UNIVERSITY OF CALIFORNIA

Santa Barbara

The Enemy Within and the Enemy Without:

When "Protecting the Constitution" Becomes Unconstitutional

The Chronology of the FBI's Unconstitutional Practices Being Legalized Under the Threat of Terror, 1950s-2025

A THESIS SUBMITTED IN PARTIAL SATISFACTION OF THE REQUIREMENTS FOR THE DEGREE BACHELOR OF ARTS IN HISTORY OF PUBLIC POLICY AND LAW

by

Cecilia Jean Aden

Professor Jarett Henderson, Seminar Instructor
Professor Guiliana Perrone, Mentor

March 2025

CONTENTS

ABSTRACT

The Enemy Within and the Enemy Without: When "Protecting the Constitution" Becomes Unconstitutional

by

Cecilia Jean Aden

The question of surveillance in law enforcement and foreign intelligence has been present in the discussion of the American state since its inception, as protection of a nation's citizens is an essential component of the social contract. Over the past two and half centuries, balance between civil liberties and investigative techniques has ebbed and flowed as the times have called for it, existing in a binary in which an increase in civil liberties must coalesce with a decrease in national security. Yet how does the United States government grapple with maintaining civil liberties when the Executive has declared an unending War on Terror? Or the insidious, metastatic threat of Communist spies?

Through examining the Federal Bureau of Investigation's (FBI) procedures from the 1950's to early 2000s, as well as the legislative and policy guardrails put in place, my findings illustrate that the FBI is unable to exist under the restrictions of the Constitution; rather, it is an agency where its very purpose, of preventing terrorist attacks and violence, cannot be carried out due to the impossibility of always predicting capacity for harm. In attempting to carry out such a mission, the FBI continually fails and terrorist acts and organization persist. The endurance of

harm integral to human nature, and the FBI's failures to suppress it, has been used as leverage for decades by the Executive branch to pressure Congress to expand the scope and reach of both the executive and intelligence agencies into the lives of Americans and residents- further violating the Constitution with each bill codified. The executive and the FBI have conflated politically unsavory groups with terror and violence, in different shades and framings depending on the demographic, in order to repress political expression and resistance. In doing so, Presidents and the FBI alike have turned tragedies into guises for the expansion of the surveillance state, causing irreparable harm to individuals domestically and abroad.

In gathering my sources, I relied heavily on the Library of Congress, the FBI vault, and ProQuest to compile an archival source of Congressional hearings, FBI memorandums, pamphlets, interviews, trials and speeches. I began my research by gaining an understanding into the broader historiographical discourse surrounding the infamous FBI program COINTELPRO, then consulted the files and files of FBI documents on each 'unsavory' target. I then worked chronologically through the primary and secondary source material to understand the patterns in a larger context, which led me to understanding the legislation that stemmed from the indexing of the transgressions occurring within COINTELPRO.

Acknowledgements

First and foremost, I would like to thank my mentor, Professor Guiliana Perrone. Through our many discussions, the courses you have taught, and my many moments in your office in which I am filled with exasperation from the ideological contradictions of this area of research, you have inspired me to think more critically of the world around me and to interrogate what justice truly means in practice. I would not be the scholar, thinker, and historian I am today without your impact. I am truly grateful and honored for your time and insight on this project. To fighting for abolition and liberation. Even if we will not see the fruits of the struggle in this lifetime, we can always give love to our cats.

To my parents: thank you for your consistent support, even when I was uncertain of my footing or direction. I will be forever grateful to have two people who instilled in me a curiosity for the world around me, for deeper understanding… As I write, I think back to all the discourse-filled car rides, where we would try to solve all of the world's problems during 101 traffic. Thank you for modeling generosity and community; thank you for always seeing what I was capable of even when I have been blind to it. To Carson, thank you for pushing me to question further and to enjoy the little things. I love you guys.

To Uma, Claire, Sydney, and Kylie- what a far way we have come in these four years, in this strange utopia we call home. I am so thankful I found such true and unwavering friendship in you all. You all contributed your ideas, your understanding, and your questioning to this thesis in a way that has made me a stronger historian and writer. Thank you for picking me up each time my head was cloudy and I doubted myself. Thank you for forcing me to put the computer down and touch some grass. And thank you, most of all, for being yourselves: you all are so inspiring, and I cannot wait to see where we all turn up.

This thesis was shaped by my community around me: the Coalition, Student Commission On Racial Equity, DIVEST, the office of the External Vice President of Local Affairs, the members of Phi Alpha Delta, the UCSB History Department ... They are as much contributors as I. May we all fight with grit for solidarity and liberation.

Introduction

"Direct and unconcealed brute force and violence—although clearly persisting in many quarters of society—are today less acceptable to an increasingly sophisticated public, a public significantly remote from the methods of social and economic control common to early America. This is not a statement, however, that there is such increased civility that Americans can no longer tolerate social control of the country's under classes by force of violence; rather, it is an observation that Americans today appear to be more inclined to issue endorsement to agents and agencies of control which carry out the task, while permitting the benefactors of such control to retain a semi-dignified, clean-hands image of themselves."
-Huey Newton [1]

January 1st, 2025: Thousands were gathered in New Orleans to watch the Sugar Bowl football game on New Year's Day when a man drove a pickup truck into a crowd of people, killing 14 and leaving many with injuries. This man was identified to be Shamsud-Din Jabbar, a U.S. veteran of the Afghanistan invasion who converted to becoming an ISIS member in the summer of 2023.[2] Following the attack, it was found that the 42-year-old veteran "posted five videos in the minutes and hours leading up to the attack," discussing killing his family and making news headlines highlighting ISIS's war against nonbelievers.[3] Despite decades and decades of legislation permitting extensive domestic surveillance, the FBI did not prevent nor flag Jabbar as a potential terrorist- in spite of the overt posts on social media that stated his plans to enact violence on innocent civilians and his clear connections to ISIS. So how did the FBI miss this when the evidence of planned harm was posted for the world to see? The United States'

---

[1]Huey P. Newton, *War Against the Panthers: A Study of Repression in America* (New York: Black Classic Press, 1997), 5.
[2]Casey Tolan et al., "New Orleans Attacker Discussed Plans to Kill His Family and Join ISIS in Chilling Recordings. Here's What We Know," CNN, January 3, 2025, https://www.cnn.com/2025/01/01/us/shamsud-din-jabbar-suspect-new-orleans-attack/index.html.
[3] Ibid.

methods of intelligence failed to prevent this horrific attack, another failure in a string of terrorist attacks since Bush declared the "War on Terror" in 2001.[4]

The "War on Terror" justified many government actions, including military invasions into Afghanistan and Iraq, as well as a pursuit of "weapons of mass destruction" that never existed.[5] But it also constituted a fundamental rewriting of the liberties the executive branch could take in violating U.S. citizens' most fundamental rights, the ones granted to them and protected by the Constitution- all under the elusive legislation of the USA PATRIOT ACT. The irony of the name is pertinent to the discourse surrounding terrorism as a whole, which we will discuss in the subsequent sections. Despite its name, the USA PATRIOT ACT was merely a continuance of a decades-long erosion of civil liberties and growing expedience of the surveillance state.

The Cold War carried a similar, yet distinct context in which the FBI was operating. It was a period that represented widespread fear of infiltrators and communism following World War II and the prominence of Russia as a communist world power. Reports of Soviet espionage in Canada, as well as reports from the FBI, launched a full-scale panic in Congress in 1946, leading to a review of all State Department employees to ensure that they all held proper loyalty to the United States.[6] The nation's second red scare was fully underway. At this time, the FBI utilized its ties to the press and to Congress, in particular Senator Richard Nixon, to stoke communist fear of government officials secretly having ties to Russia; the House Un-American Committee (HUAC), influenced by FBI reports and findings, began to indict government

---

[4]"Global War on Terror," George W. Bush Library, accessed March 14, 2025, https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror.
[5]Carroll Doherty, "A Look Back at How Fear and False Beliefs Bolstered U.S. Public Support for War in Iraq," Pew Research Center, March 14, 2023, https://www.pewresearch.org/politics/2023/03/14/a-look-back-at-how-fear-and-false-beliefs-bolstered-u-s-public-support-for-war-in-iraq/.
[6] Kenneth O'Reilly,"The FBI and the Origins of McCarthyism," *The Historian*, vol. 45, no. 3, 1983, p. 375, *JSTOR*, http://www.jstor.org/stable/24445173. Accessed 14 Mar. 2025.

workers as well as Communist Party leaders and questioned them on their loyalty to the nation.[7] Through the Smith Act, passed in 1940 criminalizing the act of advocating for overthrow of the government, hundreds of innocent citizens were arrested, most often trapped by the fear and paranoia of an overzealous government.[8] The Smith Act represented one of many legislative tools that allowed mass prosecution without proper evidence in the name of national security. Many leading the persecution of those accused of communism or colluding, from Supreme Court justices to employers, would later admit to doing so "... because they believed or claimed to believe that there was a serious threat to the nation's security."[9] The McCarthyism that ran rampant in the United States during the Cold War represents a particular pattern that is at the heart of this story: the dehumanization of civilians, leading to a violation of their rights, because of an overzealous perception of demonized groups as a national security threat. Racism and xenophobia often fueled which groups would be targeted, and the conduct most often targeted fell under the charge of "guilt by association." Individuals would be seen as threats for merely associating with certain political groups, actions trumped up and propagandized to seem as if there was a conspiracy to commit crime, or that merely associated with an undesirable group is itself a crime.

The historiography surrounding the Federal Bureau of Investigation's (FBI) use of counterintelligence techniques through COINTELPRO reaches considerable consensus regarding the intrusive and unconstitutional nature of the program, as well as the extent to which J. Edgar Hoover, director of the FBI, controlled and oversaw the implementation of such operations.[10]

---

[7] Ibid. 380
[8]Ellen Schrecker, "McCarthyism: Political Repression and the Fear of Communism," *Social Research*, vol. 71, no. 4, 2004, pp. 1045, *JSTOR*, http://www.jstor.org/stable/40971992. Accessed 14 Mar. 2025.
[9] Ibid. 1046
[10] David Cunningham, "The Patterning of Repression: FBI Counterintelligence and the New Left," *Social Forces* 82, no. 1 (2003): 213, https://doi.org/10.1353/sof.2003.0079.

Many historians quote Hoover's original memorandum that was sent to every field office, in which he advocated for the discreditation of activists and politically radical groups in service of their complete neutralization; hence, the historiographical sources I consulted all, to a certain degree, acknowledged that COINTELPRO was not a public safety operation, but rather a government-sponsored program against political dissenters.[11] Much emphasis was placed on how the FBI publicly humiliated their targeted members, specifically in regard to the consistent distribution of misinformation and inaccurate claims.[12] Moreover, the sources I consulted all confirmed that the FBI was privy to using the press through allying with certain publications. In doing so, the FBI was able to hone another tool necessary for the complete neutralization of their targets by running false or unflattering stories about their conduct. Much analysis within the historiography of COINTELPRO focused specifically on what practices were illegal and/or unconstitutional, without paying much study to how the act of illegality impacted the broader sense of rule of law. The repercussions of FBI conduct being illegal was not the main focus of most sources: harm inflicted was the main emphasis, which remains extremely important to the study of the FBI's behaviors and history.

Following the revelation of COINTELPRO, the discourse shifts from strictly discussing the FBI as a singular rogue agency to placing it in conversation with the other branches of government. This is especially prominent as legislation became the main avenue for the FBI and presidential administrations to legitimize their illegal and unconstitutional conduct following the Church committee findings. David Cole and James X. Dempsey's book *Terrorism and the Constitution-Sacrificing Civil Liberties in the Name of National Security* traces a disturbingly

---

[11] Pamela E. Pennock, "From 1967 to Operation Boulder: The Erosion of Arab Americans' Civil Liberties in the 1970s," *Arab Studies Quarterly* 40, no. 1 (2018): 44, https://doi.org/10.13169/arabstudquar.40.1.0041.
[12] John Drabble, "To Ensure Domestic Tranquility: The FBI, COINTELPRO-White Hate and Political Discourse, 1964-1971," *Journal of American Studies* 38, no. 2 (August 2004): 309, https://www.jstor.org/stable/27557518.

consistent pattern of civil liberty transgressions from the mid-1980s through the aftermath of 9/11 and the passage of the PATRIOT ACT, utilizing McCarthyism and COINTELPRO as stories of supporting context. Cole and Dempsey's position is that the FBI has surpassed its duty of keeping Americans safe and expanded its operation to policing political free speech and assembly.[13] They argue that despite the broad legislative weakening of the Constitution through legislation such as the Foreign Intelligence Surveillance Act of 1978 and Antiterrorism and Effective Death Penalty Act of 1996, the provisions have been ineffective in accomplishing their intended goal of catching terrorism and have instead reinforced the notion of the policing of citizens' personal lives, amongst other transgressions. *Terrorism and the Constitution-Sacrificing Civil Liberties in the Name of National Security* is mostly concerned with outlining how anti-terrorist legislation violates civil liberties, and argues that the lawlessness enacted by the FBI in the 1950s and in its early inception has remained a distinctive aspect of its practices. While fruitful in its analysis, I will examine how this quality interacts with the motivations of those within the Executive branch and Congress, zooming out to understand how all parts are working cohesively to imbue an unruly executive branch.

Laura K. Donahue's *The Cost of Counterterrorism- Power, Politics, and Liberty* was also extremely prevalent for me in tracing counterterrorism agendas. In comparing the United Kingdom's counterterrorism programs to the United States', Donahue draws conclusions regarding the deeper motives for the funding and enactment of such provisions and found that very little of the counterterrorism programs' actions are directed toward the interruption of terrorism. Donahue asserts that the counterterrorism agenda is a vicious cycle, wherein a horrific act occurs, Congress or Parliament throws money and freedom to the executive branch, and due

[13]Cole, David, and James X. Dempsey. *Terrorism and the Constitution: Sacrificing Civil Liberties in the name of national security*. New York City, NY: 3. New Press, 2006.

to the ineffective nature of the approach, this fails, restarting the cycle. Of this cycle, she states, "The assumption is that security and freedom align on a fulcrum, so that elevating one sends the other plummeting toward the ground. The dichotomy assumes that, when threatened, a state may deprive individuals of certain rights."[14] Donahue argues, through focusing on detention and interrogation, the financial backing of counterterrorism, surveillance measures, and free speech restrictions, that there is a pattern within both the U.K. and the U.S. of ignoring the damages inherent to counterterrorism provisions and reinforcing the power of the state as it does so. Donahue is mostly concerned with legislation and state rhetoric, whereas I am interested in examining the intricacies of the branches of government in relation to the FBI.

In general, historical scholarship tends to isolate each historical moment of surveillance expansion, identifying the cause and effect of each bill in the short term, with other aspects of the timeline being subject to the confines of a footnote or mention. I connect these key events to illustrate a larger story regarding Congress's role in the erosion of civil liberties and privacy, as well as how the executive branch has justified its unconstitutional operations and structure through propagandizing terrorist attacks. Legislation and surveillance violations worked in tandem to create the surveillance state in which we find ourselves today. I work to answer the question posed in other historiographic accounts regarding the implications of such unconstitutional behavior in the highest office; my historical perspective from writing during the early second Trump administration contributes to tracing the broader, long-term repercussions of the reckless political pining that became known as the "War on Terror."

This thesis relies on an archival base of Congressional hearings and reports, FBI memorandums, speeches, interviews, newspapers, brochures, posters, and pamphlets written by

[14]Donohue, Laura K. *The Cost of Counterterrorism: Power, Politics, and Liberty* (Cambridge: Cambridge University Press, 2008), 3.

revolutionaries targeted by the FBI. Congressional hearings provided a deeper understanding of the motivations and rhetoric surrounding the passage of such provisions, specifically in regard to the employment of terrorism as justification for pushing bills through without thoughtful consideration. Hearings also provided insight into Congress's memory of past FBI transgressions and whether or not they had any impact on perceiving the legislation in question. FBI memorandum and files, through the standard of meticulous records and notes, provided insight into how the Bureau operated and perceived political activists. The files revealed racism and misogyny from members of the Bureau, ranging from Hoover to agents at field offices: racism was rampant both in individual FBI agents, as well as the collective agency overall. Seeing how the special agents characterized their actions in opposition to those under their surveillance illuminated an organization less focused on law enforcement and more on the maintenance of American conservatism.

In approaching a source base heavy in government documentation, I challenge the individuals conveying such information and interrogating the motives, perspectives, and even statistics that were brought forth despite any notion of officiality. Questions as simple as: What agency is this official from, what does their office gain in the passage of this bill, and who's voice is not on the record? Congressional Hearings offer a very selective perspective on these bills, since there is an absence of testimony from those who actually suffer the long-term effects of the provisions, such as immigrants, members of the Arab community, humanitarian activists, and many more.

Enclosed in the following sections is the story of how tragic acts of terrorism were utilized by the FBI and the executive branch to assert the need for a surveillance state that prioritized national security over individual liberties. While terrorism was the guise, the

executive branch utilized these heightened freedoms to further political agendas and to weaken Congress's oversight power. In assigning the FBI and other intelligence agencies with the impossible task of preventing terrorism and maintaining national security at all costs, the FBI continually failed to meet this objective, thus propelling the argument for a further erosion of individual privacy and Constitutional provisions. I argue that the FBI cannot exist within the bounds of the Constitution if it is tasked with such an unattainable objective. Nevertheless, the executive branch has argued for and succeeded in grasping for more and more power in the name of national security, weakening Congress and the Judicial branch substantially as it reinforced the parameters of the surveillance state. Each piece of legislation discussed included statutes that curb Congressional oversight and surrender it to each intelligence agency, despite the mounting evidence that the executive branch consistently conspired with the intelligence community to further their political agendas. Congress passed each piece of legislation with a degree of concern for potential victims of terror, but also for their own concern in maintaining their political reputation.

