ARPA).<sup>42</sup> Research projects increasingly looked into the possibility of modelling cognitive processes and predicting people’s behaviours or developing simulations on the evolution of the international system. Whether abroad or at home, “enemies were no longer clearly identifiable,” writes historian of technology Jens Wegener, and “there was a demand for tools that would help identify threats and make society more legible.”<sup>43</sup> Computerised counter-insurgency systems were among them.

In 1962, sharing his “far-out thoughts on computers” in the CIA journal *Studies in Intelligence*, a CIA analyst wrote about the “rising optimism” and the prospect of seeing behavioural scientists using computers “to foretell the

behaviour of large groups of people.”<sup>44</sup> The promise of prediction resurfaced in a much less “far-out” document, the 1965 “long-range plan” of the CIA.<sup>45</sup> Echoing today’s often-heard rationale for computerisation of state surveillance, the document spoke of an “information explosion” and an ensuing “an analysis gap” that could only be solved through computers – a technology bound to profoundly change the political economy of surveillance by allowing for the deeper, wider, seamless use of collected data. Despite the CIA’s own admission of some delays in developing automated systems for intelligence analysis, the future seemed bright: current applications would “evolve into true analytical programs from which relationships among various types of events and data through the application of correlation techniques can be derived,” “large data bases in analytical programs” would soon be used “to develop new processes having direct application to the substantive intelligence activities of the Agency,” and “hopefully, predictive processes will evolve with time and experience.”

But experts close to the intelligence field started to worry about the false promises of computers. In 1965, a Pentagon review team had been tasked with surveying “interagency goals for R&D in the processing of intelligence data.” The report was damning for intelligence agencies, outlining their failure to drive such an R&D effort.<sup>46</sup> “Although millions of dollars and hundreds of man-years have been expended in applying automatic data processing,” the report stressed, “the results to date have been disappointing.” “One reason is the gap between ‘the designer’ of systems and the ‘intelligence analysts’ who do not know enough about each other’s work and lack time to do so,” but also the lack of networking of military and intelligence research with universities and the wider scientific community.<sup>47</sup> The committee argued that such organisational silos needed to be broken, calling on expanding trends dating back from the post-war years to create what historian Jens Rohde has called a “grey area” between academia and the national security state, one ripe for collusive transactions between intelligence as well as military agencies and the academic field.<sup>48</sup>

While such efforts got underway, law enforcement and intelligence agencies rushed to roll out more prosaic computer applications – although costly and resource-intensive ones – to alleviate a crisis of visibility. Flows of criminals, dissidents, and foreign agents moved across state lines and international borders, and computers could help track their history, whereabouts, and connections. In 1967, the FBI launched its National Crime Information Center (NCIC) to facilitate information sharing among the various layers of the US law enforcement system. Hoover boasted about it in magazines: “Only a nationwide computerised communications web, such as we will now be operating, can (...) bring crime prevention and control abreast of the criminal element’s jet-age mobility,” the director claimed.<sup>49</sup> In December of that year, in an attempt to predict future riots and decrease its reliance on the FBI, the DoJ employed student interns to organise cross-department files on individuals and events connected to civil disturbances.<sup>50</sup> Under the tenure of

Attorney General Ramsey Clark, the Inter-Division Information Unit (IDIU) quickly moved into a permanent programme and its files encoded in machine-readable formats. The automated “Subject File” for instance contained information on 26,000 individuals copied from the FBI’s own data or from Military Intelligence, but also from other agencies. It could be queried to provide a listing of individuals by affiliation or location, providing up-to-date information to the Attorney General and serving to promote data-sharing and greater collaboration between the DoJ and the CIA.<sup>51</sup>

As part of its CHAOS surveillance programme, the CIA also set up a computer network relying on a time-sharing IBM 360/67 hosting the HYDRA database. Although HYDRA’s index contained close to 300,000 names, actual files were only available to analysts for about 7,500 individuals and compiled data received from the FBI and CIA field stations around the world. HYDRA was lauded by CIA director Richard Helms as a way to exert greater control on access to information pertaining to this highly sensitive programme.<sup>52</sup> But it was only a small part of the agency’s expanding computer projects. In 1969, an internal memo noted “automatic data processing [had] seen an average annual growth rate of some 30% over the years 1964–1968.”<sup>53</sup> Although past programmes had been met with a “lack of results” and frustrations among its participants, many projects that had been in the “development stage” were allegedly “moving into production” and ready to expand.<sup>54</sup>

As for the US Army, it set out to encode the files of its Counterintelligence Records Information System (CRIS) into IBM punch cards to then index them into a computerised system for easy retrieval. As a congressional report would later find out, CRIS “was designed in such a way as to retrieve civil disturbance information rapidly and generate data and statistics.”<sup>55</sup> The Army too alleged that the tool would be able “to assist the Continental Army Command in the prediction of civil disturbances which might result in the deployment or commitment of federal troops.” Unsurprisingly, none of these sensitive processes of computerisation were subject to any meaningful oversight.

### **Scandals and disentanglement: The intelligence field faces radical oversight**

The expansion of US intelligence apparatus as it reacted to New Left dissidence and its growing entanglement with other fields as a result of the mounting social crises soon gave way to denunciations and a series of scandals. At the turn of the 1960s, it led to cross-field synchronisation and greater fluidity across academia, the media as well as the political, legal, and the intelligence field itself. A new structure of opposition progressively took shape: transgressions associated with the disclosures of hitherto secret knowledge about the activities of intelligence agencies became valued stances anchored in the defence of the rule of law and democratic values. A rather radical “interstitial field” dedicated to intelligence oversight was thus formed – the concept of interstitial field being

used to refer to a “weak” social field with elusive boundaries “subject to contested authority among multiple fields”<sup>56</sup>, putting intelligence officials on the defensive.

***Reactivating demands for academic autonomy***

The first social space to reactivate open struggles against intelligence and the wider security field was academia. Tensions and attempts at maintaining the autonomy of the academic field against its growing subordination to security politics pre-existed, as illustrated for instance by the figure of Norbert Wiener, the father of cybernetics who blasted the use of his work for militaristic purposes.<sup>57</sup> But in the sixties, such denunciations became much more numerous and overt.

A founding moment in that regard was the scandal around project Camelot, the code name of a counter-insurgency programme started by the US Army in 1964 carried on by the Special Operations Research Office (SORO) at American University, a research centre largely funded by the CIA. Well-meaning social scientists – psychologists, sociologists, anthropologists, economists, etc. – had set out to study countries across the world but particularly in Latin America with the goal of assessing the effectiveness of US propaganda. For several of its key academic protagonists, project Camelot – an unclassified endeavour – was a way to bring pluralism to US foreign policy, creating a counter-power to national security hawks.<sup>58</sup> Still, one of its goals was to develop a computer system capable of automating the prediction of revolutions and insurgencies so as to allow for pre-emptive action, an objective that epitomised the fascination of US elites with anticipation. But when a consultant hired by the project reached out to Chilean social scientists to gauge their interest in participating in a study on their country, the latter made their suspicions of links to the US army public. The Chilean parliament launched an investigation into what was seen as a gross illustration of US imperialism.

Eventually, in June 1965 a source from the State Department leaked the whole story to the American press.<sup>59</sup> Amidst tensions between the State Department – embarrassed by the diplomatic consequences of a research project it did not know about –<sup>60</sup> and the Pentagon, Secretary of Defense McNamara decided to terminate Project Camelot. Officials in charge of “research defence” were quick to plead for more secrecy in the future so as to alleviate the risk of similar scandals reoccurring, but Congress’ initial reaction was to cut DoD research funds for the 1966 budget.<sup>61</sup> Project Camelot appeared in a context where popular fears of the privacy-killing and de-humanising potential of data processing machines had become mainstream.<sup>62</sup> What is more, in 1965, SDS had gained momentum on campuses across the country with its anti-war teach-ins against the fast-pace militarisation of the conflict in Vietnam. The scandal thus formed part of a perfect storm that sparked of an intense politicisation of the links between universities and the national security state, re-activating structures of oppositions between social

scientists keen on operating in the “grey area” of social research and those who insisted that sciences needed to remain free of the influence of national security politics.

In this turbulent context, in February 1967, another development marked the beginning of an unprecedented wave of radical denunciations of US intelligence across the academic field. Thanks to a whistleblower, *Ramparts* magazine, created in 1962 and by then already the New Left’s unofficial outlet, revealed that the CIA secretly funded the National Students Association (another NSA), a liberal-left organisation, as part of its worldwide anti-communist campaign.<sup>63</sup> In his editorial, *Ramparts’* executive editor Warren Hinckle framed the scoop as a “disturbing” but a “real example of the extent to which this government’s secret intelligence apparatus has infiltrated presumably independent American institutions.” *Ramparts’* outing of the CIA was not a first either: less than a year earlier, the magazine had disclosed the CIA’s role in a programme established by Michigan State University to arm and train South Vietnamese security forces. The magazine had also hired William Turner, a former FBI agent dissatisfied with the agency whose first piece in the magazine denounced the FBI’s failure to respond to civil rights violations in the South. *Ramparts’* staff knew they were under heavy surveillance.<sup>64</sup> Still, they were unrepentant: “Until the CIA’s most elite operations are brought under the effective control of Congress,” Hinckle’s 1967 editorial went on, “you can consider this story a serial. We just don’t think the CIA has any damn business co-opting Americans, and we plan to expose it every chance we get.”

