

Secrecy in Flux: The CIA and Changing Context

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Introduction

Secrecy has been a part of American governance since the founding of the nation, and George Washington was the nation's first spymaster. He designed ciphers, assembled spy rings, and executed British agents. As president, he pushed for the creation of the nation's first black budget, immune to congressional review, and enshrined in the executive branch the ability to pursue secret diplomacy.

This is the way that many books and articles about America's intelligence agencies begin. They cite this distinguished pedigree in a twofold effort to legitimize secrecy as an American institution, and to present its exercise as patriotic and noble. Many then go on to extol the virtues of the nation's secret agencies, arguing their utter necessity for the maintenance of our way of life.

This is not one of those studies.

The truth is that ideas about what is and is not acceptable in terms of secrecy have changed dramatically over the course of the nation's history, driven by shifts in strategy and culture, and by the growth of different ideologies. It is these changes that I seek to examine in this work, changes that had dramatic consequences for America and for the world. Specifically, I aim to determine both how and why what I term "conceptions of appropriate secrecy" have altered over time. I use this term primarily because it encompasses a broader spectrum of

action and thought than existing inquiries, which largely limit their investigations to the question of oversight. While I am interested in oversight, my focus is on changing beliefs regarding secrecy, and the ways in which those beliefs affected policy and culture within the federal government. Oversight is certainly a part of that focus, but it is only one element among a number of factors I seek to analyze.

My inquiry begins not with Washington and his secret messages, but with the founding of the Central Intelligence Agency shortly after the end of World War II. The Agency's founding marked the inauguration of a new set of ideas regarding secrecy in America, driven by the losses of World War II, an increasing internationalism, and the looming threat of the Soviet Union. Little more than three years after the Agency's formation in 1947, these ideas had reached their fullest expression, and the conception of secrecy that precipitated the Agency's founding had come to occupy a dominant position within the nation's government.

In much of the historiography focused on the Agency, this is where things grow quiet. The CIA fades into the background, waging a secret war against the Soviet Union, and the legislators charged with passing its budget check in maybe once a year to make sure the spies have enough money. It is only in the 1970s that tremendous change occurs, spurred by a series of leaks in the press regarding illegal CIA activities on American soil. In the investigations that followed, Congress took on a watchdog role, creating committees to prevent the CIA from abusing its power and acting counter to American values or interests.

This interpretation, however, misses a great deal. Most scholars who have written about the Agency focus the bulk of their attention on the question of oversight, examining the degree to which members of Congress did or did not assert authority over the CIA. Indeed, much of the historiography boils down to back and forth arguments regarding the appropriate role of the legislature. Some, like Loch K. Johnson, have argued that the only way to keep the Agency honest is to have members of Congress involved in the process of approving operations. They feel that those legislators should be both willing and able to crack down on the CIA in the event of abuse. Furthermore, they argue that the very existence of such legislators will serve to deter actions out of step with American values. Others, like Stephen F. Knott, argue precisely the opposite, claiming that this kind of structure delays operations to a dangerous degree and prevents the Agency and its cohorts from engaging in actions that might well be morally reprehensible, but which are nonetheless vital to national security and ultimately in the nation's best interests. Instead, these scholars push for greater executive control, and for a streamlined chain of command between the presidency and the CIA.¹

¹ Loch K. Johnson, *A Season of Inquiry: Congress and Intelligence* (Chicago, Illinois: Dorsey Press, 1988).

---, *Secret Agencies: U.S. Intelligence in a Hostile World* (New Haven and London: Yale University Press, 1996).

---, "The U.S. Congress and the CIA: Monitoring the Dark Side of Government," *Legislative Studies Quarterly* 5, no. 4 (November 1980): 477–99.

Stephen F. Knott, *Secret and Sanctioned: Covert Operations and the American Presidency* (Oxford: Oxford University Press, 1996).

My approach is somewhat different, focusing less on answering the question of which approach is superior, and far more on why members of Congress have changed their behavior over time. Additionally, this narrow focus on oversight alone misses the broader conceptions of appropriate secrecy at play. For much of the CIA's history, the conception that precipitated its founding occupied such a dominant position that the idea of exerting congressional authority over the Agency would simply not have occurred to legislators. Their job was to enable the CIA to do its job, not to restrict its actions.

In my research, I focus on three entities within the federal government: Congress, the White House, and the CIA. Using declassified memoranda, newspaper articles, and the *Congressional Record*, along with government reports, letters, and public statements given by politicians, I seek to analyze the ways in which conceptions of appropriate secrecy within these organizations changed over time. Frequently, the boundaries between these conceptions are somewhat fuzzier than most interpretations suggest, and the relationships between these three entities are also far more complex than is typically demonstrated in the historiography.

Methodologically, my research skews heavily toward the primary source genres outlined above, with comparatively little use of historiography. This is due in large part to the particular focus of my research; questions of oversight overwhelmingly dominate discussion of the CIA. Additionally, there have been relatively few attempts to analyze the relationship between the Agency and

Congress in recent years. Much of what has been written thus far was composed in the 1980s, following the establishment of legislative oversight and, in a few rare instances, the Iran-Contra scandal. What few recent works exist largely rehash these topics, or examine past actions taken by the Agency in exhaustive detail and in an adversarial manner. Therefore, I have oriented my efforts towards primary source analysis, aided by recent disclosures under the Freedom of Information Act, permitted and driven by the very changes I seek to examine.

Formerly classified documents (largely memoranda) make up a large portion of my inquiry, and I have employed them primarily in an effort to track changes in culture and policy within the White House and the CIA. In both cases, these are most often documents not intended for public consumption. Therefore, despite their formal tone and framing, they afford a fairly candid perspective on the thoughts and actions of those involved in their creation. On the more public end of the spectrum, government reports and public statements given by politicians grant me a greater understanding of both the concrete nature of changes in policy, and the ways in which those changes were portrayed to the general public. Of the remaining genres, newspaper articles allow me to track current events and highlight particular occurrences, while excerpts from the *Congressional Record* permit insight into the lawmaking process and shifting currents of belief and power within Congress.

Ultimately, I argue that there was a persistent, ideologically motivated portion of Congress that advanced an alternative conception of secrecy during

what Loch K. Johnson terms “The Era of Trust,” from 1947-1974. These members of Congress, who began as a small and relatively ineffective minority, passed and attempted to pass several pieces of legislation that indirectly sought to limit the ability of the executive branch to keep information secret from Congress, laying the groundwork for more far-reaching reforms enacted in the mid-1970s. Additionally, the CIA itself was changing dramatically during this period, particularly over the course of the 1960s. The CIA’s leadership, driven by increasingly frequent leaks regarding its operations, became convinced that secrecy could not last forever. If the Agency were to survive, it would need to at the very least ready itself for potential scandals. The effect was to bring the Agency’s conception of secrecy closer to that of the legislators who had long desired greater disclosure from it. When the Watergate scandal occurred, the number of legislators pushing for change in the nation’s policies regarding secrecy increased dramatically, as did the fervor of their efforts. By 1977, the dust had largely settled, and, with Jimmy Carter in the White House, all three groups adopted a similar conception of appropriate secrecy.

In the chapters that follow, I begin by outlining the founding of the CIA, and the ways in which the conception of appropriate secrecy it embodied came to predominate. In the process, I also identify the international factors that spurred the creation of that conception, and the ways in which different groups responded to its growing prominence. From that point, I move to a discussion of the long-running resistance to that conception, and the efforts of legislators to pass

laws limiting executive secrecy. In this chapter, I also analyze the complex interplay of politics, current events, and ideology at play within these efforts, and the ways in which various presidents responded to them. I then examine the changes that occurred within the White House and the CIA over the course of the 1960s, primarily focusing on the growing realization within these groups that secrecy now had an expiration date, and that leaks were now a probability. This realization culminated in a set of internal reforms in the CIA, oriented towards preparing the Agency for future disclosures. In my final chapter, I argue that this trend within the Agency, coupled with the trauma of Watergate, precipitated the investigations of the 1970s, and that the end result of this chaotic period was a kind of harmony. For a brief time, the CIA, the White House, and Congress all operated under a similar conception of appropriate secrecy, and all three organizations took steps to systematize and normalize this relationship. It was not to last, but this relationship nonetheless represented a concrete shift in the conception of secrecy that had hitherto dominated the national conversation and the federal government.

I

The CIA and New Conceptions of Secrecy

The Founding

The founding of America's first peacetime intelligence organization began not with some dour ceremony, replete with flags and symbols of patriotic duty, but with a sophomoric joke. In a private meeting held over lunch, President Harry Truman bestowed upon newly-minted Director of Central Intelligence (DCI) Sidney Souers and Chief of Staff William Leahy "two black cloaks... two black hats of the Highwayman style, and a dagger, wooden for each." A "flowing black moustache" was placed on Leahy. Truman then pronounced the two "an excellent pair of 'cloak dagger' men," leaders of the Central Intelligence Group.²

These hats, daggers, and cloaks served to mask deeper anxieties. What these men were doing was unprecedented in the nation's history, and ran counter to what many future commentators termed 'the long-held American conception

² Eben Ayers, "The President" January 24, 1946, CIA FOIA Electronic Reading Room. Defined by the OED as: characteristic of espionage, secrecy, intrigue, etc.; hence in various allusive phrases; hence cloak-and-daggery. Adopted from the Spanish *de capa y espada* (cloak and sword, designating or pertaining to dramas or stories of intrigue and romantic or melodramatic adventure, in which the principal characters are taken from that class of society that formerly wore cloak and dagger or sword) and first used in English to describe a suspected spy in Dickens' 1841 novel *Barnaby Rudge*, the term was later adopted as a descriptor for the American Office of Strategic Services, and for spies in general.

of fair play' in the international sphere.³ While various presidents since the nation's founding had launched ad-hoc covert and extralegal operations targeted at securing America's interests abroad and at home, no unifying agency had controlled these operations, and large-scale intelligence efforts had been largely confined to wartime. This divide between war and peace was sharply delineated. When the World War I era Black Chamber broke the codes employed by Japanese diplomats involved in the Washington Naval Conference, Secretary of State Henry Stimson dismantled the agency, stating that "gentlemen do not read each other's mail."⁴ Stimson's statement speaks to the 'American conception of fair play' noted above: for many Americans, secrecy was inherently associated with wrongdoing, and with inappropriate conduct.⁵ To quote intelligence historian Christopher Andrew, "Ever since John Winthrop set out to build 'a city on a hill' in Puritan Massachusetts, Americans had believed that their country was guided by uniquely high ethical principles. They regarded peacetime espionage, if they thought of it at all, as a corrupt outgrowth of Old World diplomacy, alien to the open and upright American way."⁶

Those involved in the Central Intelligence Group's formation were highly aware that they were treading on dangerous ground, and attempting something

³ Christopher Andrew, *For the President's Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush*, 1st ed. (New York City, NY: HarperCollins, 1995), 29.

⁴ Philip Taubman, "Sons of the Black Chamber," *The New York Times*, September 19, 1982, sec. Books, <http://www.nytimes.com/1982/09/19/books/sons-of-the-black-chamber.html>.

⁵ Simon Singh, *The Code Book: The Science of Secrecy from Ancient Egypt to Quantum Cryptography* (New York: Anchor books, 2000).

⁶ Christopher Andrew, *For the President's Eyes Only*, 29"

unprecedented in the American experience.⁷ When William J. Donovan, commander of the wartime Operation of Strategic Services, first proposed the creation of CIG to President Roosevelt, he was emphatic that “such a Service should not operate clandestine intelligence within the United States,” underlining the last four words twice for emphasis.⁸ Such an agency, operating secretly within the nation, would have struck a dissonant note for Donovan and his ilk, especially in the wake of their efforts against Hitler’s Gestapo in continental Europe. Donovan’s fury was unsurprising then, when a leaked version of his letter led some to claim that this was the first step towards the creation of an “American Gestapo.”⁹ Creating a “service in the President’s offices, under a director appointed by the president,” was, a *New York Times* article quoted Representative Clare Hoffman as saying that, “another Roosevelt move ‘along the Hitler line’ - to centralize power in Washington.”¹⁰ A rapid response by Donovan and his supporters to deescalate the debate was largely successful, but the level of vitriol with which some Americans reacted to his proposal is nonetheless noteworthy and indicative of the cultural tensions at play.

⁷ Clarification:

OSS - Operation of Strategic Services, WWII covert operations unit

CIG - Central Intelligence Group, post-WWII coordinating authority for information from the nation’s intelligence agencies; interim, short-lived agency

CIA - Central Intelligence Agency, founded in 1948, responsible for the duties of both previous agencies, and for collection efforts all its own

⁸ William J. Donovan to Franklin Delano Roosevelt, “The Basis For a Permanent, United States Foreign Intelligence Service.”

⁹ Bradley F. Smith, *The Shadow Warriors: O.S.S. and the Origins of the CIA* (New York: Basic Books, 1983), 404-405 in Michael Warner, “Salvage and Liquidation: The Creation of the Central Intelligence Group,” *Studies in Intelligence*, no. Fall (1995): 111–20.

¹⁰ “Urge Central Unit For Intelligence: Backers of Donovan Proposal, Drawn for President, Stress Coordination in Peacetime,” *New York Times*, February 9, 1945.

World War II and Peacetime Intelligence

But Donovan and Truman agreed that the benefits outweighed the risks. In a world where a “delay in transmitting vital information to central decision-makers in Washington” regarding the “probability of an attack on Pearl Harbor” led to “the costliest naval disaster in the history of the United States,” and in which America’s ability to crack Japanese naval codes allowed Admiral Chester Nimitz to turn “the tide of the war” at the battle of Midway, both men felt that, as Donovan put it, “the dangers of [operating without a secret intelligence service] have been generally recognized and must be remedied.”¹¹ Pearl Harbor in particular, they felt, represented a compelling argument for a peacetime intelligence apparatus; how else was the nation to avoid preemptive strikes? Furthermore, as Herbert Hoover put it in his report on the National Security Organization (a catch-all term for the collection of organizations charged with ensuring national security i.e. the National Security Council) in 1949, “world conditions demand that the United States maintain a strong National Security Organization. This need results directly from the total disruption of the old balance of power among nations, and from new forms of communications and warfare which have impaired America’s ocean-moated isolation.” A belief that

¹¹ Indira Vidyalkar, “Pearl Harbor: Why Surprise?,” *The Indian Journal of Political Science* 41, no. 4 (1980): 847–69, 848, 857.

David Kahn, “Codebreaking in World Wars I and II: The Major Successes and Failures, Their Causes and Their Effects,” *The Historical Journal* 23, no. 3 (1980): 617–39, 627.

William J. Donovan to Franklin Delano Roosevelt, “The Basis For a Permanent, United States Foreign Intelligence Service.”

war “would be rare and that there would always be ample time to build a strong military force around this permanent cadre” was no longer tenable in an age where the United States operated “in the forefront of world affairs.”¹²

Documentary evidence indicates that Truman was highly aware of this shift in America’s fortunes, and of what he believed was the harm caused by the lack of an American intelligence agency. In his memoirs, he writes that “I have often thought that if there had been something like coordination of information in the government it would have been more difficult, if not impossible, for the Japanese to succeed in their sneak attack at Pearl Harbor.”¹³ Pearl Harbor loomed large for Truman in his considerations regarding the nation’s intelligence assets, as it did for many of his contemporaries, serving as an abject lesson in the risks of faulty or lackluster intelligence. In January of 1946, he issued a Presidential Directive to “the Secretary of State, the Secretary of War, and the Secretary of the Navy” designating them “the National Intelligence Authority” and ordering them to form “a Central Intelligence Group” using “persons and facilities from [their] respective departments.”¹⁴ Noteworthy in this document are sections (3)(c) and (3)(d), which state that the Director of Central Intelligence shall:

¹² The Commission on Organization of the Executive Branch of the Government, “The National Security Organization,” February 15, 1949, 1.

¹³ Harry S. Truman, *Memoirs: Years of Trial and Hope*, Vol. II (Garden City, NY: Doubleday, 1956), 56, in Michael Warner, “Salvage and Liquidation: The Creation of the Central Intelligence Group.”

¹⁴ Harry Truman, “Presidential Directive on Coordination of Foreign Intelligence Activities,” January 22, 1946, *Emergence of the Intelligence Establishment, Foreign Relations of the United States, 1945-1950*, https://history.state.gov/historicaldocuments/frus1945-50Intel/pg_178.

C. Perform, for the benefit of said intelligence agencies, such services of common concern as the National Intelligence Authority determines can be more efficiently accomplished centrally.

D. Perform such other functions and duties related to intelligence affecting the national security as the President and the National Intelligence Authority may from time to time direct.¹⁵

Michael Warner, a member of the CIA's History Staff, writes in his 1995 article on the formation of CIG that "this artful ambiguity... meant espionage and liaison with foreign intelligence services... everyone involved... knew this, but no one in the administration or the military wanted to say such things out loud; hence, the obfuscation." It was this "artful ambiguity," enshrined in the later National Security Act of 1947, that would provide the justification for all future covert action undertaken at the government's behest.¹⁶

CIG, Donovan, and Truman

The CIG bore little resemblance to the organization proposed by Donovan, however. In his 1944 letter to President Roosevelt, Donovan had stressed that "such a service should be... administered under Presidential direction," and that "the policy of such a Service should be determined by the Director, with the advice and assistance of a board on which the Department of State and the Armed Services should be represented."¹⁷ As his proposed organizational chart

¹⁵ Harry Truman, "Presidential Directive on Coordination of Foreign Intelligence Activities," 178.

¹⁶ Michael Warner, "Salvage and Liquidation: The Creation of the Central Intelligence Group," 116-117.

¹⁷ Donovan, "The Basis For a Permanent, United State Foreign Intelligence Service," 2.

(see Figure 1) makes abundantly clear, Donovan saw this “Proposed Central Agency” as completely independent, acting on the President’s orders alone.

