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Introduction by Loch K. Johnson, University of Georgia

From the very beginning of the nation's history, intelligence has been set aside as a conspicuous exception to James Madison's advocacy of checks-and-balances, spelled out in his *Federalist Paper No. 51*. The 'auxiliary precautions' that this key participant at the Constitutional Convention in 1787 (and later America's fourth President) -- the safeguards he had helped build into the Constitution -- were never applied to America's secret intelligence activities. It has been the norm around the world for nations to treat their intelligence services as something special and apart from the rest of government. These agencies wear a cloak of secrecy, have unique access to decision-makers, and are given considerable leeway to carry out their duties without the usual review (in democracies at least) of programs, personnel, and budgets by overseers in the legislative, executive, and judicial branches of government. A nation's leaders were expected to avert their eyes as the secret services broke laws overseas (a routine occurrence) and engaged in unsavory activities, even assassinations and *coups d'état*, that would be deemed highly inappropriate for other government agencies.

Thomas Jefferson, the prime author of America's Declaration of Independence in 1776 (and its third President) had advised binding down the government "with the chains of the Constitution,"¹ but America's intelligence operatives have long enjoyed a philosophy of government *laissez-faire*. The new Republic faced ongoing hostilities from European powers and Native Americans; as a consequence, the government was willing to cede broad discretionary powers to its intelligence officers -- the first line of defense -- who were expected to provide information about these and other dangers.

This hands-off philosophy continued into the modern era. In the 1940s, for instance, the struggle against the Axis powers and then, soon after, against the challenge of global Communism encouraged the continuation of special rules for the intelligence services. A top-secret study group, the Doolittle Commission, reported to the Eisenhower Administration in 1954 that

We are now 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. Acceptable norms of human conduct do not apply. We must develop effective espionage and counterespionage services. We must learn to subvert, sabotage and we must destroy our enemies by more clear, more sophisticated and more effective methods than those used against us."²

¹ Thomas Jefferson, "Draft of the Kentucky Resolutions" (October 1798), in Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 455.

² Quoted in Loch K. Johnson, *America's Secret Power: The CIA in a Democratic Society* (New York: Oxford University Press, 1989), 10, drawing on the *Final Report, Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the Church Committee)*, Sen. Rept. No. 94-755, Vol. 1, U.S. Senate, 94th Cong., 2d. Sess. (Washington, D.C.: U.S. Government Printing Office, 1976), p. 9, citing the Doolittle Commission Report (1954).

This exceptionalism for America's spies was reinforced by a new threat that loomed on the horizon in the early 1950s: the potential for a nuclear holocaust between the United States and the Soviet Union. Indeed, just such a conflagration nearly erupted between the superpowers during the Cuban Missile Crisis of 1962. All-out warfare between these behemoths would have left Washington, New York City, Moscow, and other obvious targets smoldering in radioactive rubble. Shaken by this perilous slide toward the rim of Armageddon, leaders in Washington and the public alike began to comprehend more completely that the United States might not survive another surprise attack like the one that stunned the nation at Pearl Harbor in 1941, this time spearheaded by nuclear-tipped missiles. Given the global conditions of hostility and uncertainty, along with the disquieting Weapons of Mass Destruction arsenals of the United States and the Soviet Union, the modern American intelligence establishment -- under the leadership of the Central Intelligence Agency (CIA) as established by the National Security Act of 1947 -- would have to be unleashed to fight the communists "in the back alleys of the world," as Secretary of State Dean Rusk in the Kennedy and Johnson Administrations described the hidden side of the Cold War.³ America's secret agencies would have to be as tough as anything the Soviets could field, and maybe just as unfettered by democratic checks-and-balances.

This is not to say that the CIA -- 'the Agency,' as it is called by insiders -- and its companion services were given carte blanche in the struggle against world Communism. Most of what they did from 1947 onward was based on decisions approved by the White House and reported, in broad outline at least, to a few members of Congress and their aides. Yet the executive and legislative approvals for intelligence operations were often nothing more than sweeping grants of authority; and the reports to lawmakers from the nation's spymasters proved to be irregular, perfunctory, sketchy, and usually of only passing interest to members of Congress, most of whom who were content to let the "honorable men" of the intelligence agencies proceed as they must to vanquish the daunting Communist foe.⁴ Model democracy or not, the United States would mimic the practice of other nations -- open societies and dictatorships alike -- in placing its secret agencies outside the normal framework of government supervision. If Americans were to be secure, a world bristling with nuclear weapons and large Red armies demanded no less.

Then, in 1974, came charges in the *New York Times* that the CIA been spying on American citizens, raising the specter of a 'gestapo' inside the United States, just as a few critics warned in the congressional floor debate when Congress established the CIA. With concern about an 'imperial presidency' in the context of the Vietnam War and with the Watergate scandal still fresh in mind, lawmakers reacted quickly to these allegations by establishing

³ Church Committee, *Final Report*, Vol. 1, p. 9.