When the CIA learned of the upcoming publication, it reached out to the White House: “The CIA will probably be accused of improperly interfering in domestic affairs, and of manipulating and endangering innocent young people. The Administration will probably come under attack,” warned a secret memo.<sup>65</sup> The reaction was planned well in advance of publication alongside the State Department to defuse the scandal,<sup>66</sup> President Johnson would appoint former Attorney General Nicholas Katzenbach to chair a blue-ribbon investigative commission (the latter eventually recommended that the CIA stop funding private voluntary organisations on US soil).<sup>67</sup> In spite of the administration’s damage-control strategy, the CIA policy of openly recruiting on campuses was in trouble. “The Central Intelligence Agency has cancelled a two-day recruiting drive at Harvard, apparently to avoid student protest” wrote the main Harvard student newspaper in February.<sup>68</sup> Chapters of SDS even started occupying recruitment outposts. At Columbia University, “19 students sat-in outside an office where the CIA was conducting interviews. The recruiters, who were trapped inside for five hours, decided to discontinue their drive,” a campus magazine reported.<sup>69</sup> And a few months later in Ann Arbor, two White Panthers activists went on to blow up one of such offices.

During those years, computer research was also directly attacked by student protestors who led campaigns and organised picket lines to call off

research projects involving computers.<sup>70</sup> Starting in the Fall of 1969, one of the most significant of these mobilisations struck at the heart of the grey area between the security and academic fields: Cambridge, Massachusetts, home of Harvard University and the Massachusetts Institute of Technology (MIT). A programme launched that year by J.C.R Licklider – one of the “founding fathers” of the Internet, who had moved from ARPA to the private sector and was then professor at MIT – and Ithiel de Sola Pool – professor of political science at MIT Center for International Studies – raised serious concerns. Project Cambridge was funded by ARPA with a giant budget of \$7.6 million (about \$56 million in 2020 dollars). The goal was to design various types of “data banks” and achieve what Licklider called “Robotised Data Analysis.” There was a clear counter-insurgency goal to the project, whereby predictions would be derived from diverse sources including “public opinion polls from all countries,” “archives on comparative communism,” “files on the contemporary world communist movements,” Youth movements,” or “peasant attitudes and behaviour.”<sup>71</sup>

Determined to stop the project, student protestors decided to occupy MIT’s Center for International Studies. They circulated leaflets with a portrait picture of Ithiel de Sola Pool and “WANTED FOR MURDER” written underneath. Noam Chomsky joined the opposition,<sup>72</sup> while leading critical theorist Herbert Marcuse wrote a letter from California expressing his regret that he could not join the students for an event while voicing his support. Licklider tried in vain to reassure the demonstrators. He also asked guards posted in his lab to put extra locks on the outside doors as well as wood panelling over the doors leading to the computers.<sup>73</sup> After the controversy, Project Cambridge survived but evolved into something far less grandiose – things like the theoretical foundations for man-machine interactions and architectures for semantic databases.

While it is true that in the long run, the struggles of the academic field actually had an ambivalent effect, rendering research “more clandestine and more militarized” according to Joy Rohde,<sup>74</sup> for years to come, local fights against such projects took place and bans on CIA campus recruitment were adopted by University Boards.<sup>75</sup> A reversal in power dynamics was starting to take place: as the open interventions of US intelligence agencies in other fields were denounced, their political role and the form of political violence they fostered became more visible and exposed. Soon enough, new cross-field alliances would start taking shape to scandalise intelligence, establishing a *de facto* interstitial field dedicated to keeping intelligence agencies in check.

#### *Cross-field coalitions scandalising intelligence*

In January 1970, as the war in Vietnam and the debate on American imperialism tore the US apart, the *Washington Monthly* published a 13-page report by a PhD student at the Law School of Columbia University by the name of Christopher Pyle.<sup>76</sup> Born in 1939, Pyle had been a reserve officer and

after graduating from law school, he joined the Army Intelligence School in Baltimore as a young law professor from 1966 to 1968. Although progressively minded, he was anything but a radical. Still, now that he was out of military service, he needed to let the American public know about what he had witnessed: the illegal surveillance carried on under the CONUS Intel programme.

Pyle had contacted the *New York Times* to publish his piece but never heard back from the newspaper. Luckily for him, his *Washington Monthly* article eventually reached a far wider audience than the *Times* would have given that it was syndicated in more than forty other press outlets across the country. Pyle's disclosure of the CONUS Intel programme immediately led to the first full-fledged Congress inquiry into intelligence affairs, two years before the Watergate scandal and five years before the Church committee. "Back then, nobody had ever taken on the intelligence community, so there was some fear of the unknown," Pyle recalled.<sup>77</sup> Some had tried, only to be successfully blackmailed by Hoover. But in 1970, despite yet another rising wave of "law-and-order" politics and the election of Republican candidate Richard Nixon, the careful political manoeuvres of Congress as well as an already reduced autonomy of the intelligence field disrupted those tactics. Immediately after publishing his article, Pyle was contacted by Democratic Senator Sam Ervin from North Carolina, whom Pyle had heard about for his legalistic defence racial segregation. "Not an auspicious beginning," Pyle would comment years later. But he was convinced that the congressman could advance civil rights and that Ervin's conservative credentials and former experience as an Army officer would protect him. Still, through fear of generating backlash from Hoover or other powerful heads of intelligence agencies, the Ervin Committee left out any reference to "intelligence" in its title, instead choosing to call its hearings "Federal Data Banks, Computers, and the Bill of Rights."

Within a month of Pyle's first article on CONUS Intel, the Ervin Committee was holding hearings, with testimonies by prominent representatives of the computer industry or of ACLU, civil servants working on computerised law enforcement databases and most crucially former military intelligence agents. In his work for the committee, Pyle indeed benefited from the input of Army intelligence agents who reached out to share what they knew and tell him about other agents he might want to talk to. In total, he recruited more than 120 agents across the country to supply information about the programme, taking many precautions to protect his sources. In a telling illustration of the immense self-confidence of Army intelligence officials, the bulk of the CONUS programme was not even classified. This allowed Pyle and his sources to document it without breaking any law. In June of 1970, around the time Pyle was put on Nixon's infamous Enemies List, he published another groundbreaking article documenting how the Army had sought to cover-up the programme so as to reinstate it quietly.<sup>78</sup> It stressed that despite orders to destroy the illegal files the Army had

collected, Congress could not ascertain that these destruction orders had been respected.

The world of intelligence was really starting to feel the heat from Congress, the media, and the wider public opinion. With the CONUS scandal and the Ervin committee's disclosures all over the press,<sup>79</sup> it was increasingly on the defensive. Hoover told Bill Sullivan, his head of domestic intelligence operations, that he would not approve of Nixon's so-called Huston Plan to expand illegal surveillance programmes for fear of adverse publicity: "For years and years and years I have approved opening mail and other similar operations," Sullivan recalled the old director saying. Hoover now felt it was much too risky to put it on paper: "It is becoming more and more dangerous and we are apt to get caught."<sup>80</sup> The Army was on the same line, telling Nixon that it could not guarantee that the Huston plan would be immune from leaks.<sup>81</sup> Intelligence officials thus registered their loss of autonomy, and the Huston plan was consequently never really implemented.<sup>82</sup>

From then on, it must have felt like an avalanche of bad news for intelligence insiders: as the historian of US intelligence Rhodri Jeffreys-Jones writes, "one distressing story followed another."<sup>83</sup> The hearings held by the Ervin committee brought to light dozens of ongoing computerised intelligence-gathering operations across federal and local government agencies.<sup>84</sup> It forced the Secretary of Defence to pledge to rein in the Army's domestic surveillance activities and also further inscribed the issue of privacy onto the legislative agenda.<sup>85</sup> Then, in March 1971, as Pyle – who worked with ACLU's Frank Donner to bring an eventually unsuccessful case against CONUS Intel case – as well as other staff wrote the Ervin committee reports, suspicions that the Army's domestic surveillance programme included members of Congress, including Sam Ervin himself and other leading figures of the Democratic Party, were confirmed.<sup>86</sup> The same month, New Left activists who made themselves known as "Citizens' Commission to Investigate the FBI" broke into an FBI field office in Media, Pennsylvania, and gathered several dossiers, passing on the material to news agencies and thus exposing COINTELPRO for the first time.<sup>87</sup> Then in June, in a sign that it was now ready to assume a more adversarial posture, the *New York Times* published the first batch of classified documents known as the Pentagon Papers, offering a grim view of the US war in Vietnam. The whistleblower, Daniel Ellsberg, was a former State Department official and RAND analyst who taught at MIT and had started attending antiwar rallies two years earlier. The administration also tried to prevent the *New York Times* and other newspapers from further publishing the Pentagon Papers, only to see the Supreme Court enshrine the right to publish classified information.<sup>88</sup>

Judges too were now turning with greater resolve against the intelligence field and the rest of the executive branch. A year later, the Supreme Court issued another groundbreaking decision. The case centred on title III of the Omnibus Crime Control and Safe Streets Act of 1968 passed in reaction to the Black rebellions of the summer of 1967, which had marked the come-back



of a “law-and-order” discourse.<sup>89</sup> The statute provided a minimal legislative basis for court-approved and warrantless national security wiretaps. And the defendants were the White Panthers: after the explosion in the CIA outpost in 1968, the FBI had eventually figured out that people affiliated with the White Panther Party might be involved in the bombing. On 7 October 1969, three of them – John Sinclair, Pun Plamondon, and Jack Forrest – were indicted and charged with conspiring to bomb the CIA office. Pun was also charged with carrying out the bombing and immediately went underground, which led the FBI to place him on its “Ten Most Wanted” List until his arrest in July 1970. But in building the case, the FBI had made extensive use of wiretaps and bugs, with no court warrant but Attorney General John Mitchell’s approval on the basis of the Safe Streets Act. The presiding district judge, Damon J. Keith, had rejected warrantless wiretapping as an abuse of executive power violating the Fourth Amendment. “We are a country of laws and not men,” Keith wrote in his opinion. The Nixon administration appealed in June 1971, and the next year, the Supreme Court issued the unanimous decision – remembered as the Keith decision – declaring the warrantless wiretapping of US citizens unconstitutional, even in the name of national security.<sup>90</sup> From then on, many cases built by the FBI against radical factions of the New Left that used similar warrantless wiretaps as key evidence crumbled. The Keith case was a heavy blow to US intelligence.