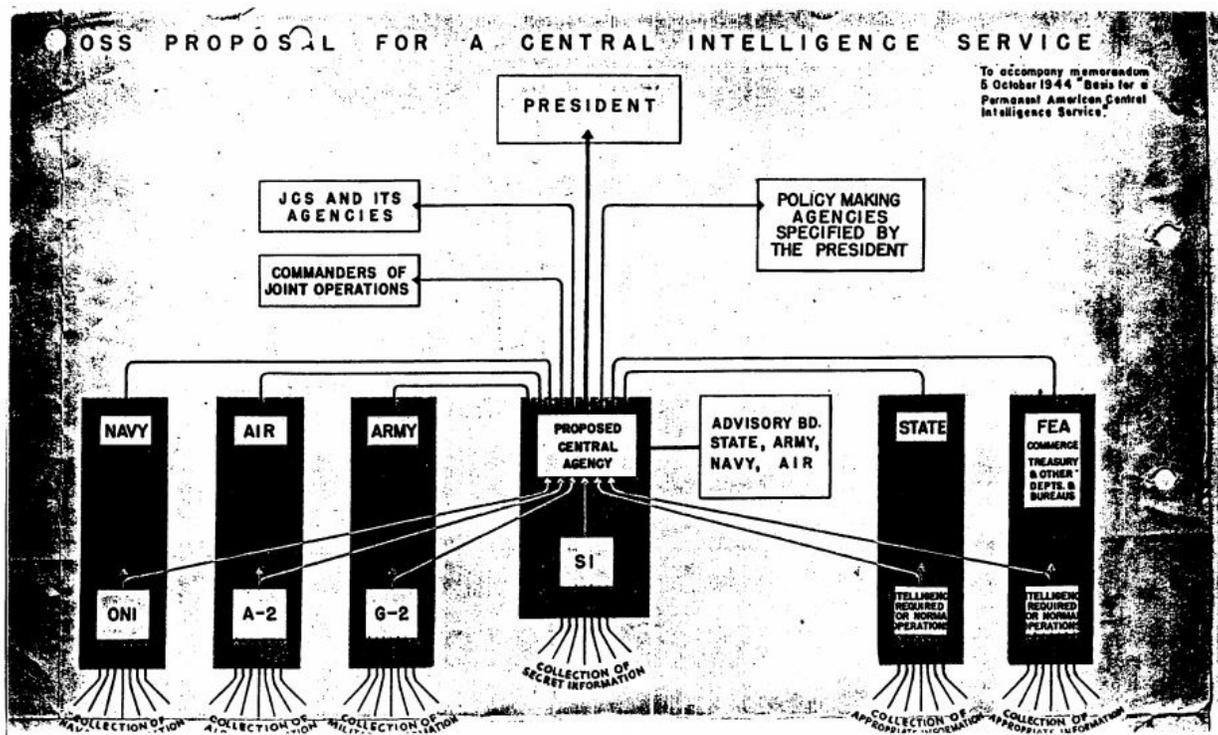


Figure 1, William J. Donovan to Franklin Delano Roosevelt, “The Basis For a Permanent, United States Foreign Intelligence Service,” 3. Notably lacking from this chart is Congress. It could potentially be present under the heading “Policy Making Agencies Specified By the President,” but if that is the case, then the proposed intelligence agency would have no obligation to Congress beyond that mandated by the President. Its chain of command would contain a single link, between the Agency’s director and the President. This document was sent to Roosevelt exclusively, and was never leaked to the public.

Donovan was less than pleased with the CIG’s dependency on the military and the Secretary of State. In a letter to General John Magruder, former Deputy Director of the OSS and head of the CIG’s Strategic Services Unit, Donovan argued that the CIG’s reliance on “persons and facilities” from the “respective Departments” of the NIA was “a breeding ground for red tape, lost motion and

lack of security.”¹⁸ In the end, however, he concluded that “more authority and independence are desirable,” but that “the breadth of [the directive’s] language may be used to advantage.”¹⁹

A few key points follow from Truman’s Directive and Donovan’s letter to Magruder. First, all those involved agreed provisions for covert action were essential to the effective operation of an intelligence agency; Donovan’s original letter to Roosevelt mentioned “clandestine subversive operations” as a key part of the agency’s duties, and the obfuscating language in Truman’s Directive has been credibly and repeatedly cited by members of the Intelligence Community as justification for covert action.²⁰ Second, there was a clear difference of opinion regarding the chain of command. Donovan wanted the agency to have as much “authority and independence as possible,” especially from the nation’s military leadership (though he did acknowledge the necessity of “cooperation” between Agency leadership and the military), and for it to report directly to the President, with the military and the State Department acting solely in an advisory capacity. Truman, conversely, sought a diffusion of responsibility, viewing the agency more as an organization for the coordination and collation of preexisting intelligence rather than an independent intelligence agency in its own right.

¹⁸ William J. Donovan and John Magruder, “Presidential Directive Establishing NIA,” Memorandum, January 23, 1946, CIA FOIA Electronic Reading Room, <https://archive.org/details/CIA-RDP90-00610R000100080002-7>, 2.

¹⁹ William J. Donovan and John Magruder, “Presidential Directive Establishing NIA,” 6.

²⁰ William J. Donovan to Franklin Delano Roosevelt, “The Basis For a Permanent, United States Foreign Intelligence Service,” 2.

However, all those involved agreed that there was no place for Congress in this proposed hierarchy. Nowhere is it mentioned on Donovan's 1944 organizational chart, and nowhere in Truman's correspondence or policy documents. Indeed, there is little evidence to suggest that the thought of Congressional involvement in the nation's intelligence agencies ever arose; it was unthinkable, not insofar as they disagreed with the idea, but rather that it was a possibility they never remotely considered. They seem to have viewed the proposed Agency as falling into the general category of defense. Just as it would be unthinkable for Congress to provide generals their marching orders, so too was it unthinkable for Congress to have a role in relation to the nation's intelligence agencies. Lastly, Truman and Donovan were firmly in agreement that the position of the United States in the post-World War II world was such that the nation could not afford to operate without a peacetime intelligence capability. The threats were too great, and the chance of surprise attack too high to risk otherwise. Secret intelligence had become a necessity.

The National Security Act, Covert Action, and Analysis

In 1947, just a year after Truman's Directive, Congress passed the National Security Act, which dissolved the NIA and the CIG, and replaced them with the National Security Council and the CIA. However, the duties and responsibilities of these organizations changed little. Of particular note is the fact that the CIA retained the mandate for covert action granted by the Directive. The legislation,

however, apparently codified that such a mandate came not from the executive branch, but from Congress. Future Agency directors would interpret this clause as blanket legislative authorization for covert action.²¹

Yet covert action itself represented something of a quandary for the Agency. Its heritage was rooted in war, and the bulk of its leadership emerged from the Second World War fresh from the front lines of espionage, paramilitary operations, and assassinations. As DCI Robert M. Gates wrote in 1992, "a number of the CIA's first officers were OSS veterans, including four of its directors - Allen Dulles, Richard Helms, William Colby, and William Casey."²² These men also ranked among the longest office-holders in the Agency's history, and held the office during the bulk of the Agency's formative years.²³ Indeed, the only portion of OSS retained in the transition to CIG was the 'Special Operations' branch; the group responsible for espionage and covert action. The analysis branch was dissolved with the rest of the OSS.²⁴ After CIG's establishment, the Group was empowered to draw talent from the State Department and from the military, yet

²¹ The National Security Council (NSC) is a group within the executive branch that advises the president on all issues relating to national security. It also issues directives (NSC Directives, often referenced as NSC followed by a dash and a numerical code) to executive agencies, including the CIA, other members of the United States Intelligence Community (USIC, the constellation of agencies responsible for intelligence collection and analysis), and military forces.

²² Robert M. Gates, "Intelligence, Democracy, and Freedom," *Presidential Studies Quarterly* 22, no. 2 (1992): 231-37, <http://www.jstor.org/stable/27550944>.

²³ Allen Dulles: 1953-1961 (8 years)

Richard Helms: 1966-1973 (7 years)

William Colby: 1973-1976 (3 years)

William Casey: 1981-1987 (6 years)

It is worth noting that the majority of DCIs held that post for less than three years. While Colby is on the shorter end of the spectrum above, most DCIs lasted two years or less.

²⁴ Michael Warner, "Salvage and Liquidation: The Creation of the Central Intelligence Group," *Studies in Intelligence*, no. Fall (1995): 111-20.

The 'Special Operations' branch survived the dissolution of the OSS through the extensive lobbying of Donovan, the branch's Director, and several prominent members of the military.

it still lacked a permanent analysis staff. Thus, when the CIA was formed, the upper echelons of its command structure consisted primarily of men trained in espionage and covert action, and its analysis capability was practically non-existent because the Agency had so few analysts. Indeed, the analysis branch needed to be built almost from the ground up after the Agency's founding.²⁵

This analytical deficit had long-term consequences for the Agency. Writing in 1985 about his tenure as DCI under President Carter, Admiral Stansfield Turner stated that “the analytic branch’s biggest problem is not size, however, but prestige within the Agency... Its prestige inside the Agency is clearly second to that of the espionage branch. In part, that’s because only a few DCIs have given analysis more than passing attention. Most of them were either former members of the espionage branch or were captivated by it.”²⁶ Legacies of this perspective survive in modern cinematography depicting covert action. James Bond and his fellows are masculine ideals; the analysts feeding them information are almost always invisible: women, or effeminate men.²⁷ This conception of analysis as unmanly was likely even more intense in decades past. Thus the newly minted

²⁵ A more in-depth breakdown on the different responsibilities of the CIA will follow shortly, but here are the salient definitions:

Espionage - covert data collection

Covert Action - propaganda, paramilitary efforts, assassinations, etc.

Analysis - turning information collected by the espionage branch and numerous other sources both covert and overt into actionable intelligence passed on to policy-makers

²⁶ Admiral Stansfield Turner, *Secrecy and Democracy: The CIA in Transition* (Boston: Houghton Mifflin Company, 1985), 126.

²⁷ Sam Mendes, *Skyfall*, Action, Adventure, Thriller, 2012, <http://www.imdb.com/title/tt1074638/>.

Paul Feig, *Spy*, Action, Comedy, Crime, 2015, <http://www.imdb.com/title/tt3079380/>.
Matthew Vaughn, *Kingsman: The Secret Service*, Action, Adventure, Comedy, 2015, <http://www.imdb.com/title/tt2802144/>.

CIA, charged with analyzing information drawn from every intelligence collection agency of the United States, possessed a paltry analysis capability following its formation, and remained leery of developing that capability over the course of the next three and a half decades.

Instead, espionage and covert action were pushed to the fore. Yet espionage is only one of the three primary branches within the Agency, largely concerned with the acquisition of information via covert means—agents within foreign governments, listening devices, and stealthy break-ins. Espionage is covert collection. The second branch, Analysis, is the process of turning that information into an actionable report for policy-makers. If espionage discovers that the Soviets have 300 nuclear missiles by approaching a loose-lipped scientist, analysis determines how much damage these missiles can do, reporting that information to policy-makers. Importantly, however, the analysis arm of the CIA focuses on both overt and covert information, drawn not from the CIA's espionage arm alone, but from publicly available documents and from all arms of the U.S. government and civilian population active overseas, including diplomats, journalists, and the military. Indeed, Turner argued in 1985 that much of the CIA's analysis was carried out on publicly available documents, and that more of it could be and should be available for public perusal.²⁸

Covert action, conversely, is when policymakers receive a document analyzing potential death counts from Soviet missiles and decide to do something

²⁸ Stansfield Turner, *Secrecy and Democracy: The CIA in Transition* (New York: HarperCollins, 1986), 113-128.

about it in secret. That might mean staging a coup in the satellite state where the missiles are based, or arming mercenaries to disrupt uranium mining operations, or any of a number of possible operations. Importantly, however, these actions are carried out in such a way that the United States government cannot be held responsible for what is, practically by definition, a violation of international law.

Thus, the tripartite duties of the CIA can broadly be defined as collection, analysis, and action. Of the three, analysis is inarguably the organization's primary duty; in its outline of the Agency's duties, the National Security Act of 1947 cites the Agency's responsibility "to correlate and evaluate intelligence relating to the national security" before any implication regarding the Agency's mandate to engage in covert action, and the Agency itself was pitched to members of Congress primarily as a coordinating organization devoted to the assessment of information from other agencies.²⁹ From the Agency's very inception, therefore, there was a tension at play, where presidents increasingly asked the Agency to perform covert actions, and where its leadership consistently prioritized covert action and espionage over the actual analysis of information gathered.

NSC-68: CIA on a War Footing

Aside from the backgrounds of the Agency's leadership, there were other reasons for the continuing focus on covert action: by the start of 1950, the

²⁹ The National Security Act of 1947, 4.

Truman administration had concluded that the United States was engaged in a global covert war with the Soviet Union, and that the CIA was the only way for America to prosecute that war effectively without having it devolve into open military conflict.

The nuclearization of the Soviet Union in August of 1949 triggered a dramatic upheaval in the strategic outlook of the United States; America was no longer the sole nuclear power, and Joseph Stalin possessed an atomic weapon. In January 1950, President Truman ordered the Secretary of State and the Secretary of Defense “to undertake a reexamination of our objectives in peace and war and of the effect of these objectives on our strategic plans.”³⁰ The final result of this reexamination was National Security Council directive 68 (NSC-68), which became the foundation for American dealings with the Soviet Union for the next few decades.³¹

Broadly speaking, NSC-68 advocated a policy of containment to prevent the spread of communism and decrease Soviet influence on a global scale. This directive, ratified and codified what was commonly known as the Truman Doctrine; the goal was “to reduce the power and influence of the U.S.S.R. to limits which no longer constitute a threat to the peace, national independence and

³⁰ “A Report to the President Pursuant to the President’s Directive of January 31, 1950” (The National Security Council, April 7, 1950), Truman Presidential Library, https://www.trumanlibrary.org/whistlestop/study_collections/coldwar/documents/pdf/10-1.pdf, 3.

³¹ “Milestones: 1945–1952 - Office of the Historian,” accessed December 20, 2017, <https://history.state.gov/milestones/1945-1952/NSC68>.

stability of the world family of nations.”³² Most importantly, however, NSC-68's writers declared outright that the United States was involved in a global conflict with the Soviet Union, a conflict spanning all arenas of interaction between the two nations. In their words, “conflict has, therefore, become endemic and is waged, on the part of the Soviet Union, by violent and non-violent methods in accordance with the dictates of expediency.”³³ Notably, they highlighted “the ideological and psychological level” and the “political and economic level” as areas where the Kremlin was particularly engaged in conflict with the U.S. Thus, NSC-68 rendered the realm of ideas a battlefield in American policy.³⁴

Truman and the NSC called on the CIA that to take the lead in that battle. While NSC-68 does not mention the Agency by name, its call to “place the maximum strain on the Soviet structure of power and particularly on the relationships between Moscow and the satellite countries” while simultaneously cautioning that “we should endeavour to achieve our general objectives by methods short of war” could realistically be accomplished by no other means.³⁵

NSC-68's effects were far-reaching. By explicitly terming politics and ideology a realm of conflict between nations, this document laid the groundwork for numerous questionable actions carried out by the nation's intelligence agencies, notably those that targeted non-governmental organizations, such as

³² “A Report to the President Pursuant to the President's Directive of January 31, 1950,” 61-62.

³³ Ibid, 4.

³⁴ Ibid, 11.

³⁵ Ibid, 63, 62.

civil rights groups, suspected communists, and anti-colonial organizations abroad. The document's authors argued that:

The integrity of our system will not be jeopardized by any measures, covert or overt, violent or non-violent, which serve the purposes of frustrating the Kremlin design, nor does the necessity for conducting ourselves so as to affirm our values in actions as well as words forbid such measures, provided only they are appropriately calculated to that end and are not so excessive or misdirected as to make us enemies of the people instead of the evil men who have enslaved them.³⁶

In so doing, they provided a moral justification for practically any action aimed at the downfall of the Soviet system, while simultaneously framing the conflict in wholly ideological and idealistic terms. This was not a cold-blooded conflict over resources or territory; this was a battle between good and evil, between slavery and freedom. There was no room for gray: opposition to the Kremlin's evil made one good, regardless of one's actions.

But perhaps most importantly for this discussion, NSC-68 enshrined CIA covert action as a key weapon of the U.S. government in its war against the Soviet Union. That emphasis on America's engagement in a secret war with the Soviets had an extraordinarily important effect on those working for the Agency, especially given that, at least publicly, the nation was at peace. The nature of that war similarly had wide-ranging effects on the Agency's leadership and staff, labelling practically every interaction between ideologies an arena of international conflict.

³⁶ "A Report to the President Pursuant to the President's Directive of January 31, 1950," 12.

The Doolittle Report, written in 1954 at President Eisenhower's request to assess the Agency's performance, only further highlighted the extent to which the nation's leadership saw itself as engaged in a war for survival. In an oft-quoted paragraph, the report's authors stated:

It is now clear that we [the American people] are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever cost. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the United States is to survive, long-standing American concepts of "fair play" must be reconsidered. We must develop effective espionage and counterespionage services and must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated and more effective methods than those used against us. It may become necessary that the American people be made acquainted with, understand and support this fundamentally repugnant philosophy.³⁷

Over the four years between NSC-68's adoption and the Doolittle Report, these justifications and world-views became a key aspect of the CIA's culture and that of the executive branch charged with overseeing and targeting its actions.

In the years that followed, the CIA undertook numerous operations targeted at halting the spread of communism. CIA agents facilitated numerous coups, notably in Guatemala, Iran, and Chile.³⁸ In Vietnam, the CIA helped to install (and, through deliberate inaction, overthrow) South Vietnamese leader Ngô Đình Diệm.³⁹ Some operations bore no fruit. In Cuba, the Agency launched a

³⁷ James H. Doolittle et al., "Report on the Covert Activities of the Central Intelligence Agency," 2-3.