⁴ One of the intelligence chiefs during the Cold War era, William E. Colby, entitled his memoir *Honorable Men: My Life in the CIA* (with Peter Forbath, New York: Simon & Schuster, 1978). For an excellent biography of Colby, see Randall B. Woods, *Shadow Warrior: William E. Colby and the CIA* (New York: Basic Books, 2013).

panels of inquiry. On the Senate side, the Church Committee sprang into existence, led by a senior member of the Foreign Relations Committee, Senator Frank Church (D, Idaho); and in the House of Representatives, the Pike Committee joined the fray, led by former Marine Corps pilot Representative Otis Pike (D, New York). Not to be left behind, the administration of President Gerald R. Ford set up its own panel of inquiry: the Rockefeller Commission, with Vice President Nelson Rockefeller at the helm. For the first time since the founding of the Republic, the lamplight of Madison's philosophy of accountability would be carried by members of Congress and by an executive branch commission into the darkest recesses of American government. The three investigations produced a dramatic sea change in attitudes toward the proper place of intelligence agencies in the polity.

Leaving the questions of domestic illegalities and dubious covert actions abroad to the Church Committee, Representative Pike and his colleagues concentrated on the failure of the intelligence agencies (especially the CIA) to adequately collect and analyze information about foreign threats. The Pike Committee's findings uncovered a litany of intelligence failures; unfortunately, though, its report leaked anonymously to a New York City newspaper, adding to the panel's sagging reputation for the irresponsible handling of classified documents.⁵ Within the White House, the Rockefeller Commission produced a serious, highly critical dissection of the controversial CIA domestic spy programs -- not at all the whitewash that many observers predicted would be the response of the Ford Administration.⁶

The Church Committee, with its much larger staff and longer timeframe, fanned out across the terrain of America's secret agencies. The scope of the intelligence abuses uncovered by the senators was startling: illegal mail openings; wiretaps for political purposes; the interception of international communications; intelligence files gathered on over a million people; improper drug experiments, and the unlawful sequestering of dangerous chemicals and biological materials; a master spy plan to conduct surveillance against Vietnam War protesters in the United States; spying on a broad spectrum of groups in American society, from universities to religious and media organizations; the incitement of violence against African-American groups and other civil rights activists -- Operation COINTELPRO, carried out by the Federal Bureau of Investigation (FBI); CIA covert actions aimed not just at communist regimes and other autocracies overseas, but at the Allende government in Chile and other democratically elected regimes as well; and murder plots against Fidel Castro of Cuba and Patrice Lumumba of Congo, among other heads-of-state in the developing world.

⁵ "The CIA Report the President Doesn't Want You to Read: The Pike Papers," *Village Voice* (February 16 and 23, 1976).

⁶ See Commission on CIA Activities within the United States, Report to the President (Washington, D.C.: Government Printing Office, 1975). For more complete examinations of these investigations, see Loch K. Johnson, *A Season of Inquiry* (Lexington: University Press of Kentucky, 1985); Frederick A.O. Schwarz, Jr. and Aziz Z. Huq, *Unchecked and Unbalanced: Presidential Power in a Time of Terror* (New York: The Free Press, 2007); and Frank Smist, Jr., *Congress Oversees the United States Intelligence Community* (Knoxville, University of Tennessee Press, 1994).

These shocking findings pointed to an obvious conclusion: Madison, Jefferson, Lord Acton, the English historian who famously observed in 1887 that ‘power tends to corrupt and absolute power corrupts absolutely,’ and all the other sage observers down through the years who had warned about the corrosive potential of unchecked power were exactly right---perhaps doubly so when it came to the risks presented by the use of secret power by the nation’s insular spy agencies. A new experiment in the evolution of American democracy was about to begin, one that had never been tried, either in the United States or in any other society past or present: an attempt to bring at least some semblance of democracy into the shadowy world of espionage.

Proponents of reform argued that the time was long overdue for introducing more transparency into the corridors of America’s hidden agencies; the shielding of citizens against surveillance by their own Argus-eyed government depended on it. Yet opponents of reform warned, in sharp contrast, that shining light into the dark side of government would result in exactly the opposite result. Subjecting the U.S. intelligence agencies to the strictures of democracy would undermine the security of America’s citizens, because these agencies would then be hobbled in the struggle against terrorists and other enemies who had no qualms about an unobstructed, even brutal, use of secret power against the United States.