Meanwhile, reacting to the revelations that some of its leading figures had been subject to intelligence surveillance by the Army, the Democratic Party’s National Committee established a Planning Group on Intelligence and Security which worked in the subsequent months on a plan to reform the intelligence community and later came up with a quite radical list of demands, at least compared to what would eventually come out of the 1975 congressional investigations (quite ironically, Ithiel de Sola Pool was a member of the group, along with Christopher Pyle). Intended to influence the 1972 election cycle, these proposals included the creation of a “permanent Commission on Intelligence, Security, and Individual Rights that would serve as an independent public body with rights of full inquiry” and the power to “recommend changes in policy, legislation, and administration for all agencies engaged in domestic intelligence and security activities.” Members of this oversight body would be nominated by the executive as well as Congress, and “possibly by civic professionals, and academic associations.”<sup>91</sup> The Planning Group stressed that “indiscriminate data collection and inability to define priority targets contribute[d] to intelligence failures.” It called for the protection of reporters’ sources and the banning of government agents from masquerading as journalists. It argued for the automatic declassification of government documents after three years except for state secrets as defined by Congress with minimal discretion granted to the executive. Finally, it advocated the expansion of the 1966 Freedom of Information Act and the adoption of a data protection law, with the deletion of “all political dossiers on citizens neither charged nor convicted of criminal acts.” The CIA was

obviously appalled by such proposals. When the book presenting the work of the Planning Group came out in 1972, an internal memo giving an overview of recent publications on the agency – a growing number of which were critical – concluded that “basically, all of the essays on foreign intelligence are hostile to CIA, especially its activities in the covert action field, with the exception of the essay by Dr. Ithiel de Sola Pool,” wrote the author.<sup>92</sup>

And finally came Watergate. In February 1973, the Senate voted to create a select committee to investigate the burglary and bugging of the Democratic National Committee (DNC) headquarters in Washington. Having already successfully tackled the overreach of the executive branch, Sam Ervin was elected chairman. The committee would go on to document the concealment of wiretap records or the use of FBI intelligence against Nixon’s political opponents.<sup>93</sup> All these examples illustrate how, after the radical protests and direct actions of student protestors on campuses, intelligence critiques coordinated across the political, legal, and media fields, reinforcing a growing divide in the field of power around the role of intelligence as the purveyor of the executive branch’s illegal surveillance and violence. A growing number of intelligence agents soon joined the choir, adopting even more radical stances than Pyle or Ellsberg.

#### ***CounterSpy: the radical campaign of former intelligence insiders***

In the summer of 1972, *Ramparts* magazine unleashed yet another storm over the world of intelligence. This time, the targeted agency was not the CIA, but the even more secretive National Security Agency. Its existence had already been disclosed in 1960, when two of its cryptographers defected to the USSR and held a press conference in Moscow.<sup>94</sup> Chastised as “sexual deviates” by officials in Washington, the two men for the first time shed light on the secretive world of signal intelligence. Still, ten years later, the NSA was still virtually unknown. But now, another NSA whistleblower dared going straight to the New Left’s leading magazine to talk about the agency’s global surveillance programmes: *Ramparts* ran an interview with Winslow Peck, a young former NSA analyst whose real name was Perry Fellwock.<sup>95</sup> “What we are dealing with is a highly bureaucratized, highly technological intelligence mission whose breadth and technological sophistication appear remarkable even in an age of imperial responsibilities and electronic wizardry,” wrote the editor David Horowitz in the interview’s introduction. Fellwock had worked on listening posts in Turkey, West Germany, and Vietnam, but he had grown disgusted with the war and joined the anti-war movement in San Diego. Going public with his experience at NSA was part of his activism. “What I wanted to do was stop the war, and I was willing to do anything possible to stop the war,” Fellwock would later explain.<sup>96</sup>

After the publication of his interview in *Ramparts*, Fellwock met anti-war leader Rennie Davis who suggested that he pursue his crusade against intelligence abuse. In the Fall of 1972, along with a former Air Force intelligence

officer named Tim Butz who had also become an anti-war and anti-capitalist activist, 30-year-old Fellwock founded a new group: the Committee for Action/Research on the Intelligence Community, or CARIC.<sup>97</sup> Butz and Fellwock reached out to other former intelligence analysts asking them to share public-interest information on covert operations and surveillance. CARIC's activists had experience in groups as diverse as the Peoples Coalition for Peace and Justice, Vietnam Veterans Against the War, the National Peace Action Coalition, and Scientists and Engineers for Social and Political Action. They opened an office in Washington DC and in early 1973, came up with the first issue of *CounterSpy*, their new bulletin. *CounterSpy* was to "serve as an independent 'watchdog' on the government spy apparatus" and its rampant "technofascism," "an independent publicly sponsored source of analysis and information on the practices, organization, and objectives of US Intelligence."<sup>98</sup> Through its disclosures, CARIC would pierce through the opacity of intelligence, put it in the spotlight and create one scandal after the other. Its first issue revealed that Nixon's Committee for the Re-election of the President had hired George Washington University students to spy on anti-war protests – a scoop they passed on to the *Washington Post*.<sup>99</sup> It also alleged that the FBI had infiltrated right-wing groups in San Diego and worked with local police to disrupt non-violent groups on the Left. The issue came with a form intended for readers to fill out and send back asking all the intelligence agencies he or she had been part of, as a way to secure new sources.

In part to avoid legal repercussions, most of CARIC's output came from open sources. But it also mobilised insider knowledge that came as an embarrassment for the heads of intelligence. In May 1973, the second issue of *CounterSpy* charged the soon-to-be-appointed CIA director, William Colby, with lying to Congress about secret CIA programmes in Vietnam, demanding Colby's resignation: "CARIC feels that a man who had a career of directing assassination and torture programs can play no legitimate part in the US government. We encourage all citizens to write to their Congressional representative, the White House, and the Central Intelligence Agency to demand his resignation." With CARIC, secret knowledge and radical denunciations of intelligence were bundled together to exert pressure on institutional oversight. Again, observers at the CIA were worried. With a disdainful tone, an internal memo took notice of CARIC's demands for the resignation of the upcoming director and ended with the prediction that "like many 'bulletins' of this type, [*CounterSpy*] will probably run its course over a few issues and collapse for lack of funds" (actually, *CounterSpy* would not cease publication until 1984).<sup>100</sup> Still, the day after sending the memo, his author called again the office of the Deputy Director, warning that "one of the editors of that publication was on TV last night and said they gave documentation to the Senate Armed Services Committee in an attempt to block Colby's nomination." The connection of CARIC's staff to Congress was a liability for national security officials. Tim Butz had for instance testified before the Senate's Foreign Relations Committee to contradict the testimony of the Secretary of Defense

on the effect of bombings in South-East Asia. In that respect, *CounterSpy* embodied some of the most dangerous alliances possible between former intelligence insiders turned radical and members of the legislative branch.

The influence of CARIC further rose when a journalist from the *Village Voice* brought the group to the attention of writer Norman Mailer, also a leading anti-surveillance advocate of the time who had been separately working on a similar idea.<sup>101</sup> A few months later, Mailer's initiative and CARIC merged: the Organizing Committee for a Fifth Estate (abbreviated OC-5) actually became the fundraising arm boosted by Mailer's celebrity, while Fellwock and Butz worked on successive issues *CounterSpy*. The advisory board further established the credibility of *CounterSpy* by including former CIA agents turned whistleblowers, like Philip Agee or Victor Marchetti, but also ACLU policy officers and lawyers, including Franck Donner. The group became a focal point for investigative journalists wanting to dig up stories on intelligence and receive the help of former intelligence professionals. It launched campus tours to denounce the "technofascist tactics of 'Big Brother'" and seed local branches of the Fifth Estate, trying to build a distributed library of intelligence files. It sent representatives to radio shows to debate former intelligence officials, it spoke before labour groups or national security think tanks. It called its readers to expose CIA recruitments efforts in their community, but also to "organize coalitions to work for police budget cuts" or to use recent Freedom of Information laws to "request copies of the file they may have on you."<sup>102</sup> Later on, through open-source intelligence methods, they would even go on to publish the names of CIA operatives working in US embassies as a way to force the agency to withdraw them and therefore disrupt the covert action they might be engaged in.