The repercussions of this are immense. Political dissent, right to assembly, and religious freedom, as promised by the First Amendment, as well as the Fourth amendment protecting against unreasonable searches and seizures, have been compromised by the mere whisper of terrorism or national security threat. From COINTELPRO to our post-9/11 world, dissent has been targeted and suppressed by the executive branch and FBI. As the FBI runs roughshod over traditional due process protections and defendants' ability to defend themselves against charges, the invasion of privacy, incarceration, deportation, and even death have become consistent outcomes in United States law enforcement operations. National security methods have few bounds in the post-9/11 world, for the President and his cabinet are able to categorize individuals

as terrorists regardless of any procedural metric; once categorized as a terrorist, Constitutional human rights are now up for debate, and the promise of freedom and democracy are suspended, if not entirely eliminated.

I begin my analysis with COINTELPRO, as Hoover's construction of the FBI's procedure and culture had a lasting impact on how the agency operated and approached Congressional and executive accountability structures. In addition, I investigate certain sub-programs of COINTELPRO that illustrate the merciless nature of their operations, as well as an overarching trend of political repression rather than national security. I will be focusing on the FBI's conduct toward Black Liberation organizations, the Communist party, and Martin Luther King, Jr.

Next, I emphasize the findings and recommendations of the Church committee, as this Congressional oversight body recorded the abuses of power undertaken by the FBI and condoned by the executive branch from the agency's inception in 1908 to 1976, the date of the report's release. This report is significant because Congress acknowledged wrongdoing as a result of a lack of oversight and overzealous action toward national threats. It indicates a Congressional understanding of the double-edged sword that comes with emboldening intelligence agencies, as well as evidence of the executive branch's propensity for unconstitutional conduct.

Following the Church Committee, I relay the chronology of the legislation passed in the wake of the findings. I begin with the Foreign Intelligence Surveillance Act of 1978, which indicates the beginning of a trend of justifying FBI surveillance activity through legislation claiming to restrict FBI surveillance. Its provisions capitalize on the distinction between citizens and noncitizens in their right to privacy and due process- a distinction further exploited in the Antiterrorism and Effective Death Penalty Act of 1996. I then describe the Antiterrorism and

Effective Death Penalty Act of 1996 and its significance for citizens' and noncitizens' protections against the state, as well as the deeoer motivations behind it.

In the final installment, I describe the USA PATRIOT ACT's provisions. I discuss the disastrous consequences that the passage of the USA PATRIOT ACT two decades ago has created in both law enforcement and the wider implication for the United States' political institution. I connect the pattern of intrusive surveillance tied to political opposition to the United States government to the second Trump administration, connecting the development of a dominant executive branch into relevance within the modern American era.

This thesis documents the larger consequences of expanding federal powers to protect national security and prevent terrorism. When Congress and intelligence agencies adopt an "any means necessary" posture toward terrorism, informed by mostly fear and anecdotes of tragedy, the fundamental values of the United States- the rights and freedoms of every single individual- are at stake. By allowing the State to create circumstances in which the Constitution does not apply, we are creating a dangerous precedent that implicates all of us. As my thesis shows, repression and inhumane treatment at the hands of the State does not stop with its original target; the target moves and changes by design. That is how the executive continues to legitimize its political repression: through scapegoats. The cases below illustrate that accepting surveillance in the name of security is a slippery slope - and may make us all less secure in our rights.

COINTELPRO: Security or Order?

"I suggest that the philosophy supporting COINTELPRO is the subversive notion that any public official, the President or a policeman, possesses a kind of inherent power to set aside the Constitution whenever he thinks the public interest, or national security warrants it. That notion is the postulate of tyranny. Law enforcers cannot be lawbreakers."[15]
-Hearing Before the Civil Rights and Constitutional Rights Subcommittee of the Committee on the Judiciary

In the mid-1950s, J. Edgar Hoover initiated the FBI "Counterintelligence Program," also known as COINTELPRO, by sending out a directive to all FBI field offices nationwide. In Hoover's initial memorandum regarding the establishment of COINTELPRO for Black Nationalist groups, he explicitly stated that "the purpose of this endeavor is to expose, disrupt, misdirect, discredit or otherwise neutralize…" the groups and individuals that were creating "civil disorder."[16] This program sought to repress political discourse through covert techniques, including but not limited to warrantless wiretaps and break-ins, media manipulation, false arrests, and the use of informants.

By design, and because “civil disorder” was loosely defined, many groups and individuals were subjected to surveillance. Any data or information collected through these secretive counterintelligence processes would be placed in a file for the specific person or group, which could be disseminated and shared throughout the FBI. While Hoover explicitly ordered and enforced a culture where agents were required to receive supervisory approval for their covert operations, he also encouraged agents to be creative as they conceived of possible operations. He sought to maintain strict authority over the bureau while also condoning a lack of procedural standars, creating an environment that lacked transparency and accepted questionable

[15]U.S. Congress, House of Representatives, Civil Rights and Constitutional Rights Subcommittee of the Committee on the Judiciary: Hearings on COINTELPRO, 94th Cong., Second sess., 1974, 3.
[16]FBI, "Subject: Counterintelligence Program | Black Nationalist-Hate Groups | Internal Security," August 25, 1967, Albany.

tactics without discourse regarding the necessity of these actions. In addition, FBI heads technically needed to seek approval from the Attorney General, but this "check" on power was often avoided by FBI agents exploiting loopholes, such as only seeking authorization for a wiretap once, then never again, regardless of the months or years that the wiretap was live.[17]

FBI offices across the country were tasked with creating COINTELPRO operations. Regardless of the acts of violence COINTELPRO may have prevented, there is no question that the initiatives as described below are nothing less than lawless, destructive and against the fundamentals upon which the United States government was founded; a fact that was nonetheless justified by national security concerns and an environment in which raising concerns was retaliated against. While many operations have been disclosed through Congressional hearings, as discussed in the following section, not all have been disclosed. There is speculated to be many cover-ups and withholding of information from Congress and the public record, leaving what is described in the following section can be regarded as a glimpse to the full extent of the COINTELPRO operations, an indication of the culture of boundless executions of power and repression.[18] The FBI engaged in a federal program of psychological and physical terror against those who resisted the state and its intelligence system, leaving no method, no matter how destructive, unconsidered.

The Communist Party and Guilt by Association (or opposition)

The Communist Party was the first group targeted by Hoover through COINTELPRO in 1956, with the objective "...to 'cripple or destroy' the CP as a *political* rather than 'criminal'

[17]Church Committee. *The FBI, COINTELPRO, and Martin Luther King, Jr.* Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities. Washington, DC: U.S. Government Printing Office, 1976.

[18]W. Churchill and J. Vander Wall, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent* (South End Press, 1990), 303.

entity."[19] The focus on the Communist Party as a threat, particularly a foreign threat, is significant in that it displays the beginning of investigating citizens under the pretense that they represent a "foreign threat." Intrusive counterintelligence mechanisms were greenlit under the premise that they were being employed against enemies of the state. This categorization was murky by design, and invasive, unconstitutional practices began to be enacted against citizens outside of the Communist party. Laura K. Donahue raised this concern in her discussion of COINTELPRO, putting forth the phenomenon that "While [the Communist Party of America, Socialist Worker Party, and the Ku Klux Klan] may be exactly the types of organization we might want the government to be monitoring, the salient point about these surveillance programs is that- whatever their motivation and target- they almost inevitably tend to expand."[20] The guilt by association principles captured more than Communist Party leadership and members: the mere defense of communist ideologies or members, or opposition to executive branch policies, could subject a citizen's life to intervention by the FBI. The FBI's targeting of the Communist Party raises insight into how the threat of foreign intrusions can quickly spiral into a government campaign of terrorizing certain domestic groups, extremely disproportionate to the degree of criminality displayed.

Following Hoover's orders, methods began to be proposed by FBI offices attempting to suppress the Communist party. FBI field agent's knowledge of their community benefitted the project, for many operations involved stoking conflict between the party and with possible community enemies such as unions, churches, and other groups such as the La Cosa Nostra, an Italian criminal syndicate. Memorandums to the director were explicit in their intentions, with a

---

[19] Ward Churchill, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent* (Boston: South End Press, 2002), 33.
[20] Donohue, Laura K. *The Cost of Counterterrorism: Power, Politics, and Liberty* (Cambridge: Cambridge University Press, 2008), 225.

memorandum from Operation Hoodwink describing that "the purpose of this memorandum is to recommend a long-range counterintelligence program designed to provoke a dispute between the Communist Partyand La Cosa Nostra under the code name of Hoodwink."[21] As with other targeted groups, the FBI aspired to create in-fighting, and in this case, pitting the Communist Party against a violent organized criminal group via fabricated letters, artificially creating tension, speaks to the FBI's hope for a darker outcome than simply chaos, but rather of violence and death.[22] An overarching pattern that Operation Hoodwink displays is that in the FBI's environment where the ends justify the means, and the threat of subversive activity has escalated in perception to such a degree, human bodies become expendable. The right to a fair trial became null in the pursuit of neutralization; over and over, the FBI reasserted its role as police, judge and jury, assuming guilt based on suspicion rather than evidence, inserting its own version of vigilante justice into its operations. The threat of communism became, both publicly and privately, justification for democracy to be paused in the name of national security, allowing the FBI to consolidate an extreme degree of discretion in determining the fate of citizens' lives- all due to holding beliefs that do not coincide with presidents or J. Edgar Hoover.

Operation Hoodwink, as well as much of the FBI's operations during the second Red Scare, represent a departure from protecting citizens from foreign influence to interference in the personal activities of Americans. Yet the operations did not simply involve those with communist notions and/or beliefs: its political targeting spanned much further than that. Political opposition to the House Un-American Activities Committee was also closely monitored and punished. For example, the FBI " the FBI targeted the entire Unitarian Society of Cleveland in

[21] F.J. Baumgardner, memorandum to file, "Subject: Hoodwink," October 4, 1966, FBI Records, National Archives and Records Administration.
[22] National Institute of Justice, *La Cosa Nostra or LCN: The Mafia in America* (Washington, DC: U.S. Department of Justice, 2006), https://www.ojp.gov/pdffiles1/nij/218555.pdf?ftag=MSF0951a18#:~:text=La%20Cosa%20Nostra%20or%20LCN,United%20States%20since%20the%201920s.

1964 because the minister and some members circulated a petition calling for the abolition of HUAC and because the church gave office space to a group the FBI did not like [and] In 1965, the FBI tried to block a City Council campaign of a lawyer who had defended Smith Act defendants."[23] The FBI could wield its tactics from COINTELPRO to further manipulate communities to achieve the political results they sought after: a maintenance of the status quo, strong executive power, and white supremacy.

The Intersection of Fear of Communism and Racial Justice

Claims that Martin Luther King, Jr. was a communist were pushed by the FBI to the media in order to discredit him and his advocacy for racial and economic justice, since the allegation of militancy waged against other Black liberation groups could not be employed due to King and his followers' adherence to nonviolence. Moreover, the FBI engaged in warrantless wiretapping and break-ins to solidify suspicions of his communist allegiances that could be used to discredit him as his message of racial justice and civil rights gained traction. When the claims of communism were found to be moot despite various repeated intelligence operations, the FBI still attacked his closest advisors, employing guilt by association narratives at every turn.

In the FBI/JFK taskforce's "Martin Luther King, Jr., A Current Analysis" in 1968, the FBI utilized circumstantial evidence in order to make false connections and assertions regarding King's behavior. For instance,

> The reason King enjoyed this close relationship with communists is best explained by the fact that Levison, in February, 1962, passed the word to Gus Hall, General Secretary, CPUSA, "King is a whole-hearted Marxist who has studied it (Marxism), believes in it and agrees with it, but because of his being a minister of religion, does not dare to espouse it publicly." Further, in March, 1962, Levison told a CPUSA functionary that King was concerned about a "communist label" being "pinned on us" but that, at the same

[23]Ward Churchill, *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent* (Boston: South End Press, 2002), 42.

> time, he wanted to do everything possible to evidence friendship toward the Soviet Union. In addition, King has been described within the CPUSA as a true, genuine Marxist-Leninist "from the top of his head to the tips of his toes." The feeling within the CPUSA at that time was, and still is, that King definitely follows a Marxist-Leninist line.[24]

Two close advisors being active in the Communist Party filled in the gap for probable cause, despite the fact that the excessive wiretaps conducted never found King to be fully aligned with the Communist Party.[25] The FBI's conflation of his associates being aligned with the communist party with Martin Luther King, Jr. being implicated as a conspiring communist and national security threat illuminates how the FBI viewed communism as a discrediting accusation. Moreover, it shows that even with extremely scarce evidence that M.L.K., Jr. was a communist, such claims could still be utilized as justification for unconstitutional invasions of privacy. As would be revealed in the Church Committee, the FBI targeted King and utilized any accusation possible in order to discredit him publicly and criminally, finding that J. Edgar Hoover had a personal vendetta against him and worked to reprimand King in every aspect.

The mere suspicion of communist influence led to a decade-long investigation into King- not for criminal or intelligence concerns, but rather a concern of his movement gaining traction. Excessive use of warrantless wiretaps, break-ins and informants were employed in order to fully "neutralize" King as a political threat. Such attacks were personal in nature, intent on destroying King's reputation and personal livelihood as well as his political movement of liberation. The beratement escalated to extreme targeting. In one instance, the FBI mailed King a recording of a wiretapped conversation, which "…was intended to precipitate a separation between Dr. King

---

[24] FBI, *"Martin Luther King, Jr., A Current Analysis,"* March 12, 1968, accessed March 17, 2025, 5, https://www.archives.gov/files/research/jfk/releases/104-10125-10133.pdf.

[25] Church Committee. *The FBI, COINTELPRO, and Martin Luther King, Jr.* Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities. Washington, DC: U.S. Government Printing Office, 1976, 17.

and his wife in the belief that the separation would reduce Dr. King's stature [and] was accompanied by a note which Dr. King and his advisors interpreted as a threat to release the tape recording unless Dr. King committed suicide."[26] Was this a "counterintelligence" tactic to suppress the Communist Party? The FBI, and Hoover in particular, sought to destroy and remove King from the Civil Rights movement due to his success as an icon and speaker, using American tax dollars.[27] The Church committee found that communism was merely a guise for the surveillance, rather than the true cause. Moreover, as momentum around King's calls for economic and racial justice grew, the FBI began to increase its public accusations of the Southern Christian Leadership Conference and Martin Luther King, Jr. enacting a communist movement. The counterintelligence tactics used against King and his associates offer a case study of how the FBI used guilt by association and Communist threats in order to enact a political repression campaign. Even more disturbingly, the Presidents and Attorney Generals during the operations had acute knowledge of the lengths to which the FBI was violating civil liberties in order to completely destroy the civil rights movement.[28] As we will see shortly, King was one of many Black Americans who were personally and collectively targeted for their opposition to systemic white supremacy in the United States.

---

[26] Ibid, 7.
[27] David J. Garrow, "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring the Effects," *The Public Historian* 10, no. 4 (1988): 5–18, JSTOR, https://doi.org/10.2307/3377831, accessed March 18, 2025.
[28] Church Committee. *The FBI, COINTELPRO, and Martin Luther King, Jr.* Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities. Washington, DC: U.S. Government Printing Office, 1976, 96.

Black Nationalist and Civil Rights Groups

The surveillance of Black organizations had persisted long before, through both COINTELPRO and other general activities, but became fully actualized when J. Edgar Hoover advised FBI offices across the nation to open files on "Black Nationalist Groups" in 1967. Hoover's language was harsh, yet encompassed the full nature of the task he was assigning to the field offices: he advised that each office should position themselves to gather as much information about Black Nationalist/Liberation groups in order to fully capitalize on intelligence opportunities to discredit such organizations. This original memorandum also points to the underlying racial bias that justified Hoover's stance, especially when describing a pillar of this operation: "The pernicious background of such groups, their duplicity, and devious maneuvers must be exposed to public scrutiny where such publicity will have a neutralizing effect."[29] Hoover's language in discussing Black people, especially activists, illustrates his conflation of their race with a proclivity to violence and "devious maneuvers," mirroring a deeper racial prejudice. Hoover later added to this characterization an attribution of criminality and immorality, further playing into the racial archetype of Black people having a higher propensity for crime and violence. At no point during this memorandum, or any proceeding, was the cause for the prevailing unrest and resistance acknowledged or discussed.

Given the invasive nature of such instruction, the objective was not simply the maintenance of public safety or civil order- it was far more nefarious. While the justification of "national security" is evoked throughout memorandums, hearings, and public statements by the FBI, the COINTELPRO activities toward "Black Nationalist" groups were rooted in racism and

---

[29] FBI, memorandum by SAC, Albany, 8/25/1967, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%201/view

the FBI's intent on preventing the civil rights movement's calls for equity and autonomy from succeeding. Under the pretense of communist infiltration and/or threats of violence, Hoover and the Bureau managed to target and destroy individuals and organizations ranging from the Revolutionary Action Movement to figures such as Martin Luther King, Jr. The groups included in this file range in tactics, ideologies, and most importantly, tendency toward violent resistance, yet all are treated as enemies of the state nonetheless.