In the course of its investigation, the Church Committee discovered that the CIA was hardly the only intelligence organization in the United States to have violated the public trust. Along with the CIA director, the heads of the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and the FBI (ruled by the redoubtable J. Edgar Hoover) all signed on to the Huston Plan, for example. This spy plan, coming out of the Nixon White House, ordered the top intelligence agencies to carry out espionage operations against Vietnam War protesters (which, ironically, they were already doing without the knowledge of the President⁷). Further, the Church Committee excoriated the NSA for reading the cables of American citizens (Operation SHAMROCK) and tapping their telephones (Operation MINARET).

The NSA’s public humiliation proved insufficient, however, to deter it from again breaking the law soon after the 9/11 attacks. The Foreign Intelligence Surveillance Act (FISA) of 1978, a byproduct of the Church Committee, set up a warrant procedure for national security wiretaps. Under the FISA provisions, the NSA and other agencies involved in this collection method had to justify their reasons for seeking wiretap authority---a noteworthy change from earlier years when an administration could eavesdrop on anyone by simply invoking the mantra ‘in the interests of national security.’ Even though this statute was in place, however, the Administration of George W. Bush ordered a malleable NSA, led by Air Force General Michael V. Hayden (later given a fourth star and named CIA Director) to disregard the FISA law and pursue wiretapping as it saw fit. While the Administration deigned to whisper word of this operation into the ears of a few members of the congressional oversight committees, these lawmakers were forbidden from posing further

⁷ See Johnson, *Season of Inquiry*.

questions or discussing the matter with colleagues or even their expert staff, upon whom they rely to brief them on the arcane ins-and-outs and legality of intelligence activities. These members of Congress lamely accepted the restrictions, chilled into submission by warnings that America's defense against terrorism depended upon extraordinary measures. In contrast to this approach, the Constitution requires that laws (like FISA) be amended or repeal if the government finds them unsatisfactory---not for the government simply to ignore them.

After sitting on this scandal for a year (at the Bush Administration's request to keep it secret), the *New York Times* decided in December of 2005 to break the news about the warrantless wiretaps. As the newspaper reported, the Administration had made a mockery out of the FISA Court procedures -- the most important form of judicial oversight for intelligence to that date -- pretending as though they didn't exist.

Then, five years later, came another bombshell involving the National Security Agency. Edward J. Snowden, a disgruntled intelligence contractor working on a project for the NSA, decided to steal over a million internal documents and release the key ones to the public. These papers disclosed that the NSA had been engaged since 2001 in the collection of bulk communications data of American citizens---a 'metadata' operation that included the destination and duration of landline telephone calls and social media contacts. In 2006, lawmakers placed the program under the supervision of the FISA Court, but it continued to flourish. An attempt in November of 2014 to shut down the metadata program attracted fifty-eight votes; this number, though, was two short of the super-majority of sixty votes required to halt a GOP filibuster designed to keep the metadata program intact. Critics of the bulk collection program vowed to fight on in 2015, subjecting the program to additional votes.

No evidence has emerged thus far that this metadata program has been misused for political purposes; however, given the experience of how the FBI's COINTELPRO Operation relied on intelligence to target the disruption of political leaders, protest groups, and rank-and-file citizen dissenters during the Vietnam War era, civil libertarians and everyone else wary of secret government powers questioned the wisdom of the program. Even some top officials inside the NSA raised doubts about the storing of communications records of almost every American citizen, but they were overruled by the agency's director, General Keith Alexander (2005-2013).⁸ Majorities in the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) have supported Alexander's view, as well as enough members of Congress at large to keep the metadata program in place despite a steadily rising tide of critics.

These events related to the NSA led to the 2014 forum in the journal *Intelligence and National Security* about the Snowden leaks and the two reviews that follow here. The first review is written by Professor Michael Penn Colaresi (Michigan State University), and the

⁸ Ken Dilanian, "AP Exclusive: Before Snowden, A Debate Inside NSA," Associated Press (November 19, 2014).

second by Professor Randall B. Woods (University of Arkansas). Each provides valuable additional insights that supplement the perspectives offered in the forum.

Emphasizing the importance of oversight even in the dark side of government (perhaps most especially there), Colaresi, author of the fascinating new book *Democracy Declassified*, warns that without better accountability, the intelligence establishment could find itself “shut down out of distrust.”⁹ He chides both the Obama Administration and the intelligence oversight committees on Capitol Hill for their failure to satisfactorily probe into the allegations of NSA overreach with the metadata program and its earlier bypassing of the FISA warrant procedures. When official entities charged with oversight responsibilities fail in their duties, Colaresi notes, the end result can be that “others will take matters into their own hands” (to wit, Mr. Snowden). He properly calls for “a more systematic and reassuring regime of revelation [about possible intelligence abuses] than sporadic leaking . . .” and urges the establishment of institutions “to reinvigorate retrospective oversight in the United States.” The Church Committee made some important steps in this direction, but, Colaresi is correct, the journey remains unfinished. Colaresi, Woods, and I would all agree (along with several of the forum participants) that improved intelligence accountability is a better remedy than relying on leaks from government ‘reformers.’