³⁸ Peter Kornbluh, "Nixon on Chile Intervention: White House Acknowledges Instructions to Block Salvador Allende," The National Security Archive, February 3, 2004, accessed January 23, 2018, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB110/index.htm>.

³⁹ The Select Committee to Study Governmental Operations with respect to Intelligence Activities, "Alleged Assassination Plots Involving Foreign Leaders," Select Committee Report (Washington D.C.: United States Senate, November 20, 1975), <https://www.cia.gov/library/readingroom/docs/CIA-RDP83-01042R000200090002-0.pdf>, 216-223.

disastrous paramilitary assault on Castro's government in 1961, along with a plethora of failed assassination attempts on the Cuban leader himself.⁴⁰ Throughout this period, CIA-funded radio stations broadcast pro-America propaganda beyond the Iron Curtain.

By the 1970s, the Agency had been at war for two decades, engaged in a conflict across all sectors of society, a conflict largely hidden from the American people. Additionally, covert action had become an integral part of the Agency's culture, prioritized over analysis. The Agency had also become accustomed to a short chain of command, where the NSC issued orders that the Agency then carried out. Absent from this chain was Congress. Indeed, from the perspective of war-time policies, it would have made little sense to those involved for Congress to play a role in decision-making. There is no mention of Congress in the sections of the National Security Act discussing the CIA.

Congressional Debate, the CIA, and the National Security Act

Congress has thus far been markedly absent from this tale of presidents and spies for good reason. The conflict outlined in NSC-68 and the Doolittle Report occurred under the radar, yet its ramifications were felt throughout American society, visible in the power of the House Un-American Activities Committee and widespread fear surrounding the Soviet Union. In such a climate, the majority of those in the federal government and in American society at large

⁴⁰ "Alleged Assassination Plots Involving Foreign Leaders," 71-179.

viewed the conceptions of secrecy seen in the formation and early years of the CIA as necessary for the defense of the country against the Communist threat. To the extent that anyone questioned the actions pursued under this conception, they did so through a lense of ‘regrettable yet necessary.’

This sense is evident from the organization's inception, primarily in the 1947 hearings before the Senate Armed Services Committee that resulted in the National Security Act. The bulk of the proceedings focused on the formation of the National Security Council and attempts to overhaul the nation's military, and the CIA itself is mentioned only 70 times in the 700 page record of hearings. The DCI at the time, Hoyt Vandenberg, argued for its creation, as did Charles S. Cheston, former Assistant Director of the OSS. Admiral Nimitz vouched for the Agency's importance and efficiency.⁴¹

The primary points of contention within the Committee regarding the Agency were questions pertaining to the effectiveness of centralization, and to the selection of its leadership. The first draft of the Act implied that only military officers would serve as DCI. Over the course of the hearings, however, those speaking about the Agency both inside and outside of the armed forces consistently advocated for civilian leadership, likening the situation to that of the Commander in Chief and arguing that civilian control should be maintained as much as possible throughout the upper echelons of the nation's leadership.

⁴¹ *Cong. Senate, Committee on Armed Services, National Defense Establishment (Unification of the Armed Services). Part 1 : hearings before the United States Senate Committee on Armed Services, Eightieth Congress, First Session on S.758, by John G. Adams, 80th Cong., 1st sess., Doc. (Washington D.C.: Government Printing Office, 1947), accessed January 23, 2018, <https://babel.hathitrust.org/cgi/pt?id=umn.31951d020978705>.*

Cheston also pointed out that "the nature of the CIA's work requires that it be independent of any department of government; since it is obliged to serve all, it must be free of the natural bias and special viewpoint of any one operating department," arguing that DCI's from branches of the military would likely carry a bias favoring that branch with them to their new post. Furthermore, the often intense rivalries between the Navy and the Army, for example, might well lead to biased or faulty reporting. The Act's final version allowed both civilians and military officers to serve as DCI, though a survey of the Agency's leadership displays a marked tendency towards the civilian side of the spectrum; Cheston's argument for "a civilian director" has largely come to pass.

Efficiency was the other primary concern. Those advocating for the Agency pushed for greater independence, stating that any other approach would introduce bias into the Agency's analysis or otherwise contaminate the organization's intelligence. Some members of the Committee, however, worried that the independence of the Agency might prevent valuable intelligence from reaching those who needed it most. Senator Millard E. Tydings questioned the Agency's place in the organizational hierarchy, reporting "directly to the President" without "direct contact with the Army and the Navy and the Air Force."⁴² He would "feel a little more secure about it" if it were connected in some way to "the War Department, the Navy Department, and the Air Force," as he

⁴² *Hearings Before the United States Senate Committee on Armed Services*, 174.

worried the lack of direct contact between Agency and military might limit the Agency's effectiveness to a dangerous extent.⁴³

In his response to Tydings, Admiral Sherman emphasized that information would, in fact, flow to those departments, and that "we tried, in this particular chart, to show only the primary line of control," rather than the movement of intelligence.⁴⁴ It is important to note that throughout this exchange, there was no objection on the part of Committee members to exclusive presidential control of the Agency, but rather to a potential failure to quickly communicate information. As Tydings put it, "Otherwise, we may have another Pearl Harbor controversy, with the question arising, 'Who got the information?' And the reply, 'It was not transmitted.' That is one thing that should not happen again."⁴⁵

Indeed, only one person in the entirety of the proceedings, Congressman Walter G. Andrews (R), argued that the very formation of a peacetime intelligence agency represented a potential for abuse and a break with American values. Speaking as a witness at the hearing, he argued:

The powers of the Central Intelligence Agency should be carefully spelled out... Moreover, the Director should be confirmed by the Senate. The potentialities of the agency are enormous; it is a great and dangerous departure for the American people to establish by law a 'spy agency,' which is what this Agency will actually be. S. 2044 [a previous version of the Act] specifically delineated the powers of this Agency. These powers, and especially the restrictions on the powers, should be reintroduced into the bill.⁴⁶

⁴³ *Hearings Before the United States Senate Committee on Armed Services*, 174.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, 175.

⁴⁶ *Ibid.*, 593.

Committee member Senator Leverett Saltonstall (R) seemed perplexed by this point, asking Andrews to "explain that a little more thoroughly to me because it is not clear to me."⁴⁷ When Andrews responded by requesting a return to a version of the Act that "more specifically outlines the powers of the Director," Saltonstall asked, "Why should such a man be restricted if he is going to do his job?"⁴⁸ The Act's final version remained vague in its outlining of the DCI's powers.

Throughout these hearings, the committee's membership devoted little attention to the CIA, beyond attempting to ensure its ability to prevent another Pearl Harbor. For most of those engaged in the hearing process, the question was not whether the CIA should exist, but how it should exist. The need for its creation was a foregone conclusion. Andrews was the only individual throughout the proceedings to question whether such an Agency should exist without a clear outlining of its powers. Committee members saw the nascent CIA not as a dangerous and powerful weapon in the making, but rather as a necessary tool to ensure efficient sharing and analysis of information. In the process they showed enormous deference to the President. It is clear from the statements of committee members that they were far more worried about centralizing military authority in the National Security Council than they were about what a president might do with a secret intelligence service in peacetime. As political scientist Harry Howe Ransom wrote in 1975, "Nothing in the 1947 House or Senate published hearings

⁴⁷ *Hearings Before the United States Senate Committee on Armed Services*, 593.

⁴⁸ *Ibid.*

suggests that Congress intended to create, or knew it was creating, an agency for paramilitary operations or foreign political interventions.”⁴⁹

Ransom argues that a similar lack of understanding or interest characterized the 1949 passage of the Central Intelligence Agency Act, stating that “The legislative history of the 1949 act, like the 1947 legislation, nevertheless gives no indication that Congress was informed of expanded CIA roles. In a letter to Chan Gurney, chairman of the Senate Armed Services Committee” sent in 1949, “CIA Director Hillenkoetter referred to the CIA’s function as simply “the coordination and production of foreign intelligence pertaining to the national security.”⁵⁰

Congress, the CIA, and Dominant Conceptions of Appropriate Secrecy

There were a few points of contact between Congress and the CIA. Four subcommittees, two in the Senate and two in the House, were charged with overseeing the Agency, operating as part of the Appropriations and Armed Services Committees in each branch of the legislature. Membership in these subcommittees was restricted to chairmen and vice-chairmen of the committees to prevent leaks, limiting the number of congressmen involved in oversight to a total of eight.

⁴⁹ Harry Howe Ransom, "Congress and the Intelligence Agencies," *Proceedings of the Academy of Political Science*, Congress Against the President, 32, no. 1 (1975), accessed January 23, 2018, doi:10.2307/1173624, 155-156.

⁵⁰Ransom, “Congress and the Intelligence Agencies,” 157.

Documentary evidence indicates that they supported the Agency in almost all circumstances, viewing it as a necessary component of the national defense in the conflict with the Soviet Union. As CIA Senate Subcommittee chairman Leverett Saltonstall argued in 1956, the committees were primarily aimed at ensuring “that [the Agency’s] funds are properly spent and that its activities are properly carried out in the way intended by Congress.”⁵¹ Since “the CIA is essentially an executive agency under the direction of the National Security Council,” and “the CIA has made very few requests for legislation,” the goal of the subcommittees was almost exclusively to ensure that the Agency was acting in concord with its mandate, not to “steer it into new and useful lines of endeavor.”⁵² Saltonstall and his fellows exemplified the conception of secrecy that undergirded the CIA in these years, stating that “the work of the CIA is essentially the work it does under the orders of the President and the National Security Council; and, as such, it must do that work.”⁵³

Outside of the subcommittees, however, there were a few congressmen who adhered to a different conception of appropriate secrecy, and who sought to strengthen congressional oversight by placing legislative controls on the Agency’s actions. Calling for the establishment of a Joint Committee on Central Intelligence with members drawn from the House and the Senate, Senators Mike Mansfield and Wayne Morse strongly opposed Saltonstall’s approach to

⁵¹ *Establishment of Joint Committee on Central Intelligence*, 84th Cong., 2nd sess., CR 102, pt. 5: 5936.

<https://www.govinfo.gov/content/pkg/GPO-CRECB-1956-pt5/pdf/GPO-CRECB-1956-pt5.pdf>

⁵² *Establishment of Joint Committee on Central Intelligence*, 5936.

⁵³ *Ibid.*

oversight, with Morse stating that “what we must do is to write in black and white provisions which will give mandatory jurisdictional power to the Congress in relationship to the CIA.”⁵⁴ Both senators were adamantly opposed to what they termed “government by secrecy,” citing the CIA as a hallmark of a trend which “began during the Roosevelt administration, if not before, and continued during the Truman administration and down into the present administration.”⁵⁵ While their plans for a joint committee were overruled in the 1950s, Mansfield and Morse were far from alone in their concerns, and the conception of appropriate secrecy they exemplified saw repeated expression in the years that followed the CIA’s formation.

⁵⁴ *Establishment of Joint Committee on Central Intelligence*, 5924.

⁵⁵ *Ibid.*

II

The Long Game: Ideology, Opportunism, and Politics

In much of the historiography, efforts to impose legislative oversight on the CIA begin in the mid-1970s, sparked by a series of disclosures in the popular press regarding extraordinary action taken by the Agency. While the CIA itself was not directly targeted until the 1970s, there were important shifts underway in the decades following the CIA's formation, shifts frequently ignored by contributors to the historiography. Expressed in legislation throughout this period, members of the legislature put forth a conception of secrecy wholly different from that which led to the founding of the Agency, pushing for increased openness and chipping away at executive secrecy. These legislators waged a long-term campaign that forced the executive branch to clearly delineate the bounds of secret information, and to defend the necessity of that secrecy in a court of law. By the time the investigations in the 1970s began, there was a long history in Congress of opposition to government secrecy, and a different conception of secrecy had been well-established.

In doing so, these members of Congress entered into repeated confrontations with both the executive branch and their fellow legislators over the concept of “executive privilege.”⁵⁶ In 1941, for example, the Chairman of the House Committee on Naval Affairs, Representative Carl Vinson, requested that Attorney General Robert H. Jackson provide to the committee:

All Federal Bureau of Investigation reports since June 1939... in connection with ‘investigations made... arising out of strikes, subversive activities in connection with labor disputes, or labor disturbances of any kind in Industrial [sic] establishments which have naval contracts.’⁵⁷

Jackson refused, stating:

It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to ‘take care that the laws be faithfully executed,’ and that congressional or public access to them would not be in the public interest.⁵⁸

In the remainder of his letter, Jackson cited numerous previous cases where members of the executive branch had refused to turn over information to Congress from the early days of the nation on up to the late 1920s, essentially arguing for the principle’s existence on the basis of long precedence. Indeed, Jackson states, the first such incident occurred “as early as 1796” regarding “a

⁵⁶ Defined by the Oxford English Dictionary as “the privilege claimed by the President for the executive branch of the U.S. government to withhold information if it is deemed to be in the public interest to do so.”

“Executive Privilege,” *OED Online* (Oxford University Press, n.d.), <http://www.oed.com/view/Entry/66012>.

“Position of the Executive Department Regarding Investigative Reports,” Attorney General Robert H. Jackson to Representative Carl Vinson, April 30, 1941, cited by Senator Olin D. Johnston, speaking on S. 921, on July 31, 1958, 85th Cong., 2nd sess., *CR* 104, pt. 12: 15696.

⁵⁷ “Position of the Executive Department Regarding Investigative Reports,” 5720.

⁵⁸ *Ibid.*

copy of the instruction to ministers of the United States who negotiated a treaty with Britain.”⁵⁹ Then-President George Washington refused. As Jackson put it:

Since the beginning of the government the executive branch has from time to time been confronted with the unpleasant duty of declining to furnish to the Congress and to the courts information which it has acquired and which is necessary to it in the administration of statutes... This discretion in the executive branch has been upheld and respected by the judiciary. The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the Executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine.⁶⁰

Jackson’s letter was repeatedly employed by legislators opposed to anti-secrecy measures as a clear articulation of executive privilege, and as a strong argument in its favor, appearing in arguments surrounding anti-secrecy legislation in both 1948 and 1958. It is also worth noting that Jackson’s letter was one of the first to explicitly outline executive privilege, and that the term itself was a fairly recent invention, first appearing in the *Federal Register* only a year earlier in 1940.⁶¹

In conjunction with 1966, 1948 and 1958 represent landmark moments in the efforts of certain members of Congress to reduce the ability of the executive branch to act in secret. Taken as a whole, the legislation presented and passed in these years represented a concerted assault on executive privilege, and the advancement of a different conception of appropriate secrecy. However, the circumstances surrounding each year were quite different, and while each

⁵⁹ "Position of the Executive Department Regarding Investigative Reports," 5720.

⁶⁰ *Ibid.*

⁶¹ "Executive Privilege," *OED Online* (Oxford University Press, n.d.), <http://www.oed.com/view/Entry/66012>.

proposed piece of legislation can be broadly described as opposed to executive secrecy, the circumstances surrounding each are indicative of the changing views of legislators regarding executive secrecy and privilege, and of the complex partisan politics at play at these moments. There were ideologically-driven legislators, yes, but the vast majority adhered to a more opportunistic and situational approach, an important factor in the study of interactions between legislature and executive.

1948: House Joint Resolution 342, the Condon Case, and Questions of Politics

The first of these efforts was House Joint Resolution 342. This was a “Joint resolution directing all executive departments and agencies of the Federal Government to make available to any and all standing, special, or select committees of the House of Representatives and the Senate information which may be deemed necessary to enable them to properly perform the duties delegated to them by the Congress.”⁶² Sponsored by Representative Clare Hoffman of Michigan (R), H.J. Resolution 342 was one of the first major attempts made by members of Congress to gain access to information concealed by the executive branch. H.J. 342 was never passed into law, failing to pass in the Senate after successfully clearing the House.⁶³ According to Hoffman, H.J. 342 was the result of months of committee meeting aimed at reforming the

⁶² *H.J. Res. 342*, May 14, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5825.

⁶³ *Message from the House*, May 14, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5825.

government's policies regarding secrecy, and an important step towards limiting the powers of the executive branch in the wake of FDR's presidency.

Yet Hoffman's speeches in the House place this claim in doubt, and three primary factors precipitated the demise of H.J. 342. The proposed law came before members of Congress just as the so-called Condon Case was in full swing. In brief, the Condon case began in March of 1948 when "a subcommittee of the House Un-American Activities Committee (HUAC) issued a report labeling physicist Edward U. Condon, director of the National Bureau of Standards, "one of the weakest links in our atomic security," based on his association with members of a left-leaning scientific organization.⁶⁴ Condon, who had been appointed to his post by President Truman, pleaded his innocence. The subcommittee then subpoenaed the FBI for details on its investigation of Condon under the so-called Loyalty Program instituted by President Truman the previous year, hoping to find hard evidence of Condon's association with "an individual alleged, by a self-confessed Soviet espionage agent, to have engaged in espionage activities with the Russians." In an effort to secure that evidence, they attempted to secure a letter from FBI Director J. Edgar Hoover to Secretary of Commerce W. Averell Harriman, in which the two discussed Condon's loyalty investigation.⁶⁵ As science historian Jessica Wang argues, "the Condon attack represented a way

⁶⁴ Jessica Wang, "Science, Security, and the Cold War: The Case of E. U. Condon," *Isis* 83, no. 2 (1992): 238-69, <http://www.jstor.org.wheatonma.idm.oclc.org/stable/234506>.

