

Intelligence Reform in the Mid-1970s

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From the inside looking out:

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Bob Woodward and Carl Bernstein are stars. They are reaping millions from their investigative reporting. When Watergate rates a chapter in history books, they will no doubt get more than a footnote. But another investigative reporter, whose role in the story he broke was probably more integral and essential, is almost forgotten already. Had Seymour Hersh not written his CIA domestic surveillance stories for the *New York Times* in December 1974 (indeed, had not the *Times* seen fit to splash the first story across five columns of page one headlined "Massive Surveillance"), there seems little doubt that there never would have been a Rockefeller Commission, a Pike "Report," a Church Committee, or an Executive Order 11905.

Books by Victor Marchetti and Philip Agee or occasional columns by Jack Anderson were not able, as the Hersh article was, to stampede the new Ford Administration into appointing a presidential commission, the first step down an everwidening path of inquiry. Hersh, and Hersh alone, caused the President, and then Congress — put in the position where it could not allow the Executive Branch alone to be the investigator — to make intelligence a major issue of 1975. His stories, combined with a presidential reaction that gave the stories great credibility, took a longsmoldering collection of problems and put them on the nation's

front burner. One would have to be quite persuasive to make the case that Woodward and Bernstein were nearly as crucial to the unfolding of their story.

On the other hand, had not Woodward and Bernstein set a favorable tone for investigative reporting, by giving great credibility to the delvings of the press into once-sacred institutions, the splash made by the Hersh article might never have been possible. The public and Congress had become quite susceptible to claims that the government was out of control, that bizarre stories about secret conspiracies might indeed be true. And the whole Watergate scenario led, as Senator Baker had been fascinated to learn and determined to probe as an adjunct to his Watergate committee tasks, in a number of bizarre ways to the CIA gates in Langley.

Yet Hersh may not even merit a historical footnote, perhaps, because the ball he started rolling never really knocked down all, or even any, of the pins. The ending of the *Post* dynamic duo's story, after all, was the resignation of a reigning President. No such result capped Hersh's story. The CIA is thriving in Langley, its constituent parts all strung together, its basic mission unchanged. The Defense Department still spends more than 80 percent of the billions of national intelligence dollars in ways only vaguely known to the American public. The new FBI building is still named for J. Edgar Hoover. And one of the nation's most expensive and most important intelligence organizations remains to this day unacknowledged by the U.S. Government. Nonetheless, the Hersh article did set in motion events that led to trumpeted "reforms" of the foreign intelligence community.

What follows is one insider's attempt to reconstruct that train of events. First, as an investigator (with the Rockefeller Commission), then as a staff assistant to the decision process (in the White House), and finally as an implementer (with the Intelligence Oversight Board), I watched the intelligence issue wax and wane, both at the office and on the nation's front pages. The views expressed here are biased by this background. In particular, the views are biased by not reflecting how the intelligence community itself, either collectively or individually, viewed what was happening. Nonetheless, the odyssey has provided some unique opportunities to see the events unfold.



The most obvious result of any government investigation is the release of information to the public. Even in the highly secretive world of intelligence, the past two years have seen many revelations. The American public has available to it much more information on the foreign intelligence community — the CIA, FBI, National Security Agency, Defense Intelligence Agency, and other elements of Defense, State, Treasury, and the Energy Resources and Development Administration — than it ever had before. Most prominent in this regard are the histories of abuses. The Church Committee's report on CIA involvement in assassinations details meticulously all the scraps of information that could be found. The Rockefeller Commission told for the first time the story of the suicide of a person on whom the CIA had been testing LSD, and numerous stories on government drug testing have followed. NSA and CIA watch lists that collected thousands of Americans' communications by cable and mail have been amply documented.

Some of these stories have been told and retold so many times that it is doubtful much of the public has been able to recognize that such activities, as reprehensible as they may have been, do not characterize the overwhelming focus of foreign intelligence activities. Take, for instance, CIA's Operation CHAOS. The CIA collected substantial amounts of information on domestic dissidents from 1967 to 1973. The Rockefeller Commission deemed the program a violation of the CIA statutory charter. The story has been told so often, though, that it would be easy to assume such activities were at the heart of CIA operations. CHAOS was the focus of the original Hersh *New York Times* articles. It merited a 20-page chapter in the Rockefeller Commission report. Church Committee hearings with James Angleton, Tom Huston, and Richard Helms put CHAOS in the headlines again in the fall of 1975. CHAOS was featured in the final Church Report, only to be on the front pages again several weeks later when the Senate Select Committee issued a supplemental report on the operation. Each time, headlines highlighted the 7,200 Americans on whom the CIA compiled files, but none of these reprises added substantial new details to the story first comprehensively told by the Rockefeller Commission. Rarely was there mention that an earlier story was being retold.

It cannot be denied, though, that the retellings had their purpose. On the first telling, many readers remained skeptical, on the one hand doubting that such events could really have occurred, while on the other hand wondering whether there might be even more to the story than was being told. With repetition, the story grew in credibility; newspaper stories shaded into documented history. Skeptics from varied viewpoints could begin to accept the story and begin to come to agreements on rational responses to abuses of the past. Retellings could also be used, as they were by the Church Committee, to highlight proposed reforms: otherwise dry legislative proposals that would gain little publicity unless placed in the context of the wrongs at which they were aimed. The Church Committee's retellings were especially well-timed to provide new impetus last spring when enthusiasm seemed to be dying for establishment of a permanent Senate Intelligence Committee.