This initial directive was added upon even more explicitly in a letter memorandum to Albany in March of 1968. Within this memorandum, COINTELPRO's objective of squashing any potential Black power and civil rights movement is of the highest priority, even higher than preventing violence. Further, in encouraging any means necessary, the Bureau illustrated how its adherence to white supremacy surpassed its loyalty to being an intelligence and law enforcement agency. As laid out below, the guidelines were specific in desired outcome:

> 1. Prevent the coalition of militant black nationalist groups. In unity there is strength; a truism that is no less valid for all its triteness. An effective coalition of black nationalist groups might be the first step toward a real "Mau Mau" in America, the beginning of a true black revolution.
> 2. Prevent the rise of a 'messiah' who could unify, and electrify, the militant black nationalist movement[…]King could be a very real contender for this position should he abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism […]
> 3. Prevent violence on the part of black nationalist of black nationalist groups. This is of primary importance, and is, of course, a goal of our investigative activity; it should also be a goal of the Counterintelligence Program. Through counterintelligence it should be possible to pinpoint potential troublemakers and neutralize them before they exercise their potential for violence.
> 4. Prevent militant black nationalist groups and leaders from gaining respectability, by discrediting them to three separate segments of the community[…] You must discredit these groups and individuals to, first, the responsible Negro community. Second, they must be discredited to the white

> community, both the responsible community and to "liberals" who have vestiges of sympathy for militant black nationalist simply because they are Negroes[…][30]

Not only is preventing violence listed third, but it is framed in the context of oppressing Black individuals and groups from attaining power, targeting individuals and condoning smear campaigns in order to discredit calls for racial justice and Black liberation. The tactics described surpass intelligence means or limiting groups' capabilities for harm; the intention of destroying and undermining the Civil Rights and Black Liberation movements is the goal first and foremost. The FBI sought to create factionalism within racial groups in order to sabotage further organizing efforts while simultaneously targeting their personal life and image within the media. And these attempts were successful: as the Church committee would later quantify "During 1967-1971, FBI headquarters approved 379 proposals for COINTELPRO actions against 'black nationalists'[... and] utilized dangerous and unsavory techniques which gave rise to the risk of death and often disregarded the personal rights and dignity of the victims."[31] The scope of the 'Black Nationalist' operations was large and far-reaching.

One means of 'neutralizing' the threat of activism was placing Black individuals associated with Black power or civil rights organizations in prison or jail for evidenced or fabricated crimes. If the alleged crimes could be substantiated, that evidence would typically be collected due to the egregious monitoring and surveillance of the suspected individuals, as can be seen with the FBI's involvement with the Revolutionary Action Movement (RAM). Enclosed in a memorandum from the Philadelphia field office in 1967, the operations were described, for "When activity started with the appearance of known Negro extremists native to Philadelphia…

---

[30] FBI, memorandum by SAC, Albany, 3/04/1968, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%201/view

[31] U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 88.

a full-time surveillance by police went into effect..[and] Any excuse for arrest was properly implemented by arrest. Any possibility of neutralizing a RAM activist was exercised."[32] The Revolutionary Action Movement (RAM) was a Black power organization known to collaborate and organize with the Black Panther Party and the Student Nonviolent Coordinating Committee, often supporting calls for urban guerilla warfare and militarism, as well as creating a Black Nationalist state.[33] RAM knew it was being targeted by the FBI, and that the FBI was "...using the word RAM as an excuse to arrest brothers and sisters not even in the movement,"[34] thus pointing to racial profiling Black people in the Philadelphia area as a result of COINTELPRO tactics. Indeed, insurrectionary militias were cause for concern during the civil unrest of the 1960s and 1970s; however, unsupported allegations of crime or association as a means for destroying Black people's ability to participate in civil action is against the due process of the Constitution. This is an action unjustified by the claim of national security, for Black individuals were arrested under false pretenses, not for any crimes they actually committed that could be perceived as a national security threat. For instance, one young Black man was arrested for passing out RAM flyers and was then charged with "inciting to riot," an unwarranted claim given the action.[35]

What is most significant when considering this example in the context of COINTELPRO is how the mechanisms used to destroy the Revolutionary Action Movement informed the FBI's covert techniques. As Curt Gentry's biography *J. Edgar Hoover | The Man and the Secrets* notes,

---

[32] FBI, memorandum by SAC, Philadelphia, 08/30/1967, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%201/view

[33]Muhammed Ahmed, *History of RAM* (1979; Freedom Archives), accessed March 20, 2025, https://freedomarchives.org/Documents/Finder/DOC513_scans/RAM/513.RAM.History.of.RAM.pdf

[34] Ibid.

[35] FBI, memorandum by SAC, Philadelphia, 08/30/1967, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%201/view

"One of the most effective tactics, of course, was to persuade local police to arrest the party leaders, on every possible charge, until they could no longer make bail. Used earlier against R.A.M., the Revolutionary Action Movement, in Philadelphia in 1967, it had proven so successful that the organization was rendered totally ineffective."[36] In completely disrupting the organization's ability to operate by imprisoning members, Hoover was able to remove key individuals that were integral to the Black Power and civil rights movement. This set a precedent of colluding with criminal justice enforcers- i.e., police- in order to undermine individuals *suspected* of subversive activity.

The work between the FBI and Los Angeles Police Department to imprison Geronimo Ji Jaga Pratt illustrates such tactics as well, for it was all in an effort to suppress his work within the Black Panther Party. After Bunchy Carter was killed, Pratt was called to take his place as Minister of Defense for the Black Panther Party. This made Pratt a target for the FBI due to his duties in leadership within the organization, teaching self-defense and implementing tactics for protecting their members and offices.[37] His position was enough to justify utilizing COINTELPRO against him. The FBI's efforts to neutralize Pratt did not start with the murder charge; rather, as Pratt noted, he realized he personally was targeted by COINTELPRO when he "...was shot in [his] bed, four days after the assassination of Fred Hampton in 1969 [and] a very similar thing happened when a sister and [him] were in bed."[38] As documented in late Congressman Ronald V. Dellums' statement, "after failing several times to stop his work and discredit him, the FBI and police finally framed Geronimo for a crime they knew he did not commit," by concealing information of his alibi for the murder as well as providing information

---

[36]Curt Gentry, *J. Edgar Hoover: The Man and His Secrets* (New York: W.W. Norton & Company, 1991), 620.
[37]Heike Kleffner, "The Black Panthers: Interviews with Geronimo Ji-Jaga Pratt and Mumia Abu-Jamal," *Race & Class* 35, no. 1 (1993): 9–26, https://doi.org/10.1177/030639689303500103.
[38] Ibid.

from an informant with a conflict of interest.[39] His conviction was overturned, with claims of the FBI attempting to keep him in solitary confinement in prison for eight years, and spending a total of 27 years in prison.[40] This case illustrates the lengths to which the FBI employed COINTELPRO to discredit and neutralize individuals of Black power groups through working with local police departments; COINTELPRO's tactics have been shown now as rounding up political prisoners. Moreover, it shows how false and exaggerated charges were used effectively as a tactic to discredit and remove prominent figures from organizing within Black power groups.[41]

Another tactic used along with the collusion with local law enforcement was eliminating possible threats. This could be achieved in multiple ways, through law enforcement officers or by pitting certain groups against each other. As mentioned by Pratt above, the murder of Fred Hampton was precipitated by the FBI's use of informant information in combination with anonymity through the cover of local law enforcement. Historian Howard Zinn describes this phenomenon, along with its impact on the life of Fred Hampton, as "... a planned pattern of violence against black militant organizers, carried on by the police and the Federal Bureau of Investigation," and noted that "...a squad of Chicago police, armed with a machine gun and shotguns, raided an apartment where Black Panthers lived […] Years later, it was discovered in a court proceeding that the FBI had an informer among the Panthers, and that they had given the

---

[39] Ronald Dellums, "Geronimo Pratt: Frame-Up Exposed," Freedom Archives, accessed March 20, 2025, https://freedomarchives.org/Documents/Finder/DOC513_scans/BPP_General/513.BPP.GEN.g.pratt.frame-up.exposed.by.ron.dellums.pdf.

[40] Boyer, Edward J, "Pratt Files Civil Rights Suit Against LAPD, FBI; Court: Ex-Black Panther Wrongly Convicted of Murder also Targets Witness. He Spent 27 Years in Prison before a Judge Ordered His Release.: [Home Edition]," *Los Angeles Times,* May 29, 1998, https://www.proquest.com/newspapers/pratt-files-civil-rights-suit-against-lapd-fbi/docview/421269165/se-2.

[41] FBI, memorandum by SAC, San Diego, 12/15/1969, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%203%20%28Final%29/view

police a floor plan of the apartment, including a sketch of where Fred Hampton slept."[42] The FBI saw Fred Hampton as a potential rising leader within both the Black Panther party and the Black Liberation movement, and therefore needed to eliminate his potential for civic disorder in order to abide by Hoover's initial COINTELPRO Black Nationalist orders.[43] By working with local police to construct an operation that meshed intelligence means and criminal matters, the FBI effectively appointed itself the arbiter of justice above the courts. While the Chicago police did have a warrant to raid the vicinity, that does not explain nor excuse eighty-two to two-hundred rounds of ammunition fired, especially considering that Hampton was found dead in his bed, most likely asleep. This state-sanctioned violence surpasses simple counterintelligence; rather, it speaks to a stronger intention to oppress and restrict Black people and their organizations. Regardless of the proclivity to violence of the Black Panthers as an organization, Hampton was not convicted, nor sentenced, nor charged. The FBI murdered a twenty-one-year-old man- a continuity in a larger pattern of Bureau violence in the name of COINTELPRO.

Given many of the Black Nationalist groups' philosophies around open carry and arming themselves for self-defense, the FBI sought to exploit the access to firearms and internal conflicts in order to incite violence, and on many occasions, death.[44] Mentioned additionally in the initial memorandum by Hoover that opened the "Black Nationalist" operations was the strong emphasis on stoking interpersonal conflicts to create in-fighting.

> "Efforts of the various groups to consolidate their forces or recruit new or youthful adherents must be frustrated. No opportunity should be missed to exploit through counterintelligence techniques the organizational and personal conflicts of the leaderships

---

[42]Howard Zinn, *A People's History of the United States* (New York: HarperCollins, 2005), 463.
[43]Curt Gentry, *J. Edgar Hoover: The Man and His Secrets* (New York: W.W. Norton & Company, 1991), 620.
[44]FBI, memorandum by SAC, Boston, 8/26/1969, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%2019/view
"The situation is being watched and consideration is being given as to how the situation may be exploited to build enmity between the two groups"

> of the groups and where possible an effort should be made to capitalize upon existing conflicts between competing black nationalist organizations."[45]

FBI field offices were instructed to utilize personal relationships as a means for disrupting the operations and activism of Black Power groups. Pitting different Black Liberation groups offered the FBI a way of both eliminating potential "subversives" with plausible deniability while also creating evidence to corroborate the claim that these organizations were violent and a threat to national security.[46] The division between the United Slaves organization and the Black Panthers was consistently exploited by the FBI to create violence between the groups. One means of doing this, which was a consistent tactic throughout COINTELPRO, was spreading rumors, either through direct phone calls, letters or other means. One example of such instigation comes from the Los Angeles Special Agent Office, in which the Bureau described how they were

> preparing an anonymous letter for Bureau approval to which will be sent to the Los Angeles Black Panther Party (BPP) supposedly from a member of the "US" organization in which it will be stated that the youth group of the "US" organization is aware of the BPP "contract" to kill RON KARENGA, leader of "US," and they, "US" members, in retaliation, have made plans to ambush leaders of the BPP in Los Angeles.
>
> It is hoped this counterintelligence measure will result in a "US" and BPP vendetta.[47]

---

[45] Id.

[46]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976).
The quote best illustrating this tactic is laid out by the House of Representatives Committee on Civil Rights. Mention is additionally made of the FBI valiantly reporting that four men died due to a shootout between the U.S. group and the Black Panthers, attributing the success to the COINTELPRO program against the Black Liberation Party. As observed: "The Bureau also encouraged "gang warfare" between violent groups. An FBI memorandum dated November 25,1968 to certain Field Offices conducting investigations of the Black Panther Party ordered recipient offices to submit 'imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP.' Proposals were to be received every two weeks. Particular attention was to be given to capitalizing upon differences between the Panthers and US, Inc. (another "Black Nationalist" group), which had reached such proportions that "it is taking on the aura of gang warfare with attendant threats of murder and reprisals."

[47]FBI, memorandum by SAC, Los Angeles, 11/29/68, accessed March 18, 2025, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%207/view.

This "counterintelligence measure," and those similar looking to heighten the tensions between them, resulted in the loss of two lives - Bunchy Carter and Jon Huggins- at the hands of two United Slaves members.[48] In another memorandum, the "results" of widespread violence and shootings in predominantly Black communities were attributed to COINTELPRO's efforts to widen disagreements. Calls for further tactics were encouraged following the murder the FBI caused of a different BPP member due to tensions with the United Slaves.[49] FBI tactics of encouraging gun violence, in an effort to eliminate prominent members of each organization and prevent unification, not only demonstrates how closely Hoover's initial orders were being followed, but how far the FBI was willing to go to suppress Black Liberation, even if it meant temporarily sacrificing U.S. citizens and peace in certain localities.

Spreading rumors or falsifying letters also predominated the Bureau's attempts to create in-fighting. Anonymous letters with claims of wrongdoing on the part of main leaders were frequent, and in many memorandums, the FBI capitalized on informant information of personal details to make their letters more convincing and inflammatory.[50] The Bureau would include specific details, stating members of a particular group were going against that group's ideology: embezzling funds and being sexually promiscuous were common accusations used to inspire fragmentation. In one memorandum from the Bureau office in Detroit, they lay out a counter-intelligence operation sending a letter to "...a representative number of Detroit BPP leaders and members… [and] will be signed 'A Concerned Sister' with the expectation that it will

---

[48] Ward Churchill, *The COINTELPRO Papers: Documents from the FBI's Secret Wars against Domestic Dissent* (San Francisco: City Lights Books, 2002), 133.
[49] FBI, memorandum by SAC, San Diego, 8/20/1969, accessed March 18, 2025, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%2020/view.
[50]Curt Gentry, *J. Edgar Hoover: The Man and His Secrets* (New York: W.W. Norton & Company, 1991), 619.

cause suspicion of [REDACTED], a Detroit BPP leader…"[51] Consistently, these efforts were impactful, as symbolized in the correspondence between Huey Newton and Eldridge Cleaver after Cleaver left the United States as a fugitive, where "...the FBI's job was much simplified when fugitive Cleaver fled to Algeria via Canada and Cuba [because] With thousands of miles separating the two leaders, the Bureau used bogus communications and missing correspondence to widen the split, so successfully playing on their ideological differences, egos, and paranoia that each man believed the other had him marked for assassination"[52] Inserting rifts in between working relationships of Black Liberation groups lent itself to disrupting organizations' structure, leadership, and overall ideology. The Bureau had constructed such an environment of fear and terror within these activist spaces that it was very easy for false rumors to be taken seriously, given the ongoing pattern of tragedy at the hands of the FBI. Trust within groups eroded, and the capacity for the Black Panthers and other such groups to organize and recruit effectively when any tension possible was being intensified by the Bureau made this COINTELPRO strategy particularly effective at putting out the fervor of the Black Liberation movement.

Letter writing and planting false information through calls had another use, as well. Informants and FBI presence was known by Black Liberation groups, and even that knowledge was flipped to create dysfunction within these organizations to such an extent that many became paranoid of informants' identities. Oftentimes, these groups were unaware of the warrantless wiretapping and "black bag jobs" that the FBI was engaging in, which was an additional source of information besides their use of informants. Regardless,

> When a member of a nonviolent group was successfully mislabeled as an informant, the result was alienation from the group. When the target belonged to a group known to have

[51] FBI, memorandum by SAC, Detroit, 6/20/1969, accessed March 18, 2025, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%2018/view.
[52]Curt Gentry, *J. Edgar Hoover: The Man and His Secrets* (New York: W.W. Norton & Company, 1991), 620.

> killed suspected informants, the risk was substantially more serious[...]it was used at least twice after FBI documents expressed concern over the possible consequences because two members of the BPP had been murdered as suspected informants.[53]

The FBI flipped its own presence and was able to use its "an agent behind every mailbox" impression to further target and destroy Black Liberation groups. Most importantly, there is substantial evidence that the Bureau knew the fatal effects of spreading rumors regarding informant statuses and continued to use this tactic to decrease membership and eliminate particularly strong members. This once again points to a larger intention that surpasses keeping American communities safe and instead focuses on squashing dissent and executing those pushing for systemic change and more rights for Black people. "Neutralizing subversives" was not limited to limiting violent action, but neutralizing the presence of Black activists overall.

Rumors and misinformation also served the FBI in accomplishing evictions from personal residences in addition to group gathering points.[54] Calls to spouses, family members, and employers were common for COINTELPRO operations. One instance symbolic of this strategy can be referred to in the Bureau's New York Office, for "Anonymous and various other pretext telephone calls will be made to the below-listed subjects for the purpose of disruption, misdirection and to attempt to neutralize and frustrate the activities of these black nationalists."[55]Any potential to sabotage personal connections and finances was capitalized upon to the best of the Bureau's ability: the goal was full personal and political destruction, with the

---

[53]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 218.
[54]Curt Gentry, *J. Edgar Hoover: The Man and His Secrets* (New York: W.W. Norton & Company, 1991), 619.
[55]FBI, memorandum by SAC, New York, February 18, 1968, *COINTELPRO - Black Extremists*, https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/COINTELPRO%20Black%20Extremist%20Part%2001/view.
This mention was in regard to the Student National Coordinating Committee leader Stokley Carmicheal. A constant target of the FBI, at one point the Bureau went as far as calling his mom to claim there was a hit out against Carmicheal, causing both to fear potential murder. This forced Carmicheal to have to pause his work with SNCC to ensure his safety.

Bureau enacting COINTELPRO to retaliate against those in a struggle of resistance with the government and its systems.

The tactics illustrated within the "Black Nationalist" initiative in COINTELPRO represent an agency intent on using any tactic necessary in order to maintain civil order. Murder, manipulation, and breach of privacy were all accepted and encouraged by Hoover and the Bureau during this period, with field offices ceasing COINTELPRO operations when Black organizations were no longer present within their jurisdiction. The goal was to prevent effective assembly and organization, justified by violence and militance, even if such a program was giving out Breakfast to Starving Children, as the BPP famously did.[56] The Bureau's true fear was the success of Black Liberation and systemic reform, leading to an increase in autonomy for Black America and an unstripping of the white supremacy that allowed for the United States government to exploit Black Americans, particularly in the working class.