⁶⁵ Exec. Order No. 9835, 3 C.F.R. (1947).
<https://www.trumanlibrary.org/executiveorders/index.php?pid=502&st=Executive+Order+9835&st1=>

Wang, "Science, Security, and the Cold War," 253.

of discrediting President Truman in a presidential election year,” especially in light of the fact that Condon himself was “a Truman appointee.”⁶⁶

HUAC’s attempt to secure Hoover’s letter quickly devolved into a political conflict between committee members and President Truman. On March 15th, Truman refused to release the letter, issuing the “Directive on the Need for Maintaining the confidential Status of Employee Loyalty Records” to “all officers and employees in the executive branch of the Government,” ordering that:

Any subpoena [sic] or demand or request for information, reports, or files of the nature described, received from sources other than those persons in the executive branch of the Government who are entitled thereto by reason of their official duties, shall be respectfully declined, on the basis of this directive, and the subpoena [sic] or demand or other request shall be referred to the Office of the President for such response as the President may determine to be in the public interest in the particular case. There shall be no relaxation of the provision of this directive except with my express authority.⁶⁷

Truman alienated HUAC chairman J. Parnell Thomas (R), who termed the memo an “attempt to obstruct and thwart our pursuit of the facts” in a letter to Truman in September 1948.⁶⁸ In the letter’s conclusion, Parnell stated that “I do not intend to be deterred or intimidated by personal attacks upon me by the President of the United States, or by political-serving announcements by the

⁶⁶ Wang, "Science, Security, and the Cold War," 253.

⁶⁷ President Harry Truman, “Directive on the Need for Maintaining the Confidential Status of Employee Loyalty Records,” memorandum to all officers and employees in the executive branch of the Government, March 15, 1948, 1, in “Public Papers Harry S. Truman 1945-1953,” Harry S. Truman Presidential Library and Museum, accessed February 18, 2018. <https://trumanlibrary.org/publicpapers/index.php?pid=1415>

⁶⁸ Representative J. Parnell Thomas to Truman, September 29, 1948, in “The Truman Administration’s Loyalty Program Research File,” Harry S. Truman Presidential Library and Museum, accessed February 18, 2018. https://www.trumanlibrary.org/whistlestop/study_collections/loyaltyprogram/documents/index.php?documentdate=1948-09-29&documentid=12-8&pagenumber=1 (Emphasis his)

Attorney General, for I shall continue to expose participants in this communist conspiracy whether they be Government employees, scientists, diplomats, labor leaders, or movie stars.”⁶⁹

Truman had utterly alienated Parnell, and angered allies of HUAC who felt that the president was protecting a potential communist sympathizer for political reasons. Parnell’s letter referenced a speech given by Truman in Oklahoma City the day before, in which the president stated that “these committees are trying to win credit for digging up evidence. They are trying to cash in on the work of the FBI, and to usurp the functions of the Grand Jury and the Federal Courts.” In a series of arguments that further infuriated Parnell, Truman stated that HUAC had “made confidential information available to the intelligence services of foreign countries” through its investigations, “injured the reputations of an innocent man by spreading wild and false accusations,” and “deprived the government of the services of a number of atomic scientists.”⁷⁰ The timing of both Truman’s speech and Parnell’s letter with a national election months away also indicates the political considerations at play (Parnell was a Republican and Truman a Democrat).

Truman’s refusal to turn over executive documents to Congress in spite of subpoenas and a measure that passed in the House by a vote of 300 to 29 (H.R. 522, which never came to a vote in the Senate) “ordering Truman to release the loyalty files on Condon” was a firm statement from the White House on the

⁶⁹ Thomas to Truman, September 29, 1948, 3.

⁷⁰ Ibid.

subject of executive privilege. The specifics of the Condon case were staying secret, no matter what Congress had to say on the matter.⁷¹

It was in the midst of this turmoil that Representative Hoffman introduced H.J. 342 to Congress. Despite his perhaps disingenuous claim that “this resolution does not even directly or indirectly stem from the so-called Condon case,” it proved categorically impossible for members of Congress to evaluate H.J. 342 in isolation from the Condon case. Representative Adolph J. Sabath (D), speaking on the act, stated that “it is my opinion that this resolution is purely of a political nature and is an effort to aid the Committee on Un-American Activities,” an opinion echoed by many of his fellows.⁷² Given the prominence of the Condon case, it would frankly have been difficult for members of Congress not to have approached an act dealing with Congressional access to Executive documents without the case in mind, despite Hoffman’s protestations to the contrary. Hoffman did not help his case on that front when he stated that while H.J. 342 was not proposed in connection with the Condon case, it “is a perfect example of what we refer to in connection with the necessity for this legislation.”⁷³ Thus, H.J. 342 was irrevocably entwined with the Condon case, muddying the waters such that members of Congress who might otherwise have supported a freedom of information bill shied away from what they viewed as an endorsement of the defamatory practices of the House Un-American Committee.

⁷¹ Wang, "Science, Security, and the Cold War: The Case of E. U. Condon," 253.

⁷² Representative Adolph J. Sabath, speaking on H.J. Res. 342, May 12, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5701.

⁷³ Representative Clare Hoffman speaking on H.J. Res. 342, on May 12, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5700.

However, there was another equally important factor at play: faith in the judgement of the executive branch and that of the president himself. Arguing in favor of H.J. 342, Representative Edward E. Cox (a conservative Democrat) stated:

This tender consideration for the Constitution, so often expressed by people who have for years been endeavoring to liquidate and wipe out this Committee on Un-American Activities, which is striving so desperately to rid our country of those influences and of those people, who, like termites, are boring away night and day in the endeavor to undermine and destroy the institution which we so greatly love, arouses my suspicions.⁷⁴

In response, Sabath bluntly asked:

Do you not feel that the President of the United States is a patriotic and loyal citizen, having the best interests of the country at heart and that he would feel that if it were for the best interests of the country, he would have released that [the Condon letter] before?⁷⁵

Sabath's statement is illustrative of the faith that many had in the presidency during this period. For them, executive privilege wasn't necessarily a topic of debate, but rather a symbol of trust in the president's judgement. Assuming that the presidency itself is occupied by "a patriotic and loyal citizen, having the best interests of the country at heart," why should Congress in any way doubt that he was acting "for the best interests of the country" in refusing to release the letter?⁷⁶ If the president decided to conceal information, he must have had good reason.

And if Congress sought to override that right, then it was its members, not the president, who were acting counter to the national interest. This viewpoint, while

⁷⁴ Representative Edward E. Cox, speaking on H.J. Res. 342, on May 12, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5703.

⁷⁵ Representative Adolph J. Sabath, speaking on H.J. Res. 342, on May 12, 1948, 80th Cong., 2nd sess., *CR* 94, pt. 5: 5703.

⁷⁶ *Ibid.*

by no means universal, nonetheless exerted a powerful influence on the debate surrounding secrecy and the executive branch.

Lastly, there was a simple question of counting votes. Given the factors involved, a presidential veto was a near certainty for H.J. 342. The likelihood that Truman, confronted with a bill seemingly aimed squarely at overturning his order regarding Condon, would do anything other than veto it must have seemed vanishingly small to the Congressmen involved. If the bill were vetoed, both houses of Congress would require a supermajority to override that veto, likely leading leaders of the Republican Party (of which Hoffman was a member) to create something akin to the following chart:

Apportionment of Seats in Congress, 1946-1948⁷⁷

House of Representatives	Senate	Presidency
246 - Republican 188 - Democrat	50 - Republican 46 - Democrat	Truman - Democrat
Supermajority Requires: 290 To achieve a supermajority, Republicans require: 44	Supermajority Requires: 64 To achieve a supermajority, Republicans require: 16	Veto Likely
Democrats Required (%): 23%	Democrats Required (%): 34%	

To pass this bill over a presidential veto, over a fifth of Democratic members of Congress in both the House and the Senate would need to break ranks with their party, and with the president himself... in an election year, when a third of the

⁷⁷ U.S. Congress, House, *Statistics of the Congressional Election of November 5, 1946*, compiled by William Graf under direction of John Andrews, Clerk of the House of Representatives, United States Government Printing Office, February 1, 1947.

seats in the Senate and the entirety of the House were up for reelection.⁷⁸ It is not so great a reach to then conclude that this was not the time for Democratic members of Congress to rock the boat, and therefore that the bill was unlikely to pass in the face of a presidential veto. This is especially true given that anti-secrecy legislation has been frequently viewed as a direct attack on the judgement of the president, not really the kind of thing opportunistic party members would seek to do in the months before a presidential election with their control of the White House at stake.

The reasons for H.J. 342's demise are many and varied, providing important insight into the long-term efforts of certain members of Congress to overcome executive privilege. First, documentary evidence demonstrates that faith in the executive played a critical role in these kinds of debates. Opposition to executive privilege could only achieve widespread support at times when a majority of Congress felt the executive branch was exercising that authority unjustly, as otherwise the precedents presented by Attorney General Robert H. Jackson were seen as establishing sufficient historical justification for the exercise of that privilege. Second, given the nature of executive privilege, most measures aimed at undermining or denying its primacy risked a presidential veto. Without bipartisan support, overcoming that veto was impossible. Therefore, the success of any measure opposing executive privilege depended in large part on the dissatisfaction of members of the president's party. Only then

⁷⁸ U.S. Congress, House, *Statistics of the Congressional Election of November 2, 1948*, compiled by William Graf under direction of Ralph R. Roberts, Clerk of the House of Representatives, United States Government Printing Office, March 1, 1949.

could such a measure gain traction in Congress. Lastly, that context could easily make or break anti-secrecy measures. The debate surrounding H.J. 342 was for the most part dominated by discussion of the Condon case; it was the focal point upon which everything rested. Therefore, in discussions of legislation targeted at increasing access to information the executive branch would rather remain secret, context plays a critical role in the debate surrounding that legislation. This is not necessarily surprising, but the reifying effect that then-current events have on otherwise abstract principles such as the “right to know” and questions of “executive privilege” is nonetheless noteworthy.

1958: The Moss Act and the Stirrings of Watchdog Oversight

Public Law 85-619, better known as the “Moss Act” for its prominent sponsor, Representative John E. Moss (D) of California, was, on its face, a small piece of legislation. In fact, it was not even a new law, but rather a modification of one of the oldest laws in the nation: the 1789 Revised Statutes, specifically section 161 of 5 U.S.C. 22.

Section 161 states:

The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.⁷⁹

Moss’s legislation added a single sentence to the end of this paragraph:

⁷⁹ *Section 161 of 5 U.S.C. 22*, cited by Richard Walker Bolling, speaking on H.R. 2767, on July 31, 1958, 85th Cong., 2nd sess., CR 104, pt. 5: 6547.

This section does not authorize withholding information from the public or limiting the availability of records to the public.⁸⁰

According to Moss, the law simply gave the executive branch too much control over information on its actions by granting administrators excessive discretion. He argued that the impetus for this amendment stemmed from his work as Chairman of the Government Information Subcommittee of the Committee on Government Operations, where the subcommittee “determined quite clearly on the record that numerous department and agencies of the Government have tortured this language into a broad authority to withhold information from the public and even from the Congress itself.”⁸¹ Moss emphasized in his statements before Congress that the act “is confined to amending the language of this section” and “does not go against any other statutory authority” or “any Executive privilege, if such exists,” labelling it “a very timid first step in bringing order out of a most chaotic field.”⁸² At many points throughout the legislation’s history, it is clear that Moss wished he could have passed a more aggressive law, but that he was highly aware such an attempt would have been doomed.

Despite its limited impact, Moss’s proposed law sparked opposition from House Republicans, notably Clare Hoffman. A member of Moss’s three member

⁸⁰ *An Act To amend section 161 of the Revised Statutes with respect to the authority of Federal officers and agencies to withhold information and limit the availability of records*, Public Law 85-618, *U.S. Statutes at Large* 72, Pt. 1 (1958): 547.
<https://www.govtrack.us/congress/bills/85/hr2767/text>

⁸¹ Representative John E. Moss, speaking on H.R. 2767, on July 31, 1958, 85th Cong., 2nd sess., *CR* 104, pt. 5: 6549.

⁸² Representative John E. Moss, speaking on H.R. 2767, 6550.

subcommittee, he argued that “this bill originated with the newspaper people,” citing Moss’s decision to begin the hearings of the subcommittee on Government Information with a series of statements from prominent journalists.⁸³ He went on to say that “the adoption of the amendment will tend to increase controversy between the departments and the staff of Congressional Committees,” along with “publicists, reporters, and the idly curious.”⁸⁴ Hoffman later drew a firm line between his proposed 1948 legislation and that of Moss, stating:

The bill then pending was a bill which called upon the executive departments to recognize the right of the Congress to relevant information in the possession of the executive departments which would enable the Congress to write legislation - and an entirely different right from the right of the individual sought in H. H. 2767 to any and all information in the possession of the executive departments.⁸⁵

Interestingly, Hoffman concluded his statement of opposition with an almost verbatim echo of Representative Sabath’s 1948 attack on Hoffman’s bill, stating that “the bill is a political attack upon the administration and questions the judgement and patriotism of future presidents.”⁸⁶ Throughout his statements, Hoffman espouses a wholly different conception of appropriate secrecy, one in which the issue at stake is the ability of Congress to legislate effectively. Moss, in contrast, was making a far broader argument regarding the ‘right’ of the American people to access information on executive agencies operating in their name.

⁸³ Representative Clare Hoffman, speaking on H.R. 2767, on July 31, 1958, 85th Cong., 2nd sess., *CR* 104, pt. 5: 6550.

⁸⁴ Representative Clare Hoffman, speaking on H.R. 2767, on July 31, 1958: 6551.

⁸⁵ *Ibid*, 6552.

⁸⁶ *Ibid*, 6558.

Partisan control of the Presidency and of Congress had also changed in the decade since 1948. Democrats held a majority in the Senate and the House, while the White House was occupied by a Republican, Dwight D. Eisenhower. This likely influenced Hoffman's statement about Moss's "political attack upon the administration," given that he himself shared a party affiliation with Eisenhower, and not with Truman.⁸⁷ However, the Democratic majority was far narrower than the Republican majority in 1948, making a supermajority in the event of a presidential veto even more unlikely. Given these circumstances, Moss's caution in avoiding even the implication of raising a challenge to executive privilege seems to have been aimed at avoiding a presidential veto, but his frustration with the situation is clearly evident, especially in his characterization of the law as "timid."⁸⁸

And avoid it he did. When President Eisenhower signed the act into law on August 12, 1958, he highlighted this fact, while simultaneously reaffirming the primacy of executive privilege:

It is... clear from the legislative history of the bill that it is not intended to, and indeed could not, alter the existing power of the head of an Executive department to keep appropriate information or papers confidential in the public interest. This power in the Executive Branch is inherent under the Constitution.⁸⁹

⁸⁷ Representative Clare Hoffman, speaking on H.R. 2767, on July 31, 1958: 6558.

⁸⁸ Representative John E. Moss, speaking on H.R. 2767, *CR* 104, pt. 5: 6549.

⁸⁹ President Dwight D. Eisenhower, "Statement by the President Upon Signing Bill Relating to the Authority of Federal Agencies To Withhold Information and Records," August 12, 1958, Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/index.php?pid=11166>

In this statement, Eisenhower set the precedent for future presidents in their response to signing anti-secrecy measures - agree, but affirm executive privilege.

For Moss, however, this was the first step in a long-term campaign. In 1963, he was again tapped by Chairman of the Committee on Government Operations, William L. Dawson, to head a subcommittee: the Foreign Operations and Government Information Subcommittee.⁹⁰ Unlike earlier and more abstract conversations regarding government secrecy, Dawson deliberately placed the CIA under the subcommittee's jurisdiction. Dawson directed the subcommittee to study executive agencies with an eye towards ascertaining “the trend in the availability of government information” and to scrutinize “the information practices of executive agencies and officials in the light of their propriety, fitness and legality.”⁹¹

This was the first time that a congressional committee, acting purely on the authority of Congress, was charged with evaluating the “propriety, fitness and legality” of the Agency, and the first time that there was any kind of presumption was explicitly made by Congress regarding “the availability of government information” in relation to the CIA.⁹² While the CIA had previously engaged with congressional committees (see the long-standing CIA subcommittees outlined in Chapter 1), such engagements had not hitherto occurred with an eye towards

⁹⁰ Representative William L. Dawson to Representative John E. Moss, March 7, 1963, 1-4. <http://acsc.lib.udel.edu/files/original/dae30df2cd1f7eef477fo2254e8700cc.pdf>

⁹¹ Representative William L. Dawson to Representative John E. Moss, March 7, 1963, 3.

⁹² *Ibid.*

Samuel J. Archibald, “The Freedom of Information Act Revisited,” *Public Administration Review* 39, no. 4 (1979): 311–18, <https://doi.org/10.2307/976206>.

correcting Agency behavior. This committee was an important step for those such as Moss who advanced a different concept of appropriate secrecy, and served to set a valuable and important precedent for future Congressional action.

The Freedom of Information Act

Moss's work as chairman of that subcommittee culminated in the passage of the 1966 Freedom of Information Act (FOIA). Writing on June 20, 1966, *New York Times* reporter William M. Blair stated that "House passage was a personal victory for Mr. Moss, who spent 10 years fighting to remove barriers to information on Government activities and action."⁹³ In letter and spirit, FOIA was both simple and far-reaching, ordering that "every agency shall, upon request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute and procedure to be followed, make such records promptly available to any person."⁹⁴ What exemptions there were in the bill, namely an acknowledgement that records "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy," carried the explicit caveat that none of those exemptions applied if members of Congress were doing the asking.⁹⁵ To quote the act:

⁹³ William M. Blair, "Information Bill Sent To Johnson," *New York Times*, 20 June 1966, p. 21.

⁹⁴ *Public information, availability. An Act To amend section 3 of the Administrative Procedure Act, chapter 324, of the Act of June 11, 1946 (60 Stat. 238), to clarify and protect the right of the public to information, and for other purposes*, Public Law 89-487, *U.S. Statutes at Large* 80, Pt. 1 (1966): 250-251.