The past year's revelations have, however, gone beyond detailing abuses of the past. When 1975 began, the CIA organization chart was classified. The Rockefeller Commission report in June 1975 was careful not to name offices below the level of the four Directorates. By April 1976, the Church Committee talked freely of lower-level offices, like the Domestic Collection and Foreign Resources Divisions, and told what they do. Similarly, the Rockefeller Commission avoided using operation code names — violating its rule only in the case of CHAOS, the particularly apt name chosen to denote attempts to understand American dissidence, and there only after serious debate among the staff about the appropriateness of using even that name in an unclassified report. The Church reports talk freely of RESISTANCE and MERRIMACK, of AMLASH and MONGOOSE. Naming names may seem insignificant today, but it certainly did not seem insignificant a mere year ago when they were still kept under wraps.

Naming names was but a first step. While the Rockefeller Commission discussed CIA proprietary companies and methods of establishing cover only in the very broadest sense — and even there with great trepidation and after much agonizing — the Church report details their types and uses. The method of producing finished intelligence, the types of covert actions conducted in the past, the budget process, relations with the academic world — all are detailed in official government documents as they had never been before. Reading the congressional documents, one familiar with issues in the intelligence community over the past 15 years would find little that was new to intelligence leaders, but much that was discussed for the first time in a nonclassified document. On the other

hand, the documents contained much that was new even to career intelligence officers who had never had a view from the top. Intelligence agencies had traditionally compartmented information, made it available only to those persons who had a genuine need to know it. As a result, many employees of intelligence agencies no doubt learned more about their employers than they ever had reason to suspect they would learn before retirement. One classic example of this learning process is exemplified by the references to the CIA's old Domestic Operations Division in Victor Marchetti's book. As knowledgeable as Marchetti had become in his years at the Agency, his description of this office contrasts starkly with its true nature, since revealed by the Church reports.

Among the purposes of any revelations should be publication of that information needed for informed public debate. There was for many years little or no public debate on the role of intelligence agencies, the only exceptions being aftermaths of the U-2 and Bay of Pigs incidents. The last year has seen much debate; has the information been made available for it to be informed? In the civil liberties area, the answer is largely yes. As the recommendations of the Rockefeller and Church reports and the detailed prohibition section of the President's Executive Order 11905 on Foreign Intelligence (18 February 1976) demonstrate, public discussion is possible and has begun on the limits — at least domestically — to be placed on foreign intelligence activities. On the other hand, the still-classified Attorney General guidelines for NSA collection and FBI counterintelligence activities cover areas where public debate cannot be easily accommodated with the demands for security. Revelation of the details of what communications the U.S. does not allow itself to intercept would be of great value to unfriendly nations who would be happy to know how they can communicate without being intercepted. In the broader area of the effectiveness of the intelligence agencies — their resource allocations and the organization of their effort — problems have been identified publicly, but informed debate remains difficult because of the limits placed by security on further description. Which collection systems deserve more emphasis — or less; whether National Intelligence Estimates are any good — or not; whether the overall intelligence budget is big enough — or too big — these questions cannot be debated in a public forum on the basis of publicly available information. Although studies of these questions have gone on for years within the Executive Branch and will be more intensely reviewed by Congress in the future, public discussion is unlikely to be useful. While it might be easy to find fault with the Church report because it is so

focused on prevention of abuses that it has little to offer in the area of effective operation of the intelligence community, the limits placed on publicly available information represent one stumbling block to any congressional committee that would wish to bring the public into this debate.

Congressional and press revelations do more than get information into the public sector. An article like Hersh's can be the catalyst for change. Once either estate latches on to any person or institution — be it Gulf Oil or the CIA — reactions to the revelations by those attacked are inevitable. The most immediate reactions are likely to be aimed at preventing future activities like those that made the splash in the press in the first place. Over the longer term, the press of scandal may also — from time to time — lead to substantive improvements. Administration responses to the intelligence revelations have aimed at both the short and long range. What is the lasting value of either?

Start with prevention of abuse — the response to the immediate, highly publicized issue. The largely unrecognized story is that many abuses had been attacked well before Seymour Hersh wrote his article. Indeed, the article would probably never have been written had not the attack already begun. The original compilation of CIA wrongs was pulled together for James Schlesinger when Watergate revelations — the Woodstein team intrudes again — were making life unpleasant for the new CIA Director. The "Family Jewels," as the compilation came to be known, represented a long, comprehensive, in-house collection of dynamite materials. Rarely, if ever, had any government agency pulled together in one place such a damaging document. The mere process of putting this information in one place may well have provided the source of Hersh's article, and subsequently, provided the material that formed the backbone (and most of the skeleton and even skin) of the Rockefeller Commission Report.

It should not be taken as a criticism of the Rockefeller Commission to state that it served primarily as a blue-ribbon panel to edit and publish the CIA Family jewels; rather, that fact should be seen first as a commentary on the useful role of outsiders invited in to counsel the government, and secondly as a tribute to the Agency — a tribute, not just because the Agency demonstrated an ability probably unmatched in the Government bureaucracy to learn what had been and still was going on throughout its organization, but also because as a result new regulations to end abuses were issued by Director Colby even before

1975 began. The mail opening program — probably the most damaging of the domestic abuses — had been terminated. Operation CHAOS had been phased out, largely because the events that provoked it were over, but also because the CIA had never been fully comfortable about its involvement with domestic dissidence. Formal procedures to limit physical and electronic surveillance and gathering of income tax information from IRS had also been put into effect. Assassination was outlawed by Director Colby long before the President mentioned that story to the press.