Through its investigations and action research, *CounterSpy* was thus at the vanguard of the radical forms of oversight now being exerted on US intelligence. Spearheaded by student radicals, lawyers, congressmen, investigative journalists, even former members of the national security state like Pyle, Ellsberg, Butz, or Fellwock, the critique of the authoritarian drift of intelligence surveillance had become mainstream, marking an "extraordinary concentration of protesting voices" – one which, as historian Kaetren Mistry writes, "highlighted past abuses and framed contemporary crises in US politics and foreign affairs, created informal networks that fostered further revelations and contributed to growing dissenting narratives that were broadly leftist-progressive and anti-imperial in nature."<sup>103</sup> The impact of this radical contention against the intelligence field was real, although in many instances exposures were met with lies and cover-up stories. As a matter of fact, many controversial programmes were brought to an end. COINTELPRO was for instance discontinued in 1971 after the break-in of the Citizens' Commission to Investigate the FBI. CONUS Intel was also disbanded due to the Ervin committee's investigation – not without the Army trying to send the computerised files with the NSA through Arpanet, the Internet's forerunner.<sup>104</sup>

Internally, intelligence officials sought to prevent employee disaffection by

reaffirming the legality and legitimacy of their domestic surveillance activities, but at first it seemed like an uphill battle. In late 1972, just as *CounterSpy* was publishing its first issues, the CIA's Inspector General was voicing concerns that leaks from disaffected employees could lead to the disclosure of the CHAOS programme.<sup>105</sup> In early 1973, as the Watergate scandal was unfolding, the new CIA director James Schlesinger, preparing for the worst, decided to launch an internal investigation into all the "questionable activities" of the agency. William Colby, the head of covert operations who would replace Schlesinger in July, came up with a 693-page memo documenting the most controversial activities – which were internally called the "family jewels" – and included assassination plots, drug experiments, or the bugging of journalists. That summer, it was also decided to terminate the domestic component of the CHAOS programme, "not so much," as the Church reports would later note, "because it was thought to be illegal *per se*, as because the so-called 'flap potential' – the risk of embarrassment to the CIA that stemmed from its dubious legality was seen to outweigh its foreign intelligence and counter-intelligence value to the Agency."<sup>106</sup>

Despite these tactics of damage control, the damage was done. Trust in the intelligence agencies by the US public was at an all-time low, according to historian Kathryn Olmsted:

The proportion of Americans who had a 'highly favourable' impression of the FBI had fallen from 84% in 1965 to 52% in 1973. In 1975, that figure dropped again to 37%. Although the Gallup organisation did not ask Americans about the relatively anonymous CIA before 1973, the agency at that time was held in lower esteem than the FBI: only 23% of Americans gave the CIA a highly favourable rating. In 1975, the figure fell to 14%. Among college students, the CIA was highly regarded by only 7%.<sup>107</sup>

### **The Church Committee and its aftermath: Fomenting consensus**

In 1974, the impetus for a sweeping reform of US intelligence was strong. Congress was determined to act, and the political context seemed extremely favourable. Yet, over the next two years, the culmination of the political crises around the abuse of intelligence surveillance would give way to a multi-pronged strategy to re-legitimise the intelligence field, leading to what a historian of journalism has called a "new age of deference."<sup>108</sup>

#### ***Congress getting serious about intelligence oversight***

The year 1974 was marked by important developments to rein in intelligence abuse. In the aftermath of Watergate, some members of Congress, including hawkish Republicans, launched investigations to look into the role that the CIA might have played in Watergate,<sup>109</sup> or established task forces to propose remedies to "the increasing incidence of unregulated, clandestine government surveillance based solely on administrative or executive authority."<sup>110</sup> Democratic

Congress members also looked into the surveillance activities legitimised by “national security,” requiring the collaboration of intelligence officials.<sup>111</sup>

In September of that year, Seymour Hersh, then a young *New York Times* journalist awarded with the Pulitzer Prize for his scoops on the My Lai massacre in Vietnam, revealed that the CIA and the State Department had lied to Congress about their efforts to overthrow Salvador Allende in Chile.<sup>112</sup> This led to another round of uproar on Capitol Hill and several attempts to rein in covert operations. Mike Mansfield, Senate majority leader, took this opportunity to push for his long-time proposal to increase oversight of the CIA. A liberal Republican, Charles Mathias, cosponsored his initiative. Others followed suit. Among them, two liberal lawmakers, Senator James Abourezk and Representative Elizabeth Holzman, sought to ban all covert operations. For Abourezk, “since they are never going to tell us, the only real alternative is to take away their money, abolish their operations so that we shall never have that kind of immoral, illegal activity committed in the name of the American people.”<sup>113</sup> But these radical parliamentarians could not find a majority to back their bills.

In the end, Congress settled on more moderate but still quite disruptive proposals to overhaul the Foreign Assistance Act. Adopted in reaction to disclosures of CIA covert operations in Chile and Southeast Asia, the provision directly targeted the core of presidential intelligence powers: the “Hughes-Ryan amendment” (named after its two Democratic sponsors) prohibited the use of funds for covert operations conducted abroad by the CIA or the Defence Department unless the President has issued an official “finding” that such operations were necessary to protect national security. The Amendment thus forbade the President to oppose “plausible deniability” for exposed covert action. But it also increased the number of congressional committees that had to be notified “in timely fashion” of these presidential findings, from four to six. The two new committees, the Senate Foreign Relations and the House Foreign Affairs Committees, were more liberal than the Committee on Appropriations or that on Armed Services, and keen to ensure that covert actions would not overstep on the prerogatives and policies of the State Department. By expanding the so-called “ring of secrecy,” the amendment also made contentious covert operations much more likely to “leak” in the media.

Meanwhile, in a separate effort, the Senate’s subcommittee on Intergovernmental Relations also held hearings on proposals to restructure legislative oversight of intelligence. In commenting on these efforts, Senator Edmund Muskie noted that:

Time and again serious proposals – from Congress, from scholars and from Presidential task forces – have been met with little more than indifference. By our efforts here in the subcommittee, I hope we can bring an end to such studied neglect. The [...] proposals now before this subcommittee would deal with intelligence oversight in various ways.

But they all reflect a common concern: That today's intelligence agencies report to far too few people on far too little of their operation.<sup>114</sup>

Some of the proposals put forward by the DNC Planning Group on Intelligence and Security in the run-up to the 1972 presidential election were carried on by the 93rd Congress dominated by Democratic majorities. First, in late 1974, after the midterms, a lame-duck Congress managed to pass the Privacy Act, in part thanks to the dedication of Senator Sam Ervin. Creating a data protection framework for federal databases also significantly expanded the Freedom of Information Act. In particular, it granted citizens with the right to judicial review when target agencies refused to disclose requested documents. President Gerald Ford – who had been appointed Vice-President after the resignation of Spiro Agnew, making him to this day the only US president never to be elected – had vetoed the bill, contradicting his own pledge to run an “open government” because his administration – and intelligence agencies in particular – were concerned that intelligence secrets might be compromised. But in December 1974, both chambers of Congress voted to override Ford's veto.<sup>115</sup>

Congressional elections had been held in November 1974, that is three months into the term of Ford in the wake of Watergate and in the midst of rising inflation due to the 1973 oil crisis. The Democratic Party had substantially increased its majorities, winning the popular vote by a margin of 16.8 points. Many incoming members of Congress were young Democrats with little experience in federal politics. The “screaming Watergate babies,” as historian Laura Kalman has referred to them,<sup>116</sup> had run campaigns attacking the “imperial presidency” embodied by Nixon, promising to bring a progressive agenda to Washington. In this context, a couple of days before Christmas Eve, just a week before these more adversarial representatives were supposed to arrive on Capitol Hill, the *New York Times* published another story by Seymour Hersh. The journalist had gotten hold of a copy of the CIA's 1973 report on controversial “family jewels” and was determined to carry his blend of adversarial journalism into the post-Watergate era by outing operation CHAOS. Covering the first page of the December 22nd issue of the *Times*, large prints read: “Huge C.I.A. operation reported in US against anti-war forces [and] other dissidents in Nixon Years.”<sup>117</sup> The exposé went on to claim that, “directly violating its charter” barring it from operating on US soil, the CIA had “conducted a massive, illegal domestic intelligence operation during the Nixon administration against the anti-war movement and other dissident groups.” Illegal break-ins, wiretaps, and mail openings were all mentioned in the article.

In some ways, Hersh's revelations about the CIA's domestic spying were old news given that the CHAOS programme had been discontinued in 1973. But after years of repeated controversies, the intelligence establishment's support base among political and media elites was stretched thin. Even Ford seemed at first determined to not get the White House tainted by the scandal,

considering that it was up to the CIA Director William Colby to deal with it. But when he got back from his skiing holidays after New Year's Eve, Ford convened a meeting with Colby and his White House Staff and was made aware of the existence of the "family jewels report." Listening to the advice of his staff, he chose to launch a blue-ribbon commission headed by the Vice-President, Nelson Rockefeller, to investigate Hersh's allegations.<sup>118</sup>

Although an internal White House memo had warned against the potential of this commission to appear as an attempt to "whitewash the problem," Richard "Dick" Cheney, then Deputy White House Chief of Staff, would later admit that the strategy was deliberately meant to head off any "congressional efforts to further encroach on the executive branch."<sup>119</sup> With the Vice-President as its head and other pro-intelligence, pro-secrecy members like former California governor Ronald Reagan,<sup>120</sup> the move was indeed widely seen as a way to undercut any aggressive investigation by Congress and alleviate the risk of further leaks. It indicated that Ford and his staff were determined, as the president put it, to "restore the rightful prerogatives of the presidency under the constitutional system," which meant keeping the congressional investigators from exerting a determining influence on intelligence policy.<sup>121</sup>

However, the initial strategy of containing the controversy to the CIA ran into hurdles when the *Washington Post* revealed that the recently defunct J. Edgar Hoover had kept personal records on congressmen.<sup>122</sup> Other damning articles about the NSA and military intelligence came out in January and early March.<sup>123</sup> The new disclosures would force the congressional inquiries to widen their scope to the whole "intelligence community." "The Year of Intelligence" was thus launched.