[56] "Free Breakfast for Children: Nonviolent Legacies of the Black Panther Party," *The Nonviolence Project*, February 4, 2024, https://thenonviolenceproject.wisc.edu/2024/02/04/free-breakfast-for-children-nonviolent-legacies-of-the-black-panther-party/.

The Church Committee: A Congressional Reckoning

The Construction

The Church Committee, properly known as the "Select Senate Committee to Study Governmental Operations with Respect to Intelligence Activities," was constructed in 1975 following many allegations and leaked documents alluding to intelligence misconduct. Prior to the Media Burglary, the Federal Bureau of Investigation (FBI) was opaque in its operations: the public and much of Congress was not privy to how or what operations the FBI was pursuing, nor what practices were considered acceptable by the Bureau. As Frank Church, the leader of the Committee and Democratic Senator from Idaho, notes in the report's preface, the establishment of this committee was unprecedented, for it was "...the first substantial inquiry into the intelligence community since World War II."[57] Prior to this investigation, Congress and the Executive office were resigned to relying on J. Edgar Hoover's testimony and budget appeals- much of which would later be found to be fraudulent or inflated in order to increase funding.[58] Upon the revelations of the Media Burglary, as discussed in the previous section, everything changed. Congress was left blindsided by the revelations of the existence of COINTELPRO and its subsequent defiance of lawful investigation standards. Shortly thereafter, a Congressional oversight committee was organized in order to investigate the scope of such unlawful activities fully and to identify what failures of checks and balances enabled the agency's rogue behavior.

The Church committee was organized in January of 1975 and consisted of 15 members, with Frank Church of Idaho as the Chairman of the committee, hence its colloquial name of

---

[57]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), v.

[58]Betty Medsger, *The Burglary: The Discovery of J. Edgar Hoover's Secret FBI* (New York: Alfred A. Knopf, 2014).

"Church Committee." Other members included John G. Tower, Philip A. Hart, Walter F. Mondale, Walter D. Huddleston, Robert Morgan, Gary Hart, Howard H. Baker, Jr., Barry Goldwater, Charles McC. Mathias, and Richard S. Schweiker. Stated in the committee's preface was the immediate objective of investigating "...the extent, if any, to which illegal, improper, or unethical activities were engaged in by any agency of the Federal government,"[59] which abided by the Senate Resolution that initiated the committee. This objective was broken into four parts: (I) Introduction and Summary, (II) the Growth of Domestic Intelligence, 1936 to 1976, (III) Findings, and (IV) Conclusions and Recommendations.

Investigating the degree to which intelligence agencies abided by Constitutional principles was a large impetus in the framing of the committee's findings, especially in regard to the failures of such checks and balances. The committee was interested in the failures of the system that enabled such egregious disregard for the law and democratic principles. In this deeper purpose, Church laid the basis for later recommendations of tighter checks and balances of the intelligence agencies. It was stated clearly, however, that the Committee's goal was not to bring about any such prosecution or reprimand, as they felt that responsibility should be left to the courts exclusively; rather, "It is far better suited to determine how things went wrong and what can be done to prevent their going wrong again, than to resolve disputed questions of individual 'guilt' or 'innocence.'"[60] Hence, holding members of the intelligence community accountable for their wrongdoings did not occur federally, which became a burden for the victims of the FBI to undertake through litigation. The committee analyzed the faults in policy and violations of intelligence organizations as a whole, thus leaving guilty/implicated individuals

[59] Senate Resolution 21, January 27, 1975, Sec. 1.
[60]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), viii.

shielded from consequences by the supposed "check" on bureau power. The Committee's nature was not prosecutorial, but rather assumed the objective of proper oversight and evaluation. Regardless, violations of the law and the Constitution were scrutinized and described in full.

For the purposes of this analysis, I will be focusing mainly on the committee's findings and recommendations pertaining to the Bureau, although the history within Part II contributed fruitful context for how the bureau's atmosphere of lawlessness and amorality developed. Moreover, while the Central Intelligence Agency (CIA), Army Intelligence, as well as the Internal Revenue Service was included in the Committee's investigation, I will be exclusively in conversation with the findings and recommendations pertaining to the FBI, as the FBI was the sole agency operating COINTELPRO and is the subject of my analysis in the following chronologies. The other agencies were found to collaborate with the FBI for some of the most destructive and lawless operations, all condoned under the Executive branch.

Committee Findings

The committee found substantial evidence that the FBI not only broke the law consistently but did so knowingly and in collusion with the Attorney Generals and executive offices. The committee's report outlined a pattern of intent to obstruct public exposure of the FBI's activities, proving an understanding of wrongdoing and illegality that agents and directors sought to conceal. Given that such operations were only justified by vague notions of national security, with specific evidence being scarce, the findings of the Church committee illustrate a rogue agency granted power by the executive office, emboldened to collect intelligence on the basis of maintaining order rather than preserving the American ideals of democracy and liberty that the FBI claimed to be protecting, all without the public's knowledge.

The report prefaces its discussion of the unlawful activities of the FBI by citing the integral nature of their duty to protect the nation. This concession is important because it illustrates the bounds in which this report must remain: critical of the practices, but not allowed to be critical of the institution as a whole. In diagnosing the transgressions at hand, the committee found that the Fourth Amendment of protection against unreasonable search, as well as the First Amendment of the right to assemble, petition, and oppose government activity were highlighted as regularly violated by COINTELPRO operations. These violations will become a motif in FBI transgressions for decades to come, long after the Church Committee's report was published and popularized.

The Church committee noted the behavior of lawlessness as an overall characteristic of FBI operations and agents. The findings went as far as to conclude that "...the question raised was usually not whether a particular program was legal or ethical, but whether it worked [;]Legal issues were clearly not a primary consideration-if they were a consideration at all-in many of the programs and techniques of the intelligence community."[61] Much of the testimony yielded from the committee's investigations found that from special agents to higher directors within the FBI, neither constitutionality nor legality was even given consideration. Some of these instances were due to agents' assumption that the operations of the FBI were either above the law or inherently legal.[62] The FBI, being emboldened by the nature of its security objectives, enabled unconstitutional actions to be justified by a separate, amoral code of conduct more concerned with the effective suppression of dissent than enforcing/upholding the law and American values. An FBI COINTELPRO Chief noted his mentality in enacting illegal mail openings and other COINTELPRO programs as justified by "The greater good, the national security…[was] Why I

[61]Id.
[62]Ibid, 145.

thought these programs were good, it was that the national security required this, this is correct."[63] Such testimony points to the expansive belief that the FBI does not need to follow United States law because national security has called for a different type of doctrine. The Committee noted many instances in which agents wittingly broke the law and/or violated the Constitution during COINTELPRO operations.[64] In such an environment, one committed to completing goals rather than being committed to due process and the rule of law, violations of civil liberties were rampant.

By excluding legality from procedure in consideration or enforcement, FBI agents concerned themselves with the most effective means of eliminating subversives. Without the limitations of the law, these operations were extreme in nature, with the committee noting that "A distressing number of the programs and techniques developed by the intelligence community involved transgressions against human decency that were no less serious than any technical violations of law."[65] The FBI, tasked to protect the citizens of the United States, disregarded the limitations set by the Constitution and other branches of government in order to silence individuals who resisted the U.S. government. This was justified by the assumption "that the failure of 'the enemy' to play by the rules granted them the right to do likewise, and in other cases on the ground that the 'national security' permitted programs would otherwise be illegal," an assumption that not only lacked substantiation and evidence, as many of the groups were lawfully protesting, but failed to justify how unlawful means of intelligence collection aided in ensuring national security.[66] As mentioned in the previous COINTELPRO section, these efforts

[63] Branigan, William A. deposition, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2nd sess., January 9, 1975, p. 41.
[64]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 142.
[65]Ibid, 140.
[66]Ibid, 141.

were harmful, life-changing, and in many cases, effective: a result that was necessitated by the FBI's disregard for each individual's constitutional and civil protections. For this notion to be as pervasive as it was, evident in the majority of COINTELPRO operations, speaks to the precedent set by Hoover and his associates.

Most significantly and yet most concisely mentioned within the report were the vast First Amendment violations that occurred through the COINTELPRO initiatives. The report cites the FBI's consistent harassment of those attempting to lawfully express their political views as causing "...serious injury to the First Amendment guarantee of freedom of speech and the right of the people to assemble peaceably and to petition the government for a redress of grievances."[67] Through the expansive monitoring of political groups, government-funded aims discrediting and sowing chaos both internally and externally within groups, as well as overt harassment of activists, the FBI committed not only unconstitutional acts but instituted an unconstitutional regime. COINTELPRO, by design, was intended to violate the First Amendment of Americans. Resistance to the government was the true "threat" that the FBI intended to neutralize, even though fears of communism and political unrest may have originally been at the forefront of Hoover's mind. The threat of a Communist takeover, however, was disproven across multiple organizing coalitions.[68] Acknowledgment of the abuse of power for political purposes- of suppressing unfavorable views of the executive office- solidifies an acknowledgment by Congress of the specific dangers that the increased collusion between the FBI and executive branch could have moving forward. Congress found through this investigation that the FBI had the capacity to harm and erode the fundamental right to political expression. Thus, as we will see

[67]Ibid, 139.
[68]David J. Garrow, "FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring the Effects," *The Public Historian* 10, no. 4 (1988): 5–18, https://doi.org/10.2307/3377831.

later, Congress understood, and had on record, how blank checks of power and a lack of accountability would be cashed by the FBI.

A notable example of violating constitutional principles and overstepping the accountability structures embedded into the three branches of government is the construction of the Security Index. The Church committee outlined this meticulously, for the Security Index reinforced the notion that the FBI's sole focus was in protecting order and the status quo rather than democracy or "American values." Within this Index, the FBI kept a list of thousands of names that were to be imprisoned in the chance of a national emergency- the discretion of what names were placed on the index was at the discretion of the agents and director of the FBI. The Security Index was created by Hoover and was originally called the Custodial Detention List prior to an attempted shutdown by Attorney General Biddle in 1943, in which he found the list to be impractical, dangerous and not justified within the United States.[69] It was then shut down once more -or at least thought to be by the Emergency Detention Act of 1950, which set procedures for the detainment of potential foreign conspirators in the event of a war or other such political catastrophe.[70]

The legislation was passed only six years following the Supreme Court case of *Ex Parte Endo*. The ruling in the case determined that the detainment of Japanese Americans following the bombing of Pearl Harbor[71] was unconstitutional, and that "when the power to detain is derived from the power to protect the war effort against espionage and sabotage, detention which

---

[69]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 35.
[70] Internal Security Act of 1950, Title II-Emergency Detention, 64 Stat. 987 (1950).
[71]Franklin D. Roosevelt, "Executive Order 9066," February 19, 1942, in *Code of Federal Regulations: Title 3, The President, 1938–1943 Compilation* (Washington, DC: Office of the Federal Register, National Archives and Records Service, 1943), 1092–93.

has no relationship to that objective is unauthorized."[72] Given this SCOTUS ruling, Congress "did not authorize the suspension of the privilege of the writ of habeas corpus, and it provided that detained persons could appeal to a review board and to the courts" in the Emergency Detention Act of 1950.[73] However, through the renaming of the Custodial Detention List, the Committee found the FBI to be acting unlawfully by disobeying the Emergency Detention Act of 1950. The Church Committee charged that the Security Index created the circumstances for "...a potential general suspension of the privilege of the writ of habeas corpus secured by Article I, Section 9, of the Constitution, thereby violating Congress's power of legislation by the founding document of the nation."[74] Thus, the maintenance of the Security Index, through renaming it to conceal its presence, and despite the two other branches' attempts to obstruct its existence, further illustrates the FBI's brazen attitude toward the rule of law, the Constitution, and its obligation to allow oversight by the other branches of government.

The Executive Implications

It is important to note that the Church committee's investigation began just four months after President Ford pardoned Nixon; his transgressions were extremely recent to the drafting of this report and were imperative in the lack of checks and balances for the intelligence community. Nixon often employed the FBI to collect intelligence to serve his own interests, such as wiretapping the White House to gain others' personal information.[75] Based on both the emphasis and preponderance of examples, the impeachment of Richard Nixon and his actions as

---

[72] *Ex parte Endo*, 323 U.S. 283 (1944).
[73] U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 54.
[74]Ibid, 139-140.
[75]Ibid, 10.

President deeply impacted the Church committee's understanding of the relationship between the FBI and the Executive office.

But why was such illegality deemed necessary to achieving national security? How did Hoover get away with executing extremely destructive operations? Who failed at conducting proper oversight? The Church committee's answer to the question of motive is most fruitful when examining the FBI's collusion with the Executive Office and Attorneys General in sanctioning illegal activities.

Firstly, the Church committee discussed at length the unconstitutional and illegal theory that Nixon and his associates used to legitimize his unlawful Huston Plan: a "sovereign" President can approve operations and actions that would otherwise be illegal in the name of protecting national security, for it provided an explanation for the ideological framework FBI agents and higher administration was operating under. This idea of a "sovereign president," in which his duty to national security reigned supreme over his obligation to maintain civil liberties, will be employed for decades to come; Nixon's assertion of this theory quickly became the roots of how Bush approaches terrorism following 9/11.

The Huston Plan implicated the Nixon administration, the NSA, the CIA, and FBI in a conspiracy to expand the scope of intelligence activities by loosening the legal limitations placed on such agencies, a plan the Church Committee refers to as "...another disturbing reminder of the fact that intelligence programs and techniques may be advocated and authorized with the knowledge they are illegal."[76] Excluding his Attorney General, who is meant to provide oversight for the intelligence agencies, President Richard Nixon, in collaboration with the three

[76]Ibid, 143.

intelligence agencies, created this plan with the knowledge that some of the operations proposed, such as mail opening and warrantless break-ins, were illegal. President Nixon approved the Huston Plan, only to revoke approval five days later after the consideration of public sentiment.[77] This is significant for two main reasons: the plan was a reaction to escalating anti-war protests and the Kent State massacre, with the supposed intent of preventing violence on college campuses, and because these intelligence agencies were already executing such plans without Presidential approval, which Nixon was unaware of.[78] The President and intelligence directors charged that the most effective means of neutralizing college campuses- and most importantly the anti-war movement- would be targeting students with surveillance more heavily, a tactic that demonstrates how the President used intelligence agencies in order to suppress political opposition through surveillance.

This example gives insight into the methods the FBI used to knowingly break the law and violate sections of the Constitution to target the New Left and civil liberties activists, with the support of the president. Further corroborating such evidence of the objective to silence the New Left and Progressive movemnets is testimony from one of Nixon's advisors and coordinators of the Huston Plan, Tom Huston himself. In Huston's deposition, he communicated his view that

> the real threat to internal security was potential repression by right-wing forces within the United States. He argued that the "New Left" was capable of producing a climate of fear that would bring forth an ever repressive demagogue in the country. Huston believed that the intelligence professionals, if given the chance, could protect the people from the latent forces of repression by monitoring the New Left, including by illegal means. Illegal action directed against the New Left, in other words, should be used by the Government to forestall potential repression by the Right.[79]

---

[77]Id.

[78]Ibid, 113.

[79]Tom Charles Huston, deposition, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2nd sess., 1975, p. 43; Staff Summary of Tom Charles Huston

Huston's testimony was profound. It named the New Left as an overt target of state surveillance efforts. He also described the fear of a weakening right-wing political party as a large contributing factor in the greenlighting of illegal intelligence endeavors by Nixon. Thus, "national security" was defined not by the safety of American citizens but by the preservation of the power of the political right and the dominance of conservatism. The committee found the justification to act in extremely harmful unconstitutional manners to be in service of a political agenda rather than in the service of American values, and deeply criticized this practice.

The fact that the FBI knew their COINTELPRO activity was illegal is also evident in that they attempted to cover up and hide their transgressions, oftentimes leading to further illegal activity. For instance, the FBI "...developed a special filing system-or, more accurately, a destruction system-for memoranda written about illegal techniques, such as break-ins, and highly questionable operations […] authorizing documents and other memoranda were filed in special safes at headquarters and field offices until the next annual inspection by the Inspection Division, at which time they were to be systematically destroyed."[80] Any recorded illegal activity would be eliminated in order to preserve the Bureau's image and ability to continue unlawful activity without oversight. In addition, when dealing with the Long Committee, a Senate Committee investigating intelligence agencies' techniques, the FBI steered Long away from examining their electronic surveillance practices, with the FBI even writing Senator Long's press release.[81] These two examples, as well as the multiple instances of the FBI concealing operations from both the Attorney General and other counterparts, paints the picture of a rogue agency that was aware of

---

Interview, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2nd sess., 1975.

[80]U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities.* 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976), 148.

[81]Ibid, 153.

the unsavory nature of their actions. There is a clear disregard for law and policy, which enables an assertion of dominance over the other branches of government: in disobeying and manipulating the Senate, and colluding with the executive office, the FBI subverted any attempt for checks and balances or adherence to the Constitution, ultimately leaving them free to violate human rights to any extent. At this point in time, the Church committee is disparaging in its language toward the FBI when referring to their cover-ups, dismayed at the subversion of Congressional oversight. Nixon and his predecessors were not privy to the concealment of the extent of certain activities, but certainly *encouraged* intrusive and unlawful surveillance when it suited their political needs.

Conclusions and Recommendations

The Church Committee's conclusions displayed both disapproval and disgust for the FBI, CIA, NSA, and executive office's willingness to overstep the bounds of the Constitution in order to target their political opponents. While the necessity of lawful domestic intelligence agencies was stated, the Church Committee lays out the American philosophies which garner the expectations of all government agencies:

> Personal privacy is protected because it is essential to liberty and the pursuit of happiness. Our Constitution checks the power of Government for the purpose of protecting the rights of individuals, in order that all our citizens may live in a free and decent society. Unlike totalitarian states, we do not believe that any government has a monopoly on truth […] Our constitutional system guards against this tendency [of abuse of power]. It establishes many different checks upon power. It is those wise restraints which keep men free. In the field of intelligence those restraints have too often been ignored.[82]

[82]Ibid, 290-291. This quote is framed by other such statements of importance, such as the idea that the gross violations committed by the intelligence agencies caused harm that expanded much further than that of its direct victims.