No matter how honorable had been the CIA's actions subsequent to collecting the Family jewels, convincing the American public of the wisdom of its actions could never have been accomplished by the Agency itself. The merit of asking a commission made up of members and staff from outside the government to make such judgments was that some degree of impartiality was necessary to establish credibility. The limited nature of the Rockefeller Commission's "outsideness" — being chaired by the Vice President and populated to a large extent by former government officials — ensured, however, that even its credibility remained to be tested by continuing investigations by Congress and the press. The Commission's credibility became especially crucial just before its report was issued. Rumors flew in the press that two versions of the report — one classified and one not — were being written, that the White House was censoring the report, and that it would contain the full story of the alleged foreign assassination attempts. The first rumor was completely false; from the beginning the Commission had planned to issue only an unclassified report, knowing full well that the existence of a secret report would only fuel demands for the full, unabridged story. Every draft done by the Commission was thus written to be an unclassified document. The second rumor had some validity, but no truly embarrassing connotations. The Commission was justifiably concerned not to release inadvertently sensitive classified information, while still telling the full story of the activities investigated. The White House was given an advance copy of the report to review, but no attempt was ever made to change even one word of the investigative findings. The third rumor particularly strained credibility when the Commission failed to make any findings with respect to alleged assassinations of foreign leaders. Although the Commission had become aware of the assassination stories early in its work, it had not been pushed to explore this area until it was well along in probing the domestic activities that had originally led to its formation. Regardless of what political motivations led to exclusion of any findings on the

assassinations in the Commission's June 5, 1975, report — and such motivations did exist — the underlying problem was that by this date — the scheduled deadline, already extended several months — the Commission was still far from completing this aspect of its inquiries. Whatever credibility the Rockefeller Commission could muster would have been sapped by a premature publication of preliminary findings in this highly sensitive area.

The minimal need for further reform of the CIA — assuming internal regulations alone could be considered sufficient to prevent abuse in the future — can be seen in the welcome embrace of the Rockefeller Commission recommendations by the Agency. Only the suggestion that the CIA's budget total be made public provoked serious disagreement. By mid-summer 1975, it was apparent that the intelligence community was quite willing to accept implementation of the Rockefeller recommendations. A number of White House staff people, with Counsel to the President Philip Buchen and Associate Counsel James Wilderotter in the lead, bustled around putting together a draft Executive Order imposing restrictions, not only on CIA, but on all foreign intelligence agencies. Inter-agency representatives were called in to make sure the restrictions were acceptable. At one point, disagreements led the drafters back to an Order that dealt only with the CIA. As suggested by the Rockefeller Commission, the Executive Order for the President's Foreign Intelligence Advisory Board (PFIAB) was drafted and redrafted to give it the new responsibility of policing the community; the only issue at the time was whether the Board, given this new task, would continue to be allowed to have a staff detailed from the intelligence community.

It appeared, around Labor Day 1975, that there was a real opportunity for the President to take the initiative away from Congress by announcing that the Rockefeller recommendations had been implemented. At that time, the Church Committee had not yet had any public hearings, the Pike Committee was still trying to get organized, and the Rockefeller agenda represented most of what was in the news. There was an opportunity for quick, decisive action. Against a background of a Nixon Administration notorious for ignoring reports from presidential commissions, the Ford Administration could show it was different; when good ideas were advanced, they were implemented. The staff effort, however, died aborning. It died not because of any serious policy objections to the types of restrictions that would have been imposed — but rather, it seemed, because no one within the White House was pushing to grasp the opportunity. Lack of direction was apparent. Those

who counseled that Congress would never act and that therefore issuance of restrictions was in the long term an unnecessary limitation of foreign intelligence won the day.

The interaction of publicity, politics, and substantive reform was clear. Publicity had created an issue worthy of Presidential attention; publicly imposed restrictions on intelligence agencies would never have been on the Oval Office agenda had not Hersh and the *New York Times* put them there. Politics, however, framed the issue for the President; the issue had become less one of what restrictions should be imposed and more one of whether any Executive actions were necessary to prevent more drastic, less appealing congressionally imposed restrictions. There was at the time only a small constituency within the Executive Branch for unilaterally limiting its own activities. Unless forced to do so, or unless political benefits could be derived by such action, the Executive Branch was loath to act.

Within but a short several months, it seemed that the moment for making an impact through the Rockefeller recommendations had passed. The Administration had been put on the defensive. The Pike Committee was beating on the intelligence community for documents, subpoenas were issued, threats to find the Secretary of State in contempt of Congress were on the front pages, and questions were being raised whether the community could even predict the next Pearl Harbor. The assassination report was not far from completion in the Senate; covert actions in Chile and Italy were about to be attacked. Mere implementation of the Rockefeller recommendations would have appeared a weak gesture once these wider issues had been opened. James Angleton's testimony that intelligence agencies should not always be expected to obey the law cast into extreme doubt the value of issuing any executive order with restrictions on the intelligence community. Through the autumn, it seemed less and less likely that the Administration would pull itself together to implement even the Rockefeller recommendations. The once frantic pace in writing and rewriting restrictions ended completely. All Administration effort was directed toward controlling the damage public revelation could cause intelligence agencies, as Congress kept threatening more and more embarrassing days of public hearings and kept demanding more and more sensitive intelligence information.