#### *A tale of two investigations*

In her detailed account of the power dynamics at play around the creation of the Church committee and its equivalent at the House of Representatives, Kathryn Olmsted has shown how much the approach of House and Senate Democrats diverged. During the debate on the resolution to create a special committee – passed on 27 January 1975 –, senators insisted on the need to strengthen "the confidence of the people" in US intelligence. The priority of Democratic senators, it seems, was to reassure Republicans that they were not "out to destroy the CIA," as Senator John Pastore stressed during the debate. House Democrats, in contrast, took a much more adversarial position, insisting on the need for a "thorough house cleaning." A leading CIA critic, representative Michael Harrington, for instance contended that the country's security "depends just as much on the maintenance of the rule of law as it does on the preservation of diplomatic secrets."<sup>124</sup>

Both chambers eventually voted to launch their investigations, which unfolded over the following months alongside a separate investigation into the growing use of technology for state surveillance purposes.<sup>125</sup> None of the



committees' chairmen were first choices. Representative Otis Pike was a moderate Democrat appointed chairman only in July 1975 after it was revealed that the first chairman, Lucien Nedzi, had known about the CIA "family jewels" report and had failed to report it to fellow committee members.<sup>126</sup> As for the senator from Idaho Frank Church, who had recently conducted a sensitive investigation on the role of multinational corporations in US foreign relations and their secret cooperation with the CIA, he was appointed because Philip Hart was ill with cancer.

Both investigations offered an unprecedented deep-dive into the realm of intelligence, including not only the CIA and the FBI, but also the NSA, the Internal Revenue Service, and the Defense Intelligence Agency. Both committees unearthed many hitherto unknown cases of abuse (e.g. the FBI's blackmailing of Martin Luther King), secret budgets funding sensitive intelligence operations, and serious gaps in executive oversight and chains of command. Still, the strong differences that had presided over the creation of both committees persisted. Where Church was willing to compromise with the executive branch, framing abuse as a consequence of "rogue elephants" rather than systemic abuse, Pike would stick to a more adversarial line, refusing to agree to many procedures that Church had accepted, declining to look at memos and briefs that the full committee could not see, and resisting any private consultation with the executive branch. In total, the Pike Committee held 54 public hearings, or more than three times the number held by the Church Committee.<sup>127</sup> Where Church pursued a theory of "aberrations" and episodic abuses, Pike looked for the systemic factors explaining such abuse. Half-a-year into both investigations, a CIA official quoted by Seymour Hersh in an article summed it up in this way: "The House goes after the arteries, while the Senate goes after the capillaries."<sup>128</sup>

This led the White House to adopt a differential policy towards the committees. Although it pressured the Church committee in many ways, the Ford administration was more inclined to work with the "gentler" of the two investigations. It resisted the Pike Committee in much fiercer ways, and overall tried to play public opinion against Congress, wrongly accusing both committees of leaking or even losing vital information.<sup>129</sup> These manoeuvres of the executive, as well as its way of framing its response to the recommendations of the Rockefeller Commission which handed out its report on the CIA in June 1975,<sup>130</sup> proved to be key in crippling the political ability of both investigations to push for meaningful reforms. From September 1975 onwards, all executive responses to the congressional inquiries were handled by the Intelligence Coordinating Group (ICG). The group, composed of senior officials including Secretary of State Henry Kissinger and Secretary of Defense James Schlesinger, met in the situation room each morning to roll-out a proactive strategy aimed at imposing the executive's own agenda.<sup>131</sup> "We should not view this simply as a 'damage control' operation but, rather, we should seize the initiative and attempt to make something positive out of

this,” wrote the main staff of the group in an internal memo.<sup>132</sup> Reform was unavoidable, but the executive should be leading the manoeuvre so as to ensure that such reforms could secure the activities of US intelligence. To roll-out this strategy, the ICG also aimed at influencing the media by placing Op-Eds by administration officials and friendly outsiders. It quickly paid-off: by Fall of 1975, the public support for wide-ranging intelligence reform was waning. CIA officials quoted in the press “expressed surprise at what they said was the inability of the Senate committee (...) to generate public support for its inquiry.”<sup>133</sup>

The role of the mainstream media and its willingness to move on from an adversarial posture and side with the executive branch was key in the growing backlash against investigators. Olmsted’s central claim is that after the Watergate and resignation of Richard Nixon, the media became “nervous about its newfound power, fearful of a public and governmental backlash, and receptive to government requests for self-censorship.”<sup>134</sup> Realising that attacking the government could entail big consequences, many editors and journalists felt like it was the time to focus on “nation-healing stories” – an expression coined by producers at CBS.<sup>135</sup> In other words, most of the Fourth Estate was now keen on restoring confidence in the government, and made that position known through editorials by criticising the committees – Pike’s in particular. The representative was accused in the *Tulsa Daily World* of being a “spoiled child” and a “small-mined egoist” for putting pressure on the executive to release State Department memos and threatening to cite Henry Kissinger for contempt of Congress.<sup>136</sup> The *New York Times* political columnist and former Nixon speechwriter William Safire also lashed at Pike for “painting everything in black and white” and making “our Government helpless and contemptible.”<sup>137</sup>

And then there was the murder of Richard Welch in Athens on 23 December 1975, shot by a Marxist revolutionary group. A CIA station chief, Welch had been previously identified by a 1968 book – a “who’s who” of the CIA – published by two Soviet-bloc intelligence agencies. More recently, the Peruvian press had revealed Welch’s name: he was the CIA station chief in Lima before being sent to Athens. That later disclosure had been reproduced in the Winter 1975 issue of *CounterSpy* as part of its advocacy of open-source investigative methods to out CIA agents. Welch’s house in Athens was that used by his two predecessors, so that the CIA could have been blamed for not making greater efforts at hiding the identity of its officials. But Welch’s burial as a national hero in Washington gave the CIA and the White House an opportunity to play out a public relations strategy of accusing *CounterSpy* and his associates of being responsible for Welch’s death. The accusation of “naming names” indirectly extended to the Church committee, because of its willingness to reproduce in its reports the names of CIA agents that had formerly been disclosed in the US press. Church would later comment that the Welch murder had been a “stage-managed” event, and that “an attempt was made to lay the responsibility on the congressional investigation” so as

to “close down the investigation as soon as possible and to try to keep control of whatever remedies were sought.”<sup>138</sup>

The investigations indeed drew to a close in early 1976. The Pike Committee’s more adversarial stance and a struggle with the executive over the classification of its report’s content led the House of Representatives to vote, by a large majority, against its publication. Bipartisan congressional support of wide-ranging intelligence oversight had lapsed, and most representatives now sided with the White House’ claims that the committee had gone too far in disclosing intelligence secrets. The report was thus held confidential until CBS reporter Daniel Schorr and journalists at the *New York Times* got a hold of it.<sup>139</sup> It eventually leaked in February 1976 when the New York-based magazine *Village Voice* decided to print it. Everybody could now read Pike’s recommendation to abolish the Defense Intelligence Agency and the Internal Security division of the FBI, the request of court orders for FBI infiltration of American organisations, as well as the disclosing of the total budgets of intelligence agencies.<sup>140</sup> Alas, the debate that took place did not relate so much to the substance of the report as to how it had been made public. Daniel Schorr was rapidly identified as the source of this publication by the *Washington Post* and was then called to testify before Congress. Refusing to identify his source alleging First Amendment protection and abandoned by his superiors, Schorr eventually had to resign from his job at CBS.

As for the Church committee’s series of reports, they were released in April 1976, as senator Franck Church rushed to the campaign trail in an attempt to secure his party’s nomination for the upcoming presidential election, racing around the country with other contenders in the Democratic primaries. The tone of the report already gave a sense of the change of mood in Washington over intelligence issues, harbouring a somewhat benevolent tone towards intelligence agencies – stressing for instance that there was now “an awareness on the part of many citizens that a national intelligence system is a permanent and necessary component of our government.”<sup>141</sup> “The system’s value to the country,” the report continued, “has been proven and it will be needed for the foreseeable future.” Overall, the idea was to boost congressional oversight by clarifying the legal basis for the different practices of US intelligence, while largely deferring to executive secrecy. Hence the report pleaded for the creation of a permanent intelligence oversight committee – a proposal that would become the committee’s main legacy –, coming out strongly against the Hughes-Ryan amendment and the wide disclosure obligations that it had set forth for covert operations.<sup>142</sup> The Church reports also carried on some of the proposals of the 1972 DNC Planning Group or those recently put forward by the ACLU,<sup>143</sup> leaving aside the most radical ones (e.g. automatic declassification, partial appointment of intelligence overseers by “civil professionals,” etc.). It for instance recommended that an Intelligence Oversight Board be established with the Attorney General as a statutory member responsible for ensuring the conformity of intelligence activities with the rule

of law. The Church committee also called on Congress to draft detailed legislative charters laying out the duties, powers, and responsibilities for the main agencies, defending the crucial principle that authorisations for domestic surveillance should be subject to court approval and conditioned on the existence of prior suspicion that such surveillance could document criminal activity in the field of terrorism or espionage, rather than mere “subversive activities.”<sup>144</sup> Finally, it was not ignorant of the risk entailed by a growing process of computerisation, calling for “restraints that not only cure past problems but anticipate and prevent the future misuse of technology” to ward off the risk of a “big brother government.”<sup>145</sup>

Taken altogether, these recommendations were significant. But by the time of their publication, as the *Washington Post* noted, “the impetus for reform appears to be only a shadow of what it was last year.”<sup>146</sup> And indeed, the few recommendations actually enacted were those that fit with the executive branch’s strategy for re-legitimising intelligence.

*Ensuing reforms: the foreclosure of democratic control over intelligence*

In February 1976, that is a few weeks before the publication of the Church reports, Ford had undercut most of the Senate committee’s recommendations by making a live speech announcing watered-down versions of it. The executive needed to make concessions, but these had to be minimal. And above all, they needed to reinstate secrecy as an effective boundary between intelligence outsiders and insiders so as to protect the autonomy of the intelligence field and the discretion of the executive branch in defining intelligence policy.

