



Swansea University
Prifysgol Abertawe



Cronfa - Swansea University Open Access Repository

This is an author produced version of a paper published in:

Journal of Intelligence History

Cronfa URL for this paper:

<http://cronfa.swan.ac.uk/Record/cronfa38323>

Paper:

Trenta, L. (2018). 'An act of insanity and national humiliation': the Ford Administration, Congressional inquiries and the ban on assassination. *Journal of Intelligence History*, 1-20.

<http://dx.doi.org/10.1080/16161262.2018.1430431>

This item is brought to you by Swansea University. Any person downloading material is agreeing to abide by the terms of the repository licence. Copies of full text items may be used or reproduced in any format or medium, without prior permission for personal research or study, educational or non-commercial purposes only. The copyright for any work remains with the original author unless otherwise specified. The full-text must not be sold in any format or medium without the formal permission of the copyright holder.

Permission for multiple reproductions should be obtained from the original author.

Authors are personally responsible for adhering to copyright and publisher restrictions when uploading content to the repository.

<http://www.swansea.ac.uk/library/researchsupport/ris-support/>

‘An act of insanity and national humiliation’: the Ford Administration, Congressional inquiries and the ban on assassination.

Abstract: The US government’s increasing reliance on targeted killings has revived debates on the role of assassination in US foreign policy. The scholarship tends to ignore the significance of the role of the Ford Administration’s ban on assassination in setting the stage for future debates. Based largely on archival material and elite interviews, this article provides the first in-depth account of the Ford Administration’s approach to assassination and the decision-making processes that led to the inclusion of a ban on assassination in Executive Order 11905. The article argues that discussions within the Ford Administration, the language adopted in presenting the Order, and the ban itself actually did not close assassination off completely as an option but left it in a status of ‘strategic ambiguity’ that could be exploited by future presidents. The article will also challenge two resilient myths: first, the apparently ‘imperilled’ nature of the Ford Presidency and second CIA Director William Colby’s alleged supine cooperation with Congress. The article shows that, from the start, the administration and the CIA made a concerted and successful effort to obstruct intelligence inquiries, to restore the powers and reputation of the CIA, and to fend off Congressional assaults on the presidency.

Keywords: Assassination; Ford Administration; CIA; intelligence; Church Committee; Congress; Imperial Presidency

Introduction

The US government’s reliance on targeted killings has revived academic debate of the role of assassination in US foreign policy.¹ Within this literature, single case studies have often detailed episodes of the early Cold War,² showing the role of Presidents and of plausible deniability in the development and implementation of assassination plots. Several other studies - relying on insights from history, international law, and International Relations (IR) - have traced the evolution of US law and policy surrounding assassination. These studies

¹ Jack MacDonald, *Enemies known and unknown* (London: Hurst, 2017); Markus Gunneflo, *Targeted Killing: a legal and political history* (Cambridge: Cambridge University Press, 2016); Warner Schilling and Jonathan Schilling, ‘Decision making in using assassinations in international relations,’ *Political Science Quarterly*, 131, no. 3 (2016): 503-539.

² These include, for example, the Eisenhower and Kennedy Administrations’ obsession with Fidel Castro, as well as the US efforts against Lumumba. See Don Bohning, *The Castro Obsession: U.S. Covert Operations Against Cuba, 1959-1965* (Lincoln: Potomac Books, 2006) and Ludo de Witte, *The Assassination of Lumumba* (London: Verso, 2003).

developed in two main waves. The first wave included studies published from the late 1980s to the late 1990s.³ They were inspired by the controversies surrounding the US raid against targets in Libya, the so-called CIA ‘assassination manual’ for the Nicaraguan *contras*, and the early airstrikes against Saddam Hussein in Operation Desert Storm.⁴ The second wave largely developed after 9/11 and coincided with the establishment and expansion of the US targeted killing program.⁵ Within these studies, the analysis often identifies the origins of the current targeted killing program in the Reagan Administration’s war on terrorism and in the administration’s rhetoric surrounding the need to pre-empt terrorist attacks. This literature also points to Executive Order (EO) 12333 passed by the Reagan Administration and aimed at reforming the intelligence community. The order contained a ban on assassination. This ban is seen in the literature as the key moment in defining the position of assassination in the US legal and political context. Even in the more recent second wave of research, EO 12333 is taken as the starting point of the analysis with limited references to previous Administrations.⁶

This scholarship on assassination pays little attention to the earlier Executive Order 11905. Passed by the Ford Administration, EO11905 is perhaps best known as the first reform of the intelligence community after the Congressional inquiries of the mid-1970s. However, the order also included the first version of the ban on assassination. While some scholars mention this order, they have not assessed in any great depth how the Administration approached the

³ Michael Schmitt, ‘State-sponsored assassination in international and domestic law,’ *Yale Journal of International Affairs*, 17, no. 2 (1992): 609-685; Thomas Wingfield, ‘Taking aim at regime elites: assassination, tyrannicide and the Clancy Doctrine,’ *Maryland Journal of International Law*, 22, no. 2 (1998): 287-317; Boyd Johnson, ‘Executive Order 12333: the permissibility of an American Assassination of a foreign leader,’ *Cornell International Law Journal*, 25, no. 2 (1992): 401-435; Louis Beres, ‘The permissibility of state-sponsored assassination during peace and war,’ *Temple International and Comparative Law Journal*, 5 (1991): 231-249; Patricia Zengel, ‘Assassination and the law of armed conflict,’ *Military Law Review*, 134 (1991): 123-156.

⁴ See for example David Newman and Tyll van Geel, ‘Executive Order 12333: the risks of a clear declaration of Intent,’ *Harvard Journal of Law and Public Policy*, 12 (1989): 433-447; Bert Brandenburg, ‘The legality of assassination as an aspect of foreign policy,’ *Virginia Journal of international Law*, 27 (1987): 655-697.

⁵ See for example Philip Alston, ‘The CIA and targeted killings beyond borders,’ *Harvard National Security Journal*, 2 (2011): 283-446; Nathan Cannestraro, ‘American Law and Policy on assassination of foreign leaders: the practicality of maintaining the status quo,’ *Boston College International and Comparative Law Review*, 26 (2003): 1-34.

⁶ For a recent example see Christopher Fuller, *See it/Shoot it: the secret history of the CIA lethal drone programme* (London: Yale University Press, 2017).

issue of assassination, the decision-making process within the Ford Administration, how the ban came about, and its implications for the development of the role of assassination in US policy. In response, this article provides the first in-depth account of the crucial role played by the Ford Administration in establishing a ban on US government involvement in assassination. The article relies on recently declassified material from the Gerald Ford Presidential Library and from the National Security Archives, as well as on semi-structured and unstructured interviews with academics and former policymakers. Interviewees included members of the Church Committee, as well as former Vice President Mondale and former press Secretary Ron Nessen.