By mid-November 1975, the time when implementation of the Rockefeller recommendations would be an effective public stance for the President

had passed, but a new initiative began. By this time, the White House role in the intelligence issue was no longer being run out of the Counsel's office; the Intelligence Coordinating Group, with representatives of the major intelligence agencies and chaired by presidential counsellor Jack Marsh, had been formed. The group was staffed by Michael Duval, formerly of the Domestic Council. From within this group, the realization arose that if the President were prepared to move further — go beyond the Rockefeller recommendations — Congress could still be scooped, and the political initiative regained from a Congress that had seized the momentum and placed the Administration on the defensive. When the President announced his intelligence decisions in February 1976, much press comment spoke of the shifting public perception of intelligence issues caused first by the murder of Richard Welch in Athens, and then the congressional fiasco with the leaking of the Pike Report. From a perspective in the White House, however, neither event had much to do with the intelligence reform package. These events may have been important in some respects, but they were not central to reform. Rather, the failure of the President to act in August seemed due to disorganized staff work then, while his action in February seemed due to an organized staff effort five months later.

The new White House staff intelligence leadership had prevailed in arguing that the investigations had created an opportunity for decisive (and "historic") presidential action. The passing of the late summer opportunity opened up new opportunities in the winter. Had the President implemented the Rockefeller recommendations around Labor Day, it seems in retrospect extremely doubtful that the impetus to wade in again in early 1976 with more intelligence actions would have been strong. The Rockefeller recommendations dealt only with CIA domestic activities and by the end of August, it appeared unlikely that agreement could be reached on restrictions for other agencies. The recommendations included few organizational issues. The President's announcements on February 18, 1976, went much farther. They dealt with all foreign intelligence agencies; they set limits overseas as well as in the United States; they included presidential support of an electronic surveillance bill that Congress alone had been pushing previously; they addressed organization and management issues.

Thus began the effort to put together an "affirmative action plan" — a series of positive reforms to accompany any announcement of presidential restrictions to be placed on foreign intelligence, a shift from damage control to leadership. The first concrete evidence that such a

plan was in the works was the convening of a National Security Council study group, chaired by the Office of Management and Budget, with representatives of all intelligence agencies, to lay out options for reorganization. From mid-November to mid-December, daily, in President Nixon's old Executive Office Building hideaway, this group worked to put together four major options for overall reorganization and subsidiary options for oversight and control of intelligence activities.

The NSC/OMB task force did not have to start from scratch. A whole series of intelligence organization and management issues had — almost since the September day in 1947 when the CIA was born — remained open to debate. Hersh and the *New York Times* had provided an opportunity to set in front of the President these issues: Could the Director of Central Intelligence really be the leader of the foreign intelligence community? No, said the CIA because he had never been given adequate control of the 80 percent plus of national intelligence assets in the Defense Department, even by President Nixon's 1971 letter which the Schlesinger Report had inspired. No, said the Defense Department, because the Director would always have a conflict of interest as long as he still ran the CIA. But, yes, it would be nice if someone could be given effective control so that resource decisions would be better made — provided, of course, that resource control was possible without usurping Defense's needed operational control. Do consumers of intelligence get the product they need? No, they do not always, but whose fault is that — the consumer's or the producer's? And, anyway, is there any organizational way to solve that problem? Does the intelligence community's organization promote competing analyses, or rather accommodation and compromise of views? Where does the CIA fit in — as the collator above partisanship, or as another partisan in competition among intelligence judgments? Is there any way to assure that intelligence agencies do not abuse the secrecy within which they operate, or conversely, do not allow Presidents to abuse them? Give an oversight responsibility to the President's Foreign Intelligence Advisory Board? Or, a new Board? Or, a Special Counsel? Or, a super Inspector-General? Do covert actions have to be run by the CIA? Or, should they be run out of State? Or Defense? Who should approve them before they start?

Each of these issues had a history; none required the glare of press and congressional inquiry to be recognized within the government. The NSC/OMB group set forth no options that had not been considered internally before, did no original research, and added no new

understanding to complex problems — its importance was that it wrote a report at a time when persons around the President wanted options for him to choose among and announce. The group also served to give all the intelligence agencies a role in the formulation of decisions for the President. Each agency could see what options were being presented and thus prepare its arguments pro and con. Providing for such participation was necessary if the President wanted to enlist internal support for reform. At the same time, the group provided assurance to the President that reforms being pushed by his staff had been reviewed by intelligence experts.

After the submission of the NSC/OMB study, the decision process moved back into the White House staff structure. The President asked for a comprehensive statement of issues and options. A thick notebook with a white cover embossed with the presidential seal was prepared for him to take on his Christmas skiing trip to Vail. The press was told of the notebook to ensure that it would be publicly embarrassing for anyone to try to stop the momentum that was building for announcement of reform. (The press not only created issues for the White House; it thus also served as a willing tool of the White House.) The NSC/OMB study was an appendix, but it was also the basis for the main text of the notebook. The four major organizational options — (1) a Department of National Intelligence; (2) a DCI with resource control over all national assets but operational control over none; (3) a DCI with only coordinating authority, even over the CIA; and (4) maintenance of the status quo with a few tinkering — were all described. They were set in the context of the issues the study group had identified and debated. The CIA's graphics shop prepared a number of pie charts, flow diagrams, and organization charts to emphasize certain issues. The familiar old penchant for finding government organization characterized by "mess" charts was carried into the intelligence area with a chart showing the complex web of operational, resource and substantive intelligence chains of command. The notebook, like the study group report, represented no new insights into intelligence issues; but it gave great reality to the reform movement. It demonstrated that real issues and options existed. By pulling them together in one document for high-level consumption, it made a decision process inevitable. The use of graphics and other professional-looking packaging contributed greatly to the momentum.