This quote speaks to a larger question regarding the Constitutional-implied right of privacy. The committee reasoned that it is integral to the founding principles of the Declaration of Independence. The committee also referenced totalitarian states, posing that the United States shall be defined in opposition to totalitarianism. Also emphasized was that free speech without fear of governmental retaliation is essential to a functioning democracy, essentially a call to such agencies that their efforts are counterproductive to the American way of life.

These are significant notions given that the report was published during the Cold War because it reveals an underlying kernel of the motivations of the Committee. Not only was reform in mind, but a resistance to the appearance of similarities between Russia and the United States was as well.

Thus, the Church Committee's main conclusion was that "Domestic Intelligence Activity Has Threatened and Undermined The Constitutional Rights of Americans to Free Speech, Association and Privacy. It Has Done So Primarily Because The Constitutional System for Checking Abuse of Power Has Not Been Applied."[83] A profound indictment, the committee concluded that the failure of the checks and balances enabled Americans' Constitutional rights, granted to them by the first and fourth amendments, amongst others, to be wittingly violated and *undermined* by the federal government's own agencies. Following the exposure of the FBI files through the Media burglary, this also represents the American public's first insights into how their information was being collected and used within the government.[84] In summation, the committee views the three main tenets of constitutional violations to be excesses in (a) Executive power, (b) secrecy/withholding information, and (c) "avoidance of the Rule of Law."[85] The Committee declared the importance of all citizens and government agencies being tethered to the

[83]Ibid, 290-292.
[84]Id.
[85]Id.

rule of law, without exception. In both violations (a) and (c), the Committee makes a point of calling the power of the President back to the obedience of the Constitution and the law, which is in direct reference to Johnson and Nixon's recent transgressions and abuse of the executive office.

Recommendations and Their Justification

The recommendations laid out by the committee were rooted in the assertion that "Excessive intelligence activity which undermines individual rights must end. The system for controlling intelligence must be brought back within the constitutional scheme."[86] This is the main recommendation to Congress, which the Committee tasks with utilizing the findings and recommendations to draft legislation that constructed a more comprehensive oversight procedure. In navigating intelligence situations that require more nuance and are not easily ascertainable, the Committee relied on historical documents from the founding era of the United States, such as the Constitution, multiple Supreme Court decisions regarding Freedom of Speech, and the Federalist Papers. The compilation of these materials guided the Church Committee to determine that any governmental action which violates citizens' First Amendment rights were to be prohibited based on the Constitution. For government actions "...which has a collateral (rather than direct) impact upon the rights of speech and assembly…", it must pass the two tests determined by four Supreme Court decisions - *De Gregory v. New Hampshire, NAACP v. Alabama, Gibson v. Florida Legislative Investigation Commission,* and *Shelton v. Tucker.*[87] The compounding decisions led the committee to determine that the government must have a compelling reason - a legitimate state interest - to breach this foundational right and that when

[86]U.S. Congress, Senate, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2nd sess., 1976, S. Rept. 94-755 (Washington, DC: U.S. Government Printing Office, 1976), 292-293.
[87]Ibid.

the governmental operations were undertaken, they were done in a manner that minimized their impact and invasive nature as much as possible.

The Committee declared ninety-six distinct recommendations. At the heart of all recommendations, the Church Committee proclaims their intention to reestablish that both intelligence agencies and the executive branch are subject to the rule of law, and completely disavow the theory that the President can make and enforce decisions that are above the law. As is stated outright, the committee does "... not believe the Executive has, or should have, the inherent constitutional authority to violate the law or infringe the legal rights of Americans, whether it be a warrantless break-in into the home or office of an American, warrantless electronic surveillance, or a President's authorization to the FBI to create a massive domestic security program based upon secret oral directives,"[88] and denies any Constitutional loophole that the President has the authority to violate the law. In addition to FBI reforms responding to the Church committee findings, the Committee set out specific recommendations addressing the constraints and duties of the Central Intelligence Agency, the Army Intelligence, the Internal Revenue Service, and the U.S. Postal Service, as well as their scope of collaboration across agencies. The Committee creates clear policy for all respective agencies in regard to oversight, procedure, and implementation.

Much of the recommendations pertaining to the FBI explicitly prohibited the activities that the FBI undertook under COINTELPRO, such as excessive and uncalled for investigations, dissemination of information to the press or President for optic purposes, and maintaining intelligence information unnecessary for domestic security violations. One of the most prevalent recommendations stemming out of the investigation of COINTELPRO was the recommendation to cease investigations precipitated upon violating First Amendment protections, such guilt by

[88] Id, 297.

association with a group or individuals, or political opposition to the Executive branch and/or government, limiting their investigations to criminal and foreign intelligence matters exclusively. This is significant, for after tracing FBI violations and behavior since its inception, the committee recognized that guardrails and limitations were necessary for the maintenance of American citizen's Constitutional rights. The FBI did not inherently protect or uphold the First Amendment, or the rest of the Constitution; the agency must be forced to by way of policy and oversight. While this recommendation and proclamation was not included in legislation following the Church committee report's publication, it becomes clear later that the route of investigating political opposition or matters protected by the First Amendment changed from overt disregard to under the pretense of "foreign intelligence."

Yet despite all evidence pointing to Executive branch collusion and weaponization of the intelligence agencies, the Committee still reasserts Attorney General as a check of power over the FBI and as a branch of oversight, advising that they are responsible for ensuring that the FBI follows the policies and regulation put forth within the Church committee report. This is understandable structurally; however, the Committee fails to put forth recommendations regarding the blatant abuse of power that the previous Attorneys General had conducted, as well as to fully consider how the appointment of the Attorney General by the president affects the behavior of the Attorney General, nevermind their political leanings. Without the introduction of policy to ensure the Attorney General abides by the Constitution, the Church committee illustrated a pattern within Congress. Over and over, Congress trusted that the President and the executive branch to act in the interest of maintaining Constitutional rights and liberties, whereas instead the executive branch continued to prioritize maintaining political power over the wellbeing of American citizens and residents alike. Despite the repeated evidence of executive

mishandling of intelligence agencies, Congress nevertheless granted the Attorney General, and effectively the President, with oversight power over the FBI. This blind spot is integral to a significant weakening of Congress's oversight ability and to a steep widening and dominance of executive power by the twenty-first century.

If Congress had incorporated the majority of the recommendations, the story following this moment in American history would have played out very differently; as Congress's reaction to the reaction to the Church committee, the Foreign Intelligence Surveillance Act of 1978, really only encapsulated recommendation 51-54, in which non-consensual mail openings, electronic surveillance, and unauthorized entry:

> *Recommendation 52*.-All non-consensual electronic surveillance should be conducted pursuant to judicial warrants issued under authority of Title III of the Omnibus Crime Control and Safe StreetsAct of 1968. The Act should be amended to provide, with respect to electronic surveillance of foreigners in the United States, that a warrant may issue if
> *(a)* There is probable cause that the target is an officer, employee, or conscious agent of a foreign power.
> *(b)* The Attorney General has certified that the surveillance is likely to reveal information necessary to the protection of the nation against actual or potential attack or other hostile acts of force of a foreign power; to obtain foreign intelligence information deemed essential to the security of the United States; or to protect national security information against 'hostile foreign intelligence activity.
> *(c)* With respect to any such electronic surveillance, the judge should adopt procedures to minimize the acquisition and retention of non-foreign intelligence information about Americans.
> *(d)* Such electronic surveillance should be exempt from the disclosure requirements of Title III of the 1968 Act as to foreigners generally and as to Americans if they are involved in hostile foreign
> intelligence activity.[89]

Recommendation 54 mirrors much of the core provisions that will be adopted into the Foreign Intelligence Surveillance Act of 1978. However, they are adopted without the restrictions that were integral to the permissiveness of covert operations of wiretapping, mail opening,

---

[89]U.S. Congress, Senate, *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 2nd sess., 1976, S. Rept. 94-755 (Washington, DC: U.S. Government Printing Office, 1976), 327-328.

unauthorized entry. The condition that "foreign intelligence" information may be yielded by a wiretap is the main loophole for continuing violations of due process that resemble COINTELPRO. "Foreign intelligence" had an extremely wide definition in the coming decades, and is used in a similar manner as subversive was during the FBI's Hoover era. Thus, while this recommendation was eventually adopted, as we will see in the coming section, the manner in which Congress legislated the judicial warrant comes into opposition with this very recommendation, as the Church committee expected discretion in the granting of warrants through traditional means.

The Codification of Intrusive Surveillance Practices

Foreign Intelligence Surveillance Act of 1978

The Foreign Intelligence Surveillance Act of 1978 (FISA 1978) arose from the very pressing need for legislative regulations on the FBI and CIA's unchecked ability to wiretap and utilize electronic surveillance measures. Many national stakeholders, from the ACLU to Congress members, sought to tether the intelligence community to the Constitution, noting the clear fourth and fifth amendment violations.[90] As we will see below, the FISA of 1978 illustrates how organizations with the public mission of preventing crime and terrorism cannot be regulated by Congress, for their objective is inherently incompatible with any legislative or constitutional guardrail. Moreover, when greenlit by the executive branch, the structure of accountability intended to dictate their surveillance activity becomes a blunt tool, as the executive finds the intelligence community advantageous in maintaining political power, and thereby will seek to protect rather than scrutinize their practices. The FBI as an organization is structured to act unlawfully and to take legality as null, so Congressional efforts to limit the FBI's ability and scope were ineffective in protecting civil liberties.

Prior to the passing of FISA in 1978, the only other attempt by Congress to legislate the FBI's electronic surveillance activity came from the *Title III of The Omnibus Crime Control and Safe Streets Act of 1968*, which dealt with criminal cases rather than cases pertaining to national security. Title III technically outlawed wiretapping but created a loophole for eavesdropping by stating that

---

[90] United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Eighth Congress, Second Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983*. Washington: U.S. G.P.O., 1985.

> any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State reasonably determines that an emergency situation exists that involves
>
> > (a) an emergency situation exists with respect to conspiratorial activities threatening the national security interest or to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing such interception can with due diligence be obtained, and
> >
> > (b) there, are grounds upon which an order could be entered under this chapter to authorize such interception,
> >
> > may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier.[91]

Such an exception states that whenever the matter presents itself as too urgent to receive a judge's approval, officers may wiretap regardless of a lack of warrant, as long as they seek one thereafter. Almost any wiretapping could be made to fit into this criteria, leaving a large gap in the enforcement of the Title III statute. This bill signaled progress in the restrictions of electronic surveillance by creating standards and processes expected of the FBI, from proving a reasonable need for the wiretapping to a judge to requiring greater transparency and limitations upon the length of such eavesdropping.[92] However, it was ineffective overall. Title III consolidated power within the FBI and Attorney General's office through the approval provision. This loophole of national security was manipulated and abused so that the FBI frequently sought the approval of the Attorneys General rather than the courts, which granted them far more freedom than that of a

[91]Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, Title III, 82 Stat. 197 (1968).
[92] "Wiretapping and Electronic Surveillance - Title III of the Crime Control Act of 1968." *Rutgers Law Review* 23, no. 2 (1969): 319-326.

judge-approved warrant.[93] This is evidenced by the continued harms of COINTELPRO and other FBI operations spoken at length previously. Regardless of the presence of such a Title III warrant, the FBI continued to exercise an egregious use of wiretapping for situations that could not reasonably be determined to fall under the concern of national security.

Thus, following the Church Committee hearings and findings, pressure for further reforms was high: it was clear that the Title III of The Omnibus Crime Control and Safe Streets Act of 1968 was ineffective at maintaining the balance between civil liberties and national security. Moreover, "the Supreme Court also ruled that U.S. citizens could not be wiretapped in the name of national security without a court order, and Congress responded by enacting the Foreign Intelligence Surveillance Act (FISA), requiring a court order for electronic surveillance undertaken in the name of national security."[94] This chronology illustrated a respect of checks and balances between at least the Supreme Court and Congress, as Congress legislated accordingly in the aftermath of the *Keith* ruling.

Yet the road to the Foreign Intelligence Surveillance Act of 1978 was tumultuous in that original drafts were dissatisfying to both the FBI and CIA, as well as opposing groups such as the ACLU.[95] Congress struggled to find the balance between regulating electronic surveillance in a way that still allowed intelligence agencies to surveil effectively and efficiently while still safeguarding those who were considered "innocent" by Congresspeople. Here is where the

---

[93] Representative Drinan, Robert F., "*Foreign Intelligence Surveillance Act: Oversight Hearings"* testimony before the Committee on the Judiciary, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, June 8, 1983.

[94] David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 85.

[95] United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Eighth Congress, Second Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983*. Washington: U.S. G.P.O., 1985.

insidious irony lies: attempting to legalize a practice that, *by definition,* falls outside of the ideals of due process, inherently threatens civil liberties. To surveil and eavesdrop on individuals/suspects because an agency or its agents thinks there may be potential for crime still perpetuates the issues Congress found with COINTELPRO; Congress subsequently authorized agents to determine citizens and non-citizens' propensity for national harm outside of a Constitutional standard through FISA.

Adding to this dichotomy is that the need for extensive wiretapping could not be legitimized in the first place. In Representative Robert F. Drinan's view, as he stated during a "Subcommittee on Courts, Civil Liberties, and the Administration of Justice" meeting discussing FISA of 1978 prior to its official enactment,

> "Official representations, both in public and executive sessions, amounted to little more than generalities couched in terms of protecting the Nation from foreign attack. That is not a sufficient basis upon which to authorize the broad powers sought by the executive branch. The national experience and disclosures of the recent past show all too clearly that Presidents and Attorneys General have used national security as a pretext for snooping into the lawful activities of political opponents or persons perceived to pose a threat to their political security."[96]

Representative Drinan's statements came as this Subcommittee- the Subcommittee on Civil Liberties- toyed with tabling their opinions on FISA prior to its ratification, and speaks to the larger issue with Congress's objective. By reforming intelligence agencies' wiretapping procedures, Congress effectively legalized the deeply unconstitutional practice of bypassing the Fourth Amendment[97] without evidence of its necessity. The executive branch at the time did not

---

[96] Ibid.

[97] U.S. Const. amend. IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

provide any evidence outside of vague, sweeping statements that electronic surveillance played a part in maintaining national security- a practice that the Executive would continue to abuse in the decades after FISA's legislation.[98]

Within the Foreign Intelligence Surveillance Act of 1978, the legislation establishes the appointment of seven judges by the Chief Justice to review these applications (establishing the Foreign Intelligence Surveillance Court, FISC) and to determine the legitimacy of the need for electronic surveillance based on the guidelines established within FISA 1978. Congress requires that agents seek judicial approval or otherwise seek Attorney General approval, in cases where the wiretap would not surveil U.S. citizens, for wiretapping *prior* to its employment. The applications must consist of the targeted person and targeted information, the duration sought of such wiretapping, and the means by which the agent(s) intend to collect the information. The individuals targeted fall under these categories, as laid out by Department of Justice official Mary C. Lawton:

> The definition of "agent of a foreign power" is critical to an understanding of FISA. It, in effect, creates two classes of agents: persons who are not U.S. persons and who are officers or employees of foreign powers or members of international terrorist groups or who act for or on behalf of foreign powers engaged in clandestine intelligence activities where the circumstances of their presence in the United States indicate that they may be involved in such activities; all others, whether or not they are U.S. persons, are covered if they knowingly engage in clandestine intelligence gathering activities for a foreign power which may involve illegality; knowingly engage in other clandestine intelligence activities pursuant to the direction of a foreign intelligence service which involve or are about to involve a criminal violation; knowingly engage in sabotage or inter-

[98] Halperin, Morton, "*Foreign Intelligence Surveillance Act: Oversight Hearings"* testimony before the Committee on the Judiciary, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, April 24, 1978.

> national terrorism or activities in preparation therefor on behalf of a foreign power; knowingly aid and abet or conspire with any of the above.[99]

Intelligence agencies were not required under this legislation to inform individuals that they were wiretapped at any point during such initiation unless the evidence was used in a criminal proceeding. Another significant property of this bill to note is that it created a distinction between foreign intelligence gathering (for which a wiretap would be approved) and criminal investigation. Information gathered under the 1978 FISA statutes could be used in criminal investigations. FISA specified that the wiretaps must be sought with the intention of foreign intelligence gathering rather than prosecution. This distinction would later fully collapse when the Foreign Intelligence Surveillance Act was amended through the Patriot Act in 2001.

The Foreign Intelligence Surveillance Act of 1978 attempted to differentiate surveillance capacity between U.S. citizens and "foreign agents" while leaving exceptions and substantial room for justifying surveillance of U.S. citizens throughout the legislation. For instance, the approval of a warrant by a judge will follow if

> on the basis of the facts submitted by the applicant there is probable cause to believe that-
>
> (A) the target of the electronic surveillance is a foreign *power* or an agent of a foreign power: *Provided,* That no United States person may be considered a foreign power or an agent is a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and [...]
>
> if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 104(a)(7)(e)[100]

---

[99] United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Eighth Congress, First Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983, 3*. Washington: U.S. G.P.O., 1985.

[100] *Foreign Intelligence Surveillance Act of 1978*, Pub. L. No. 95-511, § 105(a)(3-5), § 104(a)(7)(e), 92 Stat. 1783 (1978). specifies that that statement of the facts and circumstances of the application must include basis that "(i) the information sought is the type of foreign intelligence information designated: and (ii) such information cannot

The language recognized the previous violations of Constitutional liberties found by the Church committee and signaled an attempt to prevent similar violations in the future. However, even in requiring wiretaps to have the approval of judges or 'emergency Attorneys General' approval, there is still leniency in the situations that FISA condoned for wiretapping. United States persons can be targeted through wiretapping if they are under suspicion of possessing foreign intelligence information and/or possess information pertinent to national security that cannot be yielded in another manner. As we will see, these "guardrails" can be easily manipulated and, in some instances, completely overstepped.