The bulk of the executive’s own intelligence reform lied in executive order n° 11905, the first detailed and public legal text laying out the powers and duties of intelligence agencies. Through it, Ford imposed a few restrictions on intelligence agencies, including a ban on assassinations as an instrument of foreign policy (the latter being framed in an ambiguous way that still left the option open).<sup>147</sup> A new Intelligence Oversight Board was also established at the White House, with the duty to report to the Attorney General “any activities that raise serious questions about legality” (rather than making the Attorney General a statutory member of the board like the DNC and the Church committee had proposed). Instead of detailed legislative charters, the executive order called on the Attorney General to issue “guidelines” framing the powers of the FBI, refusing to ban the detection and prevention of mere “subversion.”<sup>148</sup> Ford also expressed support for a proposal that had been floating since the Keith decision and taken up by Congress to create what he called “a special procedure for seeking a judicial warrant authorizing the use of electronic surveillance in the US for foreign intelligence purposes” – announcing the secret court at the heart of what would become the Foreign Intelligence Surveillance Act of 1978.<sup>149</sup> Importantly, he also called entrenching secrecy as a means to protect intelligence autonomy, for instance through a new law criminalising the disclosures of state secrets or a joint

congressional committee on intelligence oversight: “The more committees and subcommittees dealing with highly sensitive secrets,” Ford said in his address, “the greater the risks of disclosure.”<sup>150</sup>

In the aftermath of these announcements, intelligence officials – who had feared, quite rightly considering the tepid response from the mainstream press,<sup>151</sup> that these executive reforms would be open to charges of making only cosmetic changes – successfully pressured Congress to fight back against more rigorous legislation. Proposed amendments to the Privacy Act aimed at ensuring that intelligence agencies notified any person that had been targeted by the COINTELPRO or CHAOS programmes were thus defeated.<sup>152</sup> Instead, the debate rapidly shifted to the proposals that most immediately served to shield intelligence from radical critics.

First, in May 1976, at the urge of the Church committee and the White House, the Senate voted to create a Permanent Select Committee on Intelligence responsible for authorising expenditures for intelligence-related activities. It almost failed to pass when it was put to vote on the Senate floor despite having been the focus of extensive debate in both chambers in 1975.<sup>153</sup> It took the House one year to come to the same result, and both committees were added to the list of those to receive notice of covert actions under the Hughes-Ryan amendment. Representative Michael Harrington, author of the 1975 resolution establishing the Pike Committee, called these new permanent committees a “sham of oversight,”<sup>154</sup> knowing that, rather than boosting oversight, their main purpose was to eventually better protect executive secrets.<sup>155</sup> As a journalist correctly summed up after the creation of the Senate Permanent Select Committee on Intelligence:

Some hope the Senate’s creation of an oversight committee will persuade Congress to repeal the Hugues-Ryan amendment, which obliges the CIA director to report all covert activities to at least six committees. Over the past 16 months, virtually none of the information conveyed to Congress under the amendment has been kept secret.<sup>156</sup>

It would take a few more years, but that was the eventual outcome: just before the arrival of Reagan at the White House and with the support of the Carter administration,<sup>157</sup> the 1980 Intelligence Oversight Act was adopted to repeal the Hughes-Ryan amendment. While expanding the range of information shared with congressional overseers, the number of informed committees was reduced from six to just two. During Senate committee hearings, the *New York Times* reported that a young liberal Democrat from Delaware by the name of Joe Biden warned civil rights advocates that the momentum for reform had passed and that “opinion in Congress and throughout the country was running strongly against them.”<sup>158</sup>

The second lasting legacy of the Church committee came from its condemnation of warrantless surveillance, which inspired the 1978 Foreign Intelligence Surveillance Act (FISA). FISA’s initial and rather narrow goal

was to remedy the subsiding forms of warrantless national security surveillance of foreign powers or their agents – an issue left unaddressed by the Supreme Court’s 1972 Keith decision which focused solely on cases of “wholly domestic” security issues.<sup>159</sup> In early 1976, the Ford administration had come out in favour of such a federal law and President Carter also supported it.<sup>160</sup> The system would rely on the so-called Foreign Intelligence Surveillance Court (FISC), a court acting in secret where foreign intelligence surveillance authorisations issued by the DoJ would be minimally reviewed by judges, with differing standards based on the identity of the target and the now widely accepted notion of intelligence law that foreigners deserve lesser protection than “US persons.” Praised by its drafters as exemplary of the kind of constitutional checks and balances needed for intelligence in a democracy, critiques worried that the FISC might quickly “become captive of the national security establishment and serve only to encourage executive officials, now protected by judicial approval, to conduct activities that would otherwise never have been proposed.”<sup>161</sup> In 1980, the press was forced to report that the FISC “granted every request to bug spies,”<sup>162</sup> while the Department of Justice Counsel for Intelligence Policy admitted three years later that “to date, the court ha[d] not rejected a single application,” framing it as a sign that the executive branch was careful in its use of such surveillance powers.<sup>163</sup> FISA’s founding principles, such as the prohibition on warrantless surveillance and the foreign–domestic distinction, would be undermined by later reforms, especially under George W. Bush’s “war on terror” and the boost it gave to NSA-operated large-scale warrantless surveillance.<sup>164</sup>

Lastly, the autonomy of the intelligence field would rely on a third strategy: stopping the outpouring of disclosures by journalists and whistleblowers and re-activating the barrier of secrecy protecting intelligence agencies’ relative autonomy. Attempts to pursue such disclosures through the Espionage Act had run into legal hurdles – as illustrated by the failed prosecution of Daniel Ellsberg –, and so Ford’s executive order had sketched another course of action, one based on contractual law whereby all intelligence professionals would now have to sign non-disclosure agreements.<sup>165</sup> Approximately at the same time, agencies were establishing formal procedures to review the publications of former agents – the CIA for instance created its Publications Review Board in 1976. A moral panic about the use of “marijuana-hashish epidemic” and the risks it entailed for information security in intelligence further served to legitimise the use of drug testing in a veiled attempt to keep whistleblowing “hippies” at a distance.<sup>166</sup>

More significantly, the period also marked the beginning of a regulatory process called for by the Church committee and epitomised by the 1978 Civil Service Reform Act, whereby whistleblowers were forced to report internally the wrongdoings they might become aware of. As Gurman and Mistry note, executive-branch whistleblowing was defined narrowly in relation to “fraud, waste, and egregious crime.” The role of whistleblowers was to “improve the functioning of the state rather than question the underlying tenets of national

security policy or the culture of secrecy,” thus being confined to the role of “organisational defenders” rather than public advocates against intelligence abuse.<sup>167</sup> Such strengthening of secrecy effectively curtailed what had been a prime driver in stopping illegal surveillance programmes: as Morton Halperin and his colleagues from the Center for National Security Studies wrote at the time in their public advocacy against US intelligence, it was indeed the “exposure or the possibility of it” that had “moved the agencies to end some of their illegal programs”: “no internal mechanism was so effective.”<sup>168</sup>

In practice, little changed for intelligence agencies after the Year of Intelligence. There were immediate attempts to “clean house” and bring surveillance practices in conformity with the law.<sup>169</sup> An internal review launched at the CIA in 1975 concluded that they was a “lack of legal expertise in the field of electronic surveillance and a general uncertainty and inexperience in the area of Federal criminal law.”<sup>170</sup> Internal workshops were organised to accommodate the new ‘external constraints’ but also think about how the “climate of public opinion” weighed on the Agency and how the latter could foster “creativity” under such constraints.<sup>171</sup> But as early as August 1976, the CIA was already challenging a Justice Department opinion interpreting the limits of Ford’s Executive Order, with George Bush, the new CIA director, claiming that it was too restrictive.<sup>172</sup> A few months later, Carter’s quite progressive CIA director, Stansfield Turner, was already looking at ways to improve its damaged relationship with the academic world by working with the outgoing president of the International Studies Association, Vincent Davis,<sup>173</sup> a strategy that apparently bore fruit.<sup>174</sup> By the mid-1980s, the press would note that “the C.I.A. [was] once again attractive to many college students.”<sup>175</sup>

“Signal intelligence” and computerisation also appeared as a strategy aimed at expanding more discreet forms of surveillance. In an increasingly tense budgetary context (with the notable exception of the FBI whose budget kept rising), several agency departments faced restrictions in personnel, and overall a low morale. They sought to cope with this decreased manpower by enacting productivity gains through computerisation. A commission established by the Department of Defense to look into intelligence issues declared that it was “impressed with capabilities of our technical collectors as an essential input to the intelligence data base, and we believe that comparison of the data base today with that available 10 years ago illustrates the detail and precision to which we have become accustomed.”<sup>176</sup> By then, as an internal paper put it, the NSA was “almost totally dependent on computer systems to aid our analysts,” these systems being seen as necessary to “handle the increasing volume of work that grows more sophisticated while our people power is shrinking.” CIA director Turner fired 800 operational agents, enacting the vision sketched by his one of his predecessors, James Schlesinger, who believed that SIGINT and computers rather than HUMINT and clandestine operations were the future of intelligence and conducive to better command-and-control.<sup>177</sup> The Army similarly was able to cope with shortages in personnel by increasing the roll-out of new computer installations

dedicated to intelligence.<sup>178</sup> Congressional investigations into computer surveillance in the mid-1985 registered the proliferation of these technologies and the lack of appropriate oversight.<sup>179</sup> In retrospect, computerisation – as part of what sociologist Gary T. Marx would soon term “the new surveillance” –<sup>180</sup> formed part of a strategy aimed at expanding surveillance capabilities while escaping oversight, and therefore constituted a way to defend the autonomy of the field.