After Christmas the coordination process that began at the staff level in the NSC/OMB group was further promoted at the top management level.

Copies of the "White Book" were made available to top intelligence leaders, and they were called into the Cabinet Room on January 10 to be briefed, along with the President, by Jack Marsh on the book's issues and options. At the meeting, the CIA threw a fifth organizational option into the hopper, moving the decision process a step closer to a workable reorganization plan. The CIA's option (#4A, as it was tagged) gained particular credibility by being presented on a large chart done by the same CIA graphics shop in the same format as it had used for the large charts of the first four options, which the White House staff used at the Cabinet level meeting. Coordination having been "achieved," the decision process moved once again back to the White House staff structure. With the President leading the way, and with heavy participation of Marsh, Duval, Buchen, and Brent Scowcroft of the National Security Council and Don Ogilvie of the Office of Management and Budget, over a four-week period, the options were narrowed, the decisions made.

Again, packaging played a major role. Shortly after the Cabinet-level briefing, drafts of the Executive Order, a press fact sheet, organization charts, and presidential public statements and messages to Congress were prepared, and once again, put in a notebook (blue cover this time) embossed with the presidential seal. Just as the White Book had demonstrated that real options existed, the Blue Book demonstrated that an impressive package of decisions was possible. Added to the decisions on reorganization and restriction were support for electronic surveillance and anti-assassination bills already before Congress, submission of legislation to protect information on intelligence sources and methods, and presidential comments on congressional oversight.

Progress ebbed and flowed. Decisions at this point were being made within the White House; the intelligence agencies were left largely in the dark on which options were being chosen. Some clue must have been given, though, when the NSC/OMB group was called together hastily to critique Option 4A. The evolving decision that this was the option to choose was masked, however, by asking the group at the same time to critique a Defense Department proposal for realigning intelligence research and development activities of Defense and CIA, a proposal that no one in the White House was seriously considering at the time.

By early February, the President had fully digested the issues and made his decisions. He decreed that the package should be readied for announcement at his upcoming press conference, and the final pieces fell together quickly. Last-minute inter-agency drafting sessions on the

Executive Order gave each agency its final chance for input and its first opportunity to see some portions of the Order which had been worked on solely in the White House. The restrictions portion of the Order was polished for the umpteenth time. Other portions of the Order that had not received such painstaking care were hastily reviewed. Little opportunity for objection to the top management restructuring was given the intelligence agencies; they were shown its structure only in the last few days before announcement. Any chance for dilution of the restructuring was deliberately circumvented through keeping possible agency opposition uninformed. Members of the new Intelligence Oversight Board were chosen and asked to serve. Executive Branch and congressional leaders were briefed; the President began his regular press conference with announcement of the intelligence reforms, and the press got a background briefing. Seymour Hersh was not at the briefing, but it certainly represented the culmination of the process he had initiated. The President had scooped Congress by announcing and initiating implementation of his decisions before the Senate even made its recommendations public.



Reactions to the press and Congress alone, however, cannot fully explain how the reorganization came out the way it did. Indeed, although the impetus for some sort of action came from outside the Executive Branch, the substantive decisions were made almost solely on the basis of internal inputs. As a result, several concepts that operated for most active participants in the decision process as generally accepted guidelines were particularly important. Although each is probably quite sound, none was ever seriously scrutinized. No major conflicting guidelines were ever explored. Given these concepts, the decision process actually had quite limited options. Description of the concepts fills in the other half of the picture of how the February 18 actions came about:

Restrictions à la Rockefeller Commission: Although the Executive Order's restrictions (Section 5) went through literally hundreds of rewordings, the final product did not vary significantly from the recommendations of the Rockefeller Commission (which themselves were, in part, borrowed from

Defense regulations drafted after the Ervin Army surveillance hearings). It includes the ban on domestic CIA electronic surveillance, the general prohibition — with exceptions — on collection of information on domestic activities of Americans, and the admonitions to obey the law in obtaining IRS information, opening mail, and giving assistance to law enforcement agencies.

Even though the Rockefeller Commission spoke only to CIA domestic operations, its basic format and intent were carried forward into limits on activities of all intelligence agencies. Some limits were given worldwide application. At no point was any substantial attempt made to refocus the effort, to resist the use of a public document such as an executive order to issue the restrictions, or to add significant new loopholes or restrictions.

Throughout the process there was concern that valuable sources of foreign intelligence not be outlawed inadvertently, and, thus, a need arose to write restrictions carefully; but at no time was any attempt made to legitimize the clear abuses of the past or to create hidden loopholes by tricky drafting. In that area where drafting was most difficult — electronic surveillance — the solution was to direct the Attorney General to issue guidelines (guidelines which could be classified and thus be more detailed and tailored to technological capabilities). Foreign intelligence agencies were always to be limited to legitimate foreign intelligence activities; although reasonable men could differ on exactly where lines should be drawn, there was always a sincere recognition that lines did need to be drawn to protect civil liberties of Americans. The Ford Administration was given a bum rap by those commentators who characterized the Executive Order restrictions as an attempt to authorize the wrongs of the past; the close similarity between many of the Church Committee recommendations in this area and the Order itself are testament to that bum rap. The Church Committee diverged substantially from agreement with the Executive Order only in its insistence that restrictions on intelligence agencies be enacted in statute, thus eliminating the possibility that a future President would simply amend the Executive Order whenever it became unduly inhibiting.