Moreover, the "emergency provisions" that are outlined in FISA allow the Attorneys General to exercise a substantial amount of discretion in determining what constitutes an emergency wiretap and is appropriate to execute without judge approval, as opposed to what should be followed in accordance with the requirements established within F.I.S.A. of 1978. An emergency approval may be granted by the Attorney General when

> (1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and
>
> (2) the factual basis for issuance of an order under this title to approve such surveillance exists;
>
> he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 103 is informed by the Attorney General or his designee[...] not more than twenty-hours after the Attorney General authorizes such surveillance.[101]

These guidelines are quite subjective and effectively grant the Attorneys General the ability to exclude the judicial branch from preventing extraneous wiretapping. In essence, these guidelines

---

reasonably obtained by normal investigative techniques[...]" This is not a high standard for which these applications must be submitted under- there is clear room for these expectations to be exploited.

[101]Ibid.

are vague enough that the executive branch is still able to enact electronic surveillance at will by simply asking for retroactive approval, which is less subject to denial.

The significance of these loopholes and wide range of surveillance legality, is that citizens and non-citizens alike could be targeted with the information gathered within a court of law via Attorney General approval. While the F.I.S.A. of 1978 does address the potential of suppressing this testimony, the defendant must prove it was obtained illegally, which can only be done if intelligence agencies disclose to such parties the means by which they were electronically surveilled. These disclosures are not required by any agency, for they can be rejected on the basis of ongoing national security matters. Therefore, while FISA does create a path for the 'aggrieved' parties to seek evidence suppression prior to trial, it is difficult to execute in actuality, given that agencies may be able to deny the aggrieved information regarding the surveillance the individual was subjected to.

When examining the Foreign Intelligence Act of 1978 in its totality, in its language and execution, the legislation represents little more than a performance of regulation and accountability, giving the American public and Congress the illusion that these intelligence agencies are restrained in some manner. The idea of judicial authority regulating the use of wiretap is valiant in theory, but did not play out following the passage of the F.I.S.A. of 1978, since "...the court seemed to serve the executive branch as a rubber stamp: between 1979 and 2003, FISC denied only 3 of 16,450 applications the executive branch submitted."[102] While the executive branch reasoned that such a low denial rate speaks to high conduct on behalf of the intelligence community,[103] one must look at these numbers with scrutiny, especially in light of

[102] David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 86.
[103] Ibid.

the nature in which wiretaps are utilized during this time period. Moreover, a 1990 law review noted that "While the court must determine that there is a 'justified belief' that the identity of the target of the electronic surveillance is a foreign power or its agent and that the place to be surveilled is or will be used by the target, a showing of probable cause is not required to link these determinations to supporting facts (the need for such surveillance)."[104] So even in the case that one of the seven judges would look over a warrant application with scrutiny, the burden for approving the application is still incredibly low, as the D.O.J. agents don't necessarily have to provide certainty of the requirements, just something resembling probable cause. Such a permissive court left the authority of the intelligence communities *still* in the hands of the Executive branch, and F.I.S.A. of 1978 failed to lay out the recommendations found within the Church Committee "...that might have defined the FBI's power and responsibilities."[105] This legislation served as a reaction to a mass of pushback against the intelligence community but ultimately served to do little more than restructure the same practices. The F.I.S.C. courts are not able to reasonably determine the necessity of such surveillance, only whether or not it checks certain boxes- requirements that can be easily met regardless of the degree of erroneous nature of the surveillance.

The Foreign Intelligence Surveillance Act of 1978 was officially implemented in May of 1979. Yet, even four years later, significant contradictions began to arise out of the legislation. When brought forth for an oversight hearing in 1983, Department of Justice representative Mary C. Lawton lauded F.I.S.A. of 1978 for being effective in its goal.[106] However, when

---

[104]James E. Meason, "Foreign Intelligence Act: Time for Reprisal," *The International Lawyer* 24, no. 4 (Winter 1990): 1050.

[105] David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 86.

[106] United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of*

representative Kastenmeier pressed her on a recent civil litigation case, the requirements of FISA were exposed as having no real regulative or oversight power. Kastenmeier asked about a case in which F.I.S.A. of 1978 was used to surveil the Irish Republican Army, even though the organization did not pose a threat to the United States' national security. In response, Lawton specifies the actual distinction of national security:

> But that is not the standard Congress wrote in the international terrorism definition, Mr. Chairman. They are international- the Provisional IRA which is, in fact, the organization involved in both cases brought so far- is, in our judgement and in the judgement of the courts that looked at it, both in the district courts and the FISA court, an international terrorist organization within the terms of the statute. The statute does not require that the particular organization threaten the United States. I believe the legislative history makes clear, and certainly other acts of Congress make clear, that international terrorism per se is a threat to all nations while it is allowed to exist. That is the attitude that we have taken in cutting off or limiting trade with countries that support international terrorism. In other provisions of law, the judgement that is reflected is that terrorism per se is a threat to all people, not that this organization is targeted against the United States. In many cases, it will not be.[107]

Thus, by this definition, the intelligence community took any indication of *potential* terrorism as a national threat. This leaves the FBI with unchecked authority to surveil individuals, for the standard of necessity is greatly lowered. By taking a "terrorist" organization, even if it is simply a group resisting another government regime, as an individual threat to the United States, Congress granted the FBI and CIA broad justification for spying on United States citizens that circumvented the Fourth Amendment. Even in surveying groups abroad for potential terrorist tendencies, the executive branch applies the same metric to domestic political groups, in which

---

Representatives, Ninety-Eighth Congress, First Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983, 21. Washington: U.S. G.P.O., 1985.

[107]United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Eighth Congress, First Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983*, 23. Washington: U.S. G.P.O., 1985.

resistance of the government could lead to the label of terrorist. Anything could now be seen as an exception.

When such a broad range for wiretapping was taken advantage of, it left U.S. citizens subject to prosecution without the ability to appeal, as witnessed in the language of F.I.S.A. of 1978. In combination with a court that was extremely deferential to the intelligence community, "...citizens, for all intents and purposes, are unable to challenge a national security clearance[;] there were three cases in which this trend has emerged, *Halkin v. Helms, Salisbury v. United States, and Jabara v. Webster."*[108] These cases represent instances in which criminal charges were brought, and individuals were required to be notified they were victims of government surveillance. However, as noted in the Virginia Law review in 1984, "if the government improperly monitors political dissidents under the foreign intelligence shield and the dissidents never learn of the surveillance because criminal charges are never filed or because records of the operation are destroyed, then the surveillance targets have no remedy."[109] The F.I.S.A. legislation not only provides the executive branch with significant legal means of unconstitutionally surveilling citizens, fully exploiting the fourth amendment loophole of "foreign agents," but is able to do so without any accountability or reprimand; for even in the case of a criminal prosecution, intelligence agencies are not required to share any information regarding their operations. If the Department of Justice decides not to prosecute, those surveilled will never be notified that they were under the watch of the government. Despite the performance of reform, through the Foreign Intelligence Surveillance Courts and Congressional Permanent Intelligence Committee hearings, actual practice continued to echo COINTELPRO operations: citizens being

[108] Ibid.
[109] A.S.L., "Who's Listening: Proposals for Amending the Foreign Intelligence Surveillance Act," *Virginia Law Review 70*, no. 2 (March 1984): 303, http://www.jstor.com/stable/1072872.

watched and listened to without their knowledge, for whatever purpose the FBI saw fit. Combined with findings of D.O.J. officials lying on F.I.S.C. applications, there is a similar pattern of civil liberty abuse that was present under the Hoover administration. This illustrates the disturbing reality that the FBI remained effectively immune to Congressional oversight and legislative reform, and even immune to the courts.

Antiterrorism and Effective Death Penalty Act of 1996

So why does this all matter? Legislative changes aside, what are the implications of such impediments to the Constitution if most Americans are unaware these violations are even occurring? The passage of FISA did not just allow intelligence agencies to spy on "foreign agents," but it created a means for the FBI to surveil U.S. citizens with only light, performative oversight. Congress hamstrung its own oversight abilities through each terrorism bill, conceding more and more of its oversight power over to the executive office. What was left? Rogue agencies were able to prosecute U.S. citizens with little regard to their due process, utilizing their own voices against them. Such freedom was used to target the executive branch's political opponents and groups of Americans that the executive branch held prejudices against. Does this power symbolize the democracy Americans believed themselves to be under? Was this really a necessary sacrifice in order to "catch" the terrorists? Moreover, is it even possible for a government agency to prevent terrorism? These questions are imperative in examining the relationship between fear, Congress, and checks on surveillance: the three are always in limbo.

Such questions of democracy and freedom arise when examining the cause and result of the Antiterrorism and Death Penalty Act of 1996. Many provisions within the Act had been

deemed as too extreme by many Congresspeople when first proposed by the Clinton Administration, but this changed following the 1993 bombing of the World Trade Center and the 1995 Oklahoma City bombings.[110] Crucially, this legislation was not born out of lessons learned, or loopholes realized, of the two horrific incidents: the act already existed far before either tragedy. Instead, the bombings gave the administration and members of Congress a chance, and excuse, to push legislation rife with unconstitutional measures through both Houses, all under the pretense of "protecting the American people." Terrorist acts that were not thwarted by the intelligence community, in other words, became the pretext to enact increasingly powerful laws that further eroded the protection of civil liberties.

The guilty parties behind both horrors were quickly arrested and convicted following each respective terrorist act- a fact that some could argue speaks to the effectiveness of the previous law in place at the time. The Antiterrorism and Effective Death Penalty Act of 1996 does not include any legislation that would make this process more expedient or efficient, nor would it have been able to prevent either tragedy. This contradiction was brought forth by House Democrat Conyers during the bill's hearings, to which Deputy Attorney General Gorelick responded "... that if the facts of the World Trade Center bombing had been different, it could not have been investigated and prosecuted as a federal crime… [to which] Conyers concluded: 'I've never seen this much law created as a result of prosecutions that we agree worked very effectively, but you agree may not have worked.'"[111] This legislation, in combination with its provisions and the timeline of its creation, demonstrates an underlying motivation on behalf of the executive to surveil U.S. and foreign citizens- not for terrorist purposes but for political purposes. In granting the FBI the impossible task of preventing acts of terror and violence, the

[110]David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 126.
[111] Ibid, 130.

executive branch used the agencies' inability to achieve the impossible to compel Congress to cede its power of oversight further and further to the executive branch. Instead of acting as a check on the President, Congress gradually became a means for the executive branch to legalize its own unconstitutional practices.

The provisions of the Antiterrorism and Death Penalty Act of 1996 legalized violations of due process across the board. "Guilt by association" became the new policy standard for surveillance, prosecution, and even deportation; no longer was the evidence of conspiracy to commit a crime or of a crime committed necessary in order for law enforcement to target U.S. or foreign individuals. Effectively, the Constitution could be overlooked, and anyone's civil liberties infringed upon, simply by the idea or notion that one could be associated with a group that the government deemed a "security threat."

So how did the Antiterrorism Act of 1996 determine which groups would constitute a terrorist organization? Through ceding even more power to the Executive branch, the bill "Amends the Immigration and Nationality Act (INA) to authorize the Secretary of State, in consultation with the Secretary of the Treasury (Secretary) and the Attorney General, to designate an organization as a terrorist organization upon finding that the organization is a foreign organization that engages in terrorist activity and such activity threatens the security of U.S. nationals or U.S. national security."[112] The Secretary of State could add or amend any organization to the list, giving full discretion to the executive branch to determine whose Constitutional liberties will be stripped. This power has been used for political purposes on behalf of the executive branch, as this power is unreviewable.

Consequences for being associated with any groups on this list were, and are, harsh. U.S. citizens were barred from providing any financial assistance to groups on the terrorist list, even if

[112] *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, Title III, 110 Stat. 1214 (1996).

that assistance was for humanitarian causes such as providing medical care or food to those in need. If they did do so, they were then eligible to be surveilled and wiretapped by the FBI- a pattern both reminiscent of COINTELPRO, as well as a futile doubling down of already established law. Aiding and abetting crimes, conspiracy to commit crime, and other charges that are associated with this provision- of potentially funding terrorist organizations- are already illegal and subject to harsh fines and imprisonment.[113] Moreover, this "list" and guilt by association proved itself to be contradictory: U.S. individuals would not be subject to this bills' penalties if they funded a terrorist organization that was not on the Secretary of States' list, leading to selective enforcement of restrictions on "terrorist" organizations.

Yet this is not where the Act ends: Title IV outlines penalties and new immigration restrictions for foreigners based on the association with terrorist groups- not merely crimes committed, through such wording:

> Authorizes the Attorney General: (1) to seek removal of an alien terrorist by filing an application with the removal court that contains specified information, such as a statement of the facts and circumstances relied on by the Department of Justice (DOJ) to establish probable cause that the alien is a terrorist, that the alien is present in the United States, and that removal under normal immigration procedures would pose a risk to U.S. national security; and (2) to dismiss a removal action under this title at any stage of the proceeding.[114]

This grants the Attorney General and the agencies under him the ability to deport individuals without due process. Individuals targeted by such processes would be deported without the ability to context the "probable cause," for "In a special removal proceeding, whether or not it involves the use of secret information, the foreign national is barred from seeking to suppress any evidence, even if it was unconstitutionally obtained, and has no right to discover information derived under the Foreign Intelligence Surveillance Act, which the

---

[113]David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 136.
[114] *Antiterrorism and Effective Death Penalty Act of 1996*, Pub. L. No. 104-132, Title IV, 110 Stat. 1214 (1996).

government may use even if obtained in violation of FISA's provisions."[115] Essentially, defendants were and are able to be removed from their homes with evidence that they are unable to contest or defend themselves against, all in the name of national security. They do not have the right to a free trial, for they are barred from contesting the supposed evidence brought forth by the D.O.J.- if they are even granted access to it. To destroy the deportation process further, 'probable cause' could now be employed by simply being associated with such a group in the past or present: one need not commit a crime in order to be deported. Granting the power to deport individuals who have, in many circumstances, become permanent legal residents for offenses such as being associated with organizations on a list prepared by the Executive office has significant potential for abuse and speaks to a level of surveillance that *surpasses* national security. The other significant change in this legislation was that now, if associated with organizations on the Secretary of State's list, individuals were barred from entering the country for any purpose. Group association is protected by the First Amendment, and to revoke that right, as well as the right to defense and understanding of charges in trial, constitutes an extremely dangerous piece of legislation. Visa holders and permanent residents were now at the whim of the executive branch; whoever they felt threatened the nation could be deported without contest.

This act, through provisions such as guilt by association, secret evidence, and the unnecessarily stringent immigration reforms were not drafted nor codified with the desire to prevent more terrorist acts. Rather, under the guise of a nebulous terrorist threat and our agencies' understandable inability to prevent *all* heinous acts of violence within the nation from external threats, the Clinton administration pushed to expand their power over Americans' politics and daily lives. These provisions do not address causes of terrorism, nor strengthen the FBI ability to

---

[115] David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 145.

"catch" conspiring individuals; they merely create the conditions that allow for a legal means to violate U.S. citizens' and foreigners' Constitutional rights. These conditions were exploited time and time again since the Antiterrorism and Death Penalty Act of 1996 for the executive branch's political gain.

This is not to say that national security should not be the top priority of the Executive branch and each respective intelligence agency. This is merely to say that when the legislation being passed is not proven to be needed, nor helpful, to save innocent lives, Congress needs to be cautious in its willingness to sacrifice the American people's civil liberties in order to look like they are taking action.[116] Throughout the hearings leading up to its passage, it was proven that the Clinton administrations' "antiterrorism" provisions did not meet a need or fill a gap in the current ability and processes to prevent violence. It is proper for Congress to work with the Executive branch to create bills that protect the American people, but this was not proven to do so any more than the legislation that was already in place, legislation that violated the Bill of Rights to a lesser degree.

---

[116] Tushnet, Mark, and Larry Yackle, "Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act.\," *Duke Law Journal* 47, no. 1 (1997): 2, https://doi.org/10.2307/1372860.
"We suggest that the AEDPA and PRLA may illustrate two broad problems in statutory design and interpretation. First, statutory reform and judicial interpretation of existing law are alternative ways of revising existing law. Sometimes efforts to revise existing law proceed both tracks. When the judicial train arrives at the station before the legislative one, there is little reason to enact a statute from a policy standpoint. Nevertheless, there are often good political reasons to do so: Legislators will have built up an investment in the issue and will want to claim credit for doing something about a problem to which they have been calling attention."

The USA PATRIOT ACT and its Aftermath

"When Bush says Democracy, I often wonder what he's referring to."
-Angela Davis

Let us now return back to the threads of COINTELPRO: othering as justification for the violation of one's civil liberties. What cases are people preemptively categorized as threats to the state *prior* to any criminal conspiracy or action? Throughout the evolution of surveillance legislation, certain exceptions are made for "national security threats"- a term that came to describe whole groups of individuals, particularly of Arab or Muslim backgrounds as the twentieth century began to come to an end.