None of the more ambitious proposals for intelligence reforms that came out of Congress prior to or after the 1975 investigations would see the light of day. During his campaign, Democratic candidate Jimmy Carter had pledged to support “charter” legislation for the Bureau and the CIA, but his administration eventually listened to those who feared that it would overly constrain the operations of intelligence agencies.<sup>181</sup> Quite ironically, even as Carter’s 1980 State of the Union address called on removing restraints on the CIA and as Congress got rid of the Hugues-Ryan amendment while protecting classified information used in criminal trials through the 1980 Classified Information Procedures Act, Republican presidential candidate Ronald Reagan attacked the Democrats’ legacy, accusing them of having weakened intelligence agencies. His election would mark yet-another return of a “law-and-order” discourse, with increasing budgets and personnel for intelligence agencies. In line with a report of the Heritage Foundation co-written by his advisors during the transition called on “unleashing” intelligence agencies,<sup>182</sup> the Reagan administration was quick to pass reforms increasing intelligence powers. To give just a few examples, in December 1981 Reagan issued an executive order relaxing rules that precluded the CIA from collecting foreign intelligence in the US.<sup>183</sup> In 1982, the Intelligence Identities Protection Act, passed with *CounterSpy* as the main scapegoat, made it a crime to reveal the names of covert intelligence personnel. In 1983, the administration relaxed rules on domestic intelligence operations against protest groups.<sup>184</sup> And in October 1984, after a battle of several years, Congress exempted certain operational files of the CIA from disclosure under the Freedom of Information Act.<sup>185</sup>

The “old boys” of the intelligence field were on a come-back. In passing these regressive reforms, executive supporters of intelligence could rely on complicit members of Congress whose permanent committees on intelligence had grown supportive of intelligence agencies, practising “institutional” rather than “investigative” oversight.<sup>186</sup> By the mid-1980s, congressional committees on intelligence were largely staffed by former CIA officials.<sup>187</sup> In fact, many executive branch and intelligence officials remained unimpressed with the legacy of the Church committee. Just a few months before the Iran-Contra affair that would taint Reagan’s intelligence policy for months, *New York Times* reporter Leslie Gelb concluded that congressional oversight of the CIA had produced “a decade of support” for the agency by Congress.<sup>188</sup> Daniel Patrick Moynihan, former vice chairman of the intelligence committee told Gelb that, “like other legislative committees, ours came to be an advocate for the agency it was



overseeing.” William Colby himself acknowledged in February 1976 that the congressional investigations had actually strengthened the CIA and clarified the boundaries “within which it should, and should not, operate.”<sup>189</sup> In 1984, he maintained during a public conference that “the American public has benefited from a transition in the CIA from the cloak and dagger days to modern electronic surveillance,” and that the CIA “has been strengthened by laws passed in the 1970s which give Congress more authority over the agency.”<sup>190</sup>

While the latter part of the quote should be nuanced, Colby was right in saying that the “Year of intelligence” and the intelligence reforms passed in its aftermath had indeed normalised the practices of intelligence agencies. Mostly through executive orders, part of the legal basis for intelligence policy was now public. Through the prerogatives of the Permanent Select Committees, through their open hearings and reports as well as the wider media coverage, more official information now filtered out of the realm of secrecy. Such “staged transparency” helped boost public confidence and gave these agencies a new-found legitimacy, as likely did the occasional fights staged between intelligence officials and their institutional overseers. Meanwhile, secrecy had been strengthened and whistleblowers dissuaded from going public. In the back rooms, secret programmes could resume, and laws again be disregarded.

### **Conclusion**

In the context of a proliferating and radical opposition to intelligence and state surveillance, the institutionalisation of intelligence oversight as it was designed in the US in the mid-70s – and then appropriated by other liberal democracies in response to national or transnational scandals –<sup>191</sup> can be framed as a legitimising device, a power tactic aimed at securing a level of consensus around intelligence agencies and governing anti-surveillance critique.<sup>192</sup> As I have argued, the Year of Intelligence is most accurately framed as a moment of struggle when the intelligence field successfully strategised to re-establish its autonomy whilst making minimal concessions. Rather than a victory of the rule of law, it was a moment for the “internalisation” of unfolding scandals and for the depoliticisation of oppositions by giving them new technical objects – mostly legal in nature – through the development of “new state capacities to manage constitutional checks and balances.”<sup>193</sup>

As the central “rule of the game” for intelligence oversight, secrecy complemented such procedural arrangements to enact a boundary between insiders and outsiders. In turn, this effectively cut off professional overseers – be they members of the permanent committees on intelligence or judges – from the more radical and diverse range of critiques that had played such an important role in bringing to the fore the range and depth of intelligence abuse over the previous years. Although over time, some lawmakers sitting on the permanent committees on intelligence have proven themselves critical of intelligence agencies, these committees have been dominated by what Johnson has called “cheerleaders”

of intelligence agencies, that is politicians acting as these agencies' spokespersons in Congress and before the wider public.<sup>194</sup> As for external critics, they either had to join the institutional oversight game through more technically oriented advocacy or litigation at the risk of irrelevance, or be repressed and disqualified as reckless whistleblowers and radicals. What is more, such critics could easily be framed as not being "in the know," and not knowledgeable enough to appear as legitimate actors in intelligence policy debates.

Although a detailed socio-history of this process of depoliticisation through institutional intelligence oversight would be needed, it seems reasonable to suggest that, in the past forty years, the oversight structure established in the US after 1975 has given intelligence officials a working configuration to pass regressive reforms, on the long run weakening the already-tepid procedural arrangements adopted in the aftermath of the Year of Intelligence. And that in the aftermath of other scandals and in the midst of other crises, such structures largely worked to shield intelligence autonomy. Radical, "non-reformist reforms" of the kind debated in the first half of the seventies does not seem to have resurfaced in later intelligence policy debates, much less gained the prominence they had then. For all the spectacular massive disclosures of the likes WikiLeaks or Edward Snowden, and except in perhaps a few localised instances, the coalitions sparked by such disclosures to rein in intelligence abuse never got close to exerting the kind of political force that intelligence agencies had to resist in the 70s.

As for Franck Church, regardless of his motives and intentions, or the merits of many of the recommendations put forward by his committee, he was largely made in retrospect a kind of what Bourdieu called a "bureaucratic hero," a "prophet" who "rescued the possibility of believing in the official truth despite everything," a "person whose major function is to enable the group to continue to believe in the official, that is, in the idea that there is a group consensus on a certain number of values that are indispensable in dramatic situations in which the social order is deeply challenged."<sup>195</sup> Modern intelligence oversight emerged in the midst of such a moral crisis, whereby a growing network of actors holding increasingly powerful positions in their respective fields coalesced to scandalise intelligence. It is when they got to their maximal influence on the field of power that the Year of Intelligence took place, in turn giving way to impromptu strategies aimed at depoliticising intelligence oversight while Church and his co-investigators passed to history as the symbols of the reconciliation of US intelligence with the rule of law and democratic standards.<sup>196</sup> The tepid reforms adopted in their names, which set aside the most ambitious proposals of the time, would be both the product and reproducer of a procedural understanding of democracy, one losing sight of the substantive meaning of a democratic regime and of the dangers of political surveillance, conflating what Tarrow, Ginsburg and Mustafa have called "rule *by* law" with the rule *of* law.<sup>197</sup>

Of course, many developments took place from 1975 on that would help explain why a more radical agenda for intelligence oversight never came to pass: besides the manoeuvring and internal strives within the executive branch under the Ford and Carter administrations (which would deserve a more detailed analysis), there was the expanding economic crises, the eviction in the late-1970s elections of many congress members who had worked on national security issues, the fatigue of the public and the media in confronting the abuses of their government, the loosening of the ephemeral alliance between radicals and reformers, as well as new pressing issues on the international scene. For his part, Christopher Pyle, the Army intelligence whistleblower, made in 1979 the following commentary – a quite discerning if bitter one:

As inflation makes the public more conservative, demand of reform of the intelligence agencies will wane, only to prove once again that ours is a ‘democracy,’ but it is a democracy of moods and sentiments, as indifferent to constitutional principles as Hoover and his agents.<sup>198</sup>

More research would be needed to explore the relevance of these and other possible causal factors in the eventual failure to enact meaningful democratic oversight of intelligence agencies. But by giving evidence of the forms of radical opposition to US intelligence in the decade preceding 1975, this sociogenesis has recast institutional intelligence oversight in its wider historical setting. While offering a glimpse of the paths not taken, the process of institutionalisation it covers helps explain why the interstitial field concerned with intelligence oversight in the 70s has become largely dependent on, and subservient to, the intelligence field, crystallising a set of normative assumptions about what proper intelligence oversight should be.

This doxa is still prevalent in parliamentary oversight committees, many courts, the bulk of Intelligence Studies, or even many think tanks or NGOs working on intelligence. It is marked by a procedural and technocratic understanding of democracy, whereby supposedly ill-informed outsiders are excluded, partisan and radical criticisms of intelligence policy discredited, and whistleblowers – who have historically played a key role in intelligence – oversight demonised.<sup>199</sup> By having a better sense of its origins, by unearthing the invisibilised histories of the courageous actors who resisted intelligence abuse and by drawing inspiration from them, perhaps can we better inform the contemporary struggles aimed at reining in the ongoing and systemic violence committed in the name of intelligence, and by doing so help open new pathways towards emancipatory social change.

## Notes

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- 144 The Church committee's main list of recommendations can be found in "'Church Report": Supplementary Detailed Staff Reports on Intelligence Activities and Rights of Americans (Book III)', 289–339; See also "'Church Report": Foreign and Military Intelligence (Book I)', 423–74.