<https://www.govtrack.us/congress/bills/89/s1160/text>

⁹⁵ Public Law 89-487, *U.S. Statutes at Large* 80, Pt. 1 (1966): 251.
<https://www.govtrack.us/congress/bills/89/s1160/text>

Nothing in this section authorizes withholding of information or limiting the availability of records to the public except as specifically stated in this section, *nor shall this section be authority to withhold information from Congress.*⁹⁶

In passing the Freedom of Information Act, members of Congress explicitly attacked the executive's assertion of a right to conceal information from its members and advanced a new conception of secrecy, ruling that based on their constitutionally granted authority, members of Congress had the unfettered right to access records generated by executive agencies.

Despite this direct assault on executive privilege and the threat of a presidential veto, the Act passed largely without protest from the executive. In his statement regarding FOIA, President Johnson stated that "This legislation springs from one of our most essential principles: A democracy works best when the people have all the information that the security of the Nation permits. No one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest."⁹⁷ However, much as Eisenhower had done in 1958, he qualified his statement little more than a sentence later, saying that "the welfare of the Nation or the rights of individuals may require that some documents not be made available. As long as threats to peace exist, for example, there must be military secrets."⁹⁸ A few brief paragraphs after that, he, in effect, argued that FOIA gave Congress no authority to override executive

⁹⁶ Public Law 89-487, (Emphasis mine).

⁹⁷ President Lyndon B. Johnson, "Statement by the President Upon Signing the "Freedom of Information Act," July 4, 1966, Online by Gerhard Peters and John T. Woolley, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=27700>.

⁹⁸ Johnson, "Statement by the President Upon Signing the "Freedom of Information Act."

privilege, stating that “this bill in no way impairs the President's power under our Constitution to provide for confidentiality when the national interest so requires. There are some who have expressed concern that the language of this bill will be construed in such a way as to impair Government operations. I do not share this concern.”⁹⁹ In a statement measuring little more than a single page, Johnson accepted the act’s premise, instructed “every official in this administration... to make information available to the full extent consistent with individual privacy and with the national interest,” and categorically denied that Congress possessed any Constitutional right to information classified by the executive branch.¹⁰⁰ This in all likelihood had much to do with the international and domestic context at the time, driven in large part by the Vietnam war; of course documents related to the war effort would remain secret.

There was talk at the time in newspapers that Johnson might well have vetoed the bill, but such an effort would ultimately have been fruitless.¹⁰¹ The bill was passed in the House with a unanimous vote... though with a 29% abstention rate, perhaps driven in part by fear among Republicans that opposing Johnson on secrecy would only further exacerbate domestic conflict surrounding Vietnam.¹⁰² It then passed the Senate without significant difficulty. The popular support for the bill and the sheer number of legislators backing its passage would have made a veto effort both fruitless and politically damaging.

⁹⁹ Johnson, "Statement by the President Upon Signing the "Freedom of Information Act."

¹⁰⁰ Ibid.

¹⁰¹ William M. Blair, “Information Bill Sent To Johnson,”

¹⁰² Michael R. Lemov and Ralph Nader, *People’s Warrior: John Moss and the Fight for Freedom of Information and Consumer Rights* (Fairleigh Dickinson University Press, 2011).

Given that each of the previous two attempts at passing anti-secrecy legislation outlined above attracted claims of politicization, it is perhaps worth noting that the situation in 1966 was somewhat different. The Democrats held a supermajority in both the House and the Senate, and a Democrat was in the White House. If the Democratic members of Congress were impugning the patriotism of anyone, they were impugning the patriotism and judgment of a member of their own party just two years before he would have to seek reelection. Furthermore, all of the seats in the House and a third of those in the Senate were up for reelection in 1966. Given this political context, it is noteworthy that Democratic legislators decided to pass an act that would bring them into direct opposition to a Democratic presidency and unsurprising that, at least in the realm of political considerations, Republicans launched no concerted effort to prevent its passage. Any such effort would have failed completely, overridden by a supermajority of Democratic legislators in both houses of Congress; it was better not to make the attempt, especially when it was a member of the opposing party who would, for the time being, suffer the onus of the new legislation.

III

Executive, Congress, CIA: Principles in Flux

The Freedom of Information Act was arguably a concrete victory for those opposed to a blanket policy of executive secrecy. However, its abstract effects on prevailing notions of appropriate secrecy in the years that followed its passage were perhaps more impactful. While its drafters, John Moss foremost among them, were careful to avoid mounting a direct challenge to executive privilege, the principles enshrined in FOIA nonetheless constituted a firm assertion of legislative authority over the hitherto sacrosanct offices of executive agencies, and an indispensable step towards unseating the dominant conception of appropriate secrecy.

In the years to follow, this authority was called into question, yet the principles undergirding the act proved durable and far-reaching in their impact. In a sharp break with the actions of prior office-holders, President Richard Nixon issued an executive order on March 8 1972 that moved the nation's classification schema towards greater openness, mandating declassification of non-sensitive documents and altering the underlying operating presumption of federal agencies

from one of secrecy to one of openness.¹⁰³ In essence, Nixon's order made disclosure the norm, and classification a noteworthy departure from that norm. As with FOIA, the implementation of the order was somewhat piecemeal (and the veracity of the sentiment itself can credibly be questioned), yet the fact that such an order was even signed by a sitting president is indicative of an important shift in conceptions of secrecy within the executive branch and in the nation as a whole.¹⁰⁴

While these changes were occurring, there was an equally important trend underway: the involuntary emergence of the CIA from the shadows and into the spotlight of public attention. Beginning with the failed invasion of Cuba in 1961, the 1960s saw the CIA repeatedly thrust into the light by investigative journalists and widely publicized internal leaks.¹⁰⁵ Frequently credited by historians as a prime impetus for the investigations into the Agency launched by Congress in the mid-1970s, these events also fundamentally altered conceptions of secrecy within the Agency itself. Perhaps most visible in the compilation of the 'Family Jewels' (a list of illegal Agency activity in years previous) under DCI James R. Schlesinger

¹⁰³ Richard M. Nixon, "Executive Order 11652—Classification and Declassification of National Security Information and Material," The American Presidency Project, March 8, 1972, <http://www.presidency.ucsb.edu/ws/index.php?pid=482>.

¹⁰⁴ CIA Associate General Counsel, "The Development and Issuance of E.O. 11652," Memorandum, October 4, 1974, CIA FOIA Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP82M00591R000500040016-7.pdf>.

¹⁰⁵ Nicholas Dujmovic, ed., "Oral History: Reflections of DCI Colby and Helms on the CIA's 'Time of Troubles,'" *Studies in Intelligence*, Oral History, 51, no. 3 (September 10, 2007), <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol51no3/reflections-of-dci-colby-and-helms-on-the-cia2019s-201ctime-of-troubles201d.html>.

Christopher Moran, "Turning Against the CIA: Whistleblowers During the 'Time of Troubles,'" *History* 100, no. 340 (March 27, 2015): 251–74, <https://doi.org/10.1111/1468-229X.12099>.

in 1973, there is evidence of a growing realization within the Agency that disclosure was not simply an increasingly likely possibility, but rather an eventuality for which the Agency must prepare. The numerous speeches and public statements given by Schlesinger's successor, William E. Colby, are one consequence of this realization, but the effect of the CIA's entrance into the public eye would prove far-reaching and transformative in its scope.¹⁰⁶ In the wake of the Agency's entrance into the spotlight, the White House took unprecedented action toward greater openness.

Nixon and Executive Order 11652

In 1972, Richard Nixon did more to embrace the alternative conception of secrecy embodied by FOIA than any previous president. When Johnson signed FOIA into law, he was extremely careful to limit its impact, stating that "this bill in no way impairs the President's power under our Constitution to provide for confidentiality when the national interest so requires."¹⁰⁷ But when President Richard Nixon issued Executive Order 11652 on March 8, 1972, he rewrote the rules for the classification and declassification of sensitive information along

¹⁰⁶ This chapter will proceed in a chronological manner as much as is possible, but content will be divided up primarily by organization, with one section for Congress, one for the Executive, and one for the CIA. Therefore, we begin with an Executive Order in 1972, jump backwards in time to discuss a nuclear test in 1969, and forward once more to discuss a Supreme Court case that concluded in late 1972. The final section covers a timeframe stretching from the Bay of Pigs invasion in 1961 to the compilation of the 'Family Jewels' in 1973.

¹⁰⁷ President Lyndon B. Johnson, "Statement by the President Upon Signing the 'Freedom of Information Act,'" July 4, 1966, Online by Gerhard Peters and John T. Woolley, The American Presidency Project, <http://www.presidency.ucsb.edu/ws/?pid=27700>.

lines wholly in keeping with the principles of FOIA. Among the many changes wrought by 11652, the most important was its overhaul of the automatic declassification system.

Previously, under 10501, there were provisions for automatic declassification 12 years after document creation. However, the documents covered by this provision were poorly defined. Indeed, of the document categories outlined under 10501, only the first bears a clear definition, covering “information or material... over which the United States Government has no jurisdiction” i.e. information shared with the U.S. by a foreign power. Even in this, the clearest description on offer, there is tremendous ambiguity, as the text ends by extending the classification umbrella over “information or material requiring special handling.”¹⁰⁸ This ambiguity can uncharitably be read as a way of preventing widespread disclosure and declassification through extraordinary agency discretion, but a more charitable reading of the order indicates a kind of uncertainty and confusion regarding the principle in question; it may have had less to do with unwillingness, and far more to do with uncertainty regarding this alteration of a long-held attitude towards secrecy. Regardless, disclosures proved rare under 10501. In the words of the CIA Associate General Counsel assessing the legal bounds of the order in 1974¹⁰⁹, “I believe it is generally accepted that under E.O. 10501 the government classified too many documents and did much

¹⁰⁸ John F. Kennedy, “Executive Order 10964—Amendment to Executive Order 10501—Safeguarding Official Information in the Interests of the Defense of the United States,” The American Presidency Project, September 20, 1961, <http://www.presidency.ucsb.edu/ws/index.php?pid=58902>.

¹⁰⁹ Name redacted in source.

too little toward accomplishing declassification. It was these defects in the operation of E.O. 10501 which brought on the movement for and ultimate issuance of E.O. 11652.”¹¹⁰

These “defects,” as the Associate General Counsel termed them, were directly addressed in E.O. 11652. Unlike E.O. 10501, all classified documents were slated for automatic declassification under E.O. 11652 on a rolling basis. Higher classification levels were declassified more slowly, but barring the intervention of an agency official with the authority to classify documents at the highest level, even ‘Top Secret’ documents were to be declassified after a 10 year period. However, that intervention was also more formalized under E.O. 11652. To prevent automatic declassification, “an official authorized to originally classify information or material “Top Secret” “shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification.”¹¹¹

There were only four such exemptions:

- (1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.
- (2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.
- (3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

¹¹⁰ CIA Associate General Counsel, “The Development and Issuance of E.O. 11652,” Memorandum, October 4, 1974, CIA FOIA Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP82M00591R000500040016-7.pdf>.

¹¹¹ Richard M. Nixon, “Executive Order 11652—Classification and Declassification of National Security Information and Material,” The American Presidency Project, March 8, 1972, <http://www.presidency.ucsb.edu/ws/index.php?pid=482>.

(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.¹¹²

Even after an exemption was applied to prevent declassification, the order included a provision for “Mandatory Review of Exempted Material,” stating that “all classified information and material... which is exempted... shall be subject to a classification review by the originating Department [sic] at any time after the expiration of ten years from the date of origin.” Prompts for such a review included requests from “a Department or member of the public” that adequately described the record in question.¹¹³

What is perhaps most important about E.O. 11652 are the two main assumptions and expectations it embodies. First, that greater openness was the new default. Preventing automatic declassification required both the authority to classify at the highest level (an authority only available to senior officials, preventing low level officials from classifying at will; a recent change), and the claiming of a specific exemption. Even then, a member of the public could always contest that claim, forcing the department to conduct a review of the document in question. In other words, the core assumption of the section dealing with declassification is that information *will* come out eventually. In addition, the public had the explicit authority to protest matters of classification. This represented a sharp deviation from the position taken by advocates of disclosure. Even nominally pro-disclosure members of Congress like Representative Clare

¹¹² Richard M. Nixon, “Executive Order 11652—Classification and Declassification of National Security Information and Material.”

¹¹³ *Ibid.*

Hoffman drew a sharp line between the right of Congress to overrule executive secrecy and the right of the public to do so in kind. Under this provision, the public's 'right to know' was affirmed by the executive branch itself. This represented an unprecedented break with policy.

Nixon's statement regarding the order explicitly affirmed the connection between E.O. 11652 and FOIA, and was a deliberate attempt to align the executive branch with the principles of FOIA in the eyes of the public:

The interests of the United States and its citizens are best serviced by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.¹¹⁴

By emphasizing the connection between FOIA and the "information policies of the executive branch," Nixon unified his executive order with the principles of the Freedom of Information Act, becoming one of the first presidents to embrace the kinds of anti-secrecy ideals long advocated by members of the legislature.

It is worth noting that E.O. 11652 retained the ultimate authority over declassification within the executive branch. Any review mandated at the request of a member of the public would be carried out internally, not by an external department, and while the order mandated that the "National Security Council shall monitor the implementation of this order," the NSC was itself an organ of

¹¹⁴Richard M. Nixon, "Executive Order 11652—Classification and Declassification of National Security Information and Material."

the executive branch. In other words, there was no external review of classification. All oversight was internal.¹¹⁵

Additionally, there were complications regarding the impact and origins of the order, casting some doubt on the veracity of Nixon's public commitment to greater openness. In his memorandum on "The Development and Issuance of E.O. 11652," the CIA Associate General Counsel points out that implementation of the order was to occur through NSC directives. However, the first such directive, "issued on May 17, 1972," was never signed by the President, but rather by Henry Kissinger, who was never designated "as an official of the National Security Council." As a result, the Associate General Counsel argues, "the point is that aside from Kissinger's signature, which may or may not have been affixed by him, we have no indication of White House approval or commitment to the directive at that time by anyone other than David Young."¹¹⁶ The Associate General Counsel also points out that the reason further directives were even required is that the process of creating E.O. 11652 was severely delayed, and that important aspects of classification procedure dealing with "the essentials for the protection and use of information" were omitted from the order, and needed to be filled in later by NSC directive.¹¹⁷

¹¹⁵ Richard M. Nixon, "Executive Order 11652—Classification and Declassification of National Security Information and Material."

¹¹⁶ CIA Associate General Counsel, "The Development and Issuance of E.O. 11652," Memorandum, October 4, 1974, CIA FOIA Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP82M00591R000500040016-7.pdf>.

David Young was chairman of the executive committee charged with writing Executive Order 11652 and the following NSC Directive.

¹¹⁷ CIA Associate General Counsel, "The Development and Issuance of E.O. 11652."

In other words, the order was drafted by a member of Nixon's staff, and its execution refined by a person who lacked the authority to actually do so. This places Nixon's commitment to the values of FOIA somewhat in doubt; this might have been a wholly political move never intended to actually have an effect. However, the fact that a sitting president would even issue an order so in line with freedom of information principles is nonetheless noteworthy, even if the process underlying its creation was somewhat muddled. Executive Order 11652 represented a marked shift in the approach of the executive branch to classification and secrecy, a move away from a blanket assumption of secrecy and towards greater openness and an alignment of the executive branch with the core principles of FOIA. Overall, oversight authority was retained in the executive, but the base conception had changed.

Amchitka Island, FOIA, and the Supreme Court

A year before Nixon issued Executive Order 11652, in November of 1971, the United States detonated a five megaton nuclear weapon underground at Amchitka island, just off the coast of Alaska. The blast "caused 22 small earthquakes and hundreds of blast after-shocks."¹¹⁸ It also led several members of Congress to mount the first major challenge to executive secrecy under the auspices of the Freedom of Information Act.

¹¹⁸ "Blast at Amchitka Set Off 22 Quakes," *New York Times*, August 31, 1972.
Thomas O'Toole, "Amchitka Atom Blast Found To Shift Earth's Magnetism," *The Washington Post, Times Herald* (1959-1973); Washington, D.C., September 5, 1972.

Shortly after the detonation, “environmentalists and others opposed to the underground nuclear test learned that there was dissent within the executive branch about the wisdom and safety of the blast,” *Washington Post* reporter John P. MacKenzie wrote in 1972.¹¹⁹ At their prompting, Congress began to investigate, demanding that the EPA release “nine documents that various officials had prepared for the President” concerning the test.¹²⁰ However, “all but three were classified as Top Secret or Secret under E.O. 10501,” and the EPA refused to turn over the documents. The dispute quickly led to a series of court cases, through which thirty-three members of Congress led by Democratic Congresswoman Patsy T. Mink sought to compel release under FOIA. Eventually, the case reached the Supreme Court in January of 1972.¹²¹

Ultimately, the Court ruled in favor of the EPA by a 5-3 vote, arguing that the requested information clearly fell under the exemptions outlined in the text of FOIA itself, specifically those dealing with information classified under executive order and with inter-agency/inter-departmental memorandums. On the face of the matter, the case was fairly simple. The information that members of Congress sought clearly fell under the purview of both exemptions, given the nature of the documents requested.

In delivering the opinions of the Court, however, there was a marked split between those who saw this as a simple case (as outlined above) of exemptions in

¹¹⁹ John P. MacKenzie, “Access to Data Argued Before Supreme Court,” *The Washington Post, Times Herald* (1959-1973); Washington, D.C., November 10, 1972.

¹²⁰ Environmental Protection Agency et al., Petitioners, v. Patsy T. Mink et al., No. 410 U.S. 73 (United States Supreme Court January 22, 1973).