A good example that illustrates and foreshadows the pattern of guilt by association and high surveillance stoked post-9/11 comes earlier from the 1987 case of the LA-8.[117] The FBI surveilled and watched eight individuals and were unable to connect them to criminal activity. Yet, despite a lack of evidence, the INS and FBI arrested the eight: seven Palestinian activists and one Kenyan spouse.[118] They intended to deport the group as alien terrorists, employing the charges based on the McCarran-Walter Act, a statute that makes an 'alien' engaging in terrorist activities, including such that the individual "...is a member of a terrorist organization [...or] endorses or espouses terrorist activity…" deportable.[119] This act originally arose in the 1950s in reaction to the fear of communist spies during the Cold War.[120] However, the Act was now used by the INS and FBI to assert that the eight's alleged membership in the Proper Front for the Liberation of Palestine (PFLP) warranted arrest and deportation, as PFLP was considered a

[117]American Civil Liberties Union of Southern California, "Freedom File: 'L.A. 8' Arrests Launch 'Embarrassing' Two-Decade Case," January 26, 1987, accessed March 19, 2025, https://www.aclusocal.org/en/news/freedom-file-la-8-arrests-launch-embarrassing-two-decade-case-0#:~:text=Drug%20Policy%20Reform-,Freedom%20File:%20'L.A.%208'%20Arrests%20Launch,'Embarrassing'%20Two%2DDecade%20Case&text=January%2026%2C%201987:%20Eight%20L.A.,'L.A.%208'%20in%201987.
[118]Jeanne A. Butterfield, "Do Immigrants Have First Amendment Rights? Revisiting the Los Angeles Eight Case," *Middle East Report*, no. 212 (1999): 4–6, https://doi.org/10.2307/3012904.
[119]United States Code: Immigration and Nationality, 8 U.S.C. §§ -1483 Suppl. 5 1952 .
[120]U.S. Department of State, Office of the Historian, "Immigration and Nationality Act of 1952," accessed March 19, 2025, https://history.state.gov/milestones/1945-1952/immigration-act.

terrorist organization; moreover, the State declared that their case was based on secret evidence. Yet, "when the evidence underlying the government's charge in the case was finally revealed, it amounted to a claim that the eight read or distributed pro-Palestinian literature linked to the Popular Front for the Liberation of Palestine," a charge that all eight would go on to deny.[121] This case is significant because it reveals how the legislative principles discussed previously operate: guilt by association statutes, paired with overzealous terrorist accusations, lead to the arrests of eight members of society that were legal residents of the United States, handing out pamphlets that were antithetical to the State's political stance. The LA-8 were targeted for their activism in regard to Palestine- a broad infringement of their right to free political association and free speech, a pattern that closely parallels the FBI's conduct with the Revolutionary Action Movement. The FBI surveilled the individuals for over a year, and despite lack of criminal evidence, still moved to arrest and deport them on a rarely used act of guilt by association, thus giving credence to an underlying assumption of criminology that is not only racist, but against the fundamental principles of the Constitution.

The 9th District Court of Appeals agreed as well. In *American Arab Anti-Discrimination Com. v. Meese (1989)*, the Court ruled that "...each member of the Other Six faces a 'real and immediate' threat of prosecution under the McCarran-Walter provisions and Section 901 of the FRAA. They therefore present an objectively-based and "immediate" *1071 chill of their First Amendment rights sufficient to provide them with standing."[122] The Court found that the arrests of the eight for the pamphlet distribution created a chilling effect on their First Amendment rights. This premise allowed the Court to go even further, stating that "...it defies reason and undermines the values underlying the First Amendment that a magazine article advocating

---

[121]Susan M. Akram, "The Aftermath of September 11, 2001: The Targeting of Arabs and Muslims in America," *Arab Studies Quarterly* 24, no. 2/3 (2002): 72, http://www.jstor.org/stable/41858412.
[122]*American Arab Anti-Discrimination Committee v. Meese*, 714 F. Supp. 1060 (C.D. Cal. 1989).

doctrines of world communism or the unlawful damage, injury or destruction of property by the PFLP would be fully protected if published by a corporation or a citizen, but if authored or distributed by an alien could render the alien subject to the sanction of deportation."[123] This decision, that the "Other Six" of the eight had the Constitutional right to associate with whomever, despite their alien status, rejects the state's case "...that while aliens have First Amendment rights generally, within the deportation forum these rights are 'irrelevant' and can be severely circumscribed."[124] For the government to argue outright that in the case of deportation, the Constitution can be deemed irrelevant speaks to the larger motive of stripping rights away from marginalized individuals and finding moments in which the Constitution can be disregarded.

Guilt by association being brought forth in this case as a reasonable justification for deportation, even in light of intense surveillance finding no wrongdoing, corroborates the argument that surveillance imbues political repression and racial and political profiling- the grounds for arrest becomes more flexible, as neither a criminal act nor conspiracy must be found. The Secretary of State's unfettered discretion over the Terrorist Organization list through the Anti-Terrorism and Effective Death Penalty Act of 1996 in combination with the FBI's targeting of activist immigrants created the atmosphere for misuse and discrimination. The legalization of these two principles within law enforcement is concerning, as it gives credence to a police state, which will be further developed following the USA PATRIOT ACT.

The LA-8's case did not end after *American-Arab Anti-Discrimination Committee v. Meese* ruling; rather, a new case was brought forth in which the LA-8 claimed selective enforcement following legislative reform, the repeal of the McCarran-Walter Act and the Illegal

[123] Ibid.
[124] Ibid.

Immigration Reform and Immigrant Responsibility Act of 1996, reacting to their case.[125] The Supreme Court took the case, and decided that "As a general matter-and assuredly in the context of claims such as those put forward in the present case-an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation."[126] This majority opinion, as stated by Scalia, ruled in favor of racial profiling in deportation matters, as immigrants cannot cite selective enforcement or targeting in their defense. This set a precedent in which agents can operate off of biases and prejudices, and their victims will be unable to seek recourse or stay in the country by citing such practices.

It was not until 2007 that Hamide and Shehadeh's, two of the original eight, deportation proceedings came to a conclusion. The Judge threw out the case "...because of the government's refusal to disclose evidence favorable to the immigrants in compliance with his orders."[127] After twenty years, multiple cases summiting through every level of the court, the state still failed to produce evidence of the two Palestinian activists' guilt. The case of the LA-8 shows the dangerous phenomenon when political speech is conflated with terrorism: armed with the legal ability to racially profile, spy on whomever, and utilize secret evidence, thereby subverting due process, the executive branch and the FBI is able to prosecute their political opponents or "subversives" without reprimand or limitations. While the threat of terrorism is a threat the government must grapple with in preventing, the case of the LA-8 shows the superfluous and unconstitutional nature of the legislation in place.

---

[125]Susan M. Akram, "The Aftermath of September 11, 2001: The Targeting of Arabs and Muslims in America," *Arab Studies Quarterly* 24, no. 2/3 (2002): 72, http://www.jstor.org/stable/41858412.
[126]*Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999).
[127]Center for Constitutional Rights, "Judge Throws Out Charges in Los Angeles Eight Case," Center for Constitutional Rights, accessed March 19, 2025, https://ccrjustice.org/home/press-center/press-releases/judge-throws-out-charges-los-angeles-eight-case.

9/11 and the PATRIOT Act

The events of 9/11 are indisputably tragic: two hijacked planes flying directly into the Twin Towers, leading to the death of nearly 3,000 people, according to the FBI.[128] Another plane was intended to fly into the Pentagon, but the passengers sacrificed their lives in an effort to overtake the plane. And yet, somewhat unsurprisingly, the erosion of the Bill of Rights and reintroduction of a "guilt by association" principle in the Antiterrorism and Effective Death Penalty Act of 1996 did not aid intelligence agencies in preventing the most significant terrorist attack the United States has ever seen. It was ineffective in even preemptively identifying the individuals responsible for 9/11, for none of the individuals were on the FBI's radar nor implicated by the Secretary of State's 'terrorist list.'[129]H.R. 3162, the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT ACT) of 2001, was passed by a legislature attempting to prevent another terrorist act, at least in optics. Instead of recognizing that their continued blank check surveillance policy with the FBI was not leading to a prevention of terrorist conspiracy or behaviors, Congress doubled down, reforming the Foreign Intelligence Surveillance Act of 1978 to condone even further intrusions of privacy on innocent U.S. residents and citizens.

The USA PATRIOT Act also changed the standards in which surveillance through wiretaps and physical searches could be utilized; previously, the low standard necessary to receive a warrant through the FISC courts was that the wiretap would yield foreign surveillance information. The 2001 legislation's Title II rolls back much of the key provisions of FISA that protected ordinary activities of citizens from being monitored in excess (in theory).

---

[128]Federal Bureau of Investigation, "9/11 Investigation," FBI, accessed March 19, 2025, https://www.fbi.gov/history/famous-cases/911-investigation.

[129]David Cole and James X. Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (New York: New Press, 2006), 138.

> (Sec. 203) Amends rule 6 of the Federal Rules of Criminal Procedure (FRCrP) to permit the sharing of grand jury information that involves foreign intelligence or counterintelligence with Federal law enforcement, intelligence, protective, immigration, national defense, or national security officials (such officials), subject to specified requirements.
> Authorizes an investigative or law enforcement officer, or an attorney for the Government, who, by authorized means, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom to disclose such contents to such officials to the extent that such contents include foreign intelligence or counterintelligence.[...]
> Authorizes the disclosure of foreign intelligence or counterintelligence obtained as part of a criminal investigation to such officials.
> […]
> (Sec. 218) Amends FISA to require an application for an electronic surveillance order or search warrant to certify that a significant purpose (currently, the sole or main purpose) of the surveillance is to obtain foreign intelligence information. "[130]

In combination, the PATRIOT Act dissolves FISA's main justification for the violation of Fourth amendment principles: national security. The PATRIOT Act lowers the standard for wiretaps, break-ins, and other surveillance to be approved by a FISC court from where foreign intelligence is the main purpose to only a significant purpose- a standard that is extremely vague. In combination with the repeal of the sharing prohibition, Congress is condoning the FBI and prosecutors to collude on cases not concerned with national surveillance or foreign intelligence. Information acquired through surveillance, authorized by a very low standard, can now be used in criminal proceedings against individuals unconnected to terrorism or national security threats. If the PATRIOT Act's purpose was to increase vigilance on the "war on terror," why would the standard for foreign intelligence surveillance need to be lowered to include ordinary criminal activity?

The muddying of criminal and foreign intelligence purposes was not quickly adopted by FISC courts. Five months later, in *In re All Matters Submitted to the Foreign Intelligence*

---

[130] U.S. Congress. House. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. HR 3162.

Surveillance Court, the Court pushed back against the Attorney General's implementation of the PATRIOT ACT, stating

> We recite this history to make clear that the Court has long approved, under controlled circumstances, the sharing of FISA information with criminal prosecutors, as well as consultations between intelligence and criminal investigations where FISA surveillances and searches are being conducted. However, the proposed 2002 minimization procedures eliminate the bright line in the 1995 procedures prohibiting direction and control by prosecutors on 622*622 which the Court has relied to moderate the broad acquisition retention, and dissemination of FISA information in overlapping intelligence and criminal investigations."
>
> Last, but most relevant to this Court's finding, criminal prosecutors are empowered to advise FBI intelligence officials concerning "the initiation, operation, continuation, or expansion of FISA searches or surveillance." (emphasis added) This provision is designed to use this Court's orders to enhance criminal investigation and prosecution, consistent with the government's interpretation of the recent amendments that FISA may now be "used primarily for a law enforcement purpose.[131]

Through this case, the FISC court asserted their understanding of the necessity for some degree of collaboration within foreign intelligence and criminal investigations, especially in regard to redundancies of clarity in jurisdiction. However, the Court emphasized the necessity for a "wall" between criminal and foreign intelligence gathering, asserting that the guidelines and burden of proof was necessary to the balance of national security and civil liberties. Most importantly, the Court viewed the excessive condoning of collusion between foreign intelligence and criminal agents as a way for prosecutors to direct officials on what information to collect under FISA, as the warrant requirements are significantly lower for foreign intelligence. This sets a dangerous precedent, where citizen's right to unreasonable search and seizure, due process, and privacy have been revoked through a legislative loophole of the PATRIOT Act. Information to strengthen the prosecution's case could be achieved unlawfully with the protection of FISA, thereby stymying due process. Ultimately, this proceeding ended in the Court modifying certain

[131] *In re All Matters Submitted to the Foreign Intelligence Surveillance Court*, 218 F. Supp. 2d 611 (FISA Ct. 2002).

provisions of a government memorandum the Attorney General had implemented following the PATRIOT Act.

The ruling for surveillance restrictions was appealed by the government, leading to a troubling ruling in *In re: Sealed Case* that rewrote the nature of FISA and FISA's originating purpose. Chief Justice Rehnquist overturned the previous ruling, stating that "The government's overriding concern is to stop or frustrate the agent's or the foreign power's activity by any means, but if one considers the actual ways in which the government would foil espionage or terrorism it becomes apparent that criminal prosecution analytically cannot be placed easily in a separate response category," and ruled that there had not truly been a precedent in FISA of 1978 that it could apply exclusively to foreign intelligence matters, for "the FISA as passed by Congress in 1978 clearly did not preclude or limit the government's use or proposed use of foreign intelligence information, which included evidence of certain kinds of criminal activity, in a criminal prosecution."[132] Thus, with this definitive warning, all three branches of power came into concurrence that a lower level of cause for surveillance could be used in prosecutorial proceedings. The basis of Justice Rehnquist's argument is logical, but it fails to consider that the conflation does not simply follow a tidy series of events when identifying terrorists 'in need' of prosecution; rather, it permits a regime of spying that intrudes upon privacy and the notion of "innocent until proven guilty." The combination of this ruling with the secret evidence provision established in the Antiterrorism and Effective Death Penalty Act of 1996 creates an atmosphere for discrimination and racial profiling, with vast and severe consequences for marginalized peoples, specifically, in the early twenty-first century, of the Muslim faith or of Arab ethnicity.

Congress codified the USA PATRIOT Act in such a way that the surveillance exception kept to apply only to matters of national security could now be exploited to collect and

[132] *In re Sealed Case*, 310 F.3d 717, 727 (D.C. Cir. 2002)

strengthen evidence in prosecution cases. Moreover, due to Section 213 of the legislation, law enforcement was now able to surveil and wiretap- i.e. carry out search warrants- without notifying the victim of such invasion.[133] This is called the "sneak and peek" provision, in which citizens and residents would be unaware that the government was tracking their movements and behaviors. The provisions in this bill surpass any semblance of increasing terrorism prevention, as the provisions only expand surveillance to situations *outside* of foreign intelligence. In fact, by "..July 2005, the Justice Department told the House Judiciary Committee that only 12 percent of the 153 delayed-notice search warrants it received were related to terrorist investigations. What was illegal in the break-ins conducted under COINTELPRO has now become legal."[134] This corroborates my argument in that Congress essentially legalized the transgressions of the Hoover era of the FBI. Through repeated bills eroding and permitting civil liberties violations, the nature of search tactics in COINTELPRO was now legalized and condoned under the PATRIOT Act. Moreover, there was no probable avenue for recourse for the victims of such targeting because they would most likely not be informed of such invasions, and law enforcement's conduct in these cases was technically all legal, despite its Constitutionality being questionable at best.

[133] U.S. Congress. House. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. HR 3162.
[134] Laura K. Donahue, *The Costs of Counterterrorism: Power, Politics, and Liberty* (Cambridge: Cambridge University Press, 2008), 235.

Epilogue: Twenty-Five Years in a PATRIOT ACT USA

"Who has the right to have rights? It is certainly not the humans crowded into the cells here. It isn't the Senegalese man I met who has been deprived of his liberty for a year, his legal situation in limbo and his family an ocean away. It isn't the 21-year-old detainee I met, who stepped foot in this country at age nine, only to be deported without so much as a hearing."
—Mahmoud Khalil[135]

Donald J. Trump was elected president once more in November, 2024, despite the nine-hundred page Project 2025 manifesto associated with his campaign that swore to destroy fundamental bureaucratic departments, increasing Christian influence within government, and a vast stripping of federal protections and civil liberties.[136] Many citizens and news anchors chided that the President elect would not be able to succeed in enacting Project 2025 or his most extreme campaign promises, such as promising "'mass deportation,' impenetrable borders, and extreme restrictions on asylum access."[137] They found quickly into Trump's second administration that their optimism, their faith in the checks and balances against rogue executive political agendas, were mistaken.

It was not long before Trump's Immigration and Customs Enforcement raids on both undocumented immigrants, an action he justified with ridding the nation of criminals, turned toward citizens and legal residents alike.[138] On March 8th, 2025, plain clothed Department of Homeland Security agents arrested and abducted Mahmoud Khalil, refusing to inform him of the charges and basis for his arrest. Khalil was a leader in Columbia University's student activism against the genocide in Gaza in the 2024 school year; in fact, he is Palestinian himself, growing

---

[135] Mahmoud Khalil, "Letter from a Palestinian Political Prisoner in Louisiana," *In These Times*, accessed March 18, 2025, https://inthesetimes.com/article/mahmoud-khalil-letter-from-a-palestinian-political-prisoner-in-louisiana.
[136] Luke Harding, "Project 2025: the secret plan to 'save' America after the 2024 election," *The Guardian*, September 14, 2024, https://www.theguardian.com/us-news/2024/sep/14/project-2025-election.
[137] "Trump's First 100 Days: Potential Immigration Actions," National Immigration Forum, accessed March 18, 2025, https://immigrationforum.org/article/trumps-first-100-days-potential-immigration-actions/.
[138] Erika Edwards, "Trump Suggests Immigrants Are Criminals at White House Briefing," *Axios*, January 28, 2025, https://www.axios.com/2025/01/28/trump-immigrants-criminals-white-house-briefing.

up in a refugee camp in Syria.[139] He legally possessed a green card, yet was taken to a deportation camp.

Khalil's detainment was lauded by the executive branch as the first step of many in suppressing free speech on campuses across the country. Under the guise of anti-semitism and pro-terrorism, the Trump administration seeks to stifle any pro-Palestinian support, despite his own cabinet relaying Nazi salutes in government buildings. By conflating the advocacy for self-autonomy and the right for Palestinians to live and thrive with hate speech and 'terrorism,' the United States comes full circle, back to the days of COINTELPRO and routine violations of due process. Except this time, due to the Congress's decades of legislation that unceasingly expanded executive power to fight "terror," Trump's initiative and the Department of Homeland Security's abductions are legal. The patterns and harm remain intact systemically, yet in 2025, opportunities to seek recourse seem slim, if any.

