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Rediscovering Congressional Intelligence Oversight: Is Another Church Committee Possible Without Frank Church?

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REDISCOVERING CONGRESSIONAL INTELLIGENCE OVERSIGHT: IS ANOTHER CHURCH COMMITTEE POSSIBLE WITHOUT FRANK CHURCH?

By Marc B. Langston*

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I. INTRODUCTION

In describing how a misdeed’s foul reputation could herald one’s own demise, President Abraham Lincoln remarked that “[w]hat kills the skunk is the publicity it gives off.”¹ Senator Frank Church, like President Lincoln, believed that corrupt practices generally attract ample attention on their own. Indeed, in 1974 the stench of various reports of misconduct involving the intelligence agencies necessitated a thorough investigation by the government.²

Congress created a congressional committee charged with unveiling wrongdoing by the reticent intelligence agencies. Church optimistically strategized that if he could lead such a committee, he and his staff would discover misdeeds that would prompt drastic reform for

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1. JAMES C. HUMES, *THE WHIT AND WISDOM OF ABRAHAM LINCOLN* 10 (2009).
2. LEROY ASHBY & ROD GRAMER, *FIGHTING THE ODDS: THE LIFE OF SENATOR FRANK CHURCH* 470–71 (1994).

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intelligence agencies when such findings were made public.³ Indeed, Church and his leadership as chairman of the Senate's first intelligence activities committee drastically altered Americans' perceptions of their own government by bringing public attention to shocking government transgressions. He brought about significant reforms for the intelligence agencies, including the creation of Congress's permanent oversight committees on intelligence activities.

Even when confronted by powerful critics who warned of dire consequences resulting from the release of government and corporate secrets, Church refused to be imbued with such sentiments. Instead, Church adhered to another doctrine altogether: "Our society . . . has drawn its inspiration from the Biblical injunction, 'Ye shall know the truth and the truth shall make you free.'"⁴

This Article compares a historical model of congressional intelligence oversight, as demonstrated by Church's leadership as chairman of the U.S. Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities ("Church Committee"), with current intelligence oversight deficiencies that have induced a growing population of citizens to demand greater protections against government overreach and wrongdoing.⁵ By examining the difficulties Church and the Church Committee experienced in gathering evidence of government misconduct and publicly disseminating such

3. *Id.* at 472 (citing James Barron & Marjorie Arons, *The Flexible Liberalism of Frank Church*, BOSTON PHOENIX, Nov. 18, 1975; Interview by Rod Gramer with Frank Church (June 24, 1979); Frank Church, *Neither a Vendetta Nor a Whitewash* (Feb. 27, 1975) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

4. *Id.* at 490 (quoting Typescript of Church's statement in response to Ford's Oct. 31, 1975 letter urging the suppression of the committee's assassination report (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection) (including handwritten notes)); *see also* ALBERT BARNES, BARNES' NOTES ON THE NEW TESTAMENT 307 (1962) (commenting the aforementioned biblical quote from John 8:32:

The truth shall make you free. The truth here means the Christian religion. Compare Gal.[atians] [3]:1; Col.[ossians] [1]:6. The doctrines of the true religion shall make you free. That is, it will free you from the *slavery* of evil passions, corrupt propensities, and grovelling views. The condition of a sinner is that of a *captive* or a *slave* to sin. He is one who serves and obeys the dictates of an evil heart and the promptings of an evil nature, Rom.[ans] [6]:16-17, 'Ye were the *servants* of sin;' [Romans 6]:19, 'Ye have yielded your members servants unto iniquity;' [Romans 6]:20; [Romans 7]:6, [Romans 7]:8, [Romans 7]:11; [Romans 8]:21; Acts [8]:23; 'Thou art in the—*bond* of iniquity;' Gal.[atians 4]:3, Gal.[atians 4]:9. The effect of the gospel is to break this hard bondage to sin, and set the sinner free. We learn from this that religion is not slavery, or oppression. It is true freedom.)

5. *See Obama's NSA Speech Has Little Impact on Skeptical Public: Most Say U.S. Should Pursue Criminal Case Against Snowden*, PEW RES. CTR FOR PEOPLE & PRESS (Jan. 20, 2014), <http://www.people-press.org/2014/01/20/obamas-nsa-speech-has-little-impact-on-skeptical-public/> [hereinafter *Obama's NSA Speech Has Little Impact on Skeptical Public*].

information, a more historical perspective may reveal the viability of alternative methods of congressional intelligence oversight.

At the time of this Article's submission, the Central Intelligence Agency had recently confirmed its use of cyber espionage on the U.S. Senate's Select Committee on Intelligence ("Intelligence Committee").⁶ Before the CIA confirmed the story, which broke in March 2014, the Intelligence Committee's chairman, Democrat Senator Dianne Feinstein of California, on the Senate floor characterized the incident as "a potential effort to intimidate [Congress]" and critical in demonstrating "whether the Intelligence Committee can be effective in monitoring and investigating our nation's intelligence activities, or whether our work can be thwarted by those we oversee."⁷

Upon the CIA's admission of improperly accessing the Intelligence Committee's computer network, Senator John McCain echoed Church's familiar line of questioning in asking the following question: "What did the director of the CIA know and when did he know it?"⁸ McCain further criticized the CIA's actions as being "clearly unconstitutional" and "in some ways it's worse than criminal."⁹

The frustration, the sense of intimidation by the intelligence agencies, and the fundamental questions raised about Congress's difficult role as a coequal branch of government tasked with overseeing the intelligence agencies are familiar challenges faced by the Church Committee, especially as it attempted to make the Intelligence Committee a permanent one. Likewise, the public is once again eager for transparency and reform following recent revelations of widespread domestic surveillance.¹⁰

As newspapers continue to divulge blockbuster allegations detailing pervasive domestic surveillance activities, there is a growing concern among the public and politicians alike.¹¹ Such stories advance a perception now held by a majority of Americans, that of a distinct uneasi-

6. Niels Lesniewski, *McCain: 'What Did the Director of the CIA Know and When Did He Know It?'*, INSIDE THE WORLD'S GREATEST DELIBERATIVE BODY #WGDB (Aug. 1, 2014, 12:31 PM), <http://blogs.rollcall.com/wgdb/mccain-what-did-the-director-of-the-cia-know-and-when-did-he-know-it/?dcz=>.

7. Mark Mazzetti & Jonathan Weismanmarch, *Conflict Erupts in Public Rebuke on C.I.A. Inquiry*, N.Y. TIMES, March 11, 2014, at A1, available at http://www.nytimes.com/2014/03/12/us/cia-accused-of-illegally-searching-computers-used-by-senate-committee.html?_r=0. See also Lesniewski, *supra* note 6.

8. Lesniewski, *supra* note 6.

9. *Id.*

10. Susan Page, *Poll: Most Americans Now Oppose the NSA Program*, USA TODAY (Jan. 20, 2014, 3:10 PM), <http://www.usatoday.com/story/news/politics/2014/01/20/poll-nsa-surveillance/4638551/>.

11. See, e.g., Mark Mazzetti & Carl Hulse, *Inquiry by C.I.A. Affirms It Spied on Senate Panel*, N.Y. TIMES, Aug. 1, 2014, at A1, available at http://www.nytimes.com/2014/08/01/world/senate-intelligence-committee-cia-interrogation-report.html?_r=0. See also John Vidal & Suzanne Goldenberg, *Snowden Revelations of NSA Spying on Copenhagen Climate Talks Spark Anger: Documents Leaked by Edward Snowden Show NSA Kept US Negotiators Abreast of Their Rivals' Positions at 2009 Summit*,

ness regarding their privacy amidst revelations of rampant domestic surveillance.¹²

Similarly in 1974, Seymour Hersh disclosed in the *New York Times* some of the CIA's most startling domestic operations conducted over its past twenty-five years.¹³ Hersh's report and the bombshell revelations that followed, including additional developments on President Richard Nixon's connection to the Watergate burglary, are reminiscent of many of the current leaks detailing previously unknown widespread domestic surveillance programs.¹⁴

A culmination of mistrust in government and the aftermath of Watergate prompted President Gerald Ford to call for Vice President Nelson Rockefeller to chair a blue-ribbon commission to investigate such damaging allegations and to make formal recommendations for course correction. However, President Nixon's actions during Watergate represented what Church described as "an aura of imperial infallibility."¹⁵ Thus, the 94th Congress, held by a Democratic majority in both the Senate and House of Representatives, eagerly challenged the succeeding Republican President's authority and audited the executive branch's most secretive dealings. Congress voted overwhelmingly in both the House and the Senate to open their own respective investigations into the nation's intelligence agencies.¹⁶

Church convincingly lobbied for the chairmanship of the newly created Church Committee.¹⁷ Unlike with standing committees, Senate leadership enjoyed greater flexibility in selecting this special committee's chair and composition based on preference rather than seniority.¹⁸ Although Church was not the first choice, Senator Philip Hart's ongoing battle with cancer afforded Church the opportunity to chair

GUARDIAN (Jan. 30, 2014, 12:54 PM), <http://www.theguardian.com/environment/2014/jan/30/snowden-nsa-spying-copenhagen-climate-talks>.

12. *Obama's NSA Speech Has Little Impact on Skeptical Public*, *supra* note 5.

13. NATIONAL SECURITY ARCHIVE ELECTRONIC BRIEFING BOOK NO. 222, GEORGE WASH. UNIV. (Thomas Blanton ed., 2007), <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB222/>.

14. *Id.* (describing how Mr. Hersh's story led to the CIA's "Family Jewels" report, which documented the agency's illegal activities, and its public release with redactions in 1977 and with fewer redactions in 2007.)

15. ASHBY & GRAMER, *supra* note 2, at 415 (citing Frank Church, Watergate and the American Foreign Policy, Address at the University of Delaware (Nov. 19, 1973), in 119 CONG. REC. 37,949-51 (1973)).

16. *Id.* at 471.

17. *Id.* at 472. (citing Interview by Donald Richie with George Tames, Washington Photographer, *N.Y. Times*, (Jan. 13-May 16, 1988), available at https://www.senate.gov/artandhistory/history/resources/pdf/OralHistory_TamesGeorge.pdf).

18. See LOCH K. JOHNSON, A SEASON OF INQUIRY: CONGRESS AND INTELLIGENCE 17 (1988); UNITED STATES SENATE, *Senate Committees*, <http://www.senate.gov/artandhistory/history/common/briefing/Committees.htm#3> (last visited Sept. 11, 2014); see also 121 CONG. REC. 1417 (1975); *Hearings on Oversight of U.S. Government Intelligence Functions: Before the S. Comm. On Gov't Operations*, 94th Cong. 17-18 (1976) (statement of Sen. Mike Mansfield, S. Majority Leader).

the committee that would permanently alter the manner of congressional intelligence oversight.¹⁹

Church, a Democrat from Idaho, chaired the Church Committee, while John G. Tower, a Republican from Texas, served as Vice Chairman. There were five additional Democrats served on the committee: Philip Hart of Michigan, Walter F. Mondale of Minnesota, Walter “Dee” Huddleston of Kentucky, Robert B. Morgan of North Carolina, and Gary W. Hart of Colorado. Likewise, Also on the committee were four additional Republicans served on the committee: Howard H. Baker Jr. of Tennessee, Barry Goldwater of Arizona, Charles M. Mathias Jr. of Maryland, and Richard S. Schweiker of Pennsylvania.

Unfortunately for Church’s legacy, one of his contemporary opponents, Dick Cheney, now a former vice president but then a senior staffer in the Nixon White House who went on to work in the Ford White House, would advance an ideology diametrically opposed to Church’s own vision.²⁰ While Church epitomized vigilant congressional oversight and longed for the intelligence agencies to act with far greater restraint and adherence to the rule of law, Cheney successfully manifested adherence to the concept of the “imperial presidency,” “monarchical executive,” or “unitary executive.”²¹

Although Vice President Cheney’s consolidation of executive power remains controversial and well-debated among legal scholars, there is little doubt that the ideology he pursued, aided by his long-serving legal advisor David Addington, empowered the Bush Administration to insulate its activities from the type of vigorous congressional oversight and public disclosures analogously suffered by Presidents Nixon and Ford.²² Even today, the Obama Administration’s challenge of distinguishing itself from the sweeping authorities claimed by its preceding administration appears increasingly difficult in light of reports and consistent leaks detailing sustained Bush Ad-

19. ASHBY & GRAMER, *supra* note 2, at 472; *see also* JOHNSON, *supra* note 18, at 14–15.

20. *See Ford Administration Senior Staff*, GERALD FORD FOUND., <http://www.geraldrfordfoundation.org/ford-alum/ford-administration-senior-staff/> (last visited Feb. 28, 2014).

21. FREDERICK A. O. SCHWARZ JR. & AZIZ Z. HUO, *UNCHECKED AND UNBALANCED: PRESIDENTIAL POWER IN A TIME OF TERROR* 7, 157–58 (2008) (tracing the evolution of the “unitary executive” theory to the modern “Monarchical Executive” theory). *See also* SCHWARZ & HUO, *supra* at 3, 50 (describing Arthur Schlesinger’s disparaging characterization of the Nixon Administration as “The Imperial Presidency.”).

22. *See David Addington: Cheney’s Powerful, One-Man Legal Office*, FRONTLINE, (Oct. 16, 2007), <http://www.pbs.org/wgbh/pages/frontline/cheney/themes/addington.html>.

ministration policies and programs, and in some cases even enhancement under President Obama.²³

In the flurried drama surrounding the leaks of classified information by Edward Snowden, commentators are quick to invoke the Church Committee in discussing the shocking details discovered and publicly disseminated by Snowden.²⁴ However, very few commentators detail the Church Committee's struggles to uncover and publicly release information.

To many, the Church Committee's success in embarrassing the intelligence community by publicly disclosing information and holding public hearings on the government's prior misdeeds exemplified stalwart congressional oversight. Unfortunately, Congress could do nothing to alleviate the damage already caused to those who had fallen prey to government wrongdoing.

However, the Church Committee also represents a rare glimpse into the largely uncharted constitutional issues surrounding Congress's role in overseeing the Executive's intelligence activities. As many of these issues are resurfacing today, it is worthwhile to reexamine the prior congressional debates regarding public disclosure of classified and sensitive information and the creation of the permanent intelligence committees. Likewise, while the intelligence agencies are often perceived as meddling with Congress, the fear of Church turning his committee into another Senate Select Committee on Presidential Campaign Activities ("Watergate Committee") aided the Church Committee's work. Similarly, the Ford White House's apprehension of the Church Committee forcing the Judiciary to settle constitutional questions related to Congress's investigation and subpoena powers, particularly of current executive officials and former President Nixon, elicited astonishing cooperation.²⁵

As the United States faces a critical juncture in determining the proper role of government in its citizens' lives, an examination of Church's sagacious philosophy and the Church Committee's findings are a persuasive alternative to the prevalent philosophy mandating executive deference and offering few protections against government misconduct. In comparison to the Church Committee, modern con-

23. See Glenn Greenwald, *DOJ Kill List Memo Forces Many Dems Out of the Closet as Overtly Unprincipled Hacks: Last Week's Controversy Over Obama's Assassination Program Forced into Light Many Ignored Truths That Were Long Obvious*, GUARDIAN (Feb. 11, 2013, 10:05 AM), <http://www.theguardian.com/commentisfree/2013/feb/11/progressives-defend-obama-kill-list>. See also Jack Mirkinson, *DOJ's AP Probe Helps Fuel Obama-Nixon Comparisons*, HUFFINGTON POST (May 15, 2013, 08:49 AM), http://www.huffingtonpost.com/2013/05/15/obama-nixon-doj-ap-pentagon-papers_n_3278303.html.

24. See Conor Friedersdorf, *Lawbreaking at the NSA: Bring On a New Church Committee*, ATLANTIC (Aug. 16, 2013, 06:34 AM), <http://www.theatlantic.com/politics/archive/2013/08/lawbreaking-at-the-nsa-bring-on-a-new-church-committee/278750/>.

25. See FRANK J. SMIST, JR., CONGRESS OVERSEES THE U.S. INTELLIGENCE COMMUNITY 61 (2d ed.1994).

gressional hearings display a level of deference to the executive branch reminiscent of the congressional oversight hearings prior to the Church Committee, a period between 1947–1974 that Professor Loch K. Johnson described as the “Era of Trust” between Congress and the intelligence agencies.²⁶ While Loch Johnson considered the Church Committee to have represented an “Era of Skepticism,” the revelation of Iran-Contra Affair in 1986 converted the aptly named “Era of Uneasy Partnership,” lasting from 1976–1986, into the modern “Era of Distrust.”²⁷

This Article will explore the history of the Church Committee by addressing some of the critical issues they faced and will provide a background on Church, particularly those actions that significantly influenced his leadership of the Church Committee. The analysis is based on Church’s statements, various authors’ perspectives, and an interview with Peter Fenn, one of Church’s former chiefs of staff and a close friend of the Church family.