Professor Woods sees the debate over Snowden’s leaks as another chapter in the struggle between those who emphasize “absolute secrecy and maximum surveillance,” on the one hand, and those who insist that “the public has an absolute right to know,” on the other hand. National security versus personal privacy; intelligence effectiveness versus civil liberty. Of course, in a democracy, one wishes for both. What good is safety without liberty, and what good is liberty without safety? Hence, the search continues for a proper balance between these important values, a search always influenced by the current state of threats to the United States and the fear these threats instill. “Doesn’t 9/11 justify metadata dragnets?” asks Professor Woods.

In my conversations with another Arkansan over the Thanksgiving Holiday this year, Judge Morris S. Arnold, a long-time member of the FISA Court of Review (which hears appeals from the FISA Court), made a similar argument. “Can we afford to take the chance of not having a metadata program?” he wondered.¹⁰ Wherever one comes down on this question, wouldn’t it have been useful for members of the congressional committees on intelligence oversight to have had a more robust debate about the proper boundaries of U.S. intelligence collection operations? The Church Committee showed with Operation SHAMROCK that even a public hearing can be held on some aspects of this topic, carefully conducted to prevent the disclosure of classified information but allowing the American people to understand and weigh vital intelligence questions.

⁹ Michael P. Colaresi, *Democracy Declassified: The Secrecy Dilemma in National Security* (New York: Oxford University Press, 2014).

¹⁰ My interview with Judge Morris S. “Buzz” Arnold, United States Court of Appeals for the Eighth Circuit, Little Rock, Arkansas (November 26, 2014).

Surely there are bright lines to be honored even in the world of espionage, if the United States is to maintain its reputation as a defender of democratic principles. Are dragnets and fishing expeditions really in harmony with what makes America different from North Korea and other repressive regimes? Shall we engage in extraordinary renditions and torture out of a concern that we must have more intelligence? Accurate, timely, unbiased, and actionable intelligence is, naturally, vital to America's well-being; but so is -- above all else -- America's reputation in the world. Ultimately, our struggle against terrorism is about turning the tide of global opinion against the likes of Al Qaeda and ISIS and toward the ideals of Western democracy. America's trump card in this struggle is the image it has in the world. Shall it be the champion of liberty or just another hegemon using whatever hard powers it may have? Professor Woods's magisterial biography of Senator J. William Fulbright (D, Arkansas) offers this telling quote from one of the greatest lawmakers the nation has produced: "If America has a service to perform in the world---and I believe it has---it is in large part the service of its own example."¹¹

Participants:

Loch K. Johnson is the Regents Professor of International Affairs in the School of Public and International Affairs at the University of Georgia. He served as assistant to the chairman on the Church Committee, staff director of the Subcommittee on Intelligence on the House Intelligence Committee, and assistant to the chairman of the Aspin Commission on Intelligence. His latest books are *The Threat of the Horizon: An Inside Account of America's Search for Security After the Cold War* (Oxford, 2011), *National Security Intelligence: Secret Operations in Defense of the Democracies* (Polity, 2012), and *American Foreign Policy and the Challenges of World Leadership: Power, Principle, and the Constitution* (Oxford, 2015). In 2012, the consortium of universities in the Southeast Conference selected Professor Johnson as the inaugural recipient of its "Professor of the Year" Award; and, in 2014, the Intelligence Studies Section of the International Studies Association presented him with its "Distinguished Scholar" Prize.

Michael P. Colaresi is Professor of Political Science at Michigan State University and received his PhD from Indiana University in 2002. His most recent book is *Democracy Declassified: The Secrecy Dilemma in National Security* (Oxford University Press) and he is currently working on projects related to the role of militias in civil wars, understanding threat identification and cooperation in rivalries, and the politics of national security secrecy in democracies and autocracies.

Randall B. Woods is the John A. Cooper Professor of American History at the University of Arkansas. Among his publications are *Fulbright; A Biography* (New York, 1995, LBJ: *Architect of American Ambition* (New York, 2006 and most recently *Shadow Warrior: William E. Colby and the CIA* (New York, 2013). He is a past president of SHAFR and in 2013 served as the John G. Winant Visiting Professor of Politics at the University of Oxford.

¹¹ Randall B. Woods, *Fulbright: A Biography* (New York: University of Cambridge Press, 1995), 420.

This special forum does academics, intelligence community members, and the public a favor by raising the level of discussion of what we can learn from the Edward Snowden revelations. It is easy to understand the palpable disappointment in several of the contributions regarding the content of media attention in the U.S. to the leaker Edward Snowden himself and the NSA programs that he revealed. Robert Jervis, Rose McDermott and Glenn Hastedt highlight that we usually see Snowden painted as either a hero or a villain, while the reality is necessarily more complex and the criteria for adjudication exceedingly vague.¹ Sir David Omand² usefully points out that the technical definitions of both collection and surveillance have been muddled in many press accounts. In addition, Robert Aldrich and Christopher Moran³ argue that contrary to media accounts, privacy itself is not under threat, even internationally, and instead we are witnessing a decline of state secrecy.