Increasing Accountability: Even before the drawing of the first intelligence "mess" chart, a key phrase in White House discussions of intelligence reform was increasing the accountability of top intelligence leaders. The concept lies behind much of what was done. The Executive Order

speaks of the obligations of senior leaders; it delegates responsibilities to agency heads, not their agencies; Cabinet-level appointees were asked to replace their top deputies in reviewing covert action proposals, and the President for the first time embraced his responsibility to approve them; individual Department and Agency inspectors-general, general counsels, and agency heads were told to report directly to the new Oversight Board.

This focus on accountability had several intriguing aspects. For one, it led to much drawing of boxes and of lines connecting boxes. Often the question of organization seemed primarily one of which organization could be drawn most easily on a simple pyramided organization chart. Boxes and lines substituted for in-depth analysis of how decisions get made or information flows. The net result was a clean chart — with direct accountability to the President — that could be contrasted for the press and public with the mess chart with which the community began. Yet, perhaps not so surprisingly, the increase in accountability is not nearly as clean as the new chart. The National Security Council may be officially in a leadership position just under the President, but its intelligence role remains as it always has been quite fuzzy. The Committee on Foreign Intelligence may have been given resource "control," but it remains a "committee" attempting to run a multibillion dollar show. The U.S. Intelligence Board may have been abolished; but, as all knew it would, it has resurfaced with the new name, National Foreign Intelligence Board.

The emphasis on accountability may also have contributed to the unspoken decision that the President's reforms would not include any shifting of responsibilities among intelligence agencies. The focus of all reform was on top management; no change dipped below that level to affect existing inter-agency divisions of labor. Those divisions were accepted; although problems might exist, they could be solved by ensuring that community leadership was well-structured; the President need not enter that fray himself. Inclusion in the Executive Order of "charters" of responsibilities for each element of the community was, therefore, merely a process of putting in nonclassified form similar lists that already existed in NSC directives and other documents. Within the Executive, much was made of these charters; they were to substitute for absence of statutory charges to the National Security Agency and Defense Intelligence Agency and for adequate statutory guidance to CIA; they were to represent the open, candid attitude of the Ford Administration. Perhaps predictably, they had little if any impact; the

country had been too saturated with other, more detailed information to find much value in these quite general statements.

A third intriguing aspect of the emphasis on accountability is that it should have become the focus of Executive Branch intelligence reform after the revelations that many of the abuses of intelligence agencies were caused not by too little, but rather by too much, accountability to the President. Often the agencies had wandered from their statutory roles precisely in an effort to be responsive to Presidents who sought (or ordered) their help either in covert operations overseas or in dissident surveillance on the home front. Well before the reforms were announced, Senator Church had admitted he was no longer in pursuit of a rogue elephant. This apparent irony was a major focus of criticism after the intelligence announcements were made; it had been rarely, if ever, a subject of debate within the Executive prior to the announcements. It was perhaps symptomatic of the Ford Administration's image of itself — and indeed largely its reality — that no doubt would ever enter its mind that Presidents could be trusted, were honest, and always proceeded by legal means. The result may be long-term increase in beneficial accountability, but the short-term fallout was strong criticism for the President's plan. It was lack of implicit trust in the integrity of the Presidency that provided the thrust of the Church Committee recommendations and marked the basic distinction between those recommendations and the President's plan.

We Need Covert Action. The Bay of Pigs had opened to public debate the value of covert action; the secret war in Laos escalated criticism of such activities; but more recent revelations about Chile and Italy had sparked serious and sustained public arguments for the first time that covert action was inimical and detrimental to American foreign policy. Are covert action's gains worth the costs? Must all such actions be conducted secretly? The answers are by no means obvious; the questions are quite complex when viewed in the context of the wide range of activities covered by the term. Options presented to the President always made a bow to the question and to the related question whether the capability, if maintained, should be kept within the CIA; but real study of either question was never initiated. The accepted gospel — that the President must retain a capability somewhere between declaration of war and diplomatic initiative, and that only the CIA was equipped to handle such actions — remained throughout the reform discussions just that: accepted gospel. Although the need to impose restrictions on intelligence agencies was seized on as an

opportunity to tackle other issues such as resource control, it was not similarly used to reassess covert action. The only announced limitation on covert action was the ban on political assassination. Further events will be required to push the executive to study the costs and benefits of such activities. In the interim, covert action will continue under any Administration, although probably continuing only at the much reduced level of recent years.

Better Control of Resources: When James Schlesinger, then at the Bureau of the Budget, reviewed intelligence in 1971, his focus had been on resource control. Since his report, it had often been observed that the intelligence budget process had not focused on resource tradeoffs between competing systems and agencies; that the ability to collect — rather than the need to collect — often drove resource decisions; and that possible savings could be had through tighter resource control. It was these observations that led to formation of the Committee on Foreign Intelligence, which was given resource "control" over all national intelligence assets. The Committee was to have the control that had not been achieved by the Director of Central Intelligence — since being given centralized resource responsibility in 1971 — or by existing Office of Management and Budget, Intelligence Community Staff, and executive committee arrangements. Because the emphasis in setting up the new committee, the one major organizational rearrangement of the February 18 announcement, was on resource control, its membership embraced only CIA and Defense (with a swing vote given to the National Security Council), the two major resource users in the intelligence community. The State Department, and other smaller intelligence units, long represented in the U.S. Intelligence Board structure, were not included.