Of the various authors cited within this Article, two of the works, one by LeRoy Ashby & Rod Gramer, *Fighting the Odds: The Life of Senator Frank Church*, and the other by Professor Lock Johnson, *A season of inquiry: Congress and Intelligence*, each captured unique aspects of both Church and the Church Committee in a superbly detailed, well-written, and enthralling manner. Professor Loch Johnson and Peter Fenn’s review of this Article greatly aided its analysis and played a tremendous role towards its completion.

Part II describes Church’s background, relevant political positions, and role on the Senate Foreign Relations Committee and Special Committee on National Emergencies and Delegated Emergency Powers, all of which greatly impacted his leadership on the Church Committee.

Part III addresses the Church Committee’s challenges in gathering and analyzing information from the executive branch in order to uncover wrongdoing.

Part IV examines the Church Committee’s success in navigating the public release of extremely controversial government secrets despite restrictions prohibiting a congressional committee from self-releasing such information.

Part V posits how the legacy of Church and the Church Committee could inspire another era of vigorous congressional intelligence oversight.

26. JOHNSON, *supra* note 18, at 257; *see also* Brian Jackson, *Needed: Sustainable Spying Oversight*, US NEWS (Sept. 17, 2013, 4:20 PM), <http://www.usnews.com/opinion/blogs/world-report/2013/09/17/the-nsa-and-intelligence-organizations-need-sustainable-oversight>.

27. JOHNSON, *supra* note 18, at xi–xii.

II. SENATOR FRANK CHURCH: PARAGON OF OPPOSITION

Senator Frank Church served four terms in the U.S. Senate from January 3, 1957, through January 3, 1981.²⁸ Church's age when first elected, thirty-two, set him apart from many of his fellow senators, whose average age was fifty-eight.²⁹ He was even featured in newspapers as the "baby" senator and often mistaken by capitol visitors for a Senate page.³⁰

Despite his young age, Church cultivated a formidable aptitude for public speaking. During World War II, he was awarded the Bronze Star by General Robert B. McClure for his outstanding intelligence briefings detailing enemy troop movements.³¹ Church's Senate colleagues soon conferred on the former high school debator the title "boy orator" following his impressive three-hour-long presentation opposing a private dam to be built on the Oregon-Idaho border.³²

Another critical component of Church's legacy, one that greatly influenced his leadership on the Church Committee, was his demonstrated temerity in opposing considerably more powerful political rivals. According to Peter Fenn, Church's former chief of staff and close friend of the late Senator's family, two key events in Church's life contributed greatly to his independent character: "[A]fter serving in W[orld] W[ar] II and escaping death when he had cancer in law school Church was not hesitant to take risks, to take chances, to make every day count."³³ Fenn recalls that "[i]f [Church] had not had cancer, he often said that he would have been more cautious in his political career and probably not run for the U.S. Senate in 1956 at the age of 32."³⁴

While campaigning for the Senate at such a young age is courageous in its own right, an incident at the beginning of Church's tenure immediately tested his political courage. Consider the following example of Church's willingness to confront powerful enemies: "Church, within minutes after taking his oath of office, thus found himself in a 'nose-to-nose' encounter with the majority leader. [Senator Lyndon] Johnson, eyes narrowed, bore in relentlessly upon him, imploring his young

28. Church, *Frank Foster, (1924–1984)*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000388> (last visited Sept. 11, 2014).

29. ASHBY & GRAMER, *supra* note 2, at 73.

30. *Id.*

31. *Id.* at 21.

32. *Id.* at 80–81 (citing clippings of Smith's and Nover's comments, Frank Church Papers (on file at Boise State University Library System, Special Collections & Archives in Frank Church Papers collection)).

33. *Id.*; E-mail from Peter Fenn, Founding Partner, Fenn Communications Group, to Marc B. Langston, author of this article, (Feb. 12, 2014, 13:38 EST) (on file with author).

34. *Id.*

colleague to help set aside Anderson's motion."³⁵ New Mexico Senator Clinton Anderson's motion sought to advance civil rights legislation by revising Senate Rule 22 to lower the required number of votes that could end a filibuster below a two-thirds majority.³⁶

Despite Johnson's attempted subjugation, "Church . . . cast his first Senate vote in defiance of his party's leadership — 'a thing I found very difficult to do,' [Church] said immediately afterward."³⁷ Church's hesitation was well-founded, considering that "Lyndon Johnson, furious that Church had broken ranks, threw his pen down in anger when he heard him vote against tabling Anderson's motion."³⁸ For the next six months, Church "remained in Johnson's 'dog house.'"³⁹

Much later, in an interview with Church biographers LeRoy Ashby and Rod Gramer in 1979, Church stated that he could not remember "ever being pressed within the Senate on any issue as much as I was pressured on Rule 22."⁴⁰ Such an eventful beginning to his Senate tenure prepared him for tougher challenges and reoccurring opponents.

Early in Church's tenure, two key political philosophies pertinent to his leadership on the Church Committee arose and would continue to evolve over his career. On May 28, 1959, Church proposed three amendments to the Mutual Security Act aimed at preventing the United States from "arming [Latin American] 'military dictators against their own people.'"⁴¹ One of the amendments sought to publicly disclose previously hidden details surrounding U.S. military aid to Latin America.⁴² Church described such secrecy as "an affront to the whole philosophy of a free society."⁴³

His apprehension against providing covert arms to Latin America stemmed largely from what Ashby and Gramer describe as his "belie[f] that secrecy usually had more to do with concealing 'bad judgment, incompetence, and corruption' than with protecting national

35. ASHBY & GRAMER, *supra* note 2, at 76. (citing Transcript, Frank Church Oral History Interview with Paige E. Mulholland 6 (May 1, 1969) (on file with Lyndon Baines Johnson Presidential Library)).

36. *See Id.*

37. *Id.* at 78 (Church quoted in 103 CONG. REC. 832 (1957)).

38. *Id.* (citing Transcript, Frank Church Oral History Interview with Paige E. Mulholland 8 (May 1, 1969) (on file with Lyndon Baines Johnson Library)).

39. *Id.* (citing Interview by LeRoy Ashby and Rod Gramer with Ward Hower (Apr. 11, 1957)).

40. *Id.* at 77. (citing Interview by LeRoy Ashby and Rod Gramer with Frank Church (Jan. 10, 1979)).

41. *Id.* at 118. (Church News Release, Frank Church Papers (June 12, 1959) (on file at Boise State University Library System, Special Collections & Archives in Frank Church Papers collection). *See also*, 105 Cong. Rec. 9,318-21 (1959)).

42. *Id.* at 117-18. (citing 105 CONG. REC. 9,318-21 (1959)).

43. *Id.* at 117. (quoting 105 CONG. REC. 9,319 (1959)).

security.”⁴⁴ Church believed that “the desire of bureaucracy to avoid embarrassment or harassment” should not supplant “the people’s right to know.”⁴⁵

The second of these philosophies began to take hold as he represented the Senate Foreign Relations Committee on a Senate study group’s five-week-long expedition to Africa.⁴⁶ During his African journey, “he found great wisdom in Abraham Lincoln’s advice: ‘We must disenthral ourselves.’”⁴⁷ Initially, in 1960, Church had characterized the cold war as “a moral competition. . . . We will either *win* it or *lose* it. . . . [The Soviets] have seized a third of the world in 15 years!”⁴⁸ Church’s homage to President Lincoln’s philosophy of freeing oneself from preconceptions foreshadowed a growing divergence from Church’s earlier views on Cold War foreign policy.

The Africa trip radically altered his foreign policy outlook, as Ashby and Gramer observe: “Although Church sometimes placed African independence in the context of America’s struggle with the Soviets, he was more and more skeptical about a Cold War model of foreign policy.”⁴⁹ Church would later decry that “Africa can be no one’s prize . . . it belongs to Africa.”⁵⁰ Further, Church supported African independence movements against their former colonial occupiers, all European allies.⁵¹ Ashby and Gramer describe Church’s radically altered stance on the Cold War, particularly his brazen pleas with Americans “to be tolerant of the emerging African nations. Most of these new countries, lacking private capital, would probably choose a socialist course.”⁵²

In outlining a proposed article for publication in the *New York Times Magazine*, Church opined that “by equating anti-Communism with freedom, we have made nearly every government bordering the Communist world our protectorate. We were able to hold this massive front while we possessed a nuclear weapon monopoly, but it has

44. *Id.* at 118. (quoting 105 CONG. REC. 9,319 (1959)).

45. *Id.*

46. *Id.* at 135 (citing 107 CONG. REC. 11,759 (1961)).

47. *Id.* at 138.

48. *Id.* at 119 (citing Frank Church, *Communist Challenge* (Feb. 23, 1960) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

49. *Id.* at 139.

50. 107 Cong. Rec. 11759-62 (1961) (statement of Sen. Frank Church) (on file at the Frank Church Collection housed in Special Collections at Boise State University); ASHBY & GRAMER, *supra* note 2, at 138.

51. ASHBY & GRAMER, *supra* note 2, at 139. (citing 107 CONG. REC. 11,759-62 (1961)).

52. *Id.* (citing Frank Church, *Idaho Falls Speech* (Mar. 1, 1961) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

now become a dangerous over-commitment, as Laos demonstrates.”⁵³ Church prophetically warned against “a dangerous over-commitment in Asia” coupled with such an unwise policy, because:

it cast the United States in the loser’s role of upholding a fragile status quo against the rising tide of internal revolution and reform, giving the Communists an ideal opportunity to take over the cause of the down-trodden, while we identified ourselves with the dying order of the Shahs and Potentates.⁵⁴

Throughout the next two decades, events such as the Vietnam War and Watergate would encourage Church to further curb government secrecy and reject exclusively Cold War views on foreign policy. For many of his most formative years in the Senate, Church struggled to bring an end to U.S. military involvement in Vietnam.

Upon mounting frustration over the Johnson Administration’s indifference to Church’s advice and a troop surge of 3,500 joining an existing 23,000 U.S. military “advisers” in 1965, Church publicly called for a negotiated settlement in Vietnam.⁵⁵ In Church’s essay featured prominently in the popular magazine the *Saturday Evening Post*, Church pleaded for settlement in Vietnam, urging: “[T]here is so much Washington talk about stepping up the war that it threatens to engulf all rational discussion of the crisis we face—almost as if peace were something to be avoided.”⁵⁶ He described the ultimate strategic challenge that the U.S. military faced in Vietnam as one they could not overcome, stating:

American muscle, sufficiently used, may hold the 17th parallel against infiltrators from the North, but our bayonets will not stop—they could even spread—Communist agitation within other Asian countries. A government may be checked by force, but not an idea. There is no way to fence off an ideology.⁵⁷

Church also authored two companion pieces, published in late 1965 and early 1966 in the *New York Times* and *Washington Post*, imploring Americans to reject a Cold War view when looking at the war in Vietnam. In comments strikingly similar to his previous comments on African independence movements, Church stated: “We are an Alien in Asia. . . . The North Vietnamese are not foreigners . . . they are

53. Letter from Frank Church to Sidney Hyman, an acclaimed author and presidential speechwriter, at Enc. 7 (June 15, 1961) (on file with the Boise State University Library, Special Collections & Archives in Frank Church Papers collection).

54. *Id.* at Enc. 7. *See also id.* at Enc. 13; ASHBY & GRAMER, *supra* note 2, at 140.

55. ASHBY & GRAMER, *supra* note 2, at 200. *See also* GEORGE C. HERRING, *AMERICA’S LONGEST WAR: THE UNITED STATES AND VIETNAM, 1950–1975* 130–31 (2d ed. 1986).

56. Sen. Frank Church, *We Should Negotiate a Settlement in Vietnam*, *SATURDAY EVENING POST*, Apr. 24, 1965, at 10.

57. ASHBY & GRAMER, *supra* note 2, at 217.

Vietnamese.”⁵⁸ Ashby and Gramer summarize one of Church’s key points in the articles, stating that “[n]o matter what happened in Vietnam, other revolutions would continue to break out, and most probably not in ways that Americans preferred. It was essential [to Church] that these struggles not turn into American wars.”⁵⁹ Church vehemently rejected the notion that Vietnam served as the “final test of our capacity to resist Communist aggression.”⁶⁰

Church’s efforts to publicly persuade President Lyndon Johnson to negotiate a settlement with North Vietnam provoked the ire of an administration ultimately unwilling to compromise. For instance, recently declassified National Security Agency (“NSA”) documents revealed that the NSA monitored Church’s international telephone calls and cables.⁶¹ While there is no exact indication as to when Church was placed on NSA’s “watch list,” the NSA’s monitoring program began in 1967 during the Johnson Administration and continued under President Nixon until 1973.⁶² Likewise, in 1965 the CIA informed Church that his controversial Ramparts magazine interview—which was tantamount to “a warning shot across the [Johnson] administration’s bow” regarding Church’s opposition to the escalating and prolonged war in Vietnam—was being circulated by the North Vietnamese.⁶³ The CIA’s briefing was part of the Johnson Administration’s effort “to impress upon Church the need to rally behind the President.”⁶⁴

The Johnson Administration’s heavy-handed attempts at intimidation failed to halt criticism from the cadre of Senate “doves” critical of the escalating war in Vietnam. In what Church would describe as a “show of Congressional independence,” the Senate Foreign Relations Committee’s hearing on the Vietnam War attracted live television

58. Frank Church, *How Many Dominican Republics and Vietnams Can We Take On?*, NEW YORK TIMES MAGAZINE 44–45, 177–78 (Nov. 28, 1965); Frank Church, ‘. . . the Basic Flaw in Our Asian Strategy,’ WASH. POST, Feb. 20, 1966, at E3. See also ASHBY & GRAMER, *supra* note 2 at 217.

59. ASHBY & GRAMER, *supra* note 2 at 217.

60. *Id.* (citing Frank Church, *How Many Dominican Republics and Vietnams Can We Take On?*, NEW YORK TIMES MAGAZINE 45 (Nov. 28, 1965)).

61. Matthew M. Aid & William Burr, *Secret Cold War Documents Reveal NSA Spied on Senators . . . Along with Muhammad Ali, Martin Luther King, and a Washington Post Humorist*, FOREIGN POL’Y (Sept. 25, 2013), http://www.foreignpolicy.com/articles/2013/09/25/it_happened_here_NSA_spied_on_senators_1970s.

62. *Id.* See also Richard Leiby, *Declassified Documents Show NSA Listened in on MLK, Muhammad Ali and Art Buchwald*, WASH. POST (Sept. 25, 2013), http://www.washingtonpost.com/lifestyle/style/declassified-documents-show-nsa-listened-in-on-mlk-muhammad-ali-and-art-buchwald/2013/09/25/1a018178-262b-11e3-b3e9-d97fb087acd6_story.html (commenting that “[o]ddly, another senator, Howard Baker (R-Tenn.)—an ardent supporter of the war—also was put on the NSA ‘watch list.’”).

63. ASHBY & GRAMER, *supra* note 2, at 191, 198 (citing *Interview with Senator Frank Church*, RAMPARTS, Jan.–Feb. 1965, at 17).

64. *Id.* at 198 (quoting radio statement by John Warner to Frank Church (1965) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

coverage.⁶⁵ Church believed that the hearings represented the future demise of President Johnson's war, declaring that "the jig was up."⁶⁶ Indeed, gauging from President Johnson's reactions, he was less than pleased with the Senate doves. After the Senate hearings, "Johnson irritably told several members of Congress that public criticisms of the administration fortified the enemy's will to resist."⁶⁷

Church believed the Senate Foreign Relations Committee's hearings "exhibit[ed] a new but well-founded reluctance to grant the executive any more blank checks."⁶⁸ Since World War II, the presidency's consolidation of war power resulted in arrogant White House foreign policy advisors who acted, according to Church, inappropriately by "purveying the belief that anyone who is not an expert, including Congressmen, Senators, and ordinary citizens, is simply too stupid to grasp the problems of foreign policy."⁶⁹ These events reflect an important development in Church's attitude towards the executive branch, most importantly that a Senate Committee could independently frustrate the White House and successfully forward an opposing political agenda.