The main argument brought forward by this article is that an analysis of the decisions taken by the Ford Administration is essential to understanding the origins and development of the US targeted killing program and, in particular, the role of the Executive. These decisions prevented the establishment of a law or statute prohibiting assassination, measures supported by Congress and by the Ford Administration's Attorney General. Discussions within the Ford Administration, the language adopted in presenting the Executive Order, and the ban itself make clear that the aim of the administration was not one of asserting an outright ban; rather they left the issue of assassination in a status of 'strategic ambiguity';⁷ that was vague enough for future policymakers to interpret it in line with their strategic priorities. To make this argument, the analysis will look at three main steps of the Ford Administration's strategy. The first step included the establishment and management of the Rockefeller Commission in response to media scandals surrounding the intelligence community. The second step included the difficult relationship with the Church Committee. Third, the Administration's decision to publish an Executive Order 11905 to reform the Intelligence Communities and the

⁷ Jacqueline Best identifies three forms of ambiguity. In one of these forms, a term is used in an 'ambiguous' way to permit various interpretations. In this sense, ambiguity is a 'strategic asset' and policymakers aim at governing through ambiguity. See Jacqueline Best, 'Ambiguity, Uncertainty, and Risk: Rethinking Indeterminacy,' *International Political Sociology*, 2, no. 4 (December 2008): 355–374.

language of the ban included in the order left the issue of assassination ill-defined and under Presidential control.

The analysis of these steps will also help in challenging some prevailing myths that have surrounded the Ford Administration. Several historians have, until recently, argued that the Ford Administration was an ‘imperilled’ presidency, unable to challenge a rampant Congress and an assertive civil society.⁸ The analysis will show how the Administration was, from the start, aggressive, organised, and committed in its quest to ensure that the investigations of the intelligence community did not hamper the Central Intelligence Agency or reduce the powers of the president. In doing this, the analysis will update the interpretation of some scholars like Loch Johnson and Kathryn Olmsted who, while acknowledging the administration’s effort to maintain presidential power, argued that the administration was initially unprepared to challenge media scandals and Congressional inquiries.⁹ Second, the analysis will also question a myth - largely propagated by the memoirs of Henry Kissinger and former CIA officials – that has emerged around CIA Director William Colby’s alleged willingness to cooperate fully with Congress. The article will highlight how this myth has very little basis in the historical record, highlighting Colby’s much more secretive approach and his ultimate aim of protecting the Agency.

Stage managing the Rockefeller Commission

The commission and the mandate

On the 22nd of December 1974, Seymour Hersh published a *New York Times* story titled: ‘Huge CIA Operation reported in US against anti-war forces, other dissidents in Nixon

⁸ See Katherine Scott, *Reining in the state* (Lawrence: University Press of Kansas, 2013) and Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power after Watergate* (Ann Arbor: The University of Michigan Press, 2009)

⁹ Loch Johnson and Kathryn Olmsted have provided detailed analyses of the Administration’s reaction to Congressional inquiries. In their account, however, both Johnson and Olmsted suggest that the Ford Administration’s initial reaction was somewhat clumsy and unorganised and that it relied on a late counter-offensive. See Kathryn Olmsted, 'Reclaiming executive power: the Ford Administration's response to the Intelligence investigations,' *Presidential Studies Quarterly*, 26, no. 3 (1996): 725-737; Kathryn Olmsted, *Challenging the Secret Government* (Chapel Hill: The University of North Carolina Press, 1996); Loch Johnson, *A Season of Inquiry* (Lexington: The University Press of Kentucky, 1985).

years.’ The story created a political storm by exposing the CIA involvement in the wire-tapping of US citizens and other domestic activities in violation of the CIA’s statute.¹⁰ Hersh’s story was based on access to part of the so-called ‘family jewels,’ a collection of documents compiled in 1973 at the request of then CIA Director James Schlesinger. Both CIA Director William Colby and Schlesinger (who became Secretary of Defense under Ford) had failed to inform the White House regarding the ‘jewels.’¹¹ Colby had agreed to discuss the story with Hersh. As he recalled years later, Colby felt that he owed the *Times*’ reporter a favour. Hersh had agreed not to publish a story on the *Glomar Explorer* operation.¹² Furthermore, the DCI was afraid that Head of Counter-intelligence James Angleton, whom Colby was ready to fire, was behind the leaks to Hersh.¹³ Colby had agreed to meet with Hersh and, as he put it, he was ‘hoping to bring him down.’ Hersh, however, took the conversation as confirmation that he was on the right track.¹⁴ Hersh initial story did not include assassination, but the topic would soon become one of the White House’s main concerns.

With President Ford ready to depart for his Christmas vacation, National Security Advisor/Secretary of State Henry Kissinger, Chief of Staff Donald Rumsfeld and Dick Cheney, Deputy Assistant to the President, took control of the Executive’s reaction. Early in the morning of the 23rd, Kissinger wrote Rumsfeld that, in terms of public reaction, the three key aims were: to insure that no activities were taking place, to establish corrective measures if they were taking place, and to assure the American public that the president had ‘firm control over the activities of the CIA.’ The approach aimed at managing the crisis and

¹⁰ As Cynthia Nolan has shown, the storm engulfed the Executive and Congress more than the American public. Cynthia M. Nolan, ‘Seymour Hersh’s Impact on the CIA,’ *International Journal of Intelligence and CounterIntelligence*, 12, no. 1 (1999): 22.

¹¹ William Colby, *Honorable Men: my life in the CIA* (New York: Simon and Schuster, 1978): 345.

¹² Nicholas Dujmovic, ‘Oral History: Reflections of DCI Colby and Helms on the CIA’s “Time of Troubles,”’ *Studies in Intelligence*, 51, no. 3, <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> (accessed 19 July 2017).

¹³ Harold P. Ford, *William E. Colby as Director of Central Intelligence* (Central Intelligence Agency: CIA History Staff, 1993): 103.