While these are all important points, I would like to focus on Glenn Hastedt's⁴ observation, which runs through many of the contributions, that the discussion of motives is secondary to what we can learn from this event about the role of national security secrecy in the United States and democracies around the world, more generally. If we are to take up and analyze these deeper and more fundamental questions, the framing offered by Sir David Omand in the first paragraphs of his contribution is helpful.⁵ To paraphrase, he suggests that intelligence communities in democracies must balance several challenges involving both using the capacity for secrecy to enhance public security (his concepts of supply and demand), while reassuring the public that there are not abuses of those same powers (his concept of public attitudes).

This secrecy dilemma in democracies lies at the heart of several of the contributions. How can the intelligence community convince the public that policies and programs are being used efficiently for the public interest if the information either substantiating that claim or

¹ See the separate Robert Jervis, Rose McDermott and Glenn Hastedt contributions to Loch Johnson (ed), "Special Forum: Implications of the Snowden Leaks", *Intelligence and National Security* 29:6 (2014): 6-9, 10-12.

² "Special Forum," 12-14.

³ "Special Forum," 2-4.

⁴ "Special Forum," 6-7.

⁵ "Special Forum," 12-14.

potentially challenging it may be costly to reveal?⁶ Most centrally, Wesley Wark⁷ brings this dilemma into focus when he writes, “the NSA [National Security Agency] and its partners have to recognize that their long-term viability rests not in their machines and algorithms, but in their ability to convince their own publics that what they do is not just legal ... but also right” (18). In fact, the money that pays for much of the ‘machines and algorithms’ is conditional on sufficient public support and consent.

Looking at the implications of the NSA stories from this angle, Mark Phythian⁸ cogently argues that “[p]ublic trust has been a notable casualty of the Snowden revelations - trust in technology providers, in intelligence providers, and in government.” (15) I strongly agree with Phythian that a “democracy deficit [was] exposed by Snowden,” (15) and with Wark that absent methods to reassure the public and international partners (more on this below), “American-led global electronic surveillance will have to be curtailed” (17), potentially at great cost in potential security. For this reason, those inside the intelligence community, politicians, and academics need to collaborate to intelligently rewire U.S. accountability on national security before key circuits are shut down out of distrust. Perhaps we should extend Aldrich and Moran’s⁹ declaration that “[s]cholars now need to interrogate the nature of state secrecy” (3) in modern democracies to include not only the technology of security but also the technology of systematic oversight and accountability that does not rely solely on haphazard leaking, as David Barrett¹⁰ also suggests (4).

While the quality of these contributions is very high, I believe there are some incomplete connections among the arguments, which could be a reflection simply of the necessary brevity of the articles, that deserve further discussion. First, several of the authors, most obviously Aldrich and Moran¹¹, suggest that technology is driving leaking behavior. However, this is at best an incomplete picture of the lessons that the history of leakers from Herbert O. Yardley in the 1930s through Daniel Ellsberg in the 1930s to Bradley Manning in 2010 and Snowden more recently can teach us. In each case, there was a cogent policy grievance that motivated the leaking. In Snowden’s case, the failure of both the new administration in 2009, as well as intelligence committees, to publicly investigate potential

⁶ See Michael P. Colaresi, *Democracy Declassified: The Secrecy Dilemma in National Security* (New York: Oxford University Press, 2014).

⁷ “Special Forum,” 16-18.

⁸ “Special Forum,” 14-16.

⁹ “Special Forum,” 4-5.

¹⁰ “Special Forum,” 12-13.

¹¹ “Special Forum,” 2-4.

abuses of intelligence powers was troubling.¹² It is indeed easier to leak through a flash drive than photocopying the same number of documents, but then Manning was not awaiting the invention of flash drives to leak and Snowden was not waiting for CD technology to burn what he saw as illegal policies. We will never know whether a better functioning system of legislative and public accountability for policy mistakes and abuses would have changed the minds of previous leakers, but it is difficult to miss the pattern that a lack of retrospective public accounting for two controversial wars, Vietnam and then Iraq in 2003, led to several of the largest leaks in US history.

One additional reflection on the Snowden revelations might be to understand that intelligence accountability and oversight has the potential not only to reassure the public, but to increase the “loyalty” in Hastedt’s terms¹³ (6) of the very employees that are working in the intelligence community itself. A failure to look back, as explicitly occurred with respect to the legislative committees and the President¹⁴, encourages others to take matters into their own hands with vigor and self-righteousness that appears worth the costs.