Although opposing a Democratic president could foredoom reelection in many congressional districts, Idaho was growing ever conservative in its politics. Church believed faithfully that "[i]f I had been just another Democratic senator supporting the Johnson administration . . . I would have never been elected."⁷⁰ While Church occasionally took compromising positions on issues such as firearms, he was in tune with his Idaho constituents. For example, Fenn recalls that "if you were a sugar beet farmer he would walk over hot coals to help you."⁷¹ Thus, Church's willingness to confront powerful political opponents proved instrumental in his reelections, permitting him to

65. *Id.* at 218. See also Frank Church statements to Ross Woodward (Feb. 4, 1966) (on file with the Boise State University Library, Special Collections & Archives in Frank Church Papers collection).

66. *Id.* at 219 (citing Interview by Leroy Ashby & Rod Gramer with Frank Church (Feb. 13, 1979); Interview by Paige E. Mulhollan with Frank Church (May 1, 1969) (transcript available in the Lyndon Baines Johnson Presidential Library in Oral History Collection)).

67. *Id.* (quoting MELVIN SMALL, *JOHNSON, NIXON, AND THE DOVES* 81 (1988)).

68. *Id.* at 249 (quoting Frank Church, President and Congress in *Foreign Policy: The Threat to Constitutional Government* (Oct. 29, 1966) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

69. *Id.* at 248 (quoting Frank Church, President and Congress in *Foreign Policy: The Threat to Constitutional Government* (Oct. 29, 1966) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

70. *Id.* at 283–83 (citing Interview by Leroy Ashby & Rod Gramer with Frank Church (Feb. 13, 1979)).

71. Interview with Peter Fenn, Founding Partner, Fenn Comm'ns Grp., in Wash. D.C. (Aug. 27, 2013).

serve out four terms in the Senate and become the only Idaho Democrat to ever be reelected to the Senate.⁷²

In addition to Church earning another term in the 1968 election, the Senate doves would strengthen their resolve as they encountered a new opponent in the form of Republican President Richard Nixon.⁷³ Among the doves, Church led a formidable charge in attempting to redirect America's foreign policy and reclaim Congress's authority from the executive branch's aggrandized role.⁷⁴ Ashby and Gramer point outdenote that "[d]uring the opening months of the Nixon administration it would have been hard to find an elected official whose judgments of American foreign policy were harsher than Church's."⁷⁵

In speaking out against the failed Cold War mindset that had ensnared the United States into its Vietnam imbroglio, Church proposed the following analysis:

What [policy makers] overlooked in their preoccupation with war games and escalation "scenarios" was the concern of millions of Americans not just with the cost but with the character of wars they fought and their consequent outrage against a war which—even at what strategists would consider tolerable cost—has made a charnel house of a small and poor Asian country. In this moral sense there is hope—hope that we will recognize at last that a foreign policy which goes against our national character is untenable.⁷⁶

In a poignant sentence, Church cautioned Americans that "the greatest danger to our democracy is not that the communists will destroy it, but that we will betray it by the very means chosen to defend it."⁷⁷ In Church's view, through its foreign aid to questionable allies, the United States was too often perpetuating "millions of people to live under a feudalism which fosters ignorance, hunger and disease."⁷⁸

Such statements reflect Church's burgeoning discontent with the status quo and an evolution in his political philosophy, now wholly rejecting Cold War policies in favor of acknowledging the harsh reali-

72. ASHBY & GRAMER, *supra* note 2, at xiii.

73. See David S. Broder, *Nixon Wins With 290 Electoral Votes; Humphrey Joins Him in Call for Unity: Democratic Edge in House, Senate Trimmed Slightly*, WASH. POST, Nov. 7, 1968, at A1, available at <http://www.washingtonpost.com/wp-srv/national/longterm/watergate/articles/110768-1.htm> (stating that "Nixon, who is the first President since Zachary Taylor in 1848 to be confronted at the start of his White House tenure with an opposition Congress.").

74. ASHBY & GRAMER, *supra* note 2, at 291.

75. *Id.*

76. Frank Church, *Revolution and World Order*, ENGAGE, April 15, 1969, at 25 (on file with the Boise State University Library, Special Collections & Archives in Frank Church Papers collection).

77. *Id.* at 27.

78. ASHBY & GRAMER, *supra* note 2, at 291 (citing Church, *supra* note 76, at 24–25).

ties of their perceived devastating cost.⁷⁹ He and the Senate doves would soon conspire to prevent warfare's further spread into other Asian countries.⁸⁰[ML]I've noticed a few paragraph breaks in the footnotes. I've deleted them, but if this was done by design please feel free to reject my changes.

Initially, concern regarding an escalating secret war in Laos, known only to Congress, and the potential of warfare spreading into Cambodia and Thailand prompted Church to propose the notable Cooper-Church Amendment.⁸¹ Over the course of prolonged battles with the Nixon Administration, in winding down the Vietnam War and after President Nixon began warfare in Cambodia, later versions of the Cooper-Church Amendment focused on ending the conflict in Vietnam.⁸²

As Church played a critical role in opposing the Nixon Administration's foreign policy and wartime actions, he garnered both fame and disappointment. His experience as a participant in a seemingly relentless struggle to influence foreign policy led to the following state of mind, as described by Ashby and Gramer:

Church's own bouts of alienation radicalized him somewhat, pushing his egalitarian and democratic instincts more forcefully to the surface. His frustrations with the ongoing war, the "imperial presidency," and the persistent inequities of American life prodded him to brave the political tide.⁸³

The Nixon Administration did its best to thwart Church and his fellow doves, and they routinely bickered over both domestic and foreign policy issues. For example, Church helped successfully block two Supreme Court nominations over civil rights concerns.⁸⁴ Likewise, President Nixon's use of prior restraint to prevent the New York Times from publishing the Pentagon Papers drew ample scorn from Church.⁸⁵

When President Nixon pursued the policy known as "Vietnamization" by reducing U.S. ground forces in Vietnam, he subsequently in-

79. Frank Church, *supra* note 76 at 25 (on file at the Frank Church Collection housed in Special Collections at Boise State Univ.) (Sen. Church stating that, "[o]nly the abstractions of diplomacy take form in high policy councils; to see its flesh and blood one must go to a Brazilian slum, or to a devastated village in Viet Nam.>").

80. ASHBY & GRAMER, *supra* note 2, at 293 (citing Interviews by William Miller with Sen. Frank Church (June 15 & July 27, 1994)).

81. *Id.* at 299–301 (citing Letters from Sen. John Sherman Cooper to Sen. Frank Church (Sept. 30, & Oct. 9, 1969) (on file with the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

82. *Id.* at 337–38. (citing Interview by William Miller with Sen. Frank Church (July 7, 1971)).

83. *Id.* at 343–44 (citing Interview by Jerry Levinson with Sen. Frank Church (May 11, 1987)).

84. *Id.* at 368 (citing Interview by Birch Bayh with Frank Church (May 14, 1987)).

85. *Id.* at 358.

created devastating bombings in North Vietnam.⁸⁶ While Church was initially unsuccessful in passing his Case-Church Amendment to bring an end to the Vietnam War and prohibit further military action in Cambodia, Laos, or Thailand, the breaking news of the Watergate scandal and President Nixon's further catastrophic bombings in Cambodia propelled the Case-Church Amendment's eventual passage in the Senate on June 29, 1973.⁸⁷ The Case-Church Amendment effectively ended the Vietnam War and ceased the bombing of Cambodia on August 15, 1973.⁸⁸

Regarding the courage Church displayed in opposing Presidents Johnson and Nixon during the Vietnam War, Fenn recalls the following:

We had a lot of conversations about this kind of stuff, Church and I did. When he almost died of cancer in his early twenties, when he first decided to run, he probably wouldn't have done that, . . . but he felt that life was a gift and that he faced the worst when it came to his own mortality. And so, he just decided "I'm going to stand for something."⁸⁹

When Fenn was in college, he often visited the Church home and during one conversation informed Church that "your speeches [on Vietnam] are great, you and [Senator George] McGovern . . . , but really what this is about is defunding the war. You continue to vote for the appropriations for this thing."⁹⁰ Church countered: "Peter, I cannot be one of a handful of guys to vote no on money for the troops—I cannot do that—I can speak out, I can be tough, but I cannot do that. First of all, as you know, it would have no impact because we would never pass it."⁹¹

Fenn explains that the 1964 Gulf of Tonkin Resolution, which authorized President Johnson "to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression" and marked a turning point for the escalation of the Vietnam conflict, passed in the Senate by a vote of 88-2.⁹² The two senators who voted in opposition, Oregon Senator Wayne Morse and Alaska Senator Ernest Gruening, both democrats, lost their seats in the 1968 election.⁹³ Fenn understood that many senators, including Church, were later disturbed by their prior support of the Gulf of Ton-

86. *Id.* at 379–80.

87. *Id.* at 404–05.

88. *Id.* at 407.

89. Interview with Peter Fenn, Founding Partner, Fenn Comm'n's Grp., in Wash. D.C. (Aug. 27, 2013).

90. *Id.*

91. *Id.*

92. *Id.*; ASHBY & GRAMER, *supra* note 2, at 183–84.

93. E-mail from Peter Fenn, Founding Partner, Fenn Communications Group, to Marc B. Langston, (Feb. 12, 2014, 13:38 EST) (on file with author). *See also* ASHBY & GRAMER, *supra* note 2, at 282.

kin Resolution.⁹⁴ However, Fenn recalls that “voting against appropriations for the Vietnam War . . . would have been political suicide in those early years—so not only would they not have been even close to winning the day, they felt they would have lost their seats.”⁹⁵

Fenn also recalls that while his aforementioned conversation with Church took place in in 1966, in 1970 “[Church] was out front on that very issue when it came to Cambodia . . . and they won the argument.”⁹⁶ Fenn, familiar with the family, recollects that Church’s widow, Bethine, thought his opposition to Vietnam would kill his career., but he took a stand and people respected that even if they didn’t agree with him.⁹⁷

While serving as Church’s chief of staff for the Washington office, Fenn remembers Church fighting relentlessly for “the biggest non-issue of our time, I call it, the Panama Canal treaties⁹⁸ Fenn recalls that Church was absolutely irritated with a colleague’s timidity.⁹⁹ Church complained to Fenn: “God, I sometimes wonder why is he here in the first place? Why be a senator?” Fenn noted: “[Church] would be appalled by a lot of [current events] today . . . you go into this [and], at the end of the day, you lose. So what?”¹⁰⁰

Church’s penchant for leading an opposition against the executive branch also manifested earlier in 1972 when Church co-chaired the Special Committee on National Emergencies and Delegated Emergency Powers with Republican Senator Charles Mathias of Maryland, who later served on the Church Committee.¹⁰¹ The Committee’s staff uncovered 470 special statutes conferring the President additional powers during declared national emergencies and four declared states of emergency that were still in effect from the Roosevelt, Truman, and Nixon Administrations.¹⁰² Church was shocked that such laws existed, stating that “[t]hese emergency powers . . . were like a loaded gun lying around the house, ready to be fired by any trigger-happy president who might come along.”¹⁰³

94. E-mail from Peter Fenn, Founding Partner, Fenn Comm’ns Grp, to Marc B. Langston, (Feb. 12, 2014, 13:38 EST) (on file with author). *See also* ASHBY & GRAMER, *supra* note 2, at 300.

95. E-mail from Peter Fenn, Founding Partner, Fenn Comm’ns Grp, to Marc B. Langston, (Feb. 12, 2014, 13:38 EST) (on file with author).

96. *Id.*

97. *Id.*

98. Interview with Peter Fenn, Founding Partner, Fenn Comm’ns Grp., in Wash. D.C. (Aug. 27, 2013).

99. *Id.*

100. *Id.*

101. ASHBY & GRAMER, *supra* note 2, at 412.

102. *Id.* at 413 (citing Frank Church, *Ending Emergency Government*, 63 A.B.A. J., 197, 198 (1977)).

103. *Id.* (citing Frank Church, Speech at Fresno California (Sept. 20, 1976) (transcript available in the Boise State University Library, Special Collections & Archives in Frank Church Papers collection)).

While Church and Mathias were prepared to rein in such laws by introducing the National Emergencies Act in July 1974, the pair would agree with Senate Majority Leader Mike Mansfield's sentiment that "it is too good and important a bill to let those Nixon people get at it."¹⁰⁴ The resignation of President Nixon paved the way for the National Emergencies Act to become law when President Ford signed it in September 1976.¹⁰⁵ Church considered the National Emergencies Act's passage to have "more to do with returning our government to normalcy—after 43 years of emergency rule—than anything that has occurred during my twenty years of service in the Senate."¹⁰⁶

Another event in 1972 would also pit Church against the executive branch, when the press raised various allegations about a multinational corporation, the International Telephone and Telegraph Company ("ITT"), including the allegation that ITT bribed the Nixon Administration in order to prevent a Marxist government from arising in Chile.¹⁰⁷ As a senior member of the Senate Foreign Relations Committee, Church proposed the creation of a Subcommittee on Multinational Corporations ("Multinationals Committee"), which he chaired from 1973–1976.¹⁰⁸

Church's memory of eastern companies exploiting Idaho's resources and its legislature instilled in him a healthy distrust of large corporations.¹⁰⁹ One of Church's political principles that developed during his chairmanship was the notion that "[w]e must never accede to the rationale, in foreign policy or in business, that we must become as corrupt as those we come up against."¹¹⁰

Evidence of secret corruption between Latin American regimes and the United States undoubtedly frustrated Church, whose concern over such improprieties first surfaced in the Senate in 1959 when he amended the Mutual Security Act to expose the United States's secret military aid to Latin American dictatorships.¹¹¹ Likewise, as the Watergate scandal unfolded, Church perceived it as a perilous combination "of a foreign policy broken loose from its domestic, democratic moorings" and "an aura of imperial infallibility."¹¹² Church understood secrecy's inherent dangers to a democracy, as he posed the question: "If 'dirty tricks' were acceptable in foreign policy, why, in

104. *Id.* at 414 (citing Memorandum from William Miller to Senator Mathias (Oct. 3, 1974)).

105. *Id.* at 415.

106. *Id.* at 416.

107. *Id.*

108. R. Gwenn Stearn, *Frank Church Chronology*, BOISE STATE UNIV., <http://libraries.boisestate.edu/special/church/Church1.shtm> (last visited Feb. 28, 2014).

109. ASHBY & GRAMER, *supra* note 2, at 422.

110. F. FORRESTER CHURCH, *FATHER AND SON: A PERSONAL BIOGRAPHY OF SENATOR FRANK CHURCH OF IDAHO BY HIS SON* 101 (1987).

111. ASHBY & GRAMER, *supra* note 2, at 117–18.

112. *Id.* at 415.

the view of the White House Chiefs-of-Staff, were they any less so in domestic affairs?”¹¹³

Upon the Multinationals Committee uncovering astonishing revelations of widespread corruption and bribery by multinational corporations to foreign officials, the Nixon Administration, and the CIA, Church noted the following:

All of this wrongdoing is acknowledged by straight-faced executives who say they had to break the law in order to get the business. The excuse, after all, is written plainly in the adage, “When in Rome. . .” But the excuse is hollow. The bad habits of Rome were brought home to America. The roster of companies that made illegal corporate contributions to the Nixon campaign in 1972 includes many of the companies which have turned to bribery abroad. If we condone bribery of foreign officials we will sow the seeds of corruption in our own land.¹¹⁴

Church openly criticized the role of American corporations utilizing the CIA to dictate foreign elections while U.S. troops were suffering heavy casualties to guarantee the rights of free elections at home.¹¹⁵ Senator Joseph Biden described one of Church’s key political doctrines as “power out of the hands of the people is a dangerous, dangerous thing.”¹¹⁶ Church’s chairmanship of the Multinationals Committee solidified his aforementioned doctrine and concomitantly prepared him for the challenges he would face when investigating the intelligence community as chair of the Church Committee.

When the Multinationals Committee convened closed-door hearings with former CIA Director Richard Helms and other current and former intelligence officials, Church permitted his chief counsel, Jerome Levinson, to lead a difficult interrogation for Helms, resulting in Helms willfully omitting critical details of the CIA’s activities in Chile.¹¹⁷ In Levinson’s words, Helms acted like “a cornered rabbit” during his interrogation.¹¹⁸ In order to gain a more complete understanding of the situation, the Multinationals Committee became the first congressional committee to have active CIA agents testify before it.¹¹⁹ The entire experience left Church bewildered, as evidenced by his reflection that “[t]he imagination is set free to assume the United States is involved in every shady deal on God’s earth.”¹²⁰

Upon later discovering from succeeding CIA Director William Colby that the CIA explicitly supported Chile’s military coup in assassinating its socialist president, such facts brought into question former

113. *Id.* at 405.

114. CHURCH, *supra* note 110, at 101.

115. ASHBY & GRAMER, *supra* note 2, at 430–31.

116. *Id.* at 421.

117. *Id.*

118. *Id.* at 428–29.

119. *Id.* at 429.