¹⁴ Dujmovic, ‘Oral history.’

revealing as little as possible. ‘We are concerned,’ Kissinger wrote, ‘that we not act in such a way as to give credence to the allegations of the *New York Times* story and create an impression that a major problem actually exists and that the Ford Administration is confronted with a scandal of major proportions.’ The aim was to ‘head off...a full-blown Congressional investigation.’¹⁵ On the same day, Rumsfeld told Kissinger that Ford agreed with the suggestion that the first step was to have Colby write a report on the CIA activities. Rumsfeld also put Cheney in charge of all communications to the President regarding the crisis.¹⁶

On the 24th, Colby met with Kissinger to discuss the intelligence activities and his report. Kissinger, from the start, despised Colby. As Randall Woods has argued, ‘Nixon and Kissinger considered Colby a bureaucrat, a political non entity who could easily be controlled and from whom they had nothing to fear.’¹⁷ Furthermore, Colby had been particularly open with Congress during investigations regarding CIA activities in Chile and he had implied that former DCI Richard Helms had lied to Congress; a ‘cover-your-ass’ performance in Kissinger’s book.¹⁸ Colby on his part had trouble getting access to Ford and recognised the difficulties of ‘elbowing’ past Kissinger.¹⁹ At the meeting, Colby orally provided details on assassinations attempts, but those were not included in the report. On Christmas Day, Kissinger summarised his meeting with Colby to the President. He expressed concern about the propriety and morality of some of the CIA’s activities.²⁰ Ford had already decided on a blue-ribbon commission. Kissinger gave his ‘strong recommendation’ that this commission be limited to Hersh’s allegations. Crucially, this would have permitted to exclude an

¹⁵ Memo Kissinger to Rumsfeld, ‘Public handling of New York Times allegations of CIA domestic activities,’ 23 December 1974, Richard Cheney Files (RCF), Box 6, Intelligence Subseries, Folder Intelligence – General, Gerald Ford Presidential Library (GFPL).

¹⁶ Memo, Rumsfeld to Kissinger, ‘Kissinger/Rumsfeld telephone conversation, 7:30a.m., December 23, 1974, on CIA matter,’ RCF, Box 5, Intelligence Subseries, Folder Intelligence - Colby Report, GFPL.

¹⁷ Randall B. Woods, *Shadow Warrior: William Egan Colby and the CIA* (New York: Basic Books, 2013): 362.

¹⁸ Memorandum of conversation, Ford, Kissinger, Scowcroft, 21 October 1974, National Security Adviser (NSA) - Memoranda of Conversations (MemCon), 1973-1977, Box 6, Digital Files GFPL.

¹⁹ Colby, *Honorable*, 373.

²⁰ John Prados, *Lost Crusader: the Secret Wars of CIA Director William Colby* (Oxford: Oxford University Press, 2003): 295.

investigation into assassinations.²¹ For one week, members of the Administration met in Vail to discuss how to approach the crisis. Colby was excluded.²² Only on the 3rd of January, with the key decision on the establishment of a commission already taken, was Colby given an opportunity to brief the president on his report and on assassinations.

Contrary to Olmsted's interpretation, even at this early stage, the administration's approach was focused. It aimed at protecting the Agency, at excluding Congress, and at keeping secrets. Clues can be found in both private discussions on the future of the inquiry and in the approach taken to create and manage the commission. The President clarified the necessity of a positive spin on the story. 'I plan to say,' he argued, 'that a Central Intelligence Agency is essential to our national security...it has to be put positively.'²³ Similarly, Ford rejected earlier suggestions from Colby and others within the executive branch that Colby's report should be made public.²⁴ The record makes clear the origin of this emphasis on secrecy. In a separate meeting between Kissinger and Ford, the National Security Advisor warned the president: 'What is happening is worse than in the days of McCarthy.' Kissinger criticised Colby suggesting that the time had come to find a replacement.²⁵ The following day, Ford met with former CIA Director Richard Helms. The president expressed concerns regarding the commission: 'I hope they [the Commission] will stay within their charter, but in this climate, we can't guarantee it. It would be tragic if it went beyond it.' And he added that the aim was to 'protect the functions of the Agency with a Blue Ribbon group which will operate responsibly.'²⁶ As Graeme Mount has correctly argued, the commission's aim was to

²¹ Memo, Kissinger to President, 'Colby Report,' 25 Dec. 1975, RCF, Box 5, Intelligence Subseries, Folder Intelligence - Appointment of CIA Director, Folder Intelligence - Colby Report, GFPL.

²² Colby, *Honorable*, 397.

²³ Memoranda of conversation, Ford, Colby, Buchen, Marsh, Scowcroft, 3 January 1975 and Ford, Schlesinger, Marsh, Buchen, 3 January 1975, NSA - MemCon, 1973-1977, Box 8, Digital Files, GFPL.

²⁴ Colby, *Honorable*, 397 and Notes of meeting 27 December 1974, RCF, Box 5, Intelligence Subseries, Folder Intelligence - Colby Report, GFPL and Notes of Meeting, Ford, Schlesinger, Marsh, Buchen, 3 January 1975, Richard Cheney Files, Box 5, Intelligence Subseries, Folder Intelligence - Colby Report, GFPL.

²⁵ Memorandum of Conversation, Ford, Kissinger, Scowcroft, 4 January 1975, NSA - MemCon, 1973-1977, Box 8, Digital Files, GFPL.

²⁶ Memorandum of conversation, Ford, Rockefeller, Kissinger, Rumsfeld, Buchen, Marsh, Scowcroft, 4 January 1975, NSA - MemCon, 1973-1977, Box 8, Digital Files, GFPL.

placate the public and Congress, not to seek the truth.²⁷ The White House's aim was also to obstruct the commission's work. 'They did not want to do much with it,' as Vice President Walter Mondale recently stated in an interview with the author.²⁸ The composition of the commission and its mandate confirm this interpretation.

In a meeting discussing the newly established commission, even Rumsfeld conceded that the commission was 'a little Republican and right.'²⁹ The commission was also 'a little male and white.' All members were white males above fifty. The age of the commissioners was particularly important as all of them had grown up through the Second World War and the immediate post-Cold War consensus regarding the need for a muscular approach to Soviet expansionism.³⁰ Moreover, the commission gave clear signs regarding the approach taken towards the intelligence community and Congress. In spite of famous historical precedents like the Warren Commission (of which Congressman Ford had been a member) and in spite of calls from members of the Administration like Schlesinger,³¹ no member of Congress was included.³² The background of the commissioners was also indicative. As Kenneth Kitts explains, most members had strong ties to the intelligence community. General Lyman Lemnitzer was Chairman of the Joints Chiefs of Staff during the Bay of Pigs. Douglas Dillon had helped establish the OSS during World War II. Above all, the Chairman (Vice President) Nelson Rockefeller had served on the President's Foreign Intelligence Advisory Board since 1969.³³ Beyond the commissioners, the White House also carefully selected the staff. As one member of the staff concluded: 'because of the type of individual on the commission and on

²⁷ Graeme Mount (with Mark Gauthier), *895 days that changed the world* (London: Black Rose Books, 2006): 143.

²⁸ Walter Mondale, Interview with the author, 26th May 2016

²⁹ Memorandum of conversation, Ford, Rockefeller, Kissinger, Rumsfeld, Buchen, Marsh, Scowcroft, 4 January 1975.

³⁰ John M. Oseth, *Regulating US Intelligence operations* (Lexington: University Press of Kentucky, 1985): 77.

³¹ Memorandum of conversation, Ford, Schlesinger, Marsh, Buchen, 3 January 1975.