Khalil will not be the first: as this paper has demonstrated, when intelligence agencies utilize fear and horrific acts to target political opponents, the civil liberties violation will be widespread. Mahmoud Khalil, from his detainment in Louisiana, wrote in a letter that

> I have always believed that my duty is not only to liberate myself from the oppressor, but also to liberate my oppressors from their hatred and fear. My unjust detention is indicative of the anti-Palestinian racism that both the Biden and Trump administrations have demonstrated over the past 16 months as the U.S. has continued to supply Israel with weapons to kill Palestinians and prevented international intervention. For decades, anti-Palestinian racism has driven efforts to expand U.S. laws and practices that are used to violently repress Palestinians, Arab Americans, and other communities. That is precisely why I am being targeted.
>
> The Trump administration is targeting me as part of a broader strategy to suppress dissent. Visa-holders, green-card carriers, and citizens alike will all be targeted for their political beliefs. In the weeks ahead, students, advocates, and elected officials must unite.

[139] Mahmoud Khalil, "Letter from a Palestinian Political Prisoner in Louisiana," *In These Times*, accessed March 18, 2025, https://inthesetimes.com/article/mahmoud-khalil-letter-from-a-palestinian-political-prisoner-in-louisiana.

> to defend the right to protest for Palestine. At stake are not just our voices, but the fundamental civil liberties of all.[140]

Khalil conflated his detention with tactics used in Israel to oppress Palestinians, citing how the United States and Israel share weapons and legal enforcement practices and intelligence. While the extent of that relationship is outside of the scope of this paper, one thing is clear: the detainment of a student due to their opposition toward foreign policy corroborates Khalil's claims that Trump seeks to destroy free dissent. All tactics to prevent such an abuse of power have been eroded, leaving Congress unable to hold the executive branch accountable to the Constitution.

The infrastructure has been created for the Department of Homeland Security, a department formed after 9/11 under the same pretenses as the USA PATRIOT ACT, to directly detain and deport the individual's in opposition to the Trump Administration's political agenda. Following Khalil's arrest, Columbia university's "...dean, Jelani Cobb, said that he would do anything in his power to protect students and their ability to report but that no one has the capacity to stop DHS from jeopardizing their safety."[141] Who is left to protect citizens from their own government? The checks and balances have already been eroded, from the FISC courts that operate under a hindered or non-existent due process policy, to Congress's willingness to subvert their own oversight ability. Freedom of speech, unwarranted search and seizure, and due process are all rights that can be selectively granted to a United States citizen or resident when unsubstantiated claims of terror become the administration's cause for persecution. They have ceased to be unalienable rights; rather, they are granted to citizens whom the government deems worthy.

---

[140] Ibid.
[141] Amy B. Wang, "Trump Faces Growing Backlash Over Columbia Speech, Antisemitism Protests," *The Washington Post*, March 15, 2025, https://www.washingtonpost.com/politics/2025/03/15/trump-columbia-antisemitism-protests/.

Conclusion

Throughout the 1950s to 2025, the threat of internal forces of terror, which the government often suspected of foreign influence, created the circumstances by which the executive branch could justify targeting its political enemies through use of the intelligence communities under its jurisdiction. While there were instances of tragic violence, especially in the decades after the Church committee, the legislation passed in each event's aftermath, like the Antiterrorism and Effective Death Penalty Act of 1996, drastically eroded Constitutional protections from unwarranted search and seizure and widened the conditions for the intelligence community to engage in surveillance. This pattern escalated over time, and as it did, acts of terror continued to persist as citizens and residents' right to privacy and due process continued to diminish.

I argue that the Federal Bureau of Investigation's purpose in preventing violence and terror is not achievable while preserving the fundamental rights and liberties promised to every American citizen under the Constitution. The very nature of preventing crime requires a vast system of surveillance and watchdogs that is not cohesive to rights to privacy and unreasonable search and seizure. The development of the FBI since its inception illustrates that this objective can be turned on its head and used not to protect democracy, but erode it from the inside out. Under the guise of fighting terror, the illegal, covert mechanisms infamous to COINTELPRO have become legalized and its scope widened to include all citizens and legal residents. Throughout the decades, presidents and the executive branch have utilized the uncertainty and fear around terrorist attacks to justify unfair and unconstitutional targeting of groups unfavorable to the President's regime, including but not limited to the Southern Christian Leadership Conference, Black Panther Party, Muslims, and pro-Palestinian and anti-war activists.

Much is still left to be studied and understood. Unfortunately, the State's ability to conceal information and the full extent of its practices under the guise of "ongoing national security matters" is very much an impediment to the area of historical scholarship. Relying on the very government under critique to grant historians with aspects to its files raises questions surrounding the archival limitations at play. Accessing documents under the Freedom of Information Act is an extremely expensive and timely process, and once again relies on the government acting in good faith. Regardless, the scholarship pertaining to the relationship between domestic surveillance expansion and the stoking of terrorist organizations abroad, FISC court's internal policies and their relationship to the Department of Justice, and the internal processes that compelled Congress to overlook the glaring unconstitutional nature of the surveillance provisions is lacking in breadth and scope. I would like to see a deeper analysis of the U.S's foreign policy and war actions in connection with the surveillance and prosecutions domestically, especially as more is being revealed regarding the Israeli military's relationship to policy agencies across the United States.

When the boundaries of surveillance were gradually erased by Congress, there were no longer effective mechanisms to hold the FBI accountable for the harm caused. A course of oversight isn't possible when that oversight has been legislated to be null or self-enforced. No Congress person wants to be seen as "soft on terror." No Congress person wants to resist a terrorist bill with the chance that a terrorist act could follow in its wake. Hence, legislation greatly at odds with core democratic values were passed in order to display action in the face of terrorism. The political cycle has propelled Congress further and further away from the rule of law and closer and closer to the making of a soap opera: driven by emotion, a spineless branch of government unable to say "this is too far" in any formative means.

Protection against terrorism and terrorist groups is a necessary function of government. But we must use discretion when the executive branch utilizes moments of terror as opportunities for expansions of power. We must accept as a nation that crime and terrorism do not have easy solutions: these are symptoms of a larger circumstance of lack and desperation. Terrorists are not born terrorists; they become such. Further invasion into everyday civilians' lives will not decrease the amount of people radicalized to commit terror. Resources and better conditions, particularly in the very countries in which the United States invaded, could have a profound effect on the extent to which individuals see their communities' own lives as expendable.

The freedom to engage in political expression, association and protest is at the heart of this nation's founding and integral to its ability to function. No matter how it has been packaged, my thesis has demonstrated a clear effort by the intelligence community and executive branch to impede this right for its own benefit and maintenance of power. Criticism has been suppressed under the names of "neutralizing subversives," "fighting terror" and "protecting national security." Moving forward, we must be wary as a collective of the regimes that utilize scapegoating to instill widespread fear. We must ask ourselves, who benefits? And now, even moreso, what message is being suppressed?

BIBLIOGRAPHY

Primary Sources

"Trump's First 100 Days: Potential Immigration Actions." National Immigration Forum. Accessed March 18, 2025, https://immigrationforum.org/article/trumps-first-100-days-potential-immigration-actions/.

American Arab Anti-Discrimination Committee v. Meese, 714 F. Supp. 1060 (C.D. Cal. 1989).

Amy B. Wang. "Trump Faces Growing Backlash Over Columbia Speech, Antisemitism Protests." *The Washington Post*. March 15, 2025, https://www.washingtonpost.com/politics/2025/03/15/trump-columbia-antisemitism-protests/.

Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

Baumgardner, F.J. Memorandum to file, "Subject: Hoodwink," October 4, 1966. FBI Records, National Archives and Records Administration.

Church Committee. *The FBI, COINTELPRO, and Martin Luther King, Jr.* Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities. Washington, DC: U.S. Government Printing Office, 1976.

Edwards, Erica. "Trump Suggests Immigrants Are Criminals at White House Briefing." *Axios*. January 28, 2025, https://www.axios.com/2025/01/28/trump-immigrants-criminals-white-house-briefing.

Ex parte Endo, 323 U.S. 283 (1944).

FBI. "Subject: Counterintelligence Program | Black Nationalist-Hate Groups | Internal Security." August 25, 1967. Albany.

Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, § 105(a)(3-5), § 104(a)(7)(e), 92 Stat. 1783 (1978).

Halperin, Morton. "*Foreign Intelligence Surveillance Act: Oversight Hearings"* testimony before the Committee on the Judiciary, Subcommittee on Courts, Civil Liberties, and the Administration of Justice. April 24, 1978.

Harding, Lucas. "Project 2025: the secret plan to 'save' America after the 2024 election." *The Guardian*. September 14, 2024, https://www.theguardian.com/us-news/2024/sep/14/project-2025-election.

House of Representatives, Congress." House Hearing, 93rd Congress - FBI counterintelligence programs: hearing before the Civil Rights and Constitutional Rights Subcommittee of the Committee on the Judiciary, House of Representatives, Ninety-third Congress, second session ... November 20, 1974.. Government. U.S. Government Publishing Office https://www.govinfo.gov/app/details/CHRG-93hhrg43721.

In re All Matters Submitted to the Foreign Intelligence Surveillance Court. 218 F. Supp. 2d 611 (FISA Ct. 2002).

In re Sealed Case, 310 F.3d 717, 727 (D.C. Cir. 2002)

Internal Security Act of 1950, Title II-Emergency Detention, 64 Stat. 987 (1950).

Khalil, Mahmoud. "Letter from a Palestinian Political Prisoner in Louisiana." *In These Times.* Accessed March 18, 2025, https://inthesetimes.com/article/mahmoud-khalil-letter-from-a-palestinian-political-prisoner-in-louisiana.

Newton, Huey P. *War Against the Panthers: A Study of Repression in America*. New York: Black Classic Press, 1997.

Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, Title III, 82 Stat. 197 (1968).

Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999).

Roosevelt, Franklin D. "Executive Order 9066." February 19, 1942. In *Code of Federal*

Regulations: Title 3, The President, 1938–1943 Compilation, 1092–93. Washington, DC: Office of the Federal Register, National Archives and Records Service, 1943.

Senate Resolution 21, January 27, 1975, Sec. 1.

Tolan, Casey, et al. “New Orleans Attacker Discussed Plans to Kill His Family and Join ISIS in Chilling Recordings. Here’s What We Know.” *CNN*, January 3, 2025. https://www.cnn.com/2025/01/01/us/shamsud-din-jabbar-suspect-new-orleans-attack/index.html.

U.S. Congress. House. *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001*. HR 3162.

U.S. Congress. Senate. *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*. 94th Cong., 2nd sess., 1976. S. Rept. 94-755. (Washington, DC: U.S. Government Printing Office, 1976).

U.S. Const. amend. IV.

United States. Congress. House. Committee on the Judiciary. Subcommittee on Courts, Civil Liberties, and the Administration of Justice. *Foreign Intelligence Surveillance Act: Oversight Hearings Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, Ninety-Eighth Congress, First Session, on Foreign Intelligence Surveillance Act of 1978, June 8 and 9, 1983*. Washington: U.S. G.P.O., 1985.

United States Code: Immigration and Nationality, 8 U.S.C. §§ -1483 Suppl. 5 1952.

Secondary Sources

A.S.L. "Who's Listening: Proposals for Amending the Foreign Intelligence Surveillance Act." *Virginia Law Review* 70, no. 2 (March 1984): 303. http://www.jstor.com/stable/1072872.

Akram, Susan M. "The Aftermath Of September 11, 2001: The Targeting Of Arabs and Muslims In America." *Arab Studies Quarterly* 24, no. 2/3 (2002): 72. http://www.jstor.org/stable/41858412.

American Civil Liberties Union of Southern California. "Freedom File: 'L.A. 8' Arrests Launch 'Embarrassing' Two-Decade Case." January 26, 1987. Accessed March 19, 2025. https://www.aclusocal.org/en/news/freedom-file-la-8-arrests-launch-embarrassing-two-decade-case-0#:~:text=Drug%20Policy%20Reform-,Freedom%20File:%20'L.A.%208'%20Arrests%20Launch,'Embarrassing'%20Two%2DDecade%20Case&text=January%2026%2C%201987:%20Eight%20L.A.,'L.A.%208'%20in%201987.

Boyer, Edward J. "Pratt Files Civil Rights Suit Against LAPD, FBI; Court: Ex-Black Panther Wrongly Convicted of Murder also Targets Witness. He Spent 27 Years in Prison before a Judge Ordered His Release.: [Home Edition]." *Los Angeles Times,* May 29, 1998. https://www.proquest.com/newspapers/pratt-files-civil-rights-suit-against-lapd-fbi/docview/421269165/se-2.

Butterfield, Jeanne A. "Do Immigrants Have First Amendment Rights? Revisiting the Los Angeles Eight Case." *Middle East Report*, no. 212 (1999): 4–6. https://doi.org/10.2307/3012904.

Center for Constitutional Rights. "Judge Throws Out Charges in Los Angeles Eight Case." Center for Constitutional Rights. Accessed March 19, 2025. https://ccrjustice.org/home/press-center/press-releases/judge-throws-out-charges-los-angeles-eight-case.

Churchill, W., and J. Vander Wall. *The COINTELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent*. South End Press, 1990.

Cole, David, and James X. Dempsey. *Terrorism and the Constitution: Sacrificing Civil Liberties in the name of national security*. New York City, NY: New Press, 2006.

Cunningham, David. “The Patterning of Repression: FBI Counterintelligence and the New Left.” *Social Forces* 82, no. 1 (2003): 213. https://doi.org/10.1353/sof.2003.0079.

Doherty, Carroll. “A Look Back at How Fear and False Beliefs Bolstered U.S. Public Support for War in Iraq.” Pew Research Center, March 14, 2023. https://www.pewresearch.org/politics/2023/03/14/a-look-back-at-how-fear-and-false-beliefs-bolstered-u-s-public-support-for-war-in-iraq/.

Donohue, Laura K. *The Cost of Counterterrorism: Power, Politics, and Liberty*. Cambridge: Cambridge University Press, 2008.

Drabble, John. "To Ensure Domestic Tranquility: The FBI, COINTELPRO-White Hate and Political Discourse, 1964-1971." *Journal of American Studies* 38, no. 2 (August 2004): 309. https://www.jstor.org/stable/27557518.

Federal Bureau of Investigation. "9/11 Investigation." FBI. Accessed March 19, 2025. https://www.fbi.gov/history/famous-cases/911-investigation.

"Free Breakfast for Children: Nonviolent Legacies of the Black Panther Party," *The Nonviolence Project*, February 4, 2024, https://thenonviolenceproject.wisc.edu/2024/02/04/free-breakfast-for-children-nonviolent-legacies-of-the-black-panther-party/.

Garrow, David J. “FBI Political Harassment and FBI Historiography: Analyzing Informants and Measuring the Effects.” *The Public Historian*, vol. 10, no. 4, 1988, pp. 5–18. *JSTOR*, https://doi.org/10.2307/3377831. Accessed 18 Mar. 2025.

Gotham, Kevin. “Domestic Security For The American State: The FBI, Covert Repression, and Democratic Legitimacy.” *Journal of Political & Military Sociology* 22, no. 2 (1994): 203–22. http://www.jstor.org/stable/45371308.

Kleffner, Heike. "The Black Panthers: Interviews with Geronimo Ji-Jaga Pratt and Mumia Abu-Jamal." *Race & Class* 35, no. 1 (1993): 9–26. https://doi.org/10.1177/030639689303500103.

Meason, James E. "Foreign Intelligence Act: Time for Reprisal." *The International Lawyer* 24, no. 4 (Winter 1990): 1050.

Medsger, Betty. *The Burglary: The Discovery of J. Edgar Hoover's Secret FBI*. New York: Alfred A. Knopf, 2014.

National Institute of Justice. *La Cosa Nostra or LCN: The Mafia in America*. Washington, DC: U.S. Department of Justice, 2006.

https://www.ojp.gov/pdffiles1/nij/218555.pdf?ftag=MSF0951a18#:~:text=La%20Cosa%20Nostra%20or%20LCN,United%20States%20since%20the%201920s.

O'Reilly, Kenneth. "The FBI and the Origins of McCarthyism." *The Historian*, vol. 45, no. 3, 1983, pp. 375. *JSTOR*, http://www.jstor.org/stable/24445173. Accessed 14 Mar. 2025.

Pennock, Pamela E. "From 1967 to Operation Boulder: The Erosion of Arab Americans' Civil Liberties in the 1970s." *Arab Studies Quarterly* 40, no. 1 (2018): 44. https://doi.org/10.13169/arabstudquar.40.1.0041.

Ronald Dellums. "Geronimo Pratt: Frame-Up Exposed." Freedom Archives. Accessed March 20, 2025. https://freedomarchives.org/Documents/Finder/DOC513_scans/BPP_General/513.BPP.GEN.g.pratt.frame-up.exposed.by.ron.dellums.pdf.

Schrecker, Ellen. "McCarthyism: Political Repression and the Fear of Communism." *Social Research*, vol. 71, no. 4, 2004, pp. 1045. *JSTOR*, http://www.jstor.org/stable/40971992. Accessed 14 Mar. 2025.

Tushnet, Mark, and Larry Yackle. "Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act." *Duke Law Journal* 47, no. 1 (1997): 2. https://doi.org/10.2307/1372860.

U.S. Department of State, Office of the Historian. "Immigration and Nationality Act of 1952." Accessed March 19, 2025. https://history.state.gov/milestones/1945-1952/immigration-act.

Zinn, Howard. *A People's History of the United States*. New York: HarperCollins, 2005.

"Global War on Terror." *George W. Bush Library.* Accessed March 14, 2025. https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror.

"Wiretapping and Electronic Surveillance - Title III of the Crime Control Act of 1968." *Rutgers Law Review* 23, no. 2 (1969): 319-326.