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Introductory remarks for panel on Patriot Acts I and II

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George Santayana once observed that “those who do not learn from history are doomed to repeat it.” If so, we are in trouble.

The investigations we today associate with Watergate taught us a great deal about what goes wrong when the government switches from law enforcement to domestic spying. Unfortunately, memories are short, and some Republicans refuse to accept the lessons of that era.

Today we hear a great deal about the need to readjust the balance between liberty and security, as if less liberty must necessarily produce more security. Well, our government tried that that during the Cold War, when fear of Godless Communism was at least as great as today’s fear of Islamic terrorism. During the Cold War, Hoover’s FBI searched high and low for the “enemy within,” and in the process managed to transform the FBI from a predominately law enforcement agency, subject to judicial oversight, to a predominately domestic intelligence agency, responsible to no one until he died.

As an intelligence agency, Hoover’s FBI did not just collect information. It maintained detention camps and a secret list of people to be rounded up in case of a “national security emergency.” Hoover’s list included many distinguished Americans,

even members of Congress. It would be supplemented, in 1969, by the creation of Nixon's "enemies list," which led to punitive tax audits for people who opposed his policies.

In the 1950s and 1960s, the FBI did not just collect information on political activists because they might say or do something "subversive." It attempted to change political events. When I was working for Senator Church's Select Committee on Intelligence, we discovered that Hoover's lieutenants had sent Martin Luther King an anonymous note threatening to disclose tape recordings of extra-marital affairs if he did not commit suicide rather than accept the Nobel Prize for Peace. Hoover even imagined that he could replace Dr. King with someone less outspoken. When King refused to kill himself, Hoover sought to assassinate his character by leaking accounts of King's affairs to the press and sharing those accounts with other agencies, including the Army.

Hoover's Bureau illegally opened hundreds of thousands of pieces of first-class mail. His agents burglarized hundreds of offices and homes, and illegally wiretapped thousands of people. They tried to disrupt the marriages of Klansmen with false evidence of extra-marital affairs and drove one law-abiding member of the Communist Party to commit suicide by planting documents in his car which indicated, quite falsely, that he was an FBI informant.

It is important to remember the spirit of those times, when Senator Joseph McCarthy was accusing hundreds of innocent people of being Communist dupes, and the FBI was aiding, not contradicting him. Then, as now, we were fighting an undeclared war against a clandestine enemy which our fears, and government propaganda, exaggerated all out of proportion.

To recall those times, I would like to share with you something one of my colleagues on the Church Committee staff found in a secret report prepared for the second Hoover Commission, in 1954.

“As long as it remains national policy [to combat Communism, we must develop] an aggressive covert psychological, political and paramilitary organization more effective . . . and, if necessary, more ruthless than that employed by the enemy.”

“It is now clear that we 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.”

And then, in language that you might find familiar, the report concludes:

“No one should be permitted to stand in the way of the prompt, efficient, and secure accomplishment of this mission.”

That was the spirit in 1954, when Hoover was regularly rated one of the most admired men in America. Now let me read a threat assessment written by Robert Mardian, Nixon’s assistant attorney general in charge of internal security in 1972, after my disclosure of the Army’s domestic spying program and Daniel Ellsberg’s leak of the Pentagon Papers.

“We’re faced with an unprecedented problem,” Mardian says. “Not only are revolutionary terrorists finding it easier to infiltrate the bureaucracy, but we’re getting more people in government who feel they should be ruled by a sense of conscience.”

That was the ethos in government during the Cold War. What is it today? Instead of Joe McCarthy, who accused the Democrats of “twenty years of treason,” we have Ann Coulter, who is number 2 on the best-seller list with a book that accuses the

Democrats of 70 years of treason. Instead of J. Edgar Hoover, we have Robert S. Mueller, a distinct improvement. But Instead of John Mitchell at Justice, we have John Ashcroft, which is no improvement at all.

Instead of Hoover's round-up list, which was never used, we have seen over 1,200 detentions, not in open camps, but in high security prisons, where innocent persons have been held in lighted cells 23 hours a day, chained hand-and-foot when moved, slammed into walls, denied phone calls and visits with attorneys, and threatened by bigoted guards. Instead of a limited number of illegal wiretaps, we have essentially unlimited wiretaps authorized by a secret court under a pseudo-warrant procedure that falls far short of common law, or constitutional, standards of probable cause. Instead of illegal "black bag jobs," for which some of Hoover's top aides were convicted (only to be pardoned by Nixon), we have "sneak and peek searches" authorized, again, by the secret court under less than constitutional standards. And we have the prospect of citizens and aliens being stripped of their constitutional rights and tried in kangaroo courts of the president's own creation – something which was never attempted in the coldest days of the Cold War.

Another difference lies in the advent of computers and high-speed Internet communications. What used to take Hoover's gumshoes weeks of door knocking to collect can now be accessed through computers in a nanosecond. The personal information that Army intelligence once shelved in a giant black warehouse in Baltimore, and accessed via a computerized cherry picker on rails, can now be stored in a desk top computer, and transferred in just minutes to computers in a dozen other agencies. Files that used to take weeks to read, can now be searched in seconds by typing key words into far distant computers.

Our new system of domestic intelligence far exceeds anything that Joe McCarthy, J. Edgar Hoover, or Robert Mardian could have imagined. Indeed, it exceeds the wildest dreams of the KGB or the Gestapo. And who did the Bush administration hire to develop this vast computer search engine, combining commercial and governmental data banks into a “Total Information Awareness System”? A convicted felon named John Poindexter, who, as Reagan’s national security advisor, illegally sold US weapons to a terrorist nation so that he could fund a secret war against Nicaragua that Congress had forbidden.

On top of it all, we have a President who thinks he has the authority, contrary to Articles I and III of the Constitution, to create a court system on his own, where judges with no legal training can admit any evidence they want, and sentence people to death on a two-thirds vote. To make sure these rump tribunals are not held to constitutional standards, the President plans to convene them in Cuba.

President Bush has also asserted the right to label anyone he wishes an “enemy combatant,” even though the person never belonged to a military unit or saw combat, and by that labeling alone, take that person out from under the jurisdiction of our civilian courts and lock him up, incommunicado and indefinitely, in a military prison in South Carolina.

But, you say, that can’t happen here. Not in America. But it has. It is happening as we speak, as if we live in Argentina under the generals, rather than the United States under the Constitution.