120. *Id.* at 433.

Director Helms's prior conflicting testimony.¹²¹ Church displayed ferocity towards the notion that he and his fellow senators had been so flagrantly misled.¹²² He was the only member of the Multinationals Committee to publicly exhibit such lividness over the prospect of being lied to by Helms.¹²³

Church was also perturbed by the lack of congressional oversight of the CIA, bemoaning, "the watchdog committee never really watched the dog."¹²⁴ Democrat Senator Walter Mondale of Minnesota, later a Church Committee member, also expressed his frustrations over a lack of congressional oversight of the CIA and even proposed that the Senate form a committee like the Special Committee on National Emergencies and Delegated Emergency Powers.¹²⁵

The 1974 reports of CIA misdeeds by Seymour Hersh in the New York Times brought the Church Committee into being by a vote of 82-4.¹²⁶ Church would simultaneously chair the Church Committee and the Multinationals Committee, which continued its investigations into a variety of important topics such as arms trade and alarming international bribes.¹²⁷ While Church and his Multinationals Committee staff demonstrated ingenuity in gathering documents from uncooperative corporations, the Ford Administration would prove a more nuanced challenge because of its ability to claim executive privilege.¹²⁸

III. UNCOVERING THE EXECUTIVE BRANCH'S SECRETS

At the onset of their investigation, the Church Committee pursued two primary goals: gaining access to evidence by acquiring documents and interrogating witnesses and determining the impropriety or illegality of the evidence obtained.¹²⁹ The Church Committee's ability to publicly disclose highly controversial government secrets may be more attributed to its bipartisan composition and cautious approach rather than partisan zeal or a desire to undermine the executive branch.

Throughout the Church Committee's existence, Church pursued a strategy of relentlessly negotiating with the executive branch and zealously championing Congress's right to obtain information exclusively

121. *Id.* at 469.

122. *Id.*

123. *Id.*

124. *Id.* at 470.

125. *Id.*

126. *Id.* at 471.

127. *Id.* at 457, 490.

128. *See id.* at 440 (recalling how Church and his Committee staff aggressively pursued the oil company SoCal for documents pertinent to their investigation despite SoCal's attempts at delay).

129. *See* JOHNSON, *supra* note 18, at 28.

in the possession of the executive branch.¹³⁰ The Church Committee's bargaining power increased over time because Church upheld his commitment to prevent Committee staff from leaking classified information.¹³¹ Likewise, according to one of the former Church Committee staff members, Frederick Baron, Church's looming bid for the presidency, which he embarked upon as the Church Committee completed its final reports and recommendations, greatly aided the Committee's success because it "roused Church to stand up and oppose the intelligence community, head on, in public. The two interests coincided."¹³² Unfortunately for Church, the two interests did not bolster each other equally, as Church Committee Staff Director Bill Miller remarked: "He devoted his entire energy to the problem of dealing with the intelligence agencies. As a result, he gave up the presidency."¹³³

Although presidential ambitions factored into the dynamics of the Church Committee, Church often gained consensus from his Republican colleagues in carrying out the Committee's work.¹³⁴ His tactic of building a consensus, which would have been easier to achieve by relying on party or ideological factions, resulted in unanimity during times of intense partisan pressure from the Ford Administration.¹³⁵ Due to its temporary existence, the Church Committee lacked the requisite time to battle over its subpoena power in the courts and would have likely been stymied by a majority of the Senate on many of the persons it sought to subpoena.¹³⁶

Even with a desire to build a consensus, Church would have assuredly faltered without the support of his Republican colleagues, particularly Vice Chairman Tower, who represented the Committee alongside Church in most of the critical negotiations with the executive branch. Church, reflecting on Tower's role on the Church Committee, stated: "Considering the antipathy towards the investigation, he worked. He was not obstructive. He didn't make my life miserable. In fact, he was very supportive. I respected him highly."¹³⁷

Despite Church's praise for Vice Chairman Tower, Ashby and Gramer describe the inherent partisan tension of the Church Committee by retelling the following exchange: "Goldwater's staff designee candidly told the [Church] committee's chief counsel, Fritz Schwarz,

130. *Id.* at 269; Frederick A. O. Schwarz, Jr., *Access to Government Information is a Foundation of American Democracy—But the Courts Don't Get It*, 65 OKLA. L. REV. 645, 645–46 (2013).

131. JOHNSON, *supra* note 18, at 29.

132. *Id.* at 269.

133. FRANK J. SMIST, JR., *CONGRESS OVERSEES THE U.S. INTELLIGENCE COMMUNITY* 39 (2d ed. 1994).

134. *Id.* at 36.

135. *Id.*

136. JOHNSON, *supra* note 18, at 270.

137. SMIST, *supra* note 133, at 36.

'Fritz, I'm not here to work for you. I'm here to spy on you.'"¹³⁸ Goldwater, during the trying summer months of the investigation, even claimed that Soviet agents had infiltrated Congress.¹³⁹ However, the FBI's subsequent report to the Church Committee wholly rejected Goldwater's claim.¹⁴⁰ Likewise, Tower recalled that Senate Minority Leader Hugh Scott of Pennsylvania had requested that Tower serve as the GOP's "damage control officer."¹⁴¹

Even with such inherent partisan and ideological divisions, each Republican member proved instrumental in balancing the Committee's bipartisan legacy. For instance, Church Committee Chief Counsel Schwarz explained the criticality of Church's consensus strategy in ensuring bipartisan cooperation for the Committee's enduring legacy, stating the following:

This could have easily been made into a Nixon's bad-guy type of committee. But there would have been a heavy price for doing this, a political price. The committee would not have retained Republican cooperation and support. And it would have resulted in no credible recommendations for reform. The importance of the full factual record would have been lost. These problems have been deep and sustained since FDR. It is not just one bad person.¹⁴²

Often more partisan and assertive than the Church Committee in gathering documents, the House Select Committee on Intelligence ("Pike Committee"), led by New York Representative Otis Pike and a solid Democrat majority, showed little deference to the executive branch.¹⁴³ Boldly, Pike publicly decried that "[t]he bottom line is that the Congress has the right to receive classified information without any strings attached to it."¹⁴⁴ Loch Johnson described the more cautious route taken in the Senate, stating that "[t]he Church committee followed traditional procedures in attempting to obtain classified documents: negotiating with executive officials over what papers could be received and how they would be handled."¹⁴⁵ Likewise, Loch Johnson offered his inside perspective in comparing the two approaches, stating that "[i]n Senator Church's view, his committee had avoided some of the confrontation experienced by the Pike committee in the struggle for documents because 'we got an early start and we had time to enter into negotiations with the White House.'"¹⁴⁶

138. ASHBY & GRAMER, *supra* note 2, at 474.

139. JOHNSON, *supra* note 18, at 69.

140. *Id.*

141. ASHBY & GRAMER, *supra* note 2, at 473.

142. SMIST, *supra* note 133, at 41.

143. See KATHRYN S. OLMSTED, CHALLENGING THE SECRET GOVERNMENT: THE POST-WATERGATE INVESTIGATIONS OF THE CIA AND FBI 142-44 (1996).

144. JOHNSON, *supra* note 18, at 79.

145. *Id.* at 78-79.

146. *Id.* at 98.

In addition to the contributions of the Church Committee's chairman and its members, the Senate invested heavily in the success of the Church Committee. In allocating funds for at least 135 staff members and allowing them to work out of the Dirksen Senate Office Building's auditorium, the Senate provided the Committee with the necessary personnel to thoroughly investigate the intelligence community.¹⁴⁷ Even with such a generous allocation of resources, the Church Committee would have dismally failed without gaining access to evidence or by not hiring qualified staff for such an unprecedented investigation.

Church was permitted to hire Miller and Schwarz. These choices proved instrumental in the Church Committee's success, as each exercised sagacity throughout the trying months ahead.¹⁴⁸ Former Church Committee counsel, Joseph Dennin, commented that the caliber of staff hired engendered "a sense of sitting with the 'best and the brightest.'" ¹⁴⁹

As a threshold issue, the Church Committee conferred security clearances upon its own staff after reviewing background tests conducted by the FBI.¹⁵⁰ They were spared polygraphs because the wisdom of the Committee's parent chamber regarded polygraphs as "twentieth-century witchcraft."¹⁵¹ Likewise, the Dirksen auditorium was chosen as staff offices because of its single entry-exit point, which was guarded around the clock to prevent tampering with sensitive and classified materials contained therein.¹⁵²

During its investigation, the Church Committee encountered many problems, but its inability to hasten the executive branch's cooperation or at times even gain access to information critical to its inquiry proved a reoccurring obstacle.¹⁵³ In initially having roughly eight months to conduct their investigation of the intelligence agencies, Church and his Committee staff would prove instrumental in successfully negotiating with the executive branch.¹⁵⁴

Initially, the CIA and FBI were surprisingly cooperative. For instance, CIA Director William Colby waived CIA employees' secrecy oaths when interacting with the Church Committee and provided organizational charts, budgets, and documents pertaining to the CIA's legal authority for its clandestine activities.¹⁵⁵ In turn, Church Committee staff signed secrecy agreements prohibiting the release of clas-

147. *Id.* at 35.

148. *See id.* at 36–37.

149. SMIST, *supra* note 133, at 47.

150. *Id.* at 49.

151. *Id.*

152. *Id.*

153. *See* JOHNSON, *supra* note 18, at 28.

154. *See id.* at 27.

155. *Id.* at 28–29 (citing Memorandum for the Record, William G. Miller (Feb. 28, 1975)).

sified materials ascertained in the course of their investigation.¹⁵⁶ Soon after, the FBI agreed to a similar arrangement.¹⁵⁷ Notably, the senators were not required to sign secrecy agreements.¹⁵⁸

The Church Committee's first encounter with the White House would prove less than fully cooperative. On March 5, 1975, Church and Tower and a few Committee staff members, including Staff Director Miller and Chief Counsel Schwarz, met with President Ford, Secretary of State and National Security Advisor Henry Kissinger, Secretary of Defense Donald Rumsfeld, White House speechwriter Patrick Buchanan, and additional staff in the Oval Office.¹⁵⁹ Church requested a catalog of documents, most of which had never previously been obtained by any congressional committee.¹⁶⁰

Church also requested that the President issue a written directive to all of the intelligence agencies requiring them to cooperate with the investigation.¹⁶¹ President Ford declined to issue any written directives due largely to the prospect of having to issue a similar directive for the seemingly more aggressive Pike Committee in the House.¹⁶² Instead, President Ford suggested that he would determine the propriety of issuing any such directives on a "case-by-case basis."¹⁶³

Responding to Church's request for access to agency files, Kissinger hissed: "Asking for information is one thing, but going through the files is another. The covert action files are very sensitive."¹⁶⁴ President Ford defended Church, retorting that "Senator Church is not asking for the right to go fishing in the files. . . . I am certain all his requests would be relevant to the inquiry."¹⁶⁵ The President further promised Church and Tower that the White House would be "as cooperative as possible."¹⁶⁶

By April 1, 1975, Church Committee staff met with White House designees at the Old Executive Office Building to voice their complaints regarding the lack of documents obtained despite their various requests.¹⁶⁷ While the White House staff pleaded for patience due to

156. *Id.* at 29.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* (citing Memorandum from William G. Miller to Frank Church (Mar. 4, 1975)).

161. *Id.* at 30 (citing Memorandum of White House Meeting with President Ford, William G. Miller (Mar. 5, 1975); Interview with Frank Church, (Mar. 20, 1979)).

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 30-31 (quoting Memorandum of White House Meeting with President Ford, William G. Miller (Mar. 5, 1975); Interview with Frank Church, (Mar. 20, 1979)).

166. *Id.*

167. *Id.* at 35. (citing Memorandum for the Record, William G. Miller (Apr. 1, 1975)).

the sheer volume of documents requested, two days later the Church Committee received a heap of documents.¹⁶⁸ As Church Committee staff continued to press for documents throughout April and May, particularly those related to CIA assassination plots, their persistence was fruitfully rewarded—except for their inability to gain budgetary information on intelligence agencies.¹⁶⁹

While the Church Committee obtained more than they believed initially possible, Church believed that much of the delay regarding outstanding requests was an attempt by the Rockefeller Commission to prevent being overshadowed by the Church Committee.¹⁷⁰ Church expressed his concern over the torpidity of the Committee's pace and stated to his fellow Senators that "[t]he executive branch is setting the pace. We cannot make ourselves subject to their control."¹⁷¹

However, the Church Committee soon discovered a less obliging CIA when the agency limited the number of persons able to research its histories and required Committee staff to only view such documents at CIA facilities, where they were allowed only to take brief summary notes.¹⁷² Similarly, when Church and Tower attempted an end-run around President Ford by asking Vice President Rockefeller for the files possessed by the Rockefeller Commission, he politely declined.¹⁷³

As the Church Committee entered its next phase of inquiry, obtaining sworn testimony from current and former intelligence personnel, the CIA insisted that representatives from its legal offices monitor such testimony and be able to provide advice to those being interviewed.¹⁷⁴ However, the Church Committee unanimously rejected the CIA's terms, and Church later explained to the press that "there should be no inhibition, or possible inhibition, as the committee proceeds with these interrogations, and the executive departments will be so advised."¹⁷⁵

Another critical obstacle to the Church Committee's success, setting an agenda, related directly to its ability to gather factual evidence. Without adequate time to study the evidence, the Committee staff could not prepare the senators or determine who should appear

168. *Id.* at 35–36 (citing Memorandum from William G. Miller to Frank Church (Apr. 3, 1975)).

169. *Id.* at 39 (citing Memorandum for the Record, William G. Miller (Apr. 1, 1975)).

170. *Id.*

171. *Id.* (quoting Press Briefing, Frank Church, Church Comm., (Apr. 16, 1975)).

172. *Id.* at 41 (citing Memorandum of Conversation, William G. Miller (May 6, 1975)).

173. *Id.* at 42 (citing Interview with Fritz Schwarz, Chief Counsel, Church Comm. (June 8, 1979)).

174. *Id.* at 43.

175. *Id.*

before them.¹⁷⁶ Despite these challenges, the Church Committee's acquisition of some of the requested documents paved the way for investigating covert activities of the CIA, particularly assassinations.¹⁷⁷

On May 15, 1975, the CIA's Colby testified in a closed session before the Church Committee.¹⁷⁸ His overview of covert action, "the policy of interfering secretly in the affairs of other countries," provided a candid starting point from which the senators would refocus their inquiries over the next several meetings with Director Colby.¹⁷⁹ However, in delivering requested documents to the Committee, he omitted any documents detailing specific assassination plots.¹⁸⁰ After the hearing, Church decried to the press that "there are indications of gaps in the record."¹⁸¹

On May 21, 1975, Colby returned for two days of closed session hearings to answer questions regarding assassinations.¹⁸² Upon Colby's confirmation that the CIA was involved in assassination plots, Church, outraged, proclaimed to the press afterwards: "It is simply intolerable that any agency of the government of the United States may engage in murder."¹⁸³

While the assassination hearings confirmed the worst of the Committee's suspicions, they still needed more documents from the FBI and IRS before being able to move forward on domestic surveillance hearings.¹⁸⁴ However, the summer continued to yield fewer documents, as the White House continued to reiterate that the Church Committee "[b]e patient; we're understaffed for this job."¹⁸⁵ Colby, subsequently reflecting upon the White House's excuses, utterly rejected their claim, stating that "[i]t wasn't really a matter of understanding . . . they just didn't want to turn over documents."¹⁸⁶ Further, Colby explained that "[w]hile the heat from the Church committee was on the CIA, the White House told us not to cooperate . . . but when the heat began to move toward the White House, they began to give up papers."¹⁸⁷ Thereafter, the White House eventually

176. *Id.* at 42 (citing Interview with Fritz Schwarz, Chief Counsel, Church Comm. (June 8, 1979)).

177. *Id.*

178. *Id.* at 45.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* at 46 (citing WILLIAM COLBY & PETER FORBATH, *HONORABLE MEN: MY LIFE IN THE CIA* ch. 13 (Simons & Schuster eds., 1st ed. 1978)).

183. *Id.*

184. *Id.*

185. *Id.* at 47 (quoting Interview with William Colby, Director of Central Intelligence, CIA (Mar. 21, 1979)).