Second, while Barrett¹⁵ explicitly makes note of the important point that “old” information is different than real-time intelligence (5), the dynamics of transparency costs do not play a very large role in these discussions. Snowden leaked very recent information related to ongoing policies. These types of revelations are very likely to be costly to U.S. security since as the public learns this information, so too do potential threats. However, the revelation of older information is usually of less value, and, much more importantly, can have significant benefits in amending the democracy deficit in intelligence policy.

The important point is not whether “the United States and other countries need to keep as many documents secret as they do” as suggested by Robert Jervis¹⁶ (8), I believe everyone agrees they do not; the question is how does the U.S. institute a more systematic and reassuring regime of revelation than sporadic leaking without paying significant transparency costs?¹⁷

¹² “The Most Wanted Man in the World”, by James Bamford. Wired, August, 2014, <http://www.wired.com/2014/08/edward-snowden/>

¹³ “Special Forum,” 6-7.

¹⁴ See “Obama Reluctant to Look Into Bush Programs”, by David Johnson and Charlie Savage, New York Times January 11, 2009, <http://www.nytimes.com/2009/01/12/us/politics/12inquire.html?pagewanted=all& r=0>

¹⁵ “Special Forum,” 4-5.

¹⁶ “Special Forum,” 7-9.

¹⁷ See the Introduction to Loch Johnson, *America’s Secret Power: The CIA in a Democratic Society* (New York: Oxford University Press, 1991) for a useful summary of these issues in the U.S.

Phythian's¹⁸ discussion of Admiral Stansfield Turner's ethical test -- can actions "be defended before the public if exposed" (16) -- provides one part of the answer. But institutions are needed to reinvigorate retrospective oversight in the United States. What legislative and public oversight should do is make the Turner test more than an internal theoretical exercise. Secrets should have a limited shelf-life before they are made public, and members of the intelligence community should know this in order to deter abuse as well as taking transparency into their own hands. Even moving towards the principles of proportionality, as suggested by Phythian¹⁹ and Wark²⁰, will require oversight.

There are several models for improved legislative tools in democracies such as the specialized expert committees in Norway, Sweden, and the Netherlands. The current U.S. Senate intelligence committee fiasco over CIA spying on the overseers and also whether the executive summary of the torture report will be released²¹ is a case in point that improvements are necessary to intelligence committee oversight in the U.S. In addition, moving towards a balance test on national security issues for Freedom of Information laws could be useful steps. The bill currently under discussion in the Senate (S.2520) is a step in the right direction.

Third, while Kreiger²² discusses the issue of international cooperation, few remedies are suggested for repairing relations, particularly with Germany. I would suggest that Phythian²³ and Wark²⁴ come very close to outlining a prescription for moving forward. Phythian writes that there is a 'Great Game' (15) that is being played globally between intelligence agencies. However, that 'Great Game' is connected to domestic politics and public attitudes. Just as our intelligence community requires support from politicians and the public to operate potentially security-enhancing initiatives, so too do other democracies. Policies that increase distrust of the United States abroad lead to less support for the international intelligence cooperation that is crucial to dealing with transnational threats such as the Islamic State of Iraq and the Levant (ISIL) as well as cross-border

¹⁸ "Special Forum," 14-16.

¹⁹ "Special Forum," 14-16.

²⁰ "Special Forum," 16-18.

²¹ "Senator Denounces Redactions of Report on CIA Detention Program." By Mark Mazzetti, New York Times, August 5, 2014, available at <http://www.nytimes.com/2014/08/06/us/redactions-of-report-on-cia-stoke-ire.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A7%22%7D>

²² "Special Forum," 9-10.

²³ "Special Forum," 14-16.

²⁴ "Special Forum," 16-18.

violence in Ukraine and Syria. Bulk collection has real costs that cannot simply be blamed on the leaker.

Importantly, the reaction by leaders in Germany to the surveillance scandal was not solely anger, but they asked for greater collaboration and formal no-spying agreements with the U.S.²⁵ While considering admitting Germany into the Five Eyes intelligence sharing relationship might be shocking to some, if the U.S. wants to show the German leadership and public that they are partners and not targets, greater formal collaboration will be necessary. Rebuffing German attempts at intelligence cooperation is likely counter-productive and will ricochet (or *abprallen*) into even less trust.

In closing, I believe the deep contribution of this forum is to clearly demonstrate that through a high level discussion the U.S. cannot only, as Barrett²⁶ puts it, “stick with the highly imperfect elected officials and judges” (5) but perhaps begin to form rules and conventions that can safeguard important secrets while reassuring the public that abuse will be revealed. That is a tall order, but failing to learn from these implications may lead to an even higher stack of costly leaks in the future.