¹²¹ Environmental Protection Agency et al., Petitioners, v. Patsy T. Mink et al.

action, and those who saw the case itself as a dangerous precedent for future suits against executive agencies pressed under FOIA. However, both groups emphasized that it was the very caution of the lawmakers behind FOIA that had hamstrung the members of Congress pursuing this case. As Justice Byron White put it, “Congress could certainly have provided that the Executive Branch adopt new procedures or it could have established its own procedures-subject only to whatever limitations the Executive privilege may be held to impose upon such congressional ordering,” yet it did not, out of a desire “to provide a ‘workable formula’ that ‘balances, and protects all interests.’”¹²² In other words, Congress had been too deferential to the executive in 1966 if it had truly sought to demand greater openness. Ultimately, White concluded that the law as written simply did not sustain the arguments of those members of Congress involved in the suit.

The dissenting view, however, saw this case as a dangerous precedent, completely out of step with the legislative intention of FOIA. For the members of the supreme court, there was a critical principle at stake in this case: that of *in camera* judicial review of classified material.¹²³ Earlier in the case’s history, a lower court had reviewed the classified documents in question, attempting to divide sensitive material from more mundane proceedings, a move that drew opprobrium from the EPA and more muted opposition from the Supreme Court’s majority. The EPA objected “both to the disclosure of any portions of the

¹²² Environmental Protection Agency et al., Petitioners, v. Patsy T. Mink et al.

¹²³ *In camera*: In a judge's private chambers, or in a courtroom from which the public and press are excluded, as opposed to in open court. Oxford English Dictionary - <http://www.oed.com.wheatonma.idm.oclc.org/view/Entry/273532?rskey=7koEKq&result=3#eid193179941>

documents and to in camera inspection by the District Court,” arguing that the proximity to the executive and the classification involved rendered such an inspection inappropriate. Justice White, in a somewhat milder fashion, agreed, stating that “in camera inspection of all documents is not a necessary or inevitable tool in every case.”¹²⁴

However, Justice William O. Douglas, speaking for the dissent, viewed the EPA’s disgruntlement (and White’s agreement) as not only unfounded but actively harmful. “The government is aghast at a federal judge’s even looking at the secret files and views with disdain the prospect of responsible judicial action in the area,” he said. “It suggest that judges have no business declassifying ‘secrets,’ that judges are not familiar with the stuff with which these ‘Top Secret’ or ‘Secret’ documents deal.” He went on to say that “unless the District Court can do those things, the much-advertised Freedom of Information Act is on its way to becoming a shambles.” Douglas felt that this Supreme Court decision set a dangerous precedent, upsetting the very basis of FOIA and effectively yanking the act’s teeth while simultaneously setting a dangerous precedent for the principle of judicial review.¹²⁵

One of FOIA’s greatest successes was its emphasis on appeal; an agency could not simply deny information without providing a justification for doing so, and if for whatever reason the requester were unsatisfied with the agency’s response, they had the legal right to take the agency in question to court. Douglas

¹²⁴ Environmental Protection Agency et al., Petitioners, v. Patsy T. Mink et al.

¹²⁵ Ibid.

feared that if *in camera* review was rendered impossible, then it would make it virtually impossible for a court to appropriately adjudicate these kinds of cases, in turn rendering FOIA completely toothless and removing the appeal process at the act's heart.

Despite the majority's argument that the case would have no broader impact, the *Washington Post* decried it as "A Setback for the Right to Know," and wrote that the ruling "gives executive officials broad license to wield their "top secret" stamps as they wish, immune from public challenge or judicial review."¹²⁶ The article concluded with a call for Congress "to bestir itself to recapture for citizens, and for itself, any real control over the uses of secrecy by the executive branch," arguing that "without such procedures, citizens will have no way to gauge how the power to classify is being employed, and no way to pry out of the executive branch the material about important issues which has been classified for no good reason and should be disclosed."¹²⁷

The CIA, the Press, and Changes in the Offing

In the years before FOIA's passage and the conflict that followed, a noteworthy shift in the nation's secrecy practices was already well underway within the Central Intelligence Agency. Repeated leaks over the course of the 1960s had fundamentally altered the Agency's approach to secrecy and to its

¹²⁶ "A Setback for the Right to Know," *The Washington Post, Times Herald* (1959-1973); *Washington, D.C.*, January 26, 1973.

¹²⁷ "A Setback for the Right to Know."

dealings with those outside of the executive branch. By the decade's end, Agency memos indicate a growing realization that nothing stays secret forever and, perhaps more importantly, a concrete and deliberate increase in outreach efforts to the legislative branch, journalists, and members of the public. The Agency which had for so long remained in the shadows was forced into the light, scrambling to find its footing in the midst of a paradigm shift in American conceptions of appropriate secrecy.

The first step down this road began with a failed operation. In April 1961, Cuban counter-revolutionary exiles armed, trained, and supported by the CIA launched a paramilitary assault on Cuba, seeking the overthrow of Fidel Castro. The attack failed dramatically, as did the CIA's attempts to maintain deniability. Termed "The Bay of Pigs" for the main landing site used by the invasion force, the assault was indisputably attributed to forces organized and equipped by the United States government. Indeed, even before the invasion was launched, the *New York Times* ran several articles revealing that "for nearly nine months Cuban exile military forces dedicated to the overthrow of Premier Fidel Castro have been training in the United States as well as in Central America," and that the United States had been "assisting [anti-Castro forces in Guatemala] not only in personnel but in materiel and the construction of ground and air facilities." Attribution was undeniable.¹²⁸ Termed a "disaster," a "debacle," and a "fiasco" by

¹²⁸ Tania Long, "Anti-Castro Units Trained To Fight At Florida Bases: Force There and in Central America Is Reported to Total 5,000 to 6,000 Castro Foes Train Troops In Florida," *New York Times*, 1961.

many, the Bay of Pigs was also the first major failure attributed to the CIA, and its first real entry into the public sphere.¹²⁹

This exposure prompted a series of evaluations and critiques leveled at the operation from within the Agency, among them that of Colonel Jack Hawkins, the “Chief of the Paramilitary Staff of Cuba Project” - a member of the Marine Corps charged with organizing and leading the operation. For the most part, Hawkins argued that political considerations hamstrung what would otherwise have been an effective military operation, and that the demands of maintaining deniability imposed impossible constraints on the operation’s planners. However, his final conclusions also highlighted several important points with far-reaching consequences. First, that “paramilitary operations of any appreciable size cannot be conducted on a completely covert basis.”¹³⁰ Second,

The Government and the people of the United States are not yet psychologically conditioned to participate in the cold war with resort to the harsh, rigorous, and often dangerous and painful measures which must be taken in order to win. Our history and tradition have conditioned us for all-out war or all-out peace, and the resort to war-like measures in any situation short of all-out war is repugnant to the American mentality. In order to win the cold war, this inhibition must be overcome.¹³¹

Paul P. Kennedy, Special to The New York Times, “U.S. Helps Train an Anti-Castro Force At Secret Guatemalan Air-Ground Base: Clash With Cuba Feared -- Installations Built With American Aid U.S. Helps Anti-Castro Force At Secret Base in Guatemala,” *New York Times*, 1961.

¹²⁹ “The Bay Of Pigs Invasion/Playa Girón: A Chronology Of Events,” The National Security Archive, accessed April 23, 2018, <https://nsarchive2.gwu.edu//bayofpigs/chron.html>.

¹³⁰ Colonel Jack Hawkins, “Paramilitary Action Against the Castro Government of Cuba; Record of,” Memorandum for the Record, May 5, 1961, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP85-00664R000700150001-8.pdf>, 46.

¹³¹ Colonel Jack Hawkins, “Paramilitary Action Against the Castro Government of Cuba; Record of,” 45.

In this second statement, Hawkins echoes (in harsher and more stark words) the language of the Doolittle report issued in 1954, which stated that “It may become necessary that the American people be made acquainted with, understand and support this fundamentally repugnant philosophy.”¹³²

These two statements operating in concert represent an important change in conceptions of secrecy within the CIA. The first emphasizes that maintaining total secrecy during large-scale operations is an impossibility; things are going to come out one way or another. The second is a call to make those revelations less inimical to the Agency as a whole, to “overcome” “this inhibition.”¹³³ Hawkin’s retrospective on one of the Agency’s greatest failures served as a compelling distillation of the challenges facing the Agency in a world where secrecy had lost its permanence. It also offered a potential solution. If secrets were going to come out, then perhaps the correct approach was to mitigate the impact of leaks, rather than simply hope they did not occur.

While it would be several more years before the Agency fully embraced this realization, its effects were visible only three years later in a scandal regarding tax-exempt organizations in 1964. In a hearing held by the Small Business Subcommittee, Congressman and Committee Chairman Wright Patman revealed that the CIA had been funneling money through a private financial

¹³² The Doolittle Report and its implications are discussed in more detail in Chapter 1. James H. Doolittle et al., “Report on the Covert Activities of the Central Intelligence Agency,” Special Study (Washington D.C., September 30, 1954), CIA FOIA Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP86B00269R000100040001-5.pdf>, 2-3.

¹³³ Colonel Jack Hawkins, “Paramilitary Action Against the Castro Government of Cuba; Record of.”

organization (the Kaplan Fund) to covertly fund a set of groups without directly linking them to the Agency. While several articles were written in response to this revelation, the scandal quickly blew over.¹³⁴

Behind the scenes, however, was a flurry of communication between the Agency's legislative counsel and a bevy of government officials. Within a day of Patman's statement, legislative counsel John S. Warner gave numerous briefings to members of Congress, appraising them of the situation and warning them about potential blowback.¹³⁵ Additionally, the same day that Patman issued his statement, Deputy Director of the CIA Marshall S. Carter held a closed-session meeting with the Congressman, after which Patman announced that "the discussion convinced the committee that no matter of interest to the subcommittee relating to the C.I.A. existed."¹³⁶

¹³⁴ United Press International, "Patman Attacks 'secret' C.I.A. Link: Says Agency Gave Money to Private Group Acting as Its Sub Rosa 'Conduit' Patman Says C.I.A. Gave Money To a Foundation in 'Secret' Pact," *New York Times*, August 31, 1964.

"(CIA)," *United Press International*, August 31, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75-00149R000700040048-2.pdf>.

Daniel Rapoport, "Day Lead Foundations," *United Press International*, September 1, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75-00149R000400260004-9.pdf>.

Edmond Lebreton, "PMS Budget Foundations," *Associated Press*, September 1, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75-00149R000700040037-4.pdf>.

¹³⁵ John S. Warner, "Journal: Office of Legislative Counsel," September 1, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP66B00403R000300010023-4.pdf>.

John S. Warner, "Journal: Office of Legislative Counsel," September 2, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP66B00403R000300010024-3.pdf>.

John S. Warner, "Journal: Office of Legislative Counsel," September 3, 1964, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP66B00403R000300010022-5.pdf>.

¹³⁶ "C.I.A. Issue Dropped," *New York Times*, August 31, 1964.

This rapid response on the part of the CIA is indicative of a new, two part approach to these kinds of leaks. First, stem the flow of information if at all possible. At no point in this process did the CIA comment on the matter publicly, and Patman was quickly encouraged to avoid discussing CIA operations further. That approach was a demonstrable success, as nothing further leaked. Second, all comment on the matter was given by either completely uninformed third parties speculating without evidence, or by allies of the Agency putting out information drawn directly from briefings with CIA staff. Therefore, the Agency was quickly able to assume control of the narrative.

While this approach was not always so effective, the willingness of Agency staff to engage with and employ allies in Congress in order to push a certain narrative indicates an increased recognition within the Agency of the need for positive press, as well as of the potential for leaks. It also would have long-term consequences, as these instances served to build and strengthen relations between members of Congress and the Agency. In this case, the Agency was able to prevent the exposure of additional information that might otherwise have erupted into a national scandal... much as occurred three years later, once more in connection to covert funds.

In 1967, *Ramparts* magazine, a counterculture publication, published an advertisement in the *New York Times* for an article in their March issue.¹³⁷ The advertisement and subsequent article alleged that the National Student

¹³⁷ Unlike many counterculture publications, *Ramparts* was both conservative and Christian, approaching the movement from a different and somewhat unusual angle.

Association had been receiving the bulk of its funding from the CIA, which had employed cut-outs much like the Kaplan Fund to conceal the flow of cash to the Association's coffers.¹³⁸ The day of the advertisement's publication, the *New York Times* itself published an article confirming the story, backed by a statement issued by the NSA itself.¹³⁹ By the time *Ramparts* actually published its original article in March, the scandal was well underway.

The Agency's response to the scandal displays a marked evolution in its approach in the years following Patman's exposure of the Kaplan Fund, and an expansion of its efforts to convince Americans to embrace the necessary evils done in their name. First, the number of people contacted by legislative counsel John S. Warner increased dramatically. When the Patman story broke on August 31, Warner spoke with three members of Congress (or their staff members) the next day, briefing them on the situation and providing background information.¹⁴⁰ He also met with H.A. Olsher, Patman's Chief of Staff several times over the next few days, ensuring that the scandal died out quickly (visible in the dearth of follow-up stories in the press).¹⁴¹

¹³⁸ Sol Stern, "A Short Account of International Student Politics & the Cold War with Particular Reference to the NSA, CIA, Etc.," *Ramparts Magazine*, March 1967, Ramparts Magazine Archives, The Unz Review: An Alternative Media Selection.

¹³⁹ Neil Sheehan, "A Student Group Concedes It Took Funds From C.I.A.: National Association Says It Received Aid From Early 1950's Until Last Year Role In Spying Denied Leader Asserts All Money Was Used To Help Pay For Overt Activities Abroad C.I.A. Tie Affirmed By Student Group," *New York Times*, February 14, 1967.

"Statement by the United States National Student Association," February 13, 1967, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP70B00338R000200230115-4.pdf>.

¹⁴⁰ John S. Warner, "Journal: Office of Legislative Counsel." September 1, 1964.

¹⁴¹ John S. Warner, "Journal: Office of Legislative Counsel." September 2, 1964.
John S. Warner, "Journal: Office of Legislative Counsel." September 3, 1964.

In contrast, CIA briefings regarding the NSA funding scandal began days before the story broke, on February 6th. In a meeting with Senator J.W. Fulbright, CIA Assistant Deputy Director of Plans Cord Meyer revealed the upcoming story and “described in detail the past history and present situation, stressing the fact that we had never attempted to manipulate the policy of the U.S. National Student Association (USNSA) and had confined our assistance to their efforts to cope with the Communist challenge internationally.” Meyer then noted in a memorandum to Warner that “[the senator] certainly hoped that he himself would not be asked about the matter but if he was, he would say that he regretted the necessity for this type of activity.”¹⁴²

Meyer’s conversation with Senator Fulbright (and Fulbright’s response) demonstrates the ways in which the CIA and its allies sought to mitigate the effects of leaks: the exposure of secrets would be far less harmful to the Agency if Americans were inured to the actions taken in their name. Fulbright’s planned statement that “he regretted the necessity for this type of activity” was echoed by Representative Glenard Lipscomb, who, when briefed on the *Ramparts* article, emphasized his support for the Agency and “indicated as an aside that he intends possibly tomorrow [February 15th] to give another address on the communist threat,” highlighting the need for such action. Of the others briefed, many simply indicated that they would avoid speaking to the press, but those briefed by the

¹⁴² Cord Meyer, “Conversation with Senator J.W. Fulbright Re Ramparts’ Article,” Memorandum for the Record, February 6, 1967, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP70B00338R000200230183-9.pdf>.

CIA who did speak publicly tended to hew closely to the ‘regrettable yet necessary’ approach.¹⁴³

By the time *Ramparts* actually published its article, the *Times* had run a multi-page profile defending the Agency and highlighting the personality and achievements of then-DCI Richard Helms.¹⁴⁴ “Meet the Press” had aired a public debate between several members of Congress, the NSA, and the former Deputy Director for Intelligence of the CIA, Robert Amory.¹⁴⁵ And the ‘regrettable yet necessary’ narrative had, for the moment, won the field.

By this point in the Agency’s history, things had changed. The CIA was no longer an invisible agency, but rather an organization with a newfound focus on public relations. It would be another few years before DCI William Colby began speaking at conferences throughout the nation in support of the Agency in 1974, yet by 1971 the Agency was already running numerous programs to improve “Public Understanding of the Role of Intelligence,” including “about 600 speakers per annum to various School courses and other gatherings.”¹⁴⁶ In the memorandum outlining these efforts, however, Deputy Director for Support John

¹⁴³ John S. Warner, “Journal: Office of Legislative Counsel,” February 14, 1967, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP70B00338R000200230167-7.pdf>.

¹⁴⁴ “The Silent Service,” *Time*, February 24, 1967, CIA Freedom of Information Act Electronic Reading Room.

¹⁴⁵ *Meet the Press* (Washington D.C.: WRC-TV, NBC Network, February 26, 1967), CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP70B00338R000300030014-7.pdf>.

¹⁴⁶ John W. Coffey, “Public Understanding of the Role of Intelligence,” Memorandum for the Record, August 3, 1971, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP84-00780R004200150004-8.pdf>.

William E. Colby, “The View From Langley: Address to the Fund for Peace Conference on CIA and Covert Actions,” September 13, 1974.

W. Coffey expressed some doubt regarding this new focus, posing the question: “Since [the CIA] is a tool of the Executive Branch, is it proper to ‘go to the people’ to justify its continued existence in the form it now has?” Coffey avoided directly answering the question, but did note that “as long as ‘sources and methods’” must continue to be fully protected, it would seem doubtful that the Agency and its role can ever be creditably presented to the American public. Attempts to do so will continuously create situations challenging its creditability [sic] and repeatedly reopen its ‘public image’ issue.” However, he also implied that leaks such as “the ‘Ramparts’ disclosures” and the “Pentagon Papers” necessitated some form of response.¹⁴⁷

This confusion regarding the Agency’s proper role in this kind of situation illuminates the extent to which these changing conceptions of secrecy were deeply troubling for many within the Agency. While the Agency’s attempts to defend itself were deemed necessary, the doubt regarding both the grounds for attempting such a defense and its seemingly ineffectual nature are indicative of deep anxieties sparked by a changing context in which the very conception of secrecy in America was in a state of flux.

