



## **It's Time for an Independent Investigation of America's Intelligence Strategy: The Church Committee Shows How.**

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Six years after the 9/11 attacks, there is a good case to be made that the national security strategy of the United States is in shambles. We are mired in a war in Iraq that hinged on false premises supplied by the American intelligence services and irresponsible and exaggerated claims by the White House and its allies. America's good name continues to be sullied by pervasive allegations and evidence of torture—all fertile recruiting propaganda for al Qaeda and its allies. (As recently as July, 20 2007, the White House reauthorized the CIA's use of torturous interrogation methods.) And with American unpopularity at disturbingly

high levels about the world, there is scant evidence that we are winning the "war of ideas" the 9/11 Commission properly deemed to be central to countering terrorism.

There is now, as we have argued in *Unchecked and Unbalanced: Presidential Power in a Time of Terror*, a strong and urgent case for course-correction. But, as present congressional debates on the Iraq war show, the present configuration of forces between the President and Congress makes any change away from the status quo unlikely. Simply put neither congressional nor popular coalitions can easily overcome the President's de facto (and de jure) veto authority on policy matters even marginally tethered to security.

For those who see the need for transformative shifts in national security policy, what kind of institutional

architecture is necessary, or even conducive, to achieving such changes?

While there can be no magic bullet to this complex problem, we believe that historical experience suggests one institutional vehicle that has special relevance here: the high-level national investigatory panel. According to University of California, Berkeley (Boalt Hall), professor Jonathan Simon, the growth of investigative commissions can be traced back to the Progressive era, which saw “a proliferation of commissions, many of them quasi-legislative or quasi-judicial bodies.” President Washington’s appointment of a commission to investigate the suppressed Whiskey Rebellion of 1794, though, provides another, earlier, antecedent.

During World War II, two national commissions examined national security issues with varying degrees of success, demonstrating the promise and the pitfalls of these bodies. First, then-Senator Harry Truman conducted a vast investigation that effectively exposed military waste and inefficiency during World War II, even while his own party held the White House. Truman’s investigation occurred in spite of the Democratic lock on both Capitol Hill and the White House.

The second of the two World War II commissions was less successful. The Roberts Commission, chaired by Supreme Court Justice Owen Roberts, investigated the Pearl Harbor attacks and the U.S.’s failure to anticipate them. Based on a few days of unsworn testimony from officials in Washington, and sworn testimony gathered in Hawaii, they exonerated the White House and

Washington staff, while finding culpable the commander of the Pacific Fleet and the Army commander in charge of Pearl Harbor. The Roberts Commission, however, was never told that Washington had broken the Japanese codes, and so obscured the true extent of American knowledge of Japanese plans.

Even this limited set of cases suggests the importance of making sure that commissions can function in a nonpartisan fashion, and also the need to ensure full-spectrum access to relevant documentary and testimonial evidence for a commission to be credible and effective. It was not until thirty years after the War closed that these lessons would be applied.

By the 1970s, evidence of widespread and pervasive abuse of intelligence powers in the name of Cold War anti-Communism had surfaced. Combined with the post-Watergate moment of weakness in the executive branch, this provided an opening for the Senate to launch the most comprehensive diagnostic investigation of intelligence powers in the service of national security to do be done in the United States: the Church Committee.

On January 27, 1975, the United States Senate created a Select Committee to investigate the intelligence agencies of the United States, including the FBI and the CIA colloquially known by the name of its chair, Senator Frank Church. The committee contained both Republicans and Democrats, and generally reached bipartisan agreement on most issues. The Church Committee faced two basic questions: the extent to which agency actions had been illegal or improper, and whether oversight (by both Congress and

the executive) required improvement. In the course of its work, it examined and documented how intelligence agencies in the Executive Branch, most importantly the FBI, the CIA, NSA and other intelligence components of the Defense Department had violated public trust by excessive and abusive surveillance and disruption of political activity at home (such as trying to provoke Martin Luther King to commit suicide), and overseas covert action (such as hiring the Mafia to try to assassinate Cuba's Fidel Castro, and supporting the overthrow of the democratically elected government of Chile). Worse, the political leadership in both Democratic and Republican administrations had been either complicit in abuses or turned a blind eye to them.

It provided, in so doing, the most comprehensive account of intelligence activities ever produced. In concluding, the Church Committee made eighty-seven recommendations in its volume on *Foreign and Military Intelligence* and ninety-six in the companion volume on *Intelligence Activities and the Rights of Americans*. Among the most important consequences of the Church Committee's work were creation of permanent intelligence committees in the

House and Senate, and also enactment of the Foreign Intelligence Surveillance Act of 1978 (which recently has been gutted by the 2007 Protect America Act). It is, finally, noteworthy that the Church Committee completed all this without a single leak of confidential or classified information.

The Church Committee provides a model for the kind of diagnostic investigation that remains possible today: An inquiry designed to identify past flaws and to propose enduring institutional fixes to these flaws. Congressional committees have already begun this work piecemeal. But, as the 9/11 Commission showed, there is independent value in a synoptic view of security problems. With so many of the 9/11 Commission's recommendations still hanging in the air, and with so much more evidence of the institutional dysfunction of the intelligence agencies, moreover, the need for a new commission is clear: That body could build on the 2004 report from the 9/11 Commission, and articulate the kind of difficult answers to strategic and operations problems the nation faces today in Iraq, in the badlands of Pakistan, and in the ports and airports of America.