Despite this emphasis on resource control, at no point in the reform deliberations was there serious study whether the resource problem, which most agree did exist in 1971, was still a central management problem. The intervening five years had seen much budget pressure on intelligence, both from a tight overall federal budget and from inflation. Adjustments to tight budgets had inevitably forced budget decisions that may not have been made as frequently in earlier, less constrained years. Never explored was the observation made by some budget reviewers that what the mid- and late 1970s called for was not tight budget control, but, rather, encouragement of creativity in initiating new intelligence techniques and programs. Instead, the Schlesinger conclusions of 1971 were parroted each time the issues were set forth. Thus, the CFI was established as a means of controlling demands for

more money, when it was quite possible that the needed mechanism by 1976 was one that encouraged the funding of such demands.

Outside Oversight: The Rockefeller Commission had been convinced that oversight of the CIA had to include an outside voice. It called for a congressional joint intelligence committee, and it said the President's Foreign Intelligence Advisory Board should be given, for the first time, an oversight role. In retrospect, it had become clear that CIA and FBI had suffered, not benefited, from a three-decade absence of overseers. The Rockefeller Commission worried especially about the absence of institutions to which a beleaguered intelligence head could appeal when being pressured by the White House to bend rules of law or propriety. Congress could help do this job, but a role was also foreseen for a separate safety valve, within the Executive, but outside the chain of command. The President easily embraced these concepts. Thus, the new Intelligence Oversight Board, three distinguished persons from outside Government, was asked to review, and report to the President and Attorney General on, illegality or impropriety. Although options such as Special Counsel on the White House staff or a centralized Inspector-General were also advanced, the need to have this Executive oversight include an outside influence was always given the highest priority. Disputes were limited to whether it made sense to give PFIAB this role, or to constitute a new Board. The decision was to split this responsibility in recognition of the other overriding and somewhat conflicting responsibility of the already existing PFIAB to encourage more and better intelligence activities. Ironically, given this decision, the Oversight Board was manned with three members all of whom were already on, or added to, PFIAB.

As with other top management reshufflings in the President's plan, establishment of the Oversight Board represented victory for a central concept without any study of the anticipated result. It was a given that outsiders should be brought into the propriety review process; questions about what those outsiders would do were not asked. Thus, on February 19, even for the fairly well defined role of the Oversight Board (much better defined, for instance, than the role given the Committee on Foreign Intelligence), implementation of the Executive Order began without detailed guidance. Numerous questions arose: Would the Board issue advisory opinions on activities it found legal and proper, or would it buck all decision to the President or Attorney General? Would the Oversight Board initiate inquiries of its own or wait for misconduct to be reported to it? What would the Board do if it found an activity to be

illegal and it nonetheless continued? How important did an activity have to be to deserve reporting to the President? How would the Board relate to the new Senate Intelligence Committee which also expected to have reported to it all infractions of law or regulation? What in the clandestine world of intelligence was the distinction between proper and improper activities? The bare outlines of the Executive Order left the Oversight Board with much leeway in which to interpret its role, ensuring that the implementation process would be more important than the establishment of the Board itself.

The President also endorsed a joint congressional intelligence committee as an idea whose time — after at least 21 years of discussion — had come.* He opposed unilateral declassification of information by Congress and supported repeal of the Hughes-Ryan requirement that appropriate congressional committees be informed of all covert actions. At the same time, he made it clear that it was up to Congress, not the Executive, to fashion its oversight mechanism. As the Senate moved toward setting up its own permanent intelligence committee, a number of issues separated the congressional advocates from Administration positions. Many Senators saw a need for this committee to authorize all intelligence appropriations, to be "fully and currently informed" of all activities including those still in planning, and to have authority to make classified information public. On each issue, the Administration felt Congress would unduly hamper flexibility and endanger security. It was around these issues that debate flowed in the Senate. From the Administration viewpoint, however, none should have been nearly as important as establishment of an overriding principle of comity. Each of the issues was significant only if one assumed antagonism between the committee and the Administration. Threats to reveal secrets, revelation of budget figures as part of an authorization process, and difficulties in meeting a fully and currently informed standard would be unlikely if committee and Administration recognized they were involved in a joint endeavor to assure the best possible intelligence — by legal means. Each issue, however, became a sticking point that endangered establishment of such a spirit of comity. Administration secrecy in the foreign policy areas and congressional irresponsibility in several well-publicized leaks over recent years had so soured relationships that reestablishment of a spirit of comity, as had existed, for instance, in the 1950 Cold War period, seemed impossible. Disputes about how the two estates could work together quickly became issues of principle on which neither side wished to be accommodating. By acting through a Senate

Resolution, rather than a statute, the Senate avoided any chance of a White House veto and won on all these issues. Only time will tell how the practice of congressional oversight works.

Quality of the Product – No Guideline: Congressman Pike seemed to have hit on a real nerve when he lambasted the intelligence community for not predicting Tet in Vietnam, the coup in Portugal, the 1973 Arab-Israeli war or the Turkish invasion of Cyprus. He further delved into quality of the intelligence product by giving the spotlight to Sam Adams to talk about massaging of Vietnam statistics and to retired CNO Admiral Elmo Zumwalt to comment on SALT verification. Civil liberty abuses of the past were admitted and could be prevented in the future, but if all the billions of dollars of efforts were not producing what they were supposed to, then really serious problems existed in intelligence. Pike's well-publicized attacks are, of course, easily answerable; his concept of the value and use of intelligence was limited by being oriented toward splashy headlines rather than in-depth understanding. Nonetheless, he was aiming at the tip of an iceberg of a genuine issue: is the intelligence product any good? And, if not, what can be done about it? Questions along similar lines had been asked within the Executive Branch. The National Intelligence Estimates had from time to time drawn questioning of their reliability and usefulness. The daily publications were often criticized for being less enlightening than the *New York Times*. Yet when the intelligence community was "historically reorganized," minimal attention was paid to the quality of the intelligence product. The NSC/OMB working group added some options to shake up the production community only at the last minute, and those options were never seriously considered afterward. Production did not involve the dollars that would make it a resource issue, nor the glamour of accountability, nor — despite Pike — the public urgency, to be included on the agenda. Production was considered a management issue to be pursued, if at all, by the newly reorganized intelligence community, not through presidential initiative.