186. *Id.*

187. *Id.*

directed the Rockefeller Commission to provide the Church Committee with its assassination documents, without redactions.¹⁸⁸

Loch Johnson described the Church Committee staff's persistence in investigating the assassination plots, stating that "the committee marshaled more than a hundred witnesses, almost ten thousand pages of sworn testimony, and the close examination of thousands of secret documents relevant to the assignation plots."¹⁸⁹ Determining illegality was not too difficult, as the CIA plotted to kill Fidel Castro of Cuba and Patrice Lumumba of the former Congo, and aided in the assassinations of Rafael Trujillo of the Dominican Republic, Ngo Dinh Diem of South Vietnam, and General René Schneider of Chile.¹⁹⁰ But some cases lacked enough evidence to clearly indicate the extent of CIA involvement, such as President Sukarno of Indonesia and François "Papa Doc" Duvalier of Haiti.¹⁹¹ Such documents also revealed a confusing and lax command and control structure within the CIA, rendering the Committee's staff perplexed as they attempted to triangulate blame upon whose authority such assassination plots were executed.¹⁹²

As the Church Committee pursued the acquisition of additional documents from various agencies, the Committee's members grew increasingly frustrated. The ailing Philip Hart, in expressing his irritation with the CIA, stated to his colleagues: "What are we here for! We're here to investigate an agency. Here it is, the end of July, and we still are bartering with the agency over seeing files!"¹⁹³ His Republican colleague, Senator Howard Baker, echoed Philip Hart's frustrations, declaring: "Let's issue subpoenas immediately to anyone who does not cooperate with this committee. . . ."¹⁹⁴

On August 12, 1975, the Church Committee voted to subpoena the White House to acquire portions of President Nixon's papers.¹⁹⁵ Soon after, on August 12th, Church appeared on NBC's Meet the Press, explaining his strategy in sparingly exercising the Committee's subpoena power:

As the confidence in the committee has built because of the lack of any leaks . . . and the great care we've taken with sensitive information, we have been able to obtain more data from the executive than has ever been the case in any congressional investigation in the past. . . . But from the beginning I faced a decision: whether to try

188. *Id.* at 48.

189. *Id.* at 59.

190. *Id.* at 48 (citing SENATE SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, ALLEGED ASSASSINATION PLOTS INVOLVING FOREIGN LEADERS 1, 6 (1975)).

191. *Id.* at 49.

192. *Id.* at 57 (citing an interview with F.A.O. Schwarz, Jr., June 8, 1979).

193. *Id.* at 68.

194. *Id.*

195. *Id.* at 70.

and negotiate for this information as confidence in the committee built, or whether immediately to stand upon the constitutional prerogative of the committee, invite a confrontation, and go into the courts. . . . I think we've taken the right course.¹⁹⁶

During Church's same appearance on NBC's Meet the Press, he warned of the dangerous course ahead if the United States continued to pursue authoritarian tactics on its own citizenry:

If this government ever became a tyranny there would be no place to hide . . . and no way to fight back, because the most careful effort to combine together in resistance to the government—no matter how privately it was done—is within the reach of the government. . . . We must see to it that all agencies which possess this technology operate within the law and under proper supervision so that we never cross over that abyss. That's the abyss from which there is no return.¹⁹⁷

The White House likely viewed Church's warnings against tyrannical governments as a critique against current practices used by the Ford Administration and a preview of the type of rhetoric that would likely emerge from the Church Committee's imminent public hearings. President Ford shot back in a televised speech on August 19, 1975, rejected Church's conclusions, and offered a counter-warning that "any reckless congressional action to cripple the effectiveness of our intelligence services in legitimate operations would be catastrophic."¹⁹⁸

Fortunately for the Church Committee, despite White House attempts to delay the Committee's work, shortly before its first public hearing on September 16, 1975, Colby informed the Committee that the agency had discovered a stockpile of lethal toxins that President Nixon had ordered destroyed.¹⁹⁹ The Church Committee was further briefed by the CIA on the details surrounding their hidden arsenal of poisons, and Committee staff prepared for the hearings by negotiating with the CIA for immediate declassification of information, interrogating witnesses, and preparing the Committee members for a public hearing.²⁰⁰

The public hearings on poisons unveiled blockbuster misdeeds by the CIA, addressed *infra* in this Article, and also highlighted, according to Church, just "how elusive the chain of command can be in the intelligence community."²⁰¹ Church considered the loose command structure to necessitate "improved mechanisms of accountability all

196. *Id.* at 70–71.

197. *Id.* at 71–72.

198. *Id.* at 72 (quoting Gerald R. Ford, Address in Minneapolis Before the Annual Convention of the American Legion (Aug. 19, 1975)).

199. *Id.* at 72–74; SMIST, *supra* note 133, at 71 (stating "On February 14, 1970, [President Nixon] ordered all existing stocks of toxins destroyed).

200. JOHNSON, *supra* note 18, at 73–74.

201. *Id.* at 76.

the way from the White House to the outer branches of the intelligence establishment.”²⁰²

However, upon concluding the first set of public hearings, the Church Committee continued its struggle to develop an agenda with some of the members feeling as though the Committee was rushing into public hearings without adequate closed-door hearings with intelligence officials and former Nixon Administration personnel, including President Nixon.²⁰³ Gary Hart commented that the decision to proceed with hearings on the Nixon Administration first and then on the NSA, with hope that the committee could hold closed NSA briefings between the two hearings, was akin to “building your boat as you go out to sea.”²⁰⁴

The Church Committee’s primary focus on the Nixon Administration centered around a White House associate counsel’s plan to escalate intelligence gathering methods for anti-Vietnam War demonstrators and other dissidents.²⁰⁵ White House aide Thomas Charles Huston’s plan (“Huston Plan”) was developed in response to President Nixon’s chastisement for his intelligence directors failure to curtail what he described to them as “[c]ertainly hundreds, perhaps thousands of Americans—mostly under 30—are determined to destroy our society.”²⁰⁶ In conjunction with recommendations by the CIA, FBI, and NSA, the Huston plan would have authorized intelligence agencies to “monitor international cables, telegrams, and mail of Americans citizens; intensify the electronic surveillance of domestic dissenters and selected establishments; break into specified establishments and into homes of domestic dissenters; and intensify the surveillance of American college students.”²⁰⁷

While President Nixon approved most of the Huston Plan, FBI Director J. Edgar Hoover allegedly “went through the ceiling” upon receiving word of the President’s approval and convinced Attorney General John N. Mitchell to immediately reverse course, effectively scuttling the Huston Plan.²⁰⁸ This incident revealed Hoover’s extortionate clout and the inherent danger poised by an administration resolved to use the intelligence agencies as a means to accomplish its misdeeds.²⁰⁹

While the Church Committee’s closed investigation into the Huston Plan yielded few forthcoming witnesses, a division among various in-

202. *Id.*

203. *See id.* at 79.

204. *Id.*

205. *See SMIST, supra* note 133, at 72.

206. JOHNSON, *supra* note 18, at 80 (quoting Tom Charles Huston, Talking paper prepared for President Richard M. Nixon (May 5, 1970)).

207. *Id.* at 81.

208. *Id.*

209. *See SMIST, supra* note 133, at 72 (citing Huston Plan, S. Select Comm. on Intelligence, 94th Cong. 141–88 (1975)).

telligence agencies became quite apparent.²¹⁰ Former CIA Director Helms displayed dismay towards Hoover and “relished explaining his shortcomings in the intelligence field.”²¹¹ Likewise, Huston, during the public hearing, offered that “[i]f J. Edgar Hoover had known about CIA domestic spying on student protestors (Operation CHAOS) . . . he ‘would have had an absolute stroke.’”²¹²

Huston, in an earlier closed interrogation, reinforced the concept of a loose command structure, stating that if the White House “had known these tools were being used [by both the FBI and the CIA] and still not getting any results, it might have changed the whole approach.”²¹³ Church characterized the various intelligence agencies as “independent fiefdoms,” stating further that “[t]he president and Mr. Huston, it appears, were deceived by intelligence officials.”²¹⁴ In cross-examining former CIA counterintelligence head James Angleton, Church admonished the entire intelligence community, stating the following:

So the commander-in-chief is not the commander-in-chief at all. He is just a problem. You do not want to inform him in the first place, because he might say no. That is the truth of it. When he did say no, you disregarded it. And then you call him the commander-in-chief.²¹⁵

Although President Nixon may have been unaware of the extent of the actions independently undertaken by the intelligence agencies, it cannot absolve his extreme view of young dissidents giving rise to the Huston Plan’s creation, characterized by Mondale as an “enormous, unrestricted paranoid fear about the American people.”²¹⁶ The Church Committee had abandoned its plan interviewing President Nixon, but instead mailed him a list of questions on a variety of topics, including the Huston Plan.²¹⁷

The Huston Plan hearings were emblematic of the dilemma facing the Church Committee: In the beginning, the Committee was delighted to gain access to a plethora of classified material, but as the Committee progressed presidents and their advisors became the prime suspects in a variety of nefarious activities. Schwarz described the evolution of the Church Committee’s conclusions, stating the following:

210. JOHNSON, *supra* note 18, at 83.

211. *Id.*

212. *Id.* at 85.

213. *Id.*

214. *Id.* at 86.

215. *Id.* at 88 (quoting Huston Plan, Vol. 2 Before the S. Comm. to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong. 60 (1975)).

216. *Id.* at 87 (quoting Huston Plan, Vol. 2 Before the S. Comm. to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong. 87 (1975)).

217. *Id.* at 84.

Specific agency acts, examined in isolation, sometimes suggested that an agency acted on its own, even misleading political superiors. But the full record of many years and many agencies made clear that ultimate responsibility was properly fixed with presidents, attorneys general, and other high executive branch officials.”²¹⁸

Thus, both the Church and Pike Committees eagerly attempted to access the highest-level executive branch officials and former officials, seeking to glean further details regarding their knowledge of and participation in such alarming activities. However, gaining access to them would prove most difficult.

On October 28, 1975, the Church Committee was delighted when Colby openly detailed the CIA’s actions against the Allende regime in Chile.²¹⁹ This raised the criticality of whether Secretary of State Kissinger would testify before the Committee, due to his suspected involvement in the plot.²²⁰

Soon after, Secretary of State Kissinger refused to publicly discuss covert actions before the Pike Committee.²²¹ While the Church Committee also sought Kissinger’s public testimony on covert actions, Church did not believe the Committee had the requisite Senate votes to compel his testimony.²²² Even the more partisan Pike Committee had rejected Pike’s motion to censure Kissinger for his refusal to appear before his committee. Pike joked after his motion’s defeat that “[i]t was my opinion that we should proceed against Dr. Kissinger as we would any other ordinary mortal.”²²³

Although Kissinger ended up testifying before the Church Committee on November 21, 1975, only in regards to U.S. covert operations in Angola, both he and former Colby refused to publicly address covert actions in Chile.²²⁴ The Church Committee proceeded to hold public hearings on Chile without these key witnesses, as discussed *infra*.²²⁵

Earlier, on November 3, 1975, the Ford Administration, evidently unhappy with Colby’s forthrightness, fired him.²²⁶ Seymour Bolten, then the CIA’s chief review staff for the Senate and the House, summarized the White House’s perspective on Colby, stating the following:

The White House was very critical of Colby whenever something came up when Colby decided to compromise. But whenever the ball was tossed to the White House, they would cave in sooner.

218. SCHWARZ & HUO, *supra* note 21, at 44.

219. JOHNSON, *supra* note 18, at 103.

220. *Id.* at 103.

221. *See id.* at 108.

222. *Id.* at 121.

223. *Id.* at 98.

224. *Id.* at 138–39 (citing Letter from Henry A. Kissinger, Former Secretary of State, to Frank Church, Former Senator (Nov. 20, 1975)).

225. *Id.*

226. *See id.* at 108.

They were terrified of subpoenas. They did not want to force a resolution of constitutional questions that had remained in the twilight zone since the beginnings of the Republic.²²⁷

Colby recalled that he “made an early decision that it was in the interests of the agency that the true story get out about what the misdeeds were—which were few and far between.”²²⁸ He believed that his forthcoming approach “brought [the] CIA within our constitutional system. Up to that time, we hadn’t.”²²⁹ Bolten further defended Colby’s actions by disparaging the White House’s criticism that he had caved before the Church and Pike Committees, stating that “[the White House] didn’t give him the support necessary to stand up to the committees. The CIA was pretty much on its own.”²³⁰ Church’s scorn over Colby’s departure was evident in his statement to the press: “There is no question in my mind but that concealment is the new order of the day. . . . Hiding evil is the trademark of a totalitarian government.”²³¹ Church also abhorred the prospect of Colby’s replacement, prominent Republican George H.W. Bush, fearing that Bush would politicize the CIA.²³²

The final surprise from the executive branch came on March 10, 1976. During the final markup of the Church Committee’s reports and recommendations, the Ford Administration aided former President Nixon in leaking his responses to the Church Committee’s questionnaire to the press in an effort to undermine the newsworthiness of the Church Committee’s findings.²³³ President Nixon attempted to justify his 1969 warrantless wiretapping of several journalists and government employees based on presidential sovereignty and “because of a Presidential determination that it was in the interests of national security.”²³⁴

Church warned in the *Washington Post* that President Nixon’s advancement of “‘the sovereign presidency’ . . . was a ‘pernicious and dangerous doctrine.’”²³⁵ Church believed that “once government officials start believing that they have the power and the right to act secretly outside the law, we have started down a long, slippery slope which culminates in a Watergate.”²³⁶ Church’s sentiments on President Nixon’s statement reflect a continuation of one of his bedrock

227. SMIST, *supra* note 133, at 61 (quoting Interview with Seymour Bolton (June 3, 1983)).

228. *Id.* at 59 (quoting Interview with William Colby, Director of Central Intelligence (July 14, 1983)).

229. *Id.*

230. *See id.* at 61.

231. JOHNSON, *supra* note 18, at 109.

232. *Id.* at 111–12.

233. *Id.* at 206.

234. *Id.*

235. *Id.*

236. *Id.*

political doctrines, as summarized by Biden: “[P]ower out of the hands of the people is a dangerous, dangerous thing.”²³⁷

While this Section of the Article focused on the Church Committee’s struggle to gain access to evidence and determine whether such evidence demonstrated instances of impropriety or illegality, much of the Committee’s work would have been severely minimized had many of its hearings and findings not been made public. The next Section will detail the Herculean effort mustered by Church and some of his colleagues in advocating for the public release of some of the government’s most embarrassing secrets.

IV. PUBLIC RELEASE OF CONTROVERSIAL STATE SECRETS

The Church Committee faced several challenges to public disclosure of many of the upsetting secrets it discovered. First, Church Committee members favoring disclosure needed assent from their fellow committee members, either by reaching a consensus or by achieving the votes requisite to set the agenda of any public meeting or release its findings. Second, the Senate rules provided a quandary as to whether the Church Committee could disclose classified information without majority approval from the Senate. Third, Church Committee members struggled to navigate through negative public perceptions of their investigation that threatened their ability to hold public hearings and publish the Committee’s final reports. Amidst all of the difficulties presented, Church’s leadership proved critical in resolving these matters in favor of public disclosure.

From the first meeting of the Church Committee’s members on April 9, 1975, its Republican senators expressed their preference to exercise extreme caution in conducting the investigation.²³⁸ Goldwater urged the Committee to “slow down” believing that the Committee was endangering “what little intelligence this country gets, and believe me, it is little compared to what our enemies have.”²³⁹ His apprehensions partly stemmed from the leaks encountered from the Watergate Committee’s, which Goldwater believed had “leaked like an old sieve.”²⁴⁰ Goldwater did “not want that to happen in an area as sensitive as intelligence.”²⁴¹

Goldwater’s apprehensions concerning the possibility of the Church Committee leaking valuable information reached its apex when the Committee deliberated over whether it would hold a public hearing on the NSA. On October 2nd, Secretary of Defense James Schlesinger and NSA Director General Lew Allen Jr. met with the Church Committee to caution against any public hearings on the NSA be-

237. ASHBY & GRAMER, *supra* note 2, at 421.

238. JOHNSON, *supra* note 18, at 37.

239. *Id.*

240. *Id.* at 12.

241. *Id.* at 14.

cause they believed such hearings would likely result in the release of information on the NSA's technological capabilities, which enemies could use to thwart NSA surveillance.²⁴² Church convinced his colleagues to hold public hearings despite such warnings because of the Committee's commendable track record of preventing disclosures deemed too sensitive for public consumption.²⁴³

However, the Committee's reputation was tarnished that weekend when Mondale inadvertently leaked details regarding assassinations not yet made public while speaking at Denison College in Granville, Ohio.²⁴⁴ To make matters worse, Church, appearing on ABC's *Issues and Answers*, responded to Mondale's speech by offering even further details on assassinations.²⁴⁵

On October 5th, Attorney General Edward Levi also sought an audience with the Church Committee in order to dissuade the Committee from pursuing public hearings on the NSA, alluding specifically to disclosures on the NSA's SHAMROCK program.²⁴⁶ He argued that such hearings would reveal the close relationships between private companies and the government that were permitting the government to access international communications.²⁴⁷ He cautioned that such disclosures would ruin the companies' reputations and likely result in private companies refusing to cooperate with the government in the future.²⁴⁸

Upon Levi's departure, Goldwater urged the Committee to reconsider public hearings on the subject, observing that the Committee was "flirting with real trouble."²⁴⁹ The majority of the Committee, including Democrats Morgan and Gary Hart, voted to delay any public hearings on the NSA, due at least in part to Church and Mondale's recent unauthorized disclosures of sensitive information.²⁵⁰

Initially Church enjoyed the stalwart support of his colleagues in negotiating with the executive branch over their release of documents, but by then it seemed to many staffers as though he had lost control of his Committee.²⁵¹ Likewise, the Committee's dilemma concerning the release of its Interim Assassination Report raised a central problem that would haunt the Committee throughout its existence.