³² Kenneth Kitts, 'Commission Politics and National Security: Gerald Ford's response to the CIA controversy of 1975,' *Presidential Studies Quarterly*, 26, no. 4 (Fall 1996): 1085

³³ Kitts, 'Commission,' 1086.

the staff, little credence was given to the wilder accusations regarding the CIA.³⁴ The White House also made sure of this by drafting a very narrow mandate for the commission.

Executive Order 11828 established the commission. Both the Order's preamble and Ford's announcement focused on the need for strengthening, as opposed to investigating, the CIA.³⁵ As to the mandate, the commission was strictly limited to investigating 'activities conducted within the United States' that violated statutory requirements. While the broader debate was already discussing the impropriety of the CIA activities and their immorality, the Order narrowly focused on their legal status.³⁶ Furthermore, the mandate was limited to an investigation of the 'public charges' and 'allegations.' The sources of these were never specified and the commission could decide (guided by the White House) which charges to investigate and which to ignore.³⁷ Finally, the mandate made clear that the various agencies should have cooperated with the commission. The commission had to rely on the CIA to reveal its own secrets. Colby famously described Rockefeller's approach. After his testimony to the commission, Rockefeller approached Colby: 'Bill,' he cautioned, 'do you really have to present all this material to us?'³⁸

A new ball game: assassinations and the Ford Administration

The issue of US government involvement in assassinations was not included in Hersh's story, or in Colby's report to the President. Colby only briefed Kissinger and the President on them between late December 1974 and early January 1975. Ford knew of the assassination attempts before he established the commission but, by limiting the mandate, excluded the commission from investigating them. This point also makes Ford's revelations on

³⁴ Kitts, 'Commission,' 1086.

³⁵ Gerald Ford, 'Statement Announcing Establishment of a Commission on CIA Activities Within the United States,' January 4, 1975, <http://www.presidency.ucsb.edu/ws/index.php?pid=4838&st=Commission&st1=> (accessed 4 January 2018) and Executive Order 11828 - Establishing a Commission on CIA Activities Within the United States, January 4, 1975, <http://www.presidency.ucsb.edu/ws/?pid=23910> (accessed July 19th 2017).

³⁶ Executive Order 11828.

³⁷ Oseth, *Regulating*, 74.

³⁸ Colby, *Honorable*, 400.

assassination even more baffling. On the 16th of January, during a lunch with journalists, Ford rejected the criticisms that the Rockefeller Commission was too conservative. He explained the selection of personnel suggesting that more liberal commissioners might have exposed darker secrets of the CIA. Asked to clarify what he meant, Ford uttered: ‘like assassination,’ before adding that the revelation was off the record.³⁹

The reasons behind Ford’s revelation are still heavily debated. Some have argued that the revelation was simply a mistake, largely due to Ford’s inexperience and his willingness to impress journalists.⁴⁰ John Greene has, unconvincingly, suggested that the revelations on assassination represented an attempt to distract the media and public opinion from the work of the commission.⁴¹ Finally, according to journalist Daniel Schorr, Ford’s aim was simply to off-load the issue on Rockefeller.⁴² This article identifies a fourth option which seems more plausible seems more plausible. Rhodri Jeffreys-Jones has argued that one of Ford’s main aims in approaching the intelligence inquiries was to protect the Republican Party and to stop the post-Watergate slide.⁴³ A tactic that had proved successful in the Nixon years and would later help members of the Ford Administration was the so called ‘flash-back’ tactic, that is, demonstrating that questionable CIA practices had started in earlier (and crucially Democratic) administrations.⁴⁴ Ford’s revelation on assassination fits this pattern. It was an opportunity to hit back at the democrats by implicating the Kennedy Administration. The journalists who had attended the lunch with Ford had respected the President’s request, but Ford’s revelation made its way to *CBS* reporter Daniel Schorr who - after a phone

³⁹ Kathryn Olmsted, ‘US Intelligence Agencies during the Ford years,’ in *A Companion to Gerald R. Ford and Jimmy Carter*, Ed. Scott Kaufman, (Oxford: John Wiley and Sons, 2016): 114.

⁴⁰ Kathryn Olmsted, Interview with the author, 16 May 2016.

⁴¹ John Robert Greene, *The Presidency of Gerald R. Ford* (Lawrence: The University Press of Kansas, 1995): 107.

⁴² Daniel Schorr, ‘My 17 Months on the CIA watch,’ *Rolling Stones*, 8 April 1976, <http://jfk.hood.edu/Collection/Weisberg%20Subject%20Index%20Files/S%20Disk/Schorr%20Daniel/Item%2001.pdf> (accessed 19 July 2017).

⁴³ Rhodri Jeffreys-Jones, Interview with the author, 24 May 2016.

⁴⁴ Rhodri Jeffreys-Jones, *The CIA and American Democracy* (London: Yale University Press, 2003): 169.

conversation with Colby⁴⁵ and his own investigation - went on air with the story regarding assassination.

Ford's revelation has generally been understood as the primary reason behind the extension of the Rockefeller's commission mandate.⁴⁶ The record and especially the generally overlooked papers of David Belin, the commission's staff Director, available at the Gerald Ford Presidential Library, however, present a different picture. Early in the commission's investigation, Belin had requested the CIA a copy of the 'family jewels.' In spite of the EO's call for cooperation, the CIA had been less than forthcoming. The copy provided did not include the discussion of assassination since the CIA considered the material extremely sensitive and outside the scope of the commission's inquiry. Only at Belin's insistence, the material was disclosed.⁴⁷ Only through Belin's pressure, assassination attempts involving domestic abuses were added to the mandate. White House Counsel Philip Buchen, however, made clear to Belin that the extension of the mandate did not affect the White House's control on the process. As Buchen wrote:

Once you complete your investigation in that regard, you should advise the President of the outcome, through me, and then it can be decided whether the subject should eventually be included as an integral part of the Commission's final report.⁴⁸

The tight leash is confirmed by the conduct of investigations. It is clear that assassination represented an altogether different territory; one where the CIA, the White House and Kissinger were unwilling to venture.

⁴⁵ Dujmovic, 'Oral history,' and Colby, *Honorable*, 409. In the conversation, Colby denied that the CIA had conducted assassination attempts in the United States which, to Schorr, meant that the Agency had done so abroad.

⁴⁶ See Olmsted, 'Reclaiming,' 727 and Daniel Schorr, *Clearing the Air* (New York: Berkley Medallion Books, 1978): 147.

⁴⁷ David Belin, 'Inside the CIA: the Belin report' David W Belin Papers (DWBP) (1961), 1963-1998, Box 55, Book files, Draft Chapter 7, 'The "Family Jewels,"' p. 8-4 [sic], GFPL. The files include draft chapters for the book 'Inside the CIA.' The book was never published. Material from these chapters was eventually included in David Belin, *Final disclosure: the full truth about the assassination of President Kennedy* (Upper Saddle River: Prentice Hall, 1988). In this case, however, the account available in the book tends to downplay Belin's role and the opposition from within the rest of the Commission to the investigation of assassination. See, in particular, the difference between the 'Second Revision' draft of Chapter 7, 'The Family Jewels' and the "Family Jewels" Chapter in the book. In the book, Chapter 16, 'The Battle to investigate assassination plots' is also vague on the reasons and protagonists of this battle.