¹⁴⁷ John W. Coffey, “Public Understanding of the Role of Intelligence.”

IV

Watergate, Investigations, & Alloyed Conceptions

As disclosures regarding the CIA continued in the early 1970s and the Agency adapted to this new state of affairs, the relationship between the executive and the legislature was undergoing an equally dramatic change. Revelations regarding President Richard Nixon's involvement in the coverup of a 1972 break-in at the Watergate complex orchestrated by his reelection campaign led to his resignation in 1974. Among the many consequences of Nixon's resignation was a paradigm shift in the dominant conception of appropriate secrecy within the legislative branch. Before, members of Congress had avoided directly challenging executive privilege, instead seeking to limit executive secrecy without provoking an all-out conflict. This was true for a number of reasons, not least of which was the political arithmetic involved: a few members of Congress were ideologically opposed to executive secrecy, but the majority held a more opportunistic viewpoint, voting along party lines and in response to current

events. For these members of the majority, executive secrecy was something of a necessary evil, on the rare occasions that they even considered its existence.

When Nixon resigned, this changed dramatically. The Congress voted into power in the fall of 1974 was adamantly opposed to executive secrecy, viewing it both as a hallmark of Nixon's presidency, and as one of the primary mechanisms his allies had employed in their attempted cover-up. This change in the structure and ideological bent of legislators permitted and prompted them to launch the first full-fledged assault on the principle of executive privilege.

Spurred on by continuing disclosures regarding the CIA, both the House and the Senate launched investigations into the secrets of the executive branch, subjecting the nation's secret agencies to an unprecedented level of scrutiny. As part of this broader effort, legislators authorized the creation of two select committees, one in the House and one in the Senate, to examine the relationship between the CIA and the executive branch, as well as past actions undertaken by the Agency at the president's behest. In so doing, Congress as a whole advanced a new conception of appropriate secrecy, one in which the executive branch's authority to keep information from Congress was almost completely dismantled. By the late 1970s, Congress itself was directly involved in decisions regarding Agency operations, what many historians term the period of legislative oversight.

In the years that followed this shift, a brief period of remarkable harmony prevailed among executive, legislature, and the CIA. All three organizations operated under a similar conception of appropriate secrecy, and all three worked

towards similar goals. This period saw its fullest expression in the administration of President Jimmy Carter, with Admiral Stansfield Turner serving as DCI. Under Turner, the CIA pioneered programs designed to ensure greater openness, and, building upon the efforts of legislative counsel John Warner in the 1960s, established a close working relationship with members of Congress.

Nixon, Watergate, and Executive Privilege

While many contributors to the historiography argue that these changes were driven primarily by leaks in the press, the role of the Watergate scandal in shaping the views of Congress (and its very composition) cannot be ignored. Leaks in the press served to spur action and to sway opportunistic legislators, but it is doubtful that the extraordinary shift embodied by the investigatory committees in the 1970s (and the inception of legislative oversight) would have occurred based on current events alone. As Senator Frank Church, Chairman of the Senate investigative committee stated:

There has been a series of allegations in the press and Congress which have provoked serious questions about the conduct of intelligence agencies at home and abroad. The Watergate disclosures raised additional questions concerning abuses of power by the executive branch, misuse of intelligence agencies, and the need to strengthen legal restraints against such abuses.¹⁴⁸

¹⁴⁸ “Foreign and Military Intelligence: Final Report of the Select Committee To Study Governmental Operations with Respect to Intelligence Activities United States Senate Together with Additional, Supplemental, and Separate Views,” U.S. Senate Select Committee Report (Washington D.C.: Select Committee to Study Government Operations: United States Senate, April 26, 1976), The Internet Archive, <https://archive.org/details/finalreportofselo1unit>, 10.

While the role of the press was a factor in these investigations, Watergate was a far greater catalyzing incident in the formation of the investigatory committees and in the broader shifts underway in conceptions of appropriate secrecy.

While the story of Watergate is fairly well-known, there are a few aspects of the break-in and ensuing cover-up that served a particularly impactful role in the months that followed. In particular, the interactions between the CIA, Nixon, and the FBI over the course of the cover-up demonstrated to members of Congress the ways in which executive secrecy could be used to serve illicit purposes, among them conspiracy to obstruct justice. The willingness of members of these agencies to obey executive orders in secret despite the degree to which such actions ran counter to the will of Congress pushed the issue of executive secrecy to the realm of open conflict between legislature and executive.

The break-in at the Watergate complex, headquarters of the Democratic National Committee, was carried out by a group of five men contracted by a member of the Committee to Re-Elect the President to plant bugging devices in the offices of DNC leadership. A guard apprehended the group, sparking an FBI investigation into their its members' actions.¹⁴⁹ As their identities were uncovered, it became clear that almost every member of the team was a former agent of the CIA or the FBI itself, and that many of them bore close ties to the anti-Castro Cuban community. It would eventually emerge that many of them

¹⁴⁹ Alfred E. Lewis, "5 Held in Plot to Bug Democrats' Office Here," *The Washington Post*, June 18, 1972, <http://www.washingtonpost.com/wp-dyn/content/article/2002/05/31/AR2005111001227.html>.

were former members of Nixon's 'Plumbers,' a secret operations group within the White House that worked to discredit his opponents, as well as to diminish threats to his reputation.

In the wake of their capture, the FBI and the CIA both undertook actions at the request of the president's cabinet that would have far-reaching consequences. In a memo written by Deputy Director of the CIA Lieutenant General Vernon A. Walters five days after a meeting held with DCI Helms and White House Chief of Staff H.R. Haldeman on June 23 1972, Walters related that over the course of this meeting Haldeman:

Asked what the connection with the Agency was and the Director repeated that there was none. Haldeman said that the whole affair was getting embarrassing and it was the president's wish that Walters [sic] call on Acting FBI Director Patrick Gray and suggest to him that... it was not advantageous to have the enquiry pushed.¹⁵⁰

DCI Helms responded:

That he had talked to Gray on the previous day and had made it plain to him that the Agency was not behind this matter, that it was not connected with it and none of the subjects was working for, nor had worked for the Agency in the last two years. He had told Gray that none of his investigations was [sic] touching any covert projects of the Agency, current or ongoing.¹⁵¹

Walters indicated in a later memo that this record of his conversation was "never intended to be a full or verbatim account," and that he had made mistakes - as noted above, he wrote the memo five days after the meeting occurred.¹⁵² Most

¹⁵⁰ Vernon A. Walters, Memorandum for the Record, June 28, 1972, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75B00380R000100070037-8.pdf>.

¹⁵¹ Vernon A. Walters, June 28, 1972.

¹⁵² Vernon A. Walters, "Request for Notes Used for Memoranda Prepared by General Walters: Covering Note," Covering Note, May 18, 1973, CIA Freedom of Information Act

notably, Walters writes that he had actually misquoted Haldeman as saying “it is the President’s wish.” In a note regarding this mistake, he writes that he originally included the phrase because “obviously the thought was implicit in my mind”; Walters believed that Haldeman’s suggestion carried with it the force of presidential authority.¹⁵³

Ultimately, despite his doubts, Walters appears to have acted on Haldeman’s suggestion. In his testimony as a witness in the Watergate cover-up trial, Walters stated that “he was willing to tell the FBI that danger existed because he felt Haldeman might know something he didn’t.” When asked whether he had any sense that Haldeman might have been attempting to deceive him, Walters said, “I just couldn’t conceive of such a thing.”¹⁵⁴ The effect of Walters’ action was fairly minor, but the effect of this information on Congress was not.

It is worth noting that Walters was very new to his position at the time of his conversation with Haldeman. He assumed his post as Deputy Director on May 2nd of 1972, a little over a month before his conversation with DCI Helms and Haldeman.¹⁵⁵ Acting Director Gray was also newly appointed to his post, and

Electronic Reading Room,
<https://www.cia.gov/library/readingroom/docs/CIA-RDP75B00380R000100070036-9.pdf>.

¹⁵³ Vernon A. Walters, “Request for Notes Used for Memoranda Prepared by General Walters: Covering Note.”

¹⁵⁴ “General Walters Testifies,” *NBC Nightly News* (Washington D.C.: WRC TV, NBC Network, November 15, 1974), CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP91-00901R000700090010-4.pdf>.

¹⁵⁵ Richard Helms to Stuart Symington, “Memorandum for Deputy Director Walters from Richard Helms, Dated 28 June 1972, Watergate Affair,” Memorandum, n.d., CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75B00380R000100110051-7.pdf>.

Walters notes in his record of their July 28 meeting that the two commiserated regarding the difficulties they were facing: “[Gray] said, “This is a hell of a thing to happen to us at the outset of our tenures with our respective offices.” I agreed heartily.”¹⁵⁶

In this document, Gray also alludes to the pressure he was facing from the White House, asking “if the President had called me [Walters] on this matter,” and noting “that a lot of pressure had been brought on him [Gray] in this manner.”¹⁵⁷ A year later, the “pressure” on Gray reached the point where he too took action to aid the cover-up on the orders of the White House.

On June 28, 1973, Gray met with White House Counsel John Dean and Assistant to the President for Domestic Affairs John Ehrlichman. The two men gave Gray materials from the safe of one of the Watergate burglars, and told him that they were “political dynamite” and “clearly should not see the light of day.”¹⁵⁸ Gray destroyed the documents in question a few months later.¹⁵⁹

When speaking about the meeting before members of Congress, Gray:

Testified that although Erlichman and Dean did not expressly instruct him to destroy the files, “the implication of the substance and tone of their remarks was that these two files were to be destroyed and I interpreted this to be an order from the counsel to the President of the United States

¹⁵⁶ Vernon A. Walters, Memorandum for the Record, July 28, 1972, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP75B00380R000100070044-0.pdf>.

¹⁵⁷ Vernon A. Walters, July 28, 1972.

¹⁵⁸ “The Final Report of the Select Committee on Presidential Campaign Activities” (Washington D.C.: United States Senate, June 1974), Hathi Trust Digital Library, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015011697870;view=1up;seq=7;size=125,36>.

¹⁵⁹ Todd S. Purdum, “L. Patrick Gray III, 88, F.B.I. Chief During Watergate, Dies,” *The New York Times*, July 6, 2005, sec. Politics, <https://www.nytimes.com/2005/07/06/politics/l-patrick-gray-iii-88-fbi-chief-during-watergate-dies-2005070692073604847.html>.

issued in the presence of the two top assistants to the President of the United States.¹⁶⁰

As with Walters, Gray felt that the President's authority was implicit, and he acted accordingly, secretly assisting Nixon and his cohorts in the cover-up.

The actions of these two men, discussed at length in congressional hearings, were indicative of what many members of Congress saw as the most dangerous aspects of executive secrecy. The willingness of Walters and Gray to obey members of the White House staff without question, making inferences regarding the authority and intentions of Haldeman and Dean, revealed that secrecy within the executive branch allowed for tremendous abuse. Nixon's attempts to use executive privilege to smother the investigation only further convinced members of Congress that the principle was itself deserving of greater scrutiny, and, in concert with the testimony of Walters and Gray regarding their role in the attempted cover-up, persuaded legislators that things needed to change.¹⁶¹

Church, Pike, and the Start of Legislative Oversight

This fundamental shift within the legislature regarding conceptions of appropriate secrecy was accompanied by a context-driven spur to action that motivated the more opportunistic members of Congress to join their ideologically-motivated fellows in the push to reform government secrecy along

¹⁶⁰ "The Final Report of the Select Committee on Presidential Campaign Activities," 36.

¹⁶¹ Richard M. Nixon, "Richard Nixon: Statement About Executive Privilege," The American Presidency Project, March 12, 1973, <http://www.presidency.ucsb.edu/ws/index.php?pid=4137>.

new lines. Specifically, a 1974 article published by journalist Seymour Hersh in the *New York Times* that cited numerous instances over the past decade where the CIA had acted beyond the constraints of its charter.¹⁶²

Hersh's article was based on a document written at the behest of DCI James R. Schlesinger (who served as DCI for five months in 1973), in which CIA Director of Security Howard J. Osborn compiled "summaries of activities conducted either by or under the sponsorship of the Office of Security in the past which in my opinion conflict with the provisions of the National Security Act of 1947."¹⁶³ In other words, this document (termed the 'Family Jewels') was a comprehensive summary of illegal activity by the Agency between March 1959 and the document's creation in May of 1973.

Despite the inflammatory nature of the Family Jewels and the furor sparked by their exposure in Hersh's article, the very fact of their existence is indicative of the extraordinary change in conceptions of appropriate secrecy within the CIA wrought by the end of the 1960s. They document the growing belief that nothing could remain secret forever. Schlesinger ordered the document's creation in the midst of the Watergate scandal, with the intention of readying the Agency for potential scandals in the offing, and the Family Jewels were a noteworthy step within the Agency towards putting the organization's

¹⁶² Seymour M. Hersh, "Huge C.I.A. Operation Reported In U.S. Against Antiwar Forces, Other Dissidents In Nixon Years," *The New York Times*, December 22, 1974, Late City edition, sec. 1, 26.

¹⁶³ Howard J. Osborn, "Family Jewels," Classified CIA Report (United States Central Intelligence Agency, May 16, 1973), The National Security Archive, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB222/>.

house in order, and towards ensuring a greater degree of preparation for the near-certainty of increased public scrutiny.

Thus, while the exposure of the Family Jewels certainly served to encourage members of Congress to pursue a more aggressive inquiry into the Agency's affairs, the existence of that same document was also indicative of the readiness of the Agency's leadership to embrace new conceptions of appropriate secrecy. As political scientist Cynthia M. Nolan puts it, "The existence of the report indicates that people in the CIA were concerned about abuses. Schlesinger was so supportive of this report that it is entirely possible that internal reform of the CIA was right around the corner."¹⁶⁴ Indeed, it is no great leap to say that while the investigations of 1975 were certainly traumatic for the Agency as a whole, they were not wholly unexpected, nor was their outcome wholly unwelcome. Indeed, the catalyst of the committee investigations actually served to place the Agency and members of Congress on the same page, with both groups adopting a shared set of values and beliefs regarding the role of secrecy in America.

The committees most responsible for this shift were those of Senator Frank Church and Representative Otis G. Pike. Their respective select committees sought to, in the words of Church, "conduct an investigation and study of the intelligence activities of the United States" with an eye towards

¹⁶⁴ Cynthia M. Nolan, "Seymour Hersh's Impact On The CIA," *International Journal of Intelligence and CounterIntelligence* 12, no. 1 (March 1, 1999): 18–34, <https://doi.org/10.1080/088506099305205>.

resolving “allegations of abuse and improper activities.”¹⁶⁵ In the process, Pike and Church came into repeated and heated conflict with the executive branch, to such an extent that President Gerald Ford formed the ‘Intelligence Coordinating Group’ (IGC) in September 1975 specifically to, in the words of Kathryn Olmsted, “deal with the investigators.”¹⁶⁶ The members of IGC worked to frustrate the efforts of the congressional committees at every turn, organizing hostile op-eds, blocking access to classified materials, and attempting to undercut far-reaching congressional reforms through the proposal of more modest and ultimately meaningless changes.¹⁶⁷ Even before the committees were formed, Ford and members of the executive branch attempted to seize the initiative from Congress, forming a Presidential Commission under Vice President Nelson A. Rockefeller to investigate the nation’s intelligence agencies... and to prevent further inquiries.¹⁶⁸

Ford’s opposition to the congressional committees was based on a fundamental difference in viewpoint. During his time as a Representative, Ford had served on the budget subcommittee responsible for reviewing “the budget requests of the Central Intelligence Agency,” one of the four subcommittees in

¹⁶⁵ “Foreign and Military Intelligence: Final Report of the Select Committee To Study Governmental Operations with Respect to Intelligence Activities United States Senate Together with Additional, Supplemental, and Separate Views,” U.S. Senate Select Committee Report (Washington D.C.: Select Committee to Study Government Operations: United States Senate, April 26, 1976), The Internet Archive, <https://archive.org/details/finalreportofselo1unit>.

¹⁶⁶ Kathryn Olmsted, “Reclaiming Executive Power: The Ford Administration’s Response to the Intelligence Investigations,” *Presidential Studies Quarterly* 26, no. 3 (1996): 725–37.

¹⁶⁷ Olmsted, “Reclaiming Executive Power.”

¹⁶⁸ John Prados and Arturo Jimenez-Bacardi, “Fortieth Anniversary: The Church Committee, the White House and the CIA, Spring 1975,” The National Security Archive, July 17, 2015, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB522-Church-Committee-Faced-White-House-Attempts-to-Curb-CIA-Probe/>.

Congress responsible for legislative interaction with the Agency.¹⁶⁹ Many have argued the Ford's time on the committee and in briefings with intelligence officials had accustomed him to a certain *modus operandi*. Speaking on Ford's reaction to a disclosure by the Pike committee regarding the National Security Agency's penetration of Egyptian communications during the Yom Kippur War, Christopher Andrews writes that "[Ford's] SIGINT briefings over the past two decades had accustomed him to the idea that the whole subject was undiscussable in public," and that he "shared NSA's outrage at the revelation."¹⁷⁰ Olmsted states that "President Ford was a longtime supporter of a strong CIA," and that "he had taken pride in belonging to the privileged club of congressmen who shared some of the CIA's secrets."¹⁷¹ In other words, Ford's time on one of the CIA subcommittees had given him a healthy respect for the dominant conception of appropriate secrecy that held primacy in the decades before 1970. As president, he sought to halt or at the very least inhibit the shift within the federal government toward a new paradigm.