During the Church Committee's earlier meeting on July 23, 1975, Goldwater questioned the Committee's ability to release such a report

242. *Id.* at 92.

243. *Id.*

244. *Id.* at 92-93.

245. *Id.* at 93.

246. *Id.* at 93-94.

247. *Id.* at 94.

248. *Id.*

249. *Id.*

250. *Id.* at 95-96.

251. *Id.* at 95-96.

without the consent of the full Senate.²⁵² With the concurrence of Tower, Baker then crystallized the Republican senators' position with the following argument: "We have no right to put ourselves above the Senate."²⁵³ Nevertheless, Mondale promoted the publication of the Interim Assassination Report to rid the Committee of the "tarbaby" consisting of intermittent "bits and pieces" already being mentioned in the press.²⁵⁴

On October 9th, President Ford requested that the Church Committee halt its publication of the Interim Assassination Report, citing its prospective use by the Soviet Union as propaganda.²⁵⁵ The issue lingered without resolution until November 3rd when the Ford Administration again urged Committee members to keep the Interim Assassination Report secret, now claiming that disclosure would jeopardize national security.²⁵⁶ In Church's response, he told the press that despite the President's request, "[the American people] have a right to know what their government has done."²⁵⁷

As Church entered the committee room, he participated in a prolonged discussion over the various Senate and committee rules governing the release of classified information.²⁵⁸ Infuriated, both at his colleagues' discussion and President Ford's attempt to sway the Committee against the report's disclosure, Church threw down a document and uttered: "I will have to reconsider my chairmanship of this committee."²⁵⁹ Former Church Committee staffer Loch Johnson understood Church's statement to indicate that "if the committee bowed to the president and kept the assassination findings secret, the chairman would resign."²⁶⁰ Likewise, he also recalled: "A silence fell over the room. No one had seen Church so utterly dejected."²⁶¹

President Ford's plea for nondisclosure likely elicited Church's dependent tenor because it frustrated Church's aspiration to wield public disclosures as a means of attaining drastic reforms for the intelligence agencies and congressional intelligence oversight. Following the President's request would perpetuate what critics knocked as the executive's duplicitous control of classified information, aptly described in 1974 by Representative William Moorhead, then Chair of the Foreign Operations and Government Information Subcommittee of the House Government Operations Committee:

252. *Id.* at 63–64.

253. *Id.* at 64.

254. *Id.* at 63.

255. *Id.* at 98.

256. *Id.* at 108.

257. *Id.*

258. *Id.* at 109.

259. *Id.*

260. *Id.*

261. *Id.*

Critics of the present system of handling classified information within the Executive Branch point to an obvious double standard. On one hand, the full power of the Government's legal system is exercised against certain newspapers for publishing portions of the Pentagon Papers and against someone like Daniel Ellsberg for his alleged role in their being made public. This is contrasted with other actions by top Executive officials who utilize the technique of "instant declassification" of information they want leaked. Sometimes it is an "off-the-record" press briefing or "backgrounders" that becomes "on-the-record" at the conclusion of the briefing or at some future politically strategic time. Such Executive Branch leaks may be planted with friendly news columnists. Or, the President himself may exercise his prerogative as Commander in Chief to declassify specific information in an address to the Nation or in a message to the Congress seeking additional funds for weapons systems.²⁶²

Church's unconcealed dejection transformed the uncertainty of his continued role as chair into a partial victory. After several minutes, Church's Democratic colleagues broke the silence with praise for both Church and the Committee's many accomplishments.²⁶³ Church rallied his spirits and called for a Committee vote on presenting the 500-page report to the full Senate for approval before its release.²⁶⁴ Sending it before the Senate was a major concession to his Republican colleagues.²⁶⁵ The Committee voted unanimously to follow Church's proposed plan of action.²⁶⁶

Ironically, the Committee also voted, seven to three, to release its report on the NSA's SHAMROCK program, pending only a favorable determination by the Senate Parliamentarian instead of being first sent to the full Senate like the Interim Assassination Report.²⁶⁷ On November 5th, the Senate Parliamentarian ruled that no Senate rule barred the Church Committee from presenting its SHAMROCK report at the next day's public hearing.²⁶⁸

During the hearing, Church publicly read the Committee's report on the SHAMROCK program, detailing how the NSA's agreements with various private companies provided them with American's' international telegrams from 1947 until May 15, 1975, when NSA Director General Allen at the CIA terminated the program.²⁶⁹ Church de-

262. JENNIFER K. ELSEA, CONG. RESEARCH SERV., THE PROTECTION OF CLASSIFIED INFORMATION: THE LEGAL FRAMEWORK 12 (Jan. 10, 2013), <http://www.fas.org/sgp/crs/secrecy/RS21900.pdf> (quoting THOMAS M. FRANCK AND EDWARD WEISBAND, SECRECY AND FOREIGN POLICY 90 (1974) (statement of William S. Moorhead)).

263. JOHNSON, *supra* note 18, at 109.

264. *Id.*

265. *Id.*

266. *Id.* at 110.

267. *Id.*

268. *Id.* at 111.

269. *Id.* at 112.

scribed the SHAMROCK program as “probably the largest government interception program affecting Americans ever undertaken.”²⁷⁰

Despite Church’s victory in alerting the public of such an invasive and widespread domestic surveillance program, Tower voiced his “firm opposition to this unilateral release of classified information.”²⁷¹ Goldwater, unfavorably comparing Church to Pike, echoed Tower’s criticism: “The fact that the other body, the House, seems to be irresponsible in its treatment of the subject is no reason, in my opinion, for the Senate to try to use that as an excuse for disseminating secret material.”²⁷² Defended by many of the Church Committee’s Democrats, Huddleston replied to Tower and Goldwater, “[T]here has to be a certain amount of knowledge made available to the public and made available to the Congress before reasonable and meaningful legislation can be processed.”²⁷³ Such discourse reflected the Committee’s partisan divisions as the senators stumbled towards a full session of the Senate, where their disagreement would take center stage.

On November 20, 1975, the Senate convened in a rare secret session to address the Church Committee’s Interim Assassination Report.²⁷⁴ Addressing the entire chamber, Church implored his colleagues to “remain a people who confront our mistakes and resolve not to repeat them. If we do not, we will decline. But if we do, our future will be worthy of the best of our past.”²⁷⁵ Tower offered his counterargument, questioning “[a]t what point must the people’s right to know be subordinated to the people’s right to be secure?”²⁷⁶

After an hour of listening to remarks by Church Committee members, Michigan Republican Minority Whip Robert Griffin raised the identical matter that provoked Church to threaten resignation from the Committee on November 3rd: whether the Senate rules required a majority of the Senate to release classified information provided by the executive branch.²⁷⁷ Specifically, Griffin pointed to a portion of Senate Rule 36 section 5, which provided the following:

Whenever, by the request of the Senate or any committee thereof any documents or papers shall be communicated to the Senate by the President or the head of any Department relating to any matter pending in the Senate the proceedings in regard to which are secret and confidential under the rules, said documents and papers shall be

270. Peter Fenn, *Throwing America’s Privacy Under the Bus: Once upon a time in Washington, lawmakers cared about invasions of privacy that are commonplace today*, US NEWS (June 6, 2013, 05:50 PM), www.usnews.com/opinion/blogs/peter-fenn/2013/06/06/nsa-phonerecords-collection-signals-the-end-of-privacy.

271. JOHNSON, *supra* note 18, at 112.

272. *Id.*

273. *Id.* at 112–13.

274. *Id.* at 131.

275. *Id.*

276. *Id.*

277. *Id.* at 132.

considered as confidential, and shall not be disclosed without leave of the Senate.²⁷⁸

Mondale, brandishing the Senate Parliamentarian's ruling presented to the Church Committee in early November, clarified that the rule only applied to "private communications" before the "Senate as a whole."²⁷⁹ Likewise, Mondale read from the Parliamentarian's ruling: "[M]atters that go routinely before committees, which are often classified, can be released by those committees in their normal function."²⁸⁰ Further, Mondale advised against Griffin's interpretation, warning that doing so would result in the following:

It will mean that whenever the executive branch wants to bottle something up they will take a stamp out of the lower left-hand drawer, stamp it "top secret" and send it to you classified. It will be a new Official Secrets Act of a kind we never had before. It will give the executive branch power they have never had before, power binding not only upon the executive, but upon Congress itself. It will destroy Congress' power and responsibility of informing the public.²⁸¹

While one may have thought Mondale's eloquent rebuttal—supported in part by the Senate Parliamentarian—should have settled the dispute by leading the Senate to accept his conclusion or alternatively agree with Griffin's interpretation, the Senate instead ignited into prolonged and heated debate.²⁸² Fueling the Senate's rage were two facts: First, no one outside the Committee had been provided an advanced copy of the Interim Assassination Report; and, second, the prevailing view was that it would be leaked to the press with or without a vote because it had already been printed.²⁸³

In disappointment, Huddleston expressed his frustration over the Senate's behavior, stating the following:

The whole purpose of coming before the Senate by the committee was simply to inform senators so they would not read about the report in the press before they had any knowledge of what it is all about. The unfortunate thing about this morning, of course, is that we spent nearly the entire time debating the question as to whether or not the Senate ought to vote or not vote on releasing the report. . . . We went through an entire morning without ever having an opportunity to answer one single question about the substance of the report. . . . It is unfortunate that the Senate today got hung up on these questions which were not even pertinent to the whole session today.²⁸⁴

278. *Id.* at 132–33 (quoting SENATE MANUAL, S. DOC. NO. 91-1, at 51 (1969)).

279. *Id.* at 133.

280. *Id.*

281. *Id.*

282. *Id.* at 134.

283. *Id.*

284. *Id.* at 136.

The Senate disobeyed the longstanding custom of showing deference out of respect to the work done by committees, as explained by Senator Stuart Symington of Missouri just prior to the Church Committee members' remarks: "[W]hatever the committee thinks should be done with this report, I am going to be for."²⁸⁵ Fortunately for the fate of Interim Assassination Report, prior to the secret session Church instructed his staff to hand out copies of the report to anyone with press credentials immediately after it adjourned.²⁸⁶ Thus the document became *fait accompli* because the Senate never had the ability to alter its course.²⁸⁷

Unfortunately for the proponents of public disclosure, their victory in the Senate's secret session was ultimately overruled when the Senate created its permanent Select Committee on Intelligence.²⁸⁸ The Senate passed an amendment offered by Senator Sam Nunn, a Democrat from Georgia, which read that "[t]he Committee shall not publicly disclose such information without leave of the Senate."²⁸⁹

The failure of the Pike Committee was a harbinger of the significance of the Nunn Amendment. Pike refused to yield to White House requests for 250 deletions to the Pike Committee's final report under the auspice of national security, resulting in the report never being published by the House.²⁹⁰ Instead, the report was leaked to a New York City weekly publication, the Village Voice.²⁹¹ Church "was pleased about the stand the Pike [C]ommittee had taken on the rights of a congressional committee to release classified information by majority vote: 'If Congress permits itself to be gagged it ought to forfeit its oversight function.'"²⁹²

Similarly, following the Senate's passage of the Nunn Amendment, Democrat Senator Gaylord Nelson of Nebraska criticized the measure because it "undermine[s] our claim to be a coequal branch of the government."²⁹³ Tower, earlier in a meeting among the members of the Church Committee, stated the opposite view:

I believe Rule XXXVI of the Senate requires leave of the Senate before disclosing matters confidential or secret under the rules. . . . To do less would make every one of the more than 300 committees and subcommittees of the Congress *de facto* equal of the executive.²⁹⁴

285. *Id.* at 131.

286. *Id.* at 136.

287. *Id.*

288. *Id.* at 248–49.

289. *Id.* at 245.

290. *Id.* at 181–182 (citing David E. Rosenbaum, *House Prevents Releasing Report on Intelligence*, *NEW YORK TIMES*, Jan 30, 1976, at 1).

291. *Id.* at 190 (citing *The Select Committee's Investigation Record*, *THE VILLAGE VOICE*, Feb 16, 1976 at 72–92).

292. *Id.* at 184.

293. *Id.* at 248.

294. *Id.* at 188.

With the Interim Assassination Report's release, a temporary victory for those favoring disclosure, the Ford Administration, likely fearing the trove of secrets the Church Committee would attempt to publish upon its conclusion, mustered a considerable critique against the Church Committee. Most brazen of all was Kissinger's speech to the Economic Club of Detroit that rallied the audience by proclaiming that "we cannot allow the intelligence services of this country to be dismantled."²⁹⁵ He also called for termination of "the delusion that American intelligence activities are immoral . . . and the illusion that tranquility can be achieved by an abstract purity of motive for which history offers no example."²⁹⁶

Kissinger's stinging rebuke of the Church Committee and its "abstract purity of motive" was hardly a new argument for Church, who had long been criticized by his colleagues for his "Sunday school" demeanor and was even nicknamed "Senator Cathedral" by those tired of his relentless moralist tendencies.²⁹⁷ Earlier in May 1975, Kissinger had revealed in his disdain for Church's conventional moral judgments while criticizing the Multinationals Committee's investigation into bribery of foreign government officials by multinational corporations.²⁹⁸ Kissinger surprisingly defended corruption abroad, stating that "[b]ribery overseas was foreign policy, not domestic crime."²⁹⁹

Despite the Ford Administration's consistent barrage of criticism and obstruction throughout the Church Committee's existence, Church employed various tactics to promote the Committee's public image. The success of the Church Committee did not simply flow from the Committee's collective will to disclose information to the public, but rather must be attributed to the strategic means by which it tempered its opposition by refocusing attention towards the shocking government secrets it exposed.

For instance, just before the Committee's first public hearing on September 16, 1975, the White House attempted to blunt the sting of any of the Committee's revelations by leaking various details to the press. Church responded by publicly announcing, ahead of the hearings, that the "committee has evidence that quantities of biological toxins of a highly lethal character have been retained by the CIA in contravention of presidential orders that such material should be destroyed."³⁰⁰ Even with such early disclosures, the public was still shocked by the details revealed over three days of testimony.³⁰¹

295. *Id.* at 137.

296. *Id.*

297. ASHBY & GRAMER, *supra* note 2, at 411, 421 (quoting WILLIAM MILLER, *FISHBAIT: THE MEMOIRS OF THE CONGRESSIONAL DOORKEEPER* 323 (1977)).

298. *Id.* at 459.

299. *Id.* (citing JOHN T. NOONAN, JR., *BRIBES* 660-63 (1984)).

300. JOHNSON, *supra* note 18, at 74.

301. *Id.* at 75-76.

Church ensured that the CIA brought its lethal dart gun, which was the cynosure of the press because it featured prominently on the front page of the Washington Post the following day photos of the Senators handling the weapon.³⁰² The hearing also notified the public that the CIA had “stockpiled substances that could induce smallpox, tuberculosis, sleeping sickness, and other diseases[], as well as to destroy crops and livestock on a massive scale.”³⁰³ Likewise, testimony further revealed that “[t]he CIA had also diffused through the New York City subway system a ‘harmless simulant’ of a disease-carrying gas to test the dynamics of the gas flow and the vulnerability of an underground system to gaseous attack.”³⁰⁴

While revealing secrets could effectively garner media attention and diminish obstructionist forces at play, Senators often shared too much information or presented conflicting analyses when addressing the press individually. As stated earlier, Mondale and Church each embroiled themselves into controversy with their fellow Committee members when they revealed too much information about assassination plots in early October.³⁰⁵ However, that incident was exacerbated by a prior incident with more partisan flare.