⁴⁸ Letter, Philip Buchen to David Belin, 31 March 1975, DWBP (1961), 1963-1998, Box 26, Rockefeller Commission Numbered files, Folder C-21 Correspondence - White House 1975, GFPL.

In a letter to Belin in early May, Peter Clapper, Director of Public affairs for the commission, lamented the Agency's lack of cooperation. 'I will not be easily convinced,' he wrote, 'that the week-long delay between the time when I requested to see certain Helms files and the time when I was allowed to view them was not used by the Agency to cull from those files potentially damaging material.' The suspicion was confirmed by chronological gaps and by the fact that the Inspector General was assigned the task of controlling Clapper while he was going through the documents. Clapper felt he was being 'spoon-fed.'⁴⁹ Belin confronted the same delaying tactics in dealing with Kissinger. As he recalled, Kissinger had an enormous influence on the activities of the commission through his strong personal relationship with Rockefeller. After a testimony by McGeorge Bundy, Belin requested a series of documents from the National Security Council. These documents could have clarified on the president's level of knowledge on assassination plots. A series of requests was sent to Executive Secretary of the NSC, Jeanne Davis without success. Only when Belin threatened to ask Kissinger about the documents during his testimony to the commission, Mrs. Davis replied but she implied that Kissinger would have the power to decide what interpretation (and what documents) to give. A frustrated Belin asked Rockefeller to intervene. After Rockefeller's discussion with Scowcroft, Belin was granted access to a narrow set of documents through a literal interpretation of his request. Not all the files were sent and after Belin's complaint, Mrs. Davis suggested that Kissinger had already decided not to give access to other files. The NSC, Belin concluded, had tried to 'stonewall' the investigation. The delay exploited the tight deadline under which the commission was working. Additional documents arrived only on the 30th of May, one week before the deadline for the completion of the report. More importantly, an internal memorandum from

⁴⁹ Peter Clapper to David Belin, "Public Affairs Considerations in Report," May 2, 1975, Digital National Security Archives, Briefing Book on White House and Rockefeller Commission, Document 11, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB543-Ford-White-House-Altered-Rockefeller-Commission-Report/> (accessed 20 July 2017).

April had already made clear that Kissinger's office would not comply with Belin's request. Assurances of cooperation, Belin concluded, were 'garbage.' 'The real intent from the very beginning was to deny access.'⁵⁰ Kissinger's influence would also determine the shape of the final report.

With the commission's investigation coming to a close, on the 12th of May, Dillon and Rockefeller let the media know that the report would soon be released, including a section on assassination.⁵¹ In the last week of May, however, a request came from the White House and Kissinger to exclude the final chapter on assassination. The decision was taken in spite of several commissioners and members of staff being concerned for the public relations impact of this decision.⁵² Belin considered holding a press conference to reveal his frustration and the extent of the CIA's activities. While Nessen approved, in theory, of the idea of a press conference, Cheney prevented him from going public.⁵³ On the 6th of June the report was released. As John Prados and Arturo Jimenez Bacardi have detailed, the published report was very different from the initial draft produced by the commission. Cheney heavily re-drafted portions of the report and edited several sections to reduce the criticism of the CIA.⁵⁴ The largest cover-up, however, concerned assassinations. Not only was Chapter 20 not included, but a short paragraph implied that, although the President had agreed to the commission's investigation of alleged assassination plots, the commission did not have time to conduct such

⁵⁰ David Belin, *Inside the CIA: the Belin report*, DWBP (1961), 1963-1998, Box 55, Book files, Draft Chapter 13, 'Confrontation with Kissinger,'" pp. 13-22, GFPL. Part of this information can also be found in Belin, *Final disclosure*: 154-159.

⁵¹ Ron Nessen, *It sure looks different from the inside* (New York: Simon and Schuster, 1978): 63.

⁵² David Belin, 'Inside the CIA: the Belin report,' DWBP (1961), 1963-1998, Box 56, Book files, Draft Chapter 15, 'Where did chapter 20 go?' p. 14-20, GFPL. The version available in *Final Disclosure* downplays again the opposition to Belin starting the investigation of assassination attempts. It also downplays the heated debate on what to do, once the request from the White House to exclude Chapter 20 had been received (page 11 of the draft). In the draft available at the Library, handwritten comments from Belin also discuss Rockefeller's unwillingness to have Belin as the public face of the Commission for fear that he might be too open. See also John Prados and Arturo Jimenez-Bacardi, 'The Rockefeller Commission, the White House and CIA Assassination Plots,' Digital National Security Archives, 29 February 2016, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB543-Ford-White-House-Altered-Rockefeller-Commission-Report/> (accessed 19 July 2017).

⁵³ David Belin, 'Where did chapter 20 go?' p. 20.

⁵⁴ Prados and Jimenez-Bacardi, 'The Rockefeller Commission.'

investigation.⁵⁵ Once again, the record shows a very different story. Already on the 15th of April, Belin had notified Buchen that an interim report would be completed shortly and that it was being drafted with a view of providing it to the Senate Committee.⁵⁶ In this sense, although at the time the commission's report was not considered a 'whitewash,' the issue of assassination had a special status.

Don't take me to Church: the Ford White House, the Church Committee and assassination

Limiting the Committee and controlling information

As Kissinger's initial reaction made clear, one of the main aims of the White House was to prevent a 'full-blown' Congressional investigation.⁵⁷ Such an approach was unlikely to succeed. Watergate had not only made investigations of the CIA 'fair game', but it had also brought to Washington a new wave of Congressmen determined to rebalance the power between the Executive and the Legislative branches.⁵⁸ Colby understood this changed mood and, as he recalled, adopted an approach that – by releasing targeted information - could both placate Congress's investigative zeal and preserve the Agency's powers intact.⁵⁹ Following this approach, on the 15th of January, Colby testified to a joint session of the Senate's Armed Services and Appropriations Committee. To the White House's dismay Colby not only used the Vail report in his testimony, but agreed to its publication, going against Ford's decision.⁶⁰ Robert McFarlane, NSA Assistant, lamented at the time that Colby had provided a lot of

⁵⁵ Commission on CIA Activities Within the United States, 'Report to the President,' 6 June 1975, RCF, Box 7, Folder Intelligence - Rockefeller Commission Report - Final (1), GFPL, p. xi.

⁵⁶ White House, Memorandum for the Record by James Wilderotter, "Meeting with David W. Belin, April 15, 1975," April 16, 1975," DNSA Briefing Book on White House and Church Committee, Document 20, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB522-Church-Committee-Faced-White-House-Attempts-to-Curb-CIA-Probe/> (accessed 19 July 2017).