Additionally, Ford was committed to defending executive power in the wake of Watergate. Nixon's perfidy and subsequent resignation had left that power in doubt, and the investigations surrounding Nixon's cover-up had set what Ford perceived to be a dangerous precedent for the ability of legislators to

¹⁶⁹ "Gerald R. Ford Congressional Papers, 1949-73," Gerald R. Ford Presidential Library, accessed October 27, 2017, <https://www.fordlibrarymuseum.gov/library/guides/findingaid/fordcong.asp>.

¹⁷⁰ Christopher Andrew, *For the President's Eyes Only: Secret Intelligence and the American Presidency from Washington to Bush* (New York: HarperCollins Publishers, 1995), 414.

¹⁷¹ Olmsted, "Reclaiming Executive Power."

override executive privilege and to peer into the affairs of the nation's executives. As Ford himself put it, "I was absolutely dedicated to doing whatever I could to restore the rightful prerogatives of the presidency under the constitutional system."¹⁷² Thus the congressional committees faced a hostile executive, committed to upholding executive privilege and preventing structural change.

However, that change was already underway. As noted above, the CIA itself had begun to recognize that a shift in values was necessary in the face of a changing domestic context well before the committees were formed. And the Agency's 1974 Director, William Colby, embraced that shift wholeheartedly, breaking ranks with Ford's IGC to such an extent that many of its members viewed him with suspicion.¹⁷³ As DCI, Colby took unprecedented steps towards greater openness, holding numerous press conferences, giving speeches at events throughout the country, and cooperating with the congressional committees largely without protest. Under Colby, the CIA began to align more closely with the conceptions of appropriate secrecy advanced by members of Congress, though the Agency did hold firm on a few key points; the paradigm that emerged in the years that followed was a compromise between these viewpoints.

The committees themselves were committed to creating far-reaching change, and to exposing what they saw as the worst abuses of executive secrecy. In its investigations, the Church committee devoted considerable time and attention to the issue of assassination, composing a 352 page interim report on

¹⁷² Telephone Interview, Gerald R. Ford, April 4, 1994 in Olmsted, "Reclaiming Executive Power."

¹⁷³ Olmsted, "Reclaiming Executive Power."

the topic, released over the objections of the executive branch in November 1975. In the report's prologue, the committee's members explicitly recognized the prevailing conception of appropriate secrecy in the years previous, writing that "the events discussed in this Interim Report must be viewed in the context of United States policy and actions designed to counter the threat of spreading communism," and that "it was considered necessary to wage a relentless cold war against Communist expansion wherever it appeared in the "back alleys of the world."¹⁷⁴ However, the Church committee ultimately condemned "the kind of abuses covered in this report," stating that "the Committee regards the unfortunate events dealt with in this Interim Report as an aberration, explainable at least in part, but not justified, by the pressures of the time."¹⁷⁵ In so doing, the committee's members both recognized the context in which these actions were taken and simultaneously made it clear that things had changed - while these actions might once have been seen as necessary, they were in no way acceptable within the new conception of appropriate action.

In the Church committee's final report, its members gave a series of recommendations, many of which were adopted, creating permanent Congressional oversight of the nation's intelligence agencies. Equally notable,

¹⁷⁴ The Select Committee to Study Governmental Operations with respect to Intelligence Activities, "Alleged Assassination Plots Involving Foreign Leaders," Select Committee Report (Washington D.C.: United States Senate, November 20, 1975), <https://www.cia.gov/library/readingroom/docs/CIA-RDP83-01042R000200090002-0.pdf>, XIII.

¹⁷⁵ The Select Committee to Study Governmental Operations with respect to Intelligence Activities, "Alleged Assassination Plots Involving Foreign Leaders," *ibid.*

however, was a short statement by the committee regarding the role of secrecy in American society:

The Committee is convinced, however, that the competing demands of secrecy and the requirements of the democratic process-our Constitution and our laws-can be reconciled. The need to protect secrets must be balanced with the assurance that secrecy is not used as a means to hide the abuse of power or the failures and mistakes of policy.¹⁷⁶

This brief set of sentences serves to illustrate the compromise to come, and highlights the willingness of members of Congress to balance the ‘right to know’ with the necessity of covert activity and information. The committee’s report in and of itself embodies this balancing act. In keeping with Agency policies and directives aimed at avoiding the publication of the sources of information and the methods of its acquisition, the report largely avoids identifying operatives by name, and refrains from detailed descriptions of the technological means employed by Agency personnel in their espionage capacity.

The Pike committee had a somewhat more troubled existence, culminating in the suppression of its final report by a vote of Congress. This was due in large part to Chairman Otis Pike’s uncompromising stance, and to what Loch K. Johnson terms a “strongly anti-CIA” approach. Unlike the Church committee, Pike refused “to obligate his staff to sign CIA-like secrecy agreements,” and repeatedly clashed with Agency personnel and members of the executive branch, focusing the bulk of his inquiry on “weaknesses in intelligence collection and

¹⁷⁶ “Foreign and Military Intelligence: Final Report of the Select Committee To Study Governmental Operations with Respect to Intelligence Activities United States Senate Together with Additional, Supplemental, and Separate Views,” U.S. Senate Select Committee Report (Washington D.C.: Select Committee to Study Government Operations: United States Senate, April 26, 1976), The Internet Archive, <https://archive.org/details/finalreportofselo1unit>, 425.

analysis.”¹⁷⁷ While the relationship between members of the Church committee and these organizations was certainly tense, the relationship of the Pike committee to these organizations can best be described as outright confrontational. As such, Pike came to serve as a warning to future legislators and, according to Johnson, the House was so “appalled by its experience with the Pike Committee” that it initially “refused to create an intelligence oversight committee in 1976 when the Senate established [the Senate Select Committee on Intelligence].”¹⁷⁸ However, in 1977, the House of Representatives voted to form a permanent committee on intelligence. By the conclusion of Ford’s presidency, both houses of Congress had established permanent intelligence committees, charged with overseeing the nation’s intelligence agencies and preventing abuse.

In effect, this meant that the previous conception of appropriate secrecy had been almost wholly overturned, replaced by a trilateral relationship between Congressional committees, the White House, and the CIA. Although this relationship was born out conflict, over the next few years relations between these organizations became normalized, with all parties adhering to a broadly similar set of values and ideals.

¹⁷⁷ John Prados and Arturo Jimenez-Bacardi, “The CIA’s Constitutional Crisis: The Pike Committee’s Challenge to Intelligence Business as Usual,” The National Security Archive, June 2, 2017, <https://nsarchive.gwu.edu/briefing-book/intelligence/2017-06-02/white-house-cia-pike-committee-1975>.

Loch K. Johnson, “The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability,” *Intelligence and National Security* 23, no. 2 (April 1, 2008): 198–225, <https://doi.org/10.1080/02684520801977337>.

¹⁷⁸ Johnson, “The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability.”

Carter, Turner, and the New Paradigm

This changing relationship and growing partnership had much to do with those at the helm during this period. Elected in 1976, President Jimmy Carter entered the presidency with a commitment to “create... a new national spirit of unity and trust,” motivated in large part by a desire to correct “our recent mistakes.”¹⁷⁹ Less than two weeks after delivering his inaugural address, Carter took action to ensure that the CIA aligned itself with his vision for a unified nation with a commitment to trust.

On February 2nd, 1977 Admiral Stansfield Turner was called to Washington for a meeting with the president the next day. When he arrived, Carter asked him to serve as CIA Director. Turner was an outsider, a career naval officer with no prior background in intelligence. In fact, he almost turned down the position when it was first offered. However, he did eventually accept, and his work as DCI had important consequences for the prevailing conception of appropriate secrecy.¹⁸⁰

For at this point in the nation’s history all three groups were attempting to find their footing. Carter had just been elected, and was trying to heal the wounds of Watergate. Unlike Ford, he had little interest in maintaining what many have termed the “Imperial Presidency” - he actively opposed it. And, on the campaign

¹⁷⁹ James Earl Carter, Jr., “Inaugural Address,” *American History: From Revolution to Reconstruction and beyond*, January 20, 1977, <http://www.let.rug.nl/usa/presidents/james-earl-carter/inaugural-address-1977.php>.

¹⁸⁰ Stansfield Turner, *Secrecy and Democracy: The CIA in Transition* (New York: HarperCollins, 1986).

trail, he had favored intelligence reform.¹⁸¹ Congress had just established permanent select committees to oversee the nation's intelligence agencies. But given their unprecedented nature, the bulk of their membership had little idea what to expect, beyond a conviction that they should avoid the chaos and strife caused by the Pike committee. The CIA was still reeling from the investigations of Church and Pike, unaccustomed to the level of openness thrust upon it by the committees, and unsure what to expect from the establishment of legislative oversight. For all three organizations, it was a wholesale disruption of the status quo, and an opportunity to build new relationships and standards of behavior.

As DCI, one of Turner's top priorities was to establish a strong working relationship with the congressional committees. However, it was a delicate balancing act. As Turner put it when describing his confirmation hearing:

I was convinced that it was necessary and desirable to present enough to let legislators make sound judgements on the value of intelligence activities, but no so much as to risk an operation's success or to give away the President's authority.¹⁸²

In the months that followed, he did much to normalize this complex and tense relationship. In an interview given two years later, Turner assessed what he saw as his progress on the goals he had identified at the outset. Speaking on the topic of legislative oversight, he said:

I just think its working splendidly. And over this past year we've made real progress in our relationships with those committees. They're touch on us... They scrutinize our budget dollar by dollar. It's tough. It takes a lot of time. But accountability is important to the American public. And accountability is important to me... I'm pleased with the process. I would

¹⁸¹ Loch K. Johnson, *A Season of Inquiry: Congress and Intelligence* (Chicago, Illinois: Dorsey Press, 1988), 254.

¹⁸² Turner, *Secrecy and Democracy*, 27.

suggest is you go to either of the chairmen of those committees, you'll find that while we're not in a buddy-buddy relationship, that won't find anybody up there who says we haven't cooperated with them just fully and that they're not please with the way we respond. So, you know, things have smoothed out. We've made progress.¹⁸³

Turner's response is borne out by the documentary evidence. At multiple points during his tenure as DCI, Turner proactively reached out to the Congressional committees, voluntarily passing along information on illegal activities carried out by the Agency in the past, and documents related to ongoing scandals and leaks in the press.¹⁸⁴

Turner also repeatedly noted in his communications with Agency personnel that things were changing, and that legislative oversight was here to stay. However, he also directly addressed the changing conceptions of appropriate secrecy and action at play, noting in a speech to CIA employees that "We are going to recognize that many or most of these things that are dug up are the application of today's standards of propriety to yesterday's actions. There's not much we can do about that, and we'll absorb some blows."¹⁸⁵ Turner was highly aware that he was leading the Agency through a time of transition; it is literally the subtitle of his memoir.

¹⁸³ "Newsweek Interview with Director Stansfield Turner," January 30, 1979, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP99-00498R000300030011-7.pdf>.

¹⁸⁴ Turner, *Secrecy and Democracy*, 42.

Stansfield Turner to Representative Edward P. Boland, Letter, June 1, 1978, CIA Freedom of Information Act Electronic Reading Room, <https://www.cia.gov/library/readingroom/docs/CIA-RDP80B01554R003400100041-3.pdf>.

¹⁸⁵ Stansfield Turner, "Address to CIA Employees" (CIA Headquarters Building, Washington D.C., March 28, 1977), <https://www.cia.gov/library/readingroom/docs/CIA-RDP80M00165A002500060006-6.pdf>, 7.

Perhaps one of Turner's most important contributions to the establishment of this new status quo was his use of the word "accountability." In his conception of the relationship between the congressional committees and the Agency, legislators were not hostile to the Agency's interests. When they halted an operation or noted a past abuse, they were helping to hold the Agency accountable to American values, and were providing a valuable service to the Agency itself. A later DCI, Robert Gates, spoke along these lines in his book, *From the Shadows*, stating:

... some awfully crazy schemes might well have been approved had everyone present not known and expected hard questions, debate, and criticism from [Capitol] Hill. And when, on a few occasions Congress was kept in the dark, and such schemes did proceed, it was nearly always to the lasting regret of the presidents involved.¹⁸⁶

This was the conception of oversight that Turner helped to establish, one in which the congressional committees served as an important check on the Agency, helping to hold it accountable.

Turner's counterparts in this effort, the legislators who served on the committees in question, were equally adrift at the start of their respective tenures.¹⁸⁷ They too had, for most part, been thrust into unfamiliar waters. As a result, the two committees adopted divergent approaches during their early years, shaped in large part by the investigatory committee that had preceded them. As Loch K. Johnson argues:

¹⁸⁶ Robert M. Gates, *From the Shadows: The Ultimate Insider's Story of Five Presidents An* (Simon & Schuster, 2011), 559.

¹⁸⁷ Loch K. Johnson, "The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability," *Intelligence and National Security* 23, no. 2 (April 1, 2008): 198–225, <https://doi.org/10.1080/02684520801977337>.

In its early days, then, the House committee set out to prove that it was not Son of Pike: no leaks; no headline grabbing; no unnecessary battle with the executive branch... The highest priority was for the committee to establish its credibility.¹⁸⁸

The Senate committee, however, was “invariably more aggressive,” taking advantage of the credibility purchased through Senator Frank Church’s efforts.¹⁸⁹

As time went on, both committees found their feet, establishing a “new partnership” with the executive branch, and with the CIA.

Through the efforts of Turner, Carter, and the members of these congressional committees, a new conception of appropriate secrecy was established, one in which ethical and legal behavior was given new weight, the existential threat from the Soviet Union had lessened, and collaboration between these three organizations had become the norm. Through compromise, they created a set of norms that balanced a desire for openness with the need for secrecy, and that enabled American citizens acting through their representatives to better affect the actions taken in their name.

¹⁸⁸ Loch K. Johnson, *A Season of Inquiry: Congress and Intelligence*, 253.

¹⁸⁹ *Ibid.*

Conclusion

Over the course of the decades that followed the Agency's founding, a dominant conception of appropriate secrecy was established, challenged, and subsequently replaced in the mid-1970s. Each of the organizations involved in and affected by that process changed dramatically during this period, driven by shifts in domestic and international context, and by political considerations frequently ignored in the historiography.

From a methodological perspective, my research indicates that traditional approaches to history relying on clearly defined 'eras' obscure the complexity of the historical actors involved. Each of the primary organizations at play in this work changed gradually, in fits and starts. Additionally, these organizations were not in any way monolithic, and there were often intense and heated disagreements between their members about the correct direction in which to take the overall group. These interactions are also frequently obscured, lost in discussion of group action. Yet groups are at all times composed of individuals, and their competing ideas and actions are crucial to understanding the conceptions at play within a given time period.

From a more concrete perspective, this work speaks to the importance of a historical approach. Much of the nuance at play is lost when scholars attempt to impose their own ideas about appropriate action on historical actors. To do so is

to misrepresent the actions of those involved. For example, many of those who argue in favor of legislative oversight term the pre-1970s period one of “benign neglect,” wherein the legislative committees charged with overseeing the CIA instead buried their heads in the sand. The implication (and sometimes the explicit argument) is that these legislators were derelict in their duties, and that their inaction allowed the Agency to abuse its power at the behest of the executive branch. But this argument assumes that these legislators saw themselves (and were seen by others) as in any way opposed to the Agency. Under the dominant conception of appropriate secrecy at the time, this was a minority viewpoint. The Agency was an important part of the national security apparatus that defended the nation from the Soviet Union, and therefore, its maintenance was crucial aspect of the national defense. Damaging that capability through disclosures or critiques of its actions could have had terrible consequences for the nation at large. This was not benign neglect, it was a recognition based on prevailing beliefs at the time that the nation’s security depended on a CIA free to act in secret. It is changes in these prevailing beliefs that affect actions taken by the historical actors involved.

It is worth noting that the relationship between executive, CIA, and Congress established under Carter suffered an enormous setback just a few years later under President Ronald Reagan. Reagan sought a return to older beliefs regarding appropriate secrecy and executive, and acted accordingly. Under his administration and the leadership of the DCI he appointed, William Casey, the

CIA returned to its policy of blanket secrecy, and Casey himself actively deceived legislators on at least one notable occasion.¹⁹⁰ The exposure of the Iran-Contra scandal towards the end of Reagan's time in office only further soured this relationship.

In the present day, conceptions of appropriate secrecy have changed once more. However, as my research suggests, these conceptions can change with shocking rapidity, especially in the face of concerted small-scale effort from an ideologically-motivated minority. This constant low-level activity has the potential to bring about tremendous change when the moment strikes, as when the Watergate scandal attracted unprecedented support to those who had long been attempting reform. In other words, consistent effort to change the prevailing beliefs of a given group moves very slowly until suddenly things move very quickly indeed. Legislators like John Moss ground away at executive secrecy for decades, and then, in the 1970s, the entire paradigm changed in little more than two years.

Lastly, given the events under way in the present day, the realization that none of these organizations are monolithic is especially important, as is the precedent for executive agencies to move in directions out of step with the prevailing beliefs within the White House. The CIA began to embrace greater openness in the late 1960s several years before Nixon issued Executive Order 11652, and Turner's actions as DCI, while not in any way counter to Carter's goals

¹⁹⁰ Loch K. Johnson, "The Church Committee Investigation of 1975 and the Evolution of Modern Intelligence Accountability," *Intelligence and National Security* 23, no. 2 (April 1, 2008): 198–225, <https://doi.org/10.1080/02684520801977337>.

or ideals, had an effect on the normalization of relations with the legislature equally if not more significant than those of Carter himself.

There is vastly more to be explored in this field, and the time is right for large-scale investigations into the history of this nation's intelligence agencies and the actions and beliefs of those who support, oppose, and control them. Their impact on American life has only grown over the last 15 years, and thus, understanding their history and the ways in which they have behaved in the past is crucial to understanding the ways in which they behave in the present. It is my hope that new perspectives are brought to bear on this subject, as the bulk of existing research stems from those who were themselves present or involved in the historical occurrences about which they write.

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