On July 20, 1975, Schweiker, appearing on Face the Nation, refuted Church’s statement made on Meet the Press the previous day that he believed, due to the testimony of the President’s brother, President Eisenhower knew little of any assassination plots and “[t]he CIA may have been behaving like a rogue elephant on a rampage.”³⁰⁶ Contrarily, Schweiker argued that the Committee lacked “any conclusive evidence that exonerates the presidents.”³⁰⁷ During the Committee’s following meeting on July 21st, Tower expressed his concern that such statements reflect the sentiment that the Committee was “beginning to polarize.”³⁰⁸ Due to the ire of the Senators leaking some of the assassination plot details and the two Senators’ divergent theories of responsibility, Baker suggested that the gag rule previously established by the Committee be removed.³⁰⁹ To which Gary Hart responded: “[W]e must all keep our mouths shut. I’ll quit this committee if we all start talking out; it will tear us apart.”³¹⁰

While the Church Committee never achieved unity in its voice or politics, its members steered the Committee in the direction of public

302. SMIST, *supra* note 133, at 71 (citing George Lardner, Jr., *CIA Tells of Exotic Weapons: Electric Gun, Untraceable Poison Pellets*, WASHINGTON POST, September 17, 1975, at A).

303. JOHNSON, *supra* note 18, at 75.

304. *Id.*

305. *Id.* at 92–93.

306. *Id.* at 57 (citing FACE THE NATION (CBS Television July 20, 1975)).

307. *Id.*

308. *Id.*

309. *Id.* at 58.

310. *Id.* at 60.

disclosure that would challenge Americans' perception of their own government, as well their own opinions.³¹¹ The off-scripted outbursts of individual senators reveal the profound effect their membership played in challenging preconceptions and altering the public's perception of its government.

For instance, during one of the Committee's public hearings on the FBI's efforts to discredit anti-Vietnam War protestors, Phillip Hart struggled to reconcile his prior beliefs with the shocking evidence before him:

I've been told for years by, among others, members of my own family that this is what the [FBI] has been doing all this time. . . . As a result of my superior wisdom in high office, I assured them that they were on pot—it just wasn't true. They [the FBI] just wouldn't do it. . . . What you have described is a series of illegal actions intended to deny certain citizens their First Amendment rights—just like my children said.³¹²

As the Church Committee hearings delved further into the FBI's "2,370 actions between 1956 and 1971" recounting incidents where the FBI "harassed and tried to destroy dissidents within the United States," it became clear that the "FBI had adopted the tactics and techniques of the KGB."³¹³ As the Committee reviewed the FBI's astonishing plot to blackmail Dr. Martin Luther King Jr. and induce him to commit suicide, Mondale concluded, "apart from direct physical violence and apart from illegal incarceration, there is nothing in this case that distinguishes that particular action much from what the KGB does with dissenters in [the Soviet Union]."³¹⁴

Further Phillip Hart raised a broader point during the FBI hearings:

It is right that the committee and the press be worried about the treatment of a Nobel Prize winner, Dr. King; but there are an awful lot of people who never get close to a Nobel Prize whose names are Jones and Smith, that my review of the files show had violence done to their first amendment rights. Nobel Prize winners will always get protection, but Joe Potatoes doesn't, and the committee should focus on him, too.³¹⁵

After the last of the Church Committee's public hearings and the near demise of the Pike Committee, dispirited, Church assessed the media's coverage, stating that "the issue has become how to keep secrets rather than how to preserve freedom."³¹⁶ Despite his disap-

311. *Id.* at 129 (citing Interview with Frederick Baron, Washington, D.C., (Dec. 4, 1978)).

312. *Id.*

313. SMIST, *supra* note 133, at 76.

314. *Id.* at 75–76; *see also* JOHNSON, *supra* note 18, at 126–27 (further detailing the FBI's actions against Dr. Martin Luther King, Jr.).

315. SMIST, *supra* note 133, at 76.

316. JOHNSON, *supra* note 18, at 184.

pointment in negative perceptions of the Committee's work, his earlier victory in the secret Senate session in November 1975 permitted the Church Committee to publish its reports before the Senate considered the Nunn Amendment. The Church Committee, exercising its authority to publish reports on its own, worked with the executive branch to satisfy a majority of its members to publish the most comprehensive reports on the intelligence community in the history of the United States.³¹⁷

V. WILL THE CHURCH COMMITTEE REMAIN THE APOGEE OF COMPREHENSIVE CONGRESSIONAL INTELLIGENCE OVERSIGHT?

Church, reflecting on the establishment of the permanent U.S. Senate Select Committee on Intelligence, envisioned variance in Congress's assiduousness in conducting future intelligence oversight:

Today, continuing congressional surveillance is built into the woodwork. We did the necessary job. Political will can't be guaranteed. . . . We did that knowing that the Congress being a political animal will exercise its surveillance with whatever diligence the political climate of the time makes for.³¹⁸

Church's astute observation emphasizes the political realities either acting to invigorate or enervate congressional intelligence oversight. President Obama's call for congressional cooperation in his proposed government surveillance program reforms, which he announced on January 17, 2014, tasks Congress with reaching a consensus where agreement is sparse.³¹⁹ While Congress must reauthorize the bulk collection of telephone data by summer 2015 in order for that program to continue, congressional opposition continues to mount.³²⁰ However such opposition is not merely delineated by party lines, as demonstrated by McCain's reaction to the President's speech in which McCain urged Congress to act because, in his view, "[i]t is more important than ever for Congress to exercise effective oversight and, where necessary, to enact legislation to address these issues which are vital to American national security."³²¹

317. *Church Committee Reports*, ASSASSINATION ARCHIVES AND RESEARCH CTR., http://www.aarclibrary.org/publib/contents/church/contents_church_reports.htm (last visited Sept. 11, 2014).

318. SMIST, *supra* note 133, at 81.

319. *Remarks by the President on Review of Signals Intelligence*, WHITE HOUSE (Jan. 17, 2014), <http://www.whitehouse.gov/the-press-office/2014/01/17/remarks-president-review-signals-intelligence>; Mark Murray, *Obama's NSA Speech: Five Burning Questions*, NBC NEWS (Jan. 17, 2014, 3:49 PM), http://nbcpolitics.nbcnews.com/_news/2014/01/17/22340505-obamas-nsa-speech-five-burning-questions?lite.

320. Julian Hatttem, *Leahy: NSA surveillance 'not making us safer.'* THE HILL (Jan. 22, 2014, 2:58 PM), <http://thehill.com/blogs/hillicon-valley/technology/196136-leahy-nsa-surveillance-not-making-us-safer>.

321. Murray, *supra* note 319.

Even members of the congressional intelligence committees are divided between support for current surveillance programs and privacy concerns. For instance, Republican Representative Mike Rogers of Michigan and Senator Feinstein, the chairs of the House and Senate intelligence committees, both support the government's use of telephone metadata to thwart terrorist plots and jointly declared that the government's bulk collection surveillance program is "legal and effective."³²² Yet three Democrats on the Senate Select Committee on Intelligence—Oregon's Ron Wyden, Colorado's Mark Udall, and New Mexico's Martin Heinrich—reacted to the President's proposed reforms by praising the prospect of ending the "dragnet collection" because doing so "will go a long way toward restoring Americans' constitutional rights and rebuilding the public's trust. . . . Make no mistake, this is a major milestone in our longstanding efforts to reform the National Security Agency's bulk collection program."³²³

During a public hearing of the Senate Select Committee on Intelligence on January 29, 2014, Udall characterized Snowden's disclosures as engendering "a trust deficit . . . between the public and the intelligence community."³²⁴ Udall recalled that a similar climate of misgiving existed when "[t]his committee was created to address a severe breach of trust that developed when it was revealed that the CIA was conducting unlawful domestic searches. The Church committee went to work, found that to be true."³²⁵ Upon Udall and Wyden asking the intelligence directors a variety of questions related to the types of searches conducted by the intelligence agencies, it became quite evident that a trust deficit remains between members of the Senate Select Committee on Intelligence and the agencies' directors.³²⁶

The recent disclosures surrounding the CIA's acts of cyber espionage on the Senate Select Committee on Intelligence may ultimately alter the political situation towards increased congressional oversight.³²⁷ However, partisan political realities remain quite evident in the Senate Select Committee on Intelligence's final push to release its report stemming from its investigation of the CIA's interrogation of suspected terrorists, which it began in 2009.³²⁸ The White House is

322. Ellen Nakashima & Greg Miller, *Obama Calls for Significant Changes in Collection of Phone Records of U.S. Citizens*, WASH. POST (Jan. 17, 2014), http://www.washingtonpost.com/politics/in-speech-obama-to-call-for-restructuring-of-nsa-surveillance-program/2014/01/17/e9d5a8ba-7f6e-11e3-95c6-0a7aa80874bc_story.html.

323. *Id.*

324. *Transcript: Senate Intelligence hearing on national security threats*, WASH. POST (JAN. 29, 2014), http://www.washingtonpost.com/world/national-security/transcript-senate-intelligence-hearing-on-national-security-threats/2014/01/29/b5913184-8912-11e3-833c-33098f9e5267_story.html (last visited Feb. 28, 2014).

325. *Id.*

326. *See id.*

327. Lesniewski, *supra* note 6.

328. Greg Miller, *Senate, CIA Clash Over Redactions in Interrogation Report*, WASH. POST (Aug. 5, 2014), <http://www.washingtonpost.com/world/national-security/>

also at odds with the Senate Select Committee on Intelligence over the declassification of the report's content.³²⁹

The White House's conflict with the Senate Select Committee on Intelligence over declassification presages that the public, even after President Obama's announcement, will remain skeptical of government overreach and will likely support those advocating for reform.³³⁰ If Congress holds additional public hearings on intelligence agencies' activities, it will be mindful of the many blunders during 2013 where additional leaks from Snowden portrayed Congress as a body unable to oversee the agencies.³³¹ In the case of Director of National Intelligence James Clapper's erroneous testimony before the Senate Select Committee on Intelligence, the public even witnessed its government lying to itself.³³² Such embarrassments only underscore the potential political pitfalls surrounding ineffectual or misleading public hearings on the activities of the intelligence agencies, particularly since Snowden continues to reveal additional government secrets.³³³

Renowned journalists Dana Priest and William M. Arkin argue that another political reality facing Congress today is the burgeoning expanse of the intelligence industry, much of which consists of private contractors. Arkin estimates that "[o]f the 854,000 people with top secret clearances, roughly 265,000 are not government employees; they are contractors working at the for-profit companies whose bottom line is to make money."³³⁴ Priest and Arkin contend that "[t]he motives of even the most conscientious, patriotic of these companies is, by definition, self-interested when it comes to working with the government."³³⁵ The proliferation of government spending on private contractors for intelligence purposes creates an analogous situation to the military-industrial complex, whereby government contractors are

senate-cia-clash-over-redactions-in-interrogation-report/2014/08/05/2f904f04-1ce0-11e4-ab7b-696c295ddfd1_story.html.

329. *Id.*

330. See *Obama's NSA Speech Has Little Impact on Skeptical Public*, *supra* note 5.

331. See Kimberley A. Strassel, *Congress's NSA Fail: Politicians Demand Oversight Over Intelligence, Then Make it a Point Not to Know What's Going On*, WALL ST. J. (Jan. 23, 2014, 07:25 PM), <http://online.wsj.com/news/articles/SB10001424052702304632204579339132807946034>.

332. Jeremy Herb, *Intelligence Chief Clapper Apologizes for 'Erroneous' Statement to Congress*, THE HILL (July 2, 2013, 11:40 PM), <http://thehill.com/blogs/defcon-hill/policy-and-strategy/308979-clapper-apologies-for-erroneous-statement-to-congress-on-us-data-collection>.

333. See *Catalog of the Snowden Revelations*, LAWFARE BLOG, <http://www.lawfareblog.com/catalog-of-the-snowden-revelations/#.UuqfvTfLs82> (last visited Feb. 28, 2014).

334. DANA PRIEST & WILLIAM M. ARKIN, *TOP SECRET AMERICA: THE RISE OF THE NEW AMERICAN SECURITY STATE* 179–80 (2011). See also *id.* at 158 (describing in detail how Arkin calculates his estimate of 854,000 people holding top secret clearances) (“[A]dd [] in the legions of private contractors hired after 9/11 to do work once handled by federal employees, and . . . count [] all the political appointees, military personnel, state and local officials, and law enforcement officers.”).

335. *Id.* at 180.

able to reinvest their earnings into lobbying activities to ensure their survival.³³⁶

Although safety concerns following the 9/11 attacks instigated the burgeoning intelligence community and its increased use of private contractors, recent leaks prompted the public to reexamine the safeguards protecting individuals' privacy against unreasonable government intrusion.³³⁷ In searching for a new balance between safety and security, judicial precedence will be an essential guide in guaranteeing privacy protections.³³⁸

For example, in one of the earliest cases of domestic surveillance, during prohibition, federal authorities relied on months of wiretapped private telephone conversations to prosecute the "King of the Puget Sound Bootleggers," Roy Olmstead, and his bootlegging colleagues.³³⁹ In Justice Louis Brandeis's famous dissent, he eloquently described a right to privacy as the following:

[The Constitution's framers] sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, *the right to be let alone*—the most comprehensive of rights, and the right most valued by civilized men.³⁴⁰

In 1967, the "right to be let alone" became the legal right to a "reasonable expectation of privacy" as the Supreme Court in *Katz v. United States* adopted Justice Brandeis's dissent in *Olmstead*.³⁴¹ *Katz* involved the use of an electronic eavesdropping device attached to a phone booth to gather evidence for prosecuting illegal gambling.³⁴² These cases and their progeny continue to influence the debate surrounding government oversight and the legality of the intelligence community's activities.³⁴³

Despite the political realities facing Congress today, the Church Committee's ability to withstand vehement opposition provides ample guidance for those interested in pursuing more comprehensive con-

336. Gary Hart, *The Intelligence-Industrial Complex*, HUFFINGTON POST (June 20, 2013, 01:02 PM), http://www.huffingtonpost.com/gary-hart/the-intelligenceindustria_b_3473283.html.

337. See PRIEST & ARKIN, *supra* note 334, at 3–6.

338. See Geoffrey R. Stone, *Is the NSA's Bulk Telephony Metadata Program Constitutional?*, HUFFINGTON POST (Jan. 3, 2014, 3:17 PM), http://www.huffingtonpost.com/geoffrey-r-stone/is-the-nsas-bulk-telephon_b_4538173.html.

339. Edwin T. Hunt, *Prohibition: A Film by Ken Burns & Lynn Novick*, PBS, http://www.pbs.org/kenburns/prohibition/media_detail/2082733861-olmstead/ (last visited Feb. 28, 2014).

340. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (emphasis added).

341. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring). See also *Mancusi v. DeForte*, 392 U.S. 364, 368 (1968) (adopting J. Harlan's reasonable expectation of privacy test).

342. *Katz*, 389 U.S. at 348–49.

343. See Stone, *supra* note 338.

gressional intelligence oversight. The Committee's Chief Counsel Schwarz believes that "[t]he Church Committee's comprehensive investigation provides a starting point" for the question of "whether the new threat [of terrorism] can be confronted without succumbing to the same institutional pathologies that curtailed America's freedoms and undermined its values during the Cold War."³⁴⁴

Fenn graciously offered his analysis and perspective on the contemporary relevancy of the Church Committee. Fenn is one of the many prominent voices advocating for another Church Committee, favoring at the very least a presidential commission similar to the National Commission on Fiscal Responsibility and Reform ("Simpson-Bowles Commission").³⁴⁵ In responding to some questions regarding the logistics of a new Church Committee, Fenn suggested that the central question is "who you have lead those kinds of things, if it was a commission or joint committee who would lead it."³⁴⁶ Fenn believes both Wyden and Udall most resemble Church, both being progressive advocates on national security issues and from western mountain states, and would both serve as fine chairs for a future Church Committee.³⁴⁷

However, Fenn indicated that those strongly advocating for another congressional committee akin to the Church Committee must realize that such a move would be difficult because its creation would be "a direct slam" against the two intelligence committees.³⁴⁸ Likewise, any such committee or commission would require "very serious, seasoned people both on the commission and its staffers . . . and you need a serious budget."³⁴⁹ In addition to the quality of those involved, Fenn stressed that one of the greatest strengths of the Church Committee was both the substantial time its members devoted to the Committee and its small size.³⁵⁰ "If you're on this committee you've got to spend time yourself. There's no excuses for not reading through this stuff. You've got to do it. And Udall would do that. So would Wyden."³⁵¹

Fenn recalls that "the model for it at that time was the Watergate Committee. What [Senate Majority Leader] Mike Mansfield thought about what he created, the Church Committee was patterned a bit

344. SCHWARZ & HUO, *supra* note 21, at 47.

345. Interview with Peter Fenn, Founding Partner, Fenn Comm'ns Grp., in Wash. D.C. (Aug. 27, 2013); Conor Friedersdorf, *Lawbreaking at the NSA: Bring On a New Church Committee*, ATLANTIC (Aug. 16, 2013, 6:34 AM), <http://www.theatlantic.com/politics/archive/2013/08/lawbreaking-at-the-nsa-bring-on-a-new-church-committee/278750/>.