⁵⁷ Memo Kissinger to Rumsfeld, 'Public handling of New York Times allegations of CIA domestic activities,' 23 December 1974.

⁵⁸ Thomas Powers, *The man who kept the secrets: Richard Helms and the CIA* (New York: Pocket Books, 1979): 313 and Frederick Schwarz, Interview with the author, 11th May 2016.

⁵⁹ Colby, *Honorable*, 376.

⁶⁰ Colby, *Honorable*, 401.

‘gratuitous information,’ without explaining the vital role played by the Agency.⁶¹ Kissinger noted in his memoirs that Colby’s performance guaranteed that the Rockefeller Commission would not be enough to moderate public, media, and Congressional calls for investigations.⁶² Congress, however, was already too invested in the issue, regardless of Colby’s testimony. The ‘Watergate babies,’ as Laura Kalman put it, ‘did not sleep, they screamed.’⁶³ Less than a week after Colby’s testimony, the Senate voted to create a Select Committee to investigate CIA activities, chaired by Idaho Senator Frank Church.

Once again, although, as Olmsted correctly points out, the White House’s approach became more aggressive in the fall of 1975, with the establishment of the Intelligence Coordinating Group,⁶⁴ from the start, the Executive made an effort to limit the extent and depth of Congressional investigations. The White House clearly aimed at giving a public impression of cooperation. Both the President and Press Secretary Ron Nessen made clear that the White House was open to full cooperation and broadly agreed with the need for investigation.⁶⁵ As Frederick Schwartz recently confirmed, the White House could not be seen as not cooperating with Congress.⁶⁶ The façade of cooperation created a ‘velvet stonewall,’ an impression of amiability and cooperation which covered the real aims of the White House.⁶⁷ Key players in the White House showed little more than contempt for the Congressional effort. Kissinger often repeated in telephone conversations his lack of ‘sympathy’ for the investigations and his hostility towards Congressional requests.⁶⁸ Memoranda of conversation from early 1975 confirm the Administration’s concerns regarding the breadth of the Church Committee investigations and, in particular, its

⁶¹ Notes, 25 January 1975, NSA, Staff Assistant Robert C. McFarlane Files, 1974-1977 Box 3, Folder January 21-31 1975, GFPL.

⁶² Henry Kissinger, *Years of Renewal* (New York: Simon and Schuster, 2000): 321-322.

⁶³ Laura Kalman, *Red Star Rising* (New York: Norton and Company 2010): 38.

⁶⁴ Olmsted, ‘Reclaiming,’ 728.

⁶⁵ Nessen, *It sure looks* and Gerald Ford, *A Time to heal* (London: W. H. Allen, 1979): 230.

⁶⁶ Schwarz, Interview with the author.

⁶⁷ Baron, Oral History interview, p. 7.

⁶⁸ Kissinger, Telcon 17 June 1975, Kissinger - Adam Walinski and Kissinger, Telcon 17 June 1975 McGeorge Bundy/Secretary Kissinger in Kissinger Conversations: Supplement II, 1969-1977, Digital National Security Archives.

willingness to explore covert actions, including assassination attempts.⁶⁹ In its containment effort, the White House replicated many of the strategies adopted against the commission. First, the Executive made an effort to limit the breadth of the committee's investigations. This included efforts to intimidate the committee, the use of Republicans on the Committee as 'fifth columns,' and leaks to discredit the Committee. Second, in spite of a façade of cooperation, as with the commission, the Executive carefully managed the process for the release of documents and information. Finally, the Administration engaged in an all-out effort to keep the work of the Committee on assassination secret.⁷⁰

Intimidation relied on both direct warnings and elements of 'theatre.' In the immediate aftermath of Ford's revelation on assassination, Kissinger reported to Ford that he had scared Church at a dinner party telling him that the 'Nixon material was mild compared to what went on in Democratic Administration,'⁷¹ another example of flash-back. Similarly, Colby's briefing to the Chairman of the Committee and to the Vice Chairman, Republican John Tower (R-TX), was devised to impress on them the importance of the intelligence work and induce the Committee to 'impose limitations on further investigation.'⁷² More generally, the White House did not hesitate to deploy the trappings of Executive power to intimidate young and (at times inexperienced) investigators. In an account not too dissimilar from that of Clapper, Frederick Baron recalled how the White House stage managed the access to documents by giving him very little time, by arranging to have a guard stand next to him as he went through boxes and boxes of documents, and by having him read the documents in the

⁶⁹ Memorandum of conversation, Kissinger, Schlesinger, Colby, Areeda, Silberman, Hoffman, Scowcroft 20 Feb. 1975, NSA - MemCon, 1973-1977, Box 9, Digital files, GFPL.

⁷⁰ Olmsted, *Challenging* and LeRoy Ahsby and Rod Gramer, *Fighting the Odds: the life of Senator Church* (Pullman: Washington State University Press, 1994): 473.

⁷¹ Memorandum of conversation, Ford, Kissinger, Rumsfeld, Marsh, Scowcroft, 21 Feb. 1975, NSA - MemCon, 1973-1977, Box 9, Digital Files, GFPL.

⁷² White House, Office of Counsel to the President, Phillip Buchen, Meeting Briefing Memo, "Meeting with Secretaries Kissinger, Schlesinger, and Director Colby, Wednesday, May 14, 1975," May 13, 1975, Document 29, DNSA Briefing Book on White House and Church Committee

Situation Room. As he put it, the White House ‘orchestrated the drama’ of the event.⁷³ As to the Republican ‘fifth column,’ Goldwater and Tower kept in constant communication with the White House. Hugh Scott (R-PA), the minority leader, asked Senator Tower to act as ‘damage control’ officer in the Committee. A member of Goldwater’s staff warned Frederick Schwarz that he wasn’t there to help the committee but to spy on it.⁷⁴ Finally, the White House adopted from the start a policy of leaks to discredit the Committee. US Deputy Attorney General Laurence Silberman made clear in a meeting in early 1975, that the White House position would be strengthened if the Committee seemed to leak information first.⁷⁵

The White House also carefully managed the process of document and information release. On this score, Kissinger and Helms have (in their memoirs) propagated the myth that Colby was out of control giving the Committee everything it wanted.⁷⁶ The record, however, shows that this ‘Colby myth’ is unfounded. The release of documents, the permission to give oral testimonies to the Committee, and the contents of these testimonies were controlled from the White House. The CIA, far from being out of control, largely followed White House guidelines. From the start of the inquiry, Colby and the CIA developed a central index to track all the documents requested by the Committee, as well as a typology including four different level of classification for these documents. Sensitive material would not be available to the committee in its ‘raw form,’ but investigators would only receive oral briefings. Documents in a second category could be viewed only at the originating agency and might have been subject to restrictions from such agency. As Schwarz complained, the power of each agency to decide what to do with documents was a source of ‘total frustration’ for the

⁷³ Frederick D. Baron, Assistant to the Chief Counsel, ‘Church Committee Oral History,’ Interview, US Senate Historical Office, 2016, 9

⁷⁴ Ashby and Gramer, *Fighting the Odds*, 473.