²⁵ “Angela Merkel eyes place for Germany in US intelligence club.” By Peter Spiegel, Financial Times. October 23, 2013, available at <http://www.ft.com/cms/s/0/e2492a3a-3d7a-11e3-9928-00144feab7de.html#axzz3K27GHvML>

²⁶ “Special Forum,” 4-5.

In 2013 Edward J. Snowden, a data specialist working for the defense firm of Booz Allen Hamilton, stole some 1.7 million classified documents from the National Security Agency's (NSA) computers. During the year that followed, he leaked many of these documents to American and British newspapers as part of a protest, he declared, against improper surveillance of citizens of the United States and the United Kingdom. The *New York Times*, a publishing beneficiary of many of the leaks, and other media outlets declared Snowden to be a national hero. Not surprisingly, many in the intelligence community disagreed. Documents that Snowden chose to release included not only those that proved that the NSA was spying on its own citizens, but also those that proved that the agency was spying on the citizens and governments of its principal allies. A national debate ensued over the proper limits on intelligence gathering in a democratic society.

As Richard Aldrich and Christopher Moran point out in their contribution, the Snowden Affair and the general tendency of the media and Congress to indict the NSA for crossing the line separating personal privacy and national security represents the culmination of a decline of secrecy rather than the decline of privacy.¹ They argue that the real issue has become not "government looking at us but us looking at government" (3), and predict the emergence of a "Transparent Society" in which it will be increasingly difficult for governments to safeguard classified information (3). The trend they identify can be traced back to the mid-1970s and the brouhaha over the release of the 'Family Jewels' and the CIA's handling of the matter. During the early years of the Cold War the American public and media were more than willing to give U.S. intelligence agencies the benefit of the doubt. As David Barrett notes, when Beron Mitchell and William Martin, two young employees of the National Security Agency, went public with news that the CIA had been secretly intercepting mail postings between citizens in the U.S. and U.S.S.R since 1952, nary a soul emerged to defend them and the two were force into political exile in Russia.² But then came Vietnam, Watergate, and the burgeoning cult of mistrust of government. As Hugh Heclo noted, a healthy skepticism on the part of the public and media turned into a poisonous cynicism.³ In 1973 William E. Colby, a veteran of the counterinsurgency/political warfare/nation-building branch of the CIA rather than the espionage/counterespionage wing, was named Director of the CIA (DCI). A year earlier a group of junior CIA officers had become concerned that the reputation of the Agency was potentially threatened by past misdeeds. They had in mind the Truman intercept program and rumors that the Agency had been forced by the Johnson and Nixon administrations to spy on domestic dissidents. James Schlesinger, Colby's predecessor, ordered an internal

¹ "Special Forum: Implications of the Snowden Leaks", *Intelligence and National Security* 29:6 (2014): 2-4 (hereafter cited as "Special Forum").

² *Ibid.*, 4.

³ Hugh Heclo, "Sixties Civics," in Sidney M. Milkis and Jerome M. Mileur, *The Great Society and the High Tide of Liberalism* (Boston, 2005), 54-55.

investigation, and the inspector general put together a list of activities that if made public might damage the CIA. It included domestic spying via Operation MHCHAOS, the mail intercept program, the Agency's contacts with E. Howard Hunt and other members of the Nixon "plumbers" team, the CIA's cooperation in attempts to frame Daniel Ellsberg, leaker of the Pentagon Papers, surveillance of journalists, the use of mind-altering drugs in the 1950s, and various assassination plots. The list acquired the sobriquet, 'Family Jewels.' On September 11, 1973, Salvador Allende, the socialist president of Chile, was overthrown and killed; rumors of U.S. involvement (mostly true) swirled. On December 22, 1974 *New York Times* reporter Seymour Hersh began a series of articles in which he outed the Family Jewels, although the CIA's involvement in various assassination plots did not become public until the following spring when President Gerald Ford accidentally let the cat out of the proverbial bag.

It fell to Colby to deal with the Family Jewels crisis. Ford, Secretary of State Henry Kissinger, and former DCI Richard Helms wanted him to stonewall the six congressional committees that formed to investigate stories of CIA wrong-doing, the most conspicuous being the Church and Pike Committees. Colby was trained as a constitutional lawyer, and he had always viewed espionage and counter espionage as a means to an end. After he became DCI he fired James Jesus Angleton for allegedly hamstringing the Agency by creating a climate of excessive secrecy. Throughout 1975 and 1976 Colby cooperated with the national press and Congress, confirming the general outline of the Family Jewels affair without revealing sources and methods. He reasoned that first, as a constitutional officer, he did not have a choice and second, if there were not some transparency in the post-Vietnam, post-Watergate atmosphere that characterized the 1970s, Congress might very well do away with the CIA entirely. After the crisis began to die down, Ford fired Colby in the fall of 1976 and intelligence/counterintelligence officers never forgave him for betraying the principal of absolute secrecy.