346. Interview with Peter Fenn, Founding Partner, Fenn Communications Group, in Wash., D.C. (Aug. 27, 2013).

347. *Id.*; Senator Udall lost his bid for re-election to the U.S. Senate in November 2014.

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.*

after [the Watergate Committee].”³⁵² Based on the time required for the Watergate Committee and the Church Committee to finish their respective tasks, Fenn estimates that a new committee or commission could complete its work within a period of a year to eighteen months.³⁵³

Fenn believes the focus of such a committee should revolve around “what the FISA courts should or should not do, what kinds of collections you can have, what you need warrants for, [and] what you don’t.”³⁵⁴ Fenn is concerned that “a lot of people, they just don’t have an expectation of privacy anymore . . . and we’ve got to get that back.”³⁵⁵ He is mindful that “technology is not going to go retro,” but rather new technologies pose considerable questions about people’s expectation of privacy.³⁵⁶ Fenn believes that although “people don’t have this innate fear that they themselves are going to be put under this, but they get that this is a highly intrusive technology that can be used in the wrong way and they’re now nervous about it.”³⁵⁷

Fenn critically rejects the government’s argument that “[w]e have it all but don’t really look at it.”³⁵⁸ He counters that “[i]f you’ve got it all—you are looking at it.” Further, with the advance of technology, Fenn questions whether “DNA [will become] the new fingerprint?”³⁵⁹ And if so, the ability to store such personal data will only improve as collection “technology is going to increase by leaps and bounds.”³⁶⁰

Today U.S. companies are being forced to comply with requests for information regarding both their domestic and international customers.³⁶¹ After all, Google and Facebook have international clients to be concerned; corporations now have several economic reasons to oppose intelligence gathering.³⁶² Fenn suggests that the notion that the government can ask hotels for its guests lists or go to communications companies and acquire their data provides companies with hard business and economic reasons to oppose such government actions, “aside from the privacy questions [and] and aside from the moral issues.”³⁶³

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.* See also Peter Swire, *Why Tech Companies and the NSA Diverge on Snowden*, WASH. POST (Jan. 29, 2014), http://www.washingtonpost.com/opinions/why-tech-companies-and-the-nsa-are-split-about-snowden/2014/01/29/e322c746-83ab-11e3-9dd4-e7278db80d86_story.html.

362. Interview with Peter Fenn, Founding Partner, Fenn Communications Group, in Wash., D.C. (Aug. 27, 2013).

363. *Id.*

He hopes that this too would play a prominent role in a future Church Committee.³⁶⁴

At his core, Fenn believes that “Church was trying to strengthen the intelligence agencies not weaken them. He was trying to concentrate on the stuff we should be concentrating on, which was the Soviet Union and China—what’s going on internationally.”³⁶⁵ Fenn added that Church was a “big believer in human intelligence and he thought they were getting lazy and doing less of that stuff and they thought they could get it all with a big vacuum cleaner in the sky.”³⁶⁶ And are we not in the same situation today? “Right, I think it’s totally the same thing. . . . I said, look, I said if you’re looking for a needle in a haystack, look for the needle. Don’t spend all your time fussing around with the whole damn haystack. I mean, you’ve got metal detectors. Fine the needle”³⁶⁷ The increased dependence on massive data collection stems from the booming intelligence budgets, and, according to Fenn, one need only look at the money because “after 9/11, whoever wanted to do something could do it. The money was all there.”³⁶⁸

Moreover, another critical component to the Church Committee’s success was its ability to gather documents from the executive branch. Although Fenn appreciates that “Church was good at [gaining access]” and was mindful that “these guys [in the Ford Administration] hated Church. . . . [and] Dick Cheney was a different Dick Cheney back then, but he hated Church then too.”³⁶⁹ Consequently, in order to gain access to the government’s secrets, Tower and Goldwater were instrumental.³⁷⁰ The Church Committee benefited from what Fenn perceives as cooperation from “folks within the [intelligence] agencies thought they had overstepped,” including Colby and General Allen.³⁷¹ Fenn recalls that “Colby had a lot of respect for Church” and “you have to remember, too, this is when [Nixon] had enemies lists . . . and Henry Kissinger, Mr. Foreign Policy Guru now, he tapped his own employees’ . . . telephones!”³⁷² Fenn recounts that Allen’s cooperation stemmed from Nixon telling him to do certain things which he didn’t feel comfortable doing.³⁷³ Fenn believed that Vice President Rockefeller and Colby did not fully appreciate harsh tactics of the

364. *Id.*

365. *Id.*

366. *Id.*

367. *Id.*

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.*

372. *Id.*

373. *Id.*

Nixon Administration, which fostered their cooperation with the Church Committee.³⁷⁴

Fenn recognizes that in order for Congress to reprise its role as an ardent overseer of the intelligence agencies, Congress must allocate greater funding towards a serious investigative staff, at minimum similar to the size of the staff of the Church Committee.³⁷⁵ Fenn recalls that “one thing about the Church Committee is that, and everybody was appalled about it at the time, but we had about 130 people . . . hard charging people.” Fenn cannot imagine ever working with a more talented group of people, commending in particular Schwarz and Miller.³⁷⁶

The size of the Church Committee’s staff is astounding considering that Priest and Arkin reported in 2011 that “the number of staffers on [the House and Senate Permanent Select Committees on Intelligence and the House and Senate Appropriations Subcommittees on Defense] has not grown much at all in the decade since the 9/11 attacks.”³⁷⁷ In fact, Priest and Arkin reported that “[t]he number of staffers with knowledge of and experience with the most costly and technologically complex agencies, the National Security Agency and the National Reconnaissance Organization, which manages multi-billion-dollar eavesdropping and spy satellite programs, actually declined.”³⁷⁸

The ability of a future committee’s staff to acquire security clearances would undoubtedly pose a substantial problem. Fenn surmises that if the Church Committee’s members had lacked the authority to grant security clearances on their own, the intelligence agencies could have derailed the Church Committee simply by denying the staff their security clearances.³⁷⁹ Fenn recalls that the Church Committee “struck an agreement with the agencies that they would perform the background checks on all of the [Committee’s] staff folks and provide that information to the Committee, the members, the senators, and they would make the decision on the clearances.”³⁸⁰ Through this process, Fenn “wasn’t aware of anyone getting turned down [for their security clearance],” although he was nervous about acquiring a clearance because of his 1972 anti-war demonstration activity in California.³⁸¹ Additionally, he recalls that one intelligence staffer was fired after talking too much near another intelligence official at a restau-

374. *Id.*

375. *Id.*

376. *Id.*

377. PRIEST & ARKIN, *surpa* note 334, at 22.

378. *Id.* at 22–23.

379. Interview with Peter Fenn, Founding Partner, Fenn Communications Group (Aug. 27, 2013).

380. *Id.*

381. *Id.* at 00:21:35.

rant.³⁸² In terms of the ability of a future committee's staff to be allowed access to top secret materials by being issued security clearances, Fenn firmly believes that the "committee has to make the decision."³⁸³

While the Church Committee was able to negotiate with the intelligence agencies at the onset of its investigation, Loch Johnson commented that throughout the duration of the Church Committee "Congress never could seem to decide whether or not the major problem before it was how to curb intelligence abuses or how to maintain secrecy."³⁸⁴ Leaks from the Pike Committee ensured that when establishing the permanent intelligence committees in 1976, in Johnson's view, "a majority in the House (and no doubt many in the Senate) had obviously become more obsessed with secrecy."³⁸⁵

Imagining a current senator's willingness to bargain for the privilege of granting security clearances for staffers highlights the contrast between modern congressional intelligence oversight and the conduct of the Church Committee. Today, Congress has tied its hands by restricting its ability to self-disclose classified information. When Wyden was quoted in a 2013 *Rolling Stone* article disparaging secret laws, untruthful intelligence agency representatives, and the vast constraints imposed on members of Congress, such statements only confirmed Nelson's prescient warning in 1976 that if Congress undercut its ability to self-disclose classified information "[w]e undermine our claim to be a coequal branch of the government."³⁸⁶

Priest and Arkin describe secrecy's isolating and frustrating effect on those engaged in congressional intelligence oversight:

The leaders of the House and Senate Intelligence Committees, who often were the only members briefed by the CIA on covert action, were not allowed to consult with their lawyers or their specialized staff members steeped in the issues, even if they had the appropriate security clearances. Instead, these members of Congress were left on their own to make sense of highly technical issues such as surveillance of fiber-optic cables in the Internet communications grid structure, or the legal interpretations, history, and nuances of a particular regulation in the law governing electronic searches and seizures.³⁸⁷

Priest and Arkin's summary echoes Wyden's sentiment that "[t]here are very significant limits [on what you can and cannot say], and they

382. *Id.*; E-mail from Peter Fenn, Founding Partner, Fenn Communications Group, to Marc B. Langston, author of this article, (Feb. 12, 2014, 13:38 EST) (on file with author).

383. Interview with Peter Fenn, Founding Partner, Fenn Communications Group (Aug. 27, 2013).

384. JOHNSON, *supra* note 18, at 248.

385. *Id.*

386. *Id.*

387. PRIEST & ARKIN, *supra* note 334, at 23.

are very cumbersome and unwieldy.”³⁸⁸ Schwarz contemplates secrecy’s dangerous quality when he considers that “[u]nderlying all the Cold War abuses and excesses at home and abroad was the assumption that the government’s role would remain forever secret.”³⁸⁹

Correspondingly, modern abuses ranging from enhanced interrogation techniques to extraordinary rendition during the Bush Administration remained secret from the intelligence oversight committees for a period much too long. For instance, Cofer Black, the former head of the CIA’s Counterterrorism Center, testified before a joint Senate and House intelligence committees hearing, addressing his level of autonomy in the “operational flexibility” in the methods he was authorized to employ in dealing with suspected terrorists. He stated that “[t]his is a very highly classified area. *All you need to know* is that there was a before 9/11 and there was an after 9/11. After 9/11, the gloves come off.”³⁹⁰

Priest vociferously reacted to Black’s statement, questioning “[w]hy was it up to this civil servant, no matter how well respected he was among his colleagues, to decide what anyone else, even the elected representatives he was addressing, did and did not need to know about the deadliest enemy facing the United States?”³⁹¹ She continued:

It seemed almost un-American that a small group of people at the White House and within the CIA could decide that only they should know how the world really worked, while the rest of the citizenry was expected to assume that they would figure out how to defeat such an elusive foe all on their own, do the right thing, and then tell the truth if they messed up.³⁹²

Priest’s reaction resembles the Church Committee’s similar declaration that “power must be checked and balanced, and that the preservation of liberty requires the restraint of laws, and not simply the good intentions of men.”³⁹³ While the Church Committee represented the end of what Loch Johnson described as the “Era of Trust” lasting from 1947–1974, the Bush Administration represented a brief time when

388. Janet Reitman, *Q&A: Senator Ron Wyden on NSA Surveillance and Government Transparency*, ROLLING STONE (Aug. 15, 2013, 1:15 PM), <http://www.rollingstone.com/politics/news/q-a-senator-ron-wyden-on-nsa-surveillance-and-government-transparency-20130815#ixzz2sHVXmsgR>.

389. SCHWARZ & HUO, *supra* note 21, at 43.

390. Michael Kirk & Mike Wiser, *Transcript: Top Secret America*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/iraq-war-on-terror/topsecretamerica/transcript-6/> (last visited Feb. 28, 2015) (official transcript differs from actual statement captured on video) (emphasis added).

391. PRIEST & ARKIN, *supra* note 334, at 14.

392. *Id.*

393. SCHWARZ & HUO, *supra* note 21, at 47 n.109 (quoting S. Rep. No. 94-755, at v (1976)).

Congress arguably provided excessive deference when ardent congressional oversight was needed most.

In contrast, the Church Committee’s final report reflected the true achievement of comprehensive congressional oversight—that “[t]he acts that the Committee exposed ‘did not reflect the ideals which have given the people of this country, and of the world, hope for a better, fuller, fairer life.’”³⁹⁴ Church’s moralist influence is particularly prominent in the following section:

The United States must not adopt the tactics of the enemy. Means are as important as ends. Crisis makes it tempting to ignore the wise restraints that make men free. But each time we do so, each time the means we use are wrong, our inner strength, the strength which makes us free, is lessened.³⁹⁵

Fenn believes the above quote accurately reflects Church’s belief system: “[I]f the ends justify the means and you betray democratic principles to defend democracy—that is an inherent contradiction that will bring you down.”³⁹⁶ Fenn recalls, one just really felt like Church was “doing the right thing.”³⁹⁷

The relevancy of the Church Committee is self-evident in the following observation made by Church on the Committee’s enduring historical significance:

[T]here is no more pernicious threat to a free society than a secret police which is operating beyond the law. Reports in the press suggested that the intelligence agencies were operating in violation of the law. If these abuses had not been uncovered and had the agencies gone unchecked, we might well have seen a secret police develop in the United States. Once that begins, the Constitution itself is in very real danger.³⁹⁸

Some would argue the same threat exists today, but the question remains whether Congress is capable or willing to engage in comprehensive intelligence oversight comparable to substantial as the Church Committee.

VI. CONCLUSION

The debates surrounding the proper role of Congress in overseeing intelligence agencies represent a full spectrum of persuasions. The variety of ideas culminating at the origin of the permanent intelligence oversight committees shatters the notion that the executive branch has

³⁹⁴ *Id.* at 47 n.110 (quoting S. Rep. No. 94-465, at 285 (1975)).

³⁹⁵ *Id.*

³⁹⁶ Interview with Peter Fenn, Founding Partner, Fenn Communications Group (Aug. 27, 2013).

³⁹⁷ *Id.*

³⁹⁸ SMIST, *supra* note 133, at 35 (quoting Interview by Frank John Smist with Sen. Frank Church (Apr. 25, 1983)).

always enjoyed or deserves as much deference as it occupies in relation to intelligence activities or declassification.

If reigning in the intelligence community, in particular ensuring strict adherence to the rule of law, is a desirable goal, the history of the Church Committee may contribute by serving as a model for congressional intelligence oversight. Although it is unfathomable that Congress would entrust another committee with as much authority as the Church Committee or that the executive branch would offer similar levels of cooperation, the Church Committee represents an alternative to executive deference and furnishes Congress with a working model to rediscover effective intelligence oversight.

In reviewing this Article, Fenn shared the following:

I often say [in] these days of ideological polarization that back then [the Church Committee] was extremely polarized ideologically—with the leading liberals of the senate and the leading conservatives—yet they managed to work together, to actually get the job done. Hard to imagine such an effort today!³⁹⁹

In Loch Johnson's review of this Article, he concluded that Fenn's remarks are exactly on point.⁴⁰⁰ Perhaps the most frustrating aspect of studying the history of Church and the Church Committee is the longing for history to manifest itself again. Although the Church Committee remains controversial to some, it was undeniably thorough. The political courage of its members, in both parties, was as astounding then as it is today. Despite divisions among its members, consensus prevailed on most of the major issues before the Committee.

Church led the Church Committee to conduct an unprecedented investigation of intelligence agencies, yielding myriad controversial secrets. His experience in opposing the executive branch over issues such as the Vietnam War encapsulated his requests for cooperation with a formidable coating of confidence. Just as Watergate had provided the political will to create the Church Committee, Church harnessed the secrets of the intelligence agencies to precipitate sweeping reforms and ensure permanent congressional intelligence oversight.

By reviewing this Article's brief summary of Church's political background and key aspects of the Church Committee's work, one hopefully gleans a model for congressional intelligence oversight that is a persuasive alternative to the status quo, wherein congressional intelligence oversight committees defer heavily to the executive branch and offer few protections against government misconduct. As Church

399. E-mail from Peter Fenn, Founding Partner, Fenn Communications Group, to Marc B. Langston, author of this article, (Feb. 12, 2014, 13:38 EST) (on file with author).

400. E-Mail from Loch K. Johnson, Regents Professor of Int'l Affairs, Univ. of Ga., to Peter Fenn, Founding Partner, Fenn Communications Group (Feb. 23, 2014, 13:31 EST) (on file with author).

envisioned, “Congress being a political animal will exercise its surveillance with whatever diligence the political climate of the time makes for.”⁴⁰¹ The recent shortcomings of congressional intelligence oversight committees may spawn a renewed interest in returning to a less-deferential posture.

401. SMIST, *supra* note 133, at 81 (quoting Interview by Frank John Smist with Sen. Frank Church (Apr. 25, 1983)).