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- 158 “The folks don’t care.” Biden is quoted as saying, in essence arguing that he agreed with the concerns of civil rights advocates but that the bill was better than nothing and far better than other proposals seeking to legalise controversial surveillance practices. “If you had a referendum on whether to ‘unleash’ the C.I.A., Biden further alleged, more than 50% of the people, not knowing what ‘unleash’ meant, would vote ‘yes’.” Quoted in Charles Mohr, ‘A.C.L.U. Testifies Intelligence Bill Would Legalize “Abuses” by C.I.A.’, *The New York Times*, 26 March 1980.
- 159 Meanwhile, the D.C. Court of Appeals ruled in 1975, in the *Zweibon v. Mitchell* case, that foreign intelligence electronic surveillance should be conducted pursuant to a warrant. See Americo R. Cinquegrana, ‘The Walls (And Wires) Have Ears: The Background and First Ten Years of the Foreign Intelligence Surveillance Act of 1978’, *University of Pennsylvania Law Review* 137, no. 3 (1989): 793–828; Trevor Morrison, ‘The Story of United States v. United States District Court (Keith): The Surveillance Power’, *Columbia Public Law & Legal Theory Working Papers*, 20 November 2008; Ira S. Shapiro, ‘The Foreign Intelligence Surveillance Act: Legislative Balancing of National Security and the Fourth Amendment’, *Harvard Journal on Legislation* 15, no. 1 (1978 1977): 142.
- 160 Thomas Blanton, ‘Wiretap Debate Déjà Vu: Electronic Surveillance From the Cold War to Al-Qaeda’, *The National Security Archive*, 4 February 2006, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB178/index.htm>.

- 161 Cinquegrana, 'The Walls (And Wires) Have Ears', 815.
- 162 "Secret Court Said to Grant Every Request to Bug Spies," *The Washington Post*, March 4, 1980. Quoted in Hochman, *The Listeners*.
- 163 Quoted in Cinquegrana, 'The Walls (And Wires) Have Ears', 815.
- 164 Mitra Ebadolahi, 'Warrantless Wiretapping Under the FISA Amendments Act', *Human Rights* 39, no. 3 (2013): 11–16. On how computerised surveillance experimented in the 1960-1970s – in particular the CIA's HYDRA database – foreshadowed the forms of surveillance that came to characterise the "War on Terror," see Jens Wegener, 'Order and Chaos.' According to Wegener, "beyond personnel and technological continuities, one of the main legacies of the HYDRA-experience was its role in spurning the development of new systems of knowledge linking the investigation of transnational threats to quantitative computer-aided forms of analysis [...]. These systems encouraged officers to think in terms of transnational social structures that had long existed at the intersection of several blind spots of the national security paradigm: fixed distinctions between internal and external security, the training of single area experts, and the legal gaps between national jurisdictions.'
- 165 According to the executive order, 'in order to improve the protection of sources and methods of intelligence, all members of the Executive branch and its contractors given access to information containing sources or methods of intelligence shall, as a condition of obtaining access, sign an agreement that they will not disclose that information to persons not authorized to receive it.' Gerald Ford, 'Executive Order 11905: United States Foreign Intelligence Activities, February 18, 1976', President of the United States, 18 February 1976, <https://www.fordlibrarymuseum.gov/library/speeches/760110e.asp>; The new strategy was based on the realisation that 'NDAs could prove a more effective means than the Espionage Act to censor authors because they did not leave it to the courts to determine the legality of the government's conduct, the extent to which the disclosure of information damaged national security, or whether arriving at a verdict required the disclosure of additional—including classified—information.' Sam Lebovic, 'From Censorship to Classification: The Evolution of the Espionage Act', in *Whistleblowing Nation: The History of National Security Disclosures and the Cult of State Secrecy*, ed. Kaeten Mistry and Hannah Gurman (Columbia University Press, 2020), 189.
- 166 William E. Colby, 'Letter from DCI on "Marihuana-Hashish" Epidemic on Personnel Security and Secrecy', 4 March 1975, <https://www.cia.gov/readingroom/document/cia-rdp78-04163r000100130001-6>; That policy developed over the years. An executive order adopted under the Reagan presidency generalised drug-testing, finding that 'The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law.' Ronald Reagan, 'Executive Order 12564: Drug-Free Federal Workplace', President of the United States, 15 September 1986, <https://www.archives.gov/federal-register/codification/executive-order/12564.html>.
- 167 Hannah Gurman and Kaeten Mistry, 'The Paradox of National Security Whistleblowing: Locating and Framing a History of the Phenomenon', in *Whistleblowing Nation: The History of National Security Disclosures and the Cult of State Secrecy*, ed. Kaeten Mistry and Hannah Gurman (Columbia University Press, 2020), 22.
- 168 Morton H. Halperin et al., *The Lawless State: The Crimes of the U.S. Intelligence Agencies* (Penguin Books, 1976), 10.

- 169 On the FBI's cover-up of its illegal investigations, see Scott, *Reining in the State*, 166.
- 170 'Report on Inquiry Into CIA-Related Electronic Surveillance Activities'.
- 171 John F. Blake 'Investigating the Topic of Creativity and Controls Within CIA (Memo from the Deputy Director for Administration)'. CIA, 7 October 1976. <https://www.cia.gov/readingroom/document/cia-rdp80-00473a000700100009-9>.
- 172 Letter, Director of Central Intelligence, Bush to Marsh, August 18, 1976. Quoted in Digital National Security Archive, 'Chronology: CIA Covert Operations II: The Year of Intelligence, 1975'.
- 173 Vince Davis and Stanfield Turner. "Comments on a Memo on Relationships Between CIA and Private Scholars" CIA, 31 May 1977. CIA CREST Record. <https://www.cia.gov/readingroom/document/cia-rdp86b00985r000300080015-5>.
- 174 Becker, 'CIA Ties with Academics: Dangerous Implications'.
- 175 David Wise, 'Campus Recruiting and the CIA', *The New York Times*, 8 June 1986, sec. Magazine.
- 176 Anonymous, 'The Yawn of the Computer Age', *Cryptolog*, January 1975.
- 177 Christopher Moran, 'Nixon's Axe Man: CIA Director James R. Schlesinger', *Journal of American Studies* 53, no. 1 (February 2019): 95–121.
- 178 Office of the Deputy Chief of Staff, Operations, 'Annual Historical Review U.S. Army Intelligence and Security Command, Fiscal Year 1978.' (Washington, D.C.: Department of Defense, 1 September 1978), 47, Digital National Security Archive.
- 179 'Federal Government Information Technology: Electronic Surveillance and Civil Liberties', Office of Technology Assessment, CIT-283 (Washington D.C.: U.S. Congress, October 1985), Digital National Security Archive.
- 180 Gary T. Marx. *Undercover: Police Surveillance in America*. Berkeley: University of California Press, 1988, 208.
- 181 The Carter administration had proposed a charter legislation, the National Intelligence Act of 1980, which would have 'largely authorized past abuses,' according to Poveda. Some congressmen still fought for more stringent restrictions. The Federal Intelligence Agencies Control Act of 1977, for instance, would have 'prohibited political surveillance and preventive action against U.S. citizens, protected whistleblowers, banned intrusive investigative methods, repealed the Smith Act, and terminated the authority of the attorney general to authorize domestic intelligence investigations. The use of paid informants in political groups was also banned.' See Poveda, 'The FBI and Domestic Intelligence', 208; George Lardner, 'Missing Intelligence Charters: No Reforms Enacted since Congressional Investigation', *The Nation* 227 (1978): 168. See also Townley, 'Spies, Civil Liberties, and the Senate', 21; on Carter's Vice-President and former Church committee member Walter Mondale's strategy to dodge the issue of charter legislations, see Scott, *Reining in the State*, 158.
- 182 The report is summarised in Judith Miller. 'Report to Reagan Aides Urges Ending Many Restrictions on U.S. Spying; First Meeting With Turner'. *The New York Times*, 21 November 1980, sec. Archives.
- 183 Ronald Reagan. 'Executive Order 12333: United States Intelligence Activities'. President of the United States, 81/12/4; Judith Miller. 'Reagan Broadens Powers of C.I.A., Allowing Spying Activities in the U.S.' *The New York Times*, 5 December 1981, sec. U.S.
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- 185 For an overview of Reagan's intelligence oversight policy, see Stansfield Turner and George Thibault, 'Intelligence: The Right Rules', *Foreign Policy*, no. 48 (1982): 122–38.

- 186 The distinction is borrowed from Smist, *Congress Oversees the United States Intelligence Community, 1947–1994*.
- 187 Olmsted, *Challenging the Secret Government*, 175–178.
- 188 Leslie H. Gelb, ‘Overseeing of CIA By Congress Has Produced a Decade of Support’, *The New York Times*, 7 July 1986, sec. U.S.
- 189 Quoted in Johnson, *A Season of Inquiry Revisited*, 273.
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- 193 Katherine Anne Scott, *Reining in the State*, 7.
- 194 Johnson, ‘The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability’.
- 195 Pierre Bourdieu, *On the State: Lectures at the Collège de France, 1989–1992*, ed. Patrick Champagne et al., trans. David Fernbach (Cambridge Malden, MA: Polity, 2014), 29.
- 196 For a most recent illustration of this narrative, see: Risen, James. *The Last Honest Man: The CIA, the FBI, the Mafia, and the Kennedys—and One Senator’s Fight to Save Democracy*. New York: Little, Brown and Company, 2023.
- 197 Tom Ginsburg and Tamir Moustafa, eds., *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Illustrated edition (Cambridge UK; New York: Cambridge University Press, 2008); Sidney Tarrow, *War, States, and Contention: A Comparative Historical Study*, 1 edition (Ithaca; London: Cornell University Press, 2015).
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