⁷⁵ Memorandum of conversation, Kissinger, Schlesinger, Colby, Areeda, Silberman, Hoffman, Scowcroft 20 Feb. 1975

⁷⁶ See Kissinger, *Years*, 325 and Richard Helms, *A Look over my shoulders: a life in the Central Intelligence Agency* (New York: Ballantine Books 2003): 427-428.

committee and the staff.⁷⁷ Documents in a third category would be provided only in a sanitized form. Finally, only a small amount of (mostly generic) documents would be provided to the committee in its original form.⁷⁸ The CIA also made widespread use of ‘abstracts.’ These short summaries of much larger and potentially more controversial documents gave the impression of collaboration while revealing very little.⁷⁹

Colby also adopted two main tactics to influence the investigations. First, as Rhodri Jeffreys-Jones has recently put it, Colby released documents on case-studies and only targeted information. This prevented the Committee from exploring broader issues regarding the CIA’s nature and culture.⁸⁰ Second, to cover potentially controversial issues, Colby adopted a strategy aimed at quantity more than quality of documents.⁸¹ Many key issues, as Harold Ford concluded, got lost in the reams of paper that surrounded the Committee.⁸² The White House similarly limited its collaboration with the Committee. Ford made clear, in an early meeting with the Committee Chairmen that he intended to restore the reputation and the strength of the intelligence community. He refused to give directives to the CIA and to other agencies to cooperate. Ford stressed that any decision would be taken on a case by case basis.⁸³ Furthermore, as a White House memo made clear, from early in the investigations, any document had to be ‘cleared through the Counsel’s office’ before being supplied to the Committee.⁸⁴

⁷⁷ William Colby, Testimony 23 May 1975, Church Committee, RCF, Box 5, Intelligence Subseries, Folder Intelligence – Colby Testimony, GFPL.

⁷⁸ Central Intelligence Agency, “Responsibilities and Support,” March 25, 1975, DNSA Briefing Book on White House and Church Committee, Document 10.

⁷⁹ John Prados and Arturo Jimenez-Bacardi, 'White House Efforts to Blunt 1975 Church Committee Investigation into CIA Abuses Foreshadowed Executive-Congressional Battles after 9/11,' National Security Archive Briefing Book, 20 July 2015, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB522-Church-Committee-Faced-White-House-Attempts-to-Curb-CIA-Probe/> (accessed 19 July 2017).

⁸⁰ Jeffreys-Jones, Interview with the author.

⁸¹ John Ranelagh, *The Agency: the rise and decline of the CIA* (Cambridge: Sceptre, 1988): 598.

⁸² Ford, *William E. Colby*, 146.

⁸³ Memorandum of conversation, Ford, Kissinger, Church, Tower, Buchen, Rumsfeld, Marsh, Scowcroft 5 March 1975

⁸⁴ White House, Office of Counsel to the President, Phillip Buchen, Meeting Briefing Memo, “Meeting with Secretaries Kissinger, Schlesinger, and Director Colby, Wednesday, May 14, 1975,” May 13, 1975, DNSA Briefing Book on White House and Church Committee, Document 29.

The same controlled process applied to oral testimonies. In this context, the management of Colby's 15th of May testimony to the Committee is instructive. On the 9th of May, a memo to the President recommended that Colby should not have been allowed to testify in front of the whole Church Committee, but only to the chairmen. The recommendation also suggested that Colby should have discussed 'in detail' with them the nature and extent of various covert operations.⁸⁵ The same day, however, the President refused such recommendation permitting Colby to brief the chairmen but only to discuss the background and rationale of covert operations with no reference to real cases. The testimony should also have been cleared with the White House in advance.⁸⁶ On the 13th, Colby was given the opportunity to rehearse his briefing at White House. The rehearsal, however, was 'not well received.' In particular, Colby should have stressed the importance of covert operations for US security instead of downplaying their necessity and their successes, as he seemed ready to do.⁸⁷ Having gone through this process, on the 15th, Colby delivered a very generic testimony on the nature and rationale of covert action to a closed session of the committee. Furthermore, duplicating the approach to the release of documents, Colby and officials from the Executive proved very good at revealing generalities or at telling the Committee things it already knew.⁸⁸

The assassination report: the fight over transfer and release

The release of information became a particularly controversial issue when it came to the material on assassination plots. Various authors suggest that after mis-handling the Rockefeller Commission's report, Ford was compelled by media and public pressure to agree

⁸⁵ Memo Buchen to the President, 'Request of the Senate Select Committee on Intelligence Activities for information on covert actions,' 12 May 1975, Remote Archive Capture (RAC), Box 36, Folder Philip Buchen Files, Intelligence Series (16), GFPL.

⁸⁶ White House, National Security Council, Memorandum from Brent Scowcroft, to CIA Director William Colby, "Briefing of the Senate Select Committee on Covert Action," c. May 9, 1975, DNSA Briefing Book on White House and Church Committee, Document 28.

⁸⁷ Memorandum, McFarlane to Kissinger, 13 May 1975, 'Church Committee request for documents on covert operations,' RAC, Box 27, Folder NSA Staff Assistant Robert McFarlane Files (1), GFPL.

⁸⁸ Schwarz, Interview with the author.

to transfer the assassination material held by the commission to the Church Committee.⁸⁹ The record, however, shows that the White House was extremely concerned regarding this transfer, that it limited the type of documents passed to the Committee, and that it agreed to the transfer only through the understanding that the documents would not be released. On the first point, a meeting between Kissinger and Ford on the 5th of June, one day before the publication of the Rockefeller Commission's report, clarified all the grave concerns regarding assassination and the possible transfer of documents. Demonstrating the sensitive nature of assassinations and the White House concern with the issue, Ford suggested that he feared that Church might 'sensationalize' the inquiry by focusing on assassination. Furthermore, the same meeting makes clear the president's main concern. As Ford put it, the White House should have been 'careful' in making statements regarding assassination, since Church might have decided to write them into law.⁹⁰ A law represented the worst-case scenario for the White House. It would have constrained Ford's powers and those of future presidents.

In a memorandum, Cheney, who was still in control of communications between the President and other officials, highlighted that the transfer of documents posed a conundrum: the commission had received only material from the CIA and had been denied access to documents from other areas of the Executive branch such as the Special Group. This created an unbalanced picture in which the CIA appeared as the only branch of government involved in assassinations plots. Passing the same material on to the Church Committee would confirm such biased picture. The delivery of documents from other groups within the executive dealing with covert actions, on the contrary, would be 'unprecedented,' with 'incalculable diplomatic ramifications' in case of leaks.⁹¹ McFarlane make clear how the release of those

⁸⁹ Olmsted, 'Reclaiming,' 727-728

⁹⁰ Memorandum of conversation, Ford, Kissinger, Scowcroft 5 June 1975, National Security Adviser - Memoranda of Conversations, 1973-1977, Box 12, Digital Files, GFPL.