Secrecy Must be Improved: The President endorsed and sent to Congress a bill to enact criminal penalties for unauthorized disclosure of information containing sources and methods of intelligence. The bill had been kicking back and forth between the CIA and Justice Department for several years. They had reconciled their differences over it in late 1975, and it was, without further coordination or any debate, included in the President's February announcement. Never was any doubt expressed that this was an easily justified, limited piece of legislation,

important to the protection of the secrecy of the guts of the intelligence community, and acceptable to most congressmen. The Administration should have known better. The Rockefeller Commission had wandered into this issue somewhat innocently and had been attacked for its efforts. It also had been shown the CIA draft legislation; but, because it was quite worried about Bill of Rights problems in the area, the Commission attempted to avoid taking any stand by recommending:

... legislation, drafted with appropriate safeguards of the constitutional rights of all affected individuals, which would make it a criminal offense for employees of the CIA willfully to divulge to any unauthorized person classified information pertaining to foreign intelligence. (Emphasis added.)

The intent may have been to avoid taking a stand, but the press immediately interpreted the recommendation as an attempt to muzzle both itself and employees seeking to reveal wrongdoing. The President's sources and methods bill brought the same reaction. Never were Administration spokesmen able to convey the message that this legislation was targeted on a limited amount of classified information and that criminal penalties were being established only for those persons who, having been given authorized possession of such information, passed it on to unauthorized persons. The press and critics of the Administration quickly picked on this legislation as indicative of a tone of increased secrecy that rubbed off on the whole reorganization. This piece of legislation drew more comment than any other portion of the intelligence announcement and detracted greatly from the opportunity to portray the overall reforms as beneficial to civil liberties interests. In retrospect, given the slim chances for passage of the bill now or any time soon, it is extremely doubtful that its inclusion was beneficial to either the intelligence community or the President.

Leave Out the FBI: Hersh had written about the CIA, and not the FBI, and thus the focus from Christmas 1974 to Valentine Day 1975 was all on foreign intelligence. It was the CIA that the Rockefeller Commission was asked to probe all spring; CIA involvement in foreign assassinations was what preoccupied the Church Committee all summer; Congressman Pike focused his fall hearings on berating CIA activities. The National Security Agency got dragged into the inquiries, partially because of oblique references in the Rockefeller Commission Report to CIA receipt of

information on dissidents from "another" agency. But the FBI came in for its major lumps only after the President's February 18 announcement.

As a result, the announcement had little to say about the FBI. Part of the FBI was included in the description of the foreign intelligence community, but the Bureau was totally excluded from the restrictions on intelligence activities. Instead, the Attorney General was told to draft internal justice regulations for the FBI. There was good reason for excluding the Bureau from the general intelligence restrictions; its combined intelligence and law enforcement responsibilities required different ground rules. Nonetheless, failure of the President's package to address the FBI left a hole in the otherwise comprehensive set of documents. Now that FBI black bag jobs are the scandal getting press and justice Department attention, the Administration has once again lost the initiative. As it becomes more and more likely that attempts to justify break-ins will be grounded on arguments of national security and the foreign threat, the failure of the February 18 plan to address them explicitly will require new responses.



The President's February 18 announcement sparked a flurry of newspaper articles. Some dissected the Executive Order restrictions, probing unsuccessfully for tucked-away loopholes; others analyzed whether the reorganization changes would have any impact. All such articles, though, could only be predictive, and thus speculative. Would the Oversight Board stop abuse? Would the Committee on Foreign Intelligence save the taxpayers millions? Would covert actions be thoroughly reviewed? The announcement had no answers; implementation was what mattered. Directions to Inspectors-General and General Counsels to report to a board of outsiders on illegal activities could easily be ignored or even forgotten. Giving the Director of Central Intelligence chairmanship of the committee controlling national intelligence was no guarantee that he or his intelligence Community Staff would have any grasp over Defense assets. It would be easy for cabinet principals to stop attending Advisory Group meetings and allow covert actions to be approved without deliberation. Once the glare of publicity and presidential attention was off intelligence, old patterns

could easily be revived.

Now, as the Executive Order approaches its anniversary, when some answers are beginning to be available, the press has by and large lost interest. Few questions have been asked about even mundane — though enlightening — details such as the hiring of staff, initiation of reports, and convening of meetings. Establishment of a Senate Intelligence Committee will mean there will be a new staff in town probing these questions, but the press has moved on to new scandals (including FBI bag jobs), leaving the cleaning up of the old to others. Only time will tell whether Congress effectively oversees. Seymour Hersh could initiate a year of intelligence revelation, which could precipitate real changes in the way intelligence is structured, but only the tried and true government official was still involved when the dust settled. Left to him will be the final word.

Footnotes

*The first such proposal was introduced in the House as early as 1948, but caused little discussion — Ed.

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