In a democracy like America's, especially in the absence of a National Secrets Act such as that of Britain, there is bound to be ongoing public and congressional scrutiny of intelligence activities. The degree to which the scales are tipped in favor of personal privacy or national security has been and will continue to be determined through a political process in the arena of public opinion. On the one side will be the intelligence community advocating for the right to absolute secrecy and maximum surveillance. Conservatives here will be torn, with traditionalists concerned by the threat to privacy and the security conscious by threats to the nation. On the other side will be the media which takes the position that, within limits, the public has an absolute right to know. At a seminar at the Naval War College in the early 1970s Seymour Hersh was asked, 'Mr. Hersh, if it were wartime and you found out about a troop ship sailing out of New York, would you break that information?' He replied, "You bet."⁴ In no small part the way in which the Snowden affair played out in the media and Congress was a function of the prevailing political climate still dominated by the intense distrust of government, especially the federal government, that sprang from disillusionment over Vietnam and Watergate.

⁴ Randall B. Woods, *Shadow Warrior: William E. Colby and the CIA* (New York, 2013), 405

In addition to the personal privacy versus national security debate, students of the Snowden affair have argued over whether he was a genuine whistle blower or merely a narcissistic publicity seeker. The media has in general defended him as a genuine whistle-blower, insisting that his leaks brought highly a controversial government activity to public notice and promoted a national debate on a subject crucial to the well-being of the republic. The *New York Times*, for example, insisted that Snowden's disclosures had done absolutely no damage to the nation's security. Legally, Snowden would not qualify. According to various statutes and policy directives, whistle blowing refers to lawful disclosures of wrongdoing made through appropriate channels to those who can take corrective action. Clearly, Snowden did not exhaust the options available to him.

Another issue is the degree to which the Snowden leaks damaged national security. He, the *New York Times*, and privacy advocates have declared that there has been little or no damage, citing NSA director Admiral Michael S. Rogers's 2014 statement that although he deplored the leaks, there was no indication that "the sky was falling."⁵ (Quoted in Loch K. Johnson in Johnson, et. al., "Implications of the Snowden leaks," 2) Members of the 'no harm, no foul' camp are standing on shaky ground. In the first place, how could they know? In the second, Snowden chose to reveal that the NSA had spied not only on private citizens but the governments of friendly nations. There is nothing really unusual in this revelation. Members of the international community, friends, and enemies, have been spying on each other for years. The damage has come from making this fact public. As Wolfgang Kreiger notes, German Chancellor Angela Merkel had felt it necessary to shun her own intelligence agencies for allegedly cooperating with the NSA. The Snowden leaks have made it much harder to elicit support for the war on terror, for example, from once and future allies; the peoples of the world view the United States with more distrust than ever. In the second place, any knowledge about the intelligence gathering capabilities of one side in a conflict, actual or potential, will aid the other.

Both Mark Pythian and Wesley Wark, while not necessarily approving of Snowden's actions, note that a public debate over the limits of surveillance is both inevitable and necessary in a democracy, all the more so since modern technology has made it possible for agencies to capture, store, and utilize billions of pieces of data. Wark calls for those establishing guidelines to be guided by four principles; necessity, proportionality, legitimacy, and privacy.⁶ But as Pythian himself points out, there is a problem with proportionality. How can protectors of the national security be sure that they are not casting their net too narrowly? Doesn't 9/11 justify meta data dragnets?⁷ In a classic study published over a half century ago, Roberta Wohlstetter demonstrated that in late 1941 U.S. Naval Intelligence was subjected to a blizzard of information on Japanese moves and

⁵ Loch Johnson, "Special Forum," 2.

⁶ Wesley Wark, "Special Forum," 17.

⁷ Mark Pythian, "Special Forum," 15-16.

intentions but were still unable to piece together the information that would allow it to predict the sneak attack on Pearl Harbor.⁸ Chaos theory teaches that a discrete event may have an impact far out of proportion to its size or initial significance.

Participants in the Snowden Forum issue other cautions. Glen Hastedt points out that as a contract worker, Snowden was much less likely than a permanent employee to demonstrate loyalty to the institution and mission for which he was working. The ongoing tendency to outsource will in itself invite security breaches. Aldrich and Moran point out that investigations of government security activity may be passing from formally constituted commissions and committees toward a version of a global civil society, characterized by NGOs, civil rights lawyers, journalists and self-appointed whistle blowers like Edward Snowden. David Barrett's observation in this regard is most compelling: "I'll stick with the highly imperfect elected officials and judges rather than a naïve and arrogant young man to decide what intelligence agencies should do or not do, and what we should know about them."⁹

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⁸ Roberta Wohlstetter, *Pearl Harbor: Crisis and Decision* (Palo Alto, CA, 1962).

⁹ David M. Barrett, "Special Forum," 5.