⁹¹ Dick Cheney, 'Comparison Between Rockefeller Commission Report and Other Executive Branch Material,' RCF, Box 8, Intelligence Subseries, Folder 'Intelligence - Rockefeller Commission Report Final General,' GFPL.

documents would be ‘irresponsible.’⁹² Such a release might have exposed the role of Presidents and other officials in directing the CIA’s covert actions.

The administration’s solution was the adoption of even more selective practices of release. First, documents would be heavily redacted. In April, notified by Belin that the Rockefeller Commission had prepared a draft of the chapter on assassination, White House officials James Wilderotter suggested that the commission should limit the documents shared with the Church Committee. In particular, the 1973 Inspector General report on assassinations should have been provided only in a heavily redacted form and, more importantly, changes to the document should have been made to reduce the impression that it had been redacted.⁹³ Second, certain documents would be kept secret altogether. In a letter to Colby, Church had identified six main areas with a connection to assassination that the Committee wanted to explore. The Executive’s reaction was to try to placate Church’s requests by having CIA officials brief the Committee. However, some recognised that the Committee would not be satisfied. The strategy adopted to avoid a ‘complete impasse’ was to provide documents on operations and topics already known. Even on these, however, ‘papers evidencing the approval process such as proposals or recommendations made to the President or to groups which advised the President, as well as deliberations within such groups’ would be excluded.⁹⁴ As Robert McFarlane concluded, the NSC adopted an ‘extremely conservative approach.’⁹⁵ The CIA agreed, as E. H. Knoche, Colby’s Special Assistant for the investigations wrote: ‘all White House papers, NSC related reports on meetings and deliberations, 40 committee minutes or any documents relating to advice given to the

⁹² Memo Robert C. McFarlane to Scowcroft, 4 June 1975, National Security Adviser, Staff Assistant Robert C. McFarlane Files, 1974-1977, Box 4, Folder June 1-15, 1975, GFPL.

⁹³ White House, Memorandum for the Record by James Wilderotter, “Meeting with David W. Belin, April 15, 1975,” April 16, 1975,” DNSA Briefing Book on White House and Church Committee, Document 20.

⁹⁴ Philip W. Buchen, Memorandum for the record, ‘Meeting in Situation Room on Friday, June 27 concerning pending requests of the Senate Select Committee on Intelligence Activities,’ RCF, Box 6, Intelligence Subseries, Folder ‘Intelligence - Congressional Investigation 3,’ GFPL.

⁹⁵ Memorandum, McFarlane to Kissinger, 13 May 1975, ‘Church Committee request for documents on covert operations,’ RAC, Box 27, Folder NSA Staff Assistant Robert McFarlane Files (1), GFPL.

President or to decisions made by him are to be isolated from the files to which the SSC is given access.’⁹⁶ The Committee was, in other words, prevented from accessing documents essential to its investigation, receiving only a limited amount of material. As Loch Johnson chronicled, even the release of this material proved extremely difficult.⁹⁷

Finally, the record makes clear that Ford and other White House officials had conceded to transfer the documents only based on the assumption that they would not be made public. As Jack Marsh wrote the President, ‘you provided the documents on the express assumption that they would be used in a responsible manner.’⁹⁸ As news reached the White House that the Senate Committee was ready to publish an interim report on assassination attempts, this assumption seemed to crumble. The issue was discussed at a meeting on the 13th of October. From the record, Ford appears shocked: ‘I think this is a more highly sensitive area than any we have had,’ he stated. ‘I never assumed they had the right to publish this.’ Warned by Attorney General Levi that the White House had no legal option to prevent publication, Ford was still unsatisfied: ‘I said they had to handle these assassination documents as we had and we released none of them.’⁹⁹ The rest of the meeting, as well as the steps taken by the White House, show that the problem had nothing to do with the type of information revealed but with the impact this had on the reputation of the intelligence community and on the balance between the Executive and Legislative branches. At the meeting, in fact, Buchen tried to put the problem into perspective: ‘all we are fighting,’ he told the President, ‘is official confirmation of material which is already widely known. This is not a good issue on which to go to the mat.’ Ford was not persuaded: ‘I think we should review it and then say it is not in the national interest to release it at all.’ Kissinger agreed stating explicitly that the issue

⁹⁶ Knoche ‘Memo to Wilderotter on CIA groundrules to provide access to documents,’ Richard Cheney Files, Box 6, Intelligence Subseries, Folder ‘Intelligence - Congressional Investigation 3,’ GFPL

⁹⁷ Johnson, *A season*, 48.

⁹⁸ Jack Marsh, Memo to the President, ‘Assassination report,’ 29 October 1975, Richard Cheney Files, Box 7, Intelligence Subseries, Folder ‘Intelligence - Report on CIA Assassination Plots (2),’ GFPL

⁹⁹ Jack Marsh, Memo to the President, ‘Assassination report,’ 29 October 1975.

impinged on the power of the Executive.¹⁰⁰ The Church Committee had agreed to let the executive review the interim report. Officials from State, Defense and the CIA reviewed it and recommended against. All agreed that the publication of the report would do ‘irreparable damage’ to both US national security and the reputation of the United States.¹⁰¹ The document from William Hyland, from the State Department is, in this context, indicative. Hyland made clear that, beyond the report itself, a greater issue was at stake. The release of the report would be taken as a defining precedent for the balance of power between the Executive and the Legislative branches.¹⁰² Agreeing with this assessment, Colby and Ford started an all-out effort to prevent the publication. They wrote letters to all the Senators on the Committee explaining the dramatic National Security implications of a release of information. Colby even held a public press conference to convince the Senate not to publish the report.¹⁰³ Only Senator Church’s insistence and his threat to resign led to the publication of the interim report on the 20th of November.

‘What was tried in the past may once again become a temptation:’ strategic ambiguity, Ford and Executive Order 11905

The assassination report discussed several case studies of US government involvement in assassination. More importantly, it discussed the CIA’s culture and the relations between the Agency and the Executive. It made clear that assassination plots had emerged in the atmosphere of secrecy surrounding the CIA and that this secrecy had been compounded by the intense pressure exercised by the White House (under several administrations) to get results against enemies of the United States. The report argued that ‘certain officials might

¹⁰⁰ Memorandum of conversation, Ford, Kissinger, Schlesinger, Levi, Lynn, Colby, Buchen, Marsh, Rumsfeld, Scowcroft, Raoul-Duval 13 October 1975, NSA - MemCon, 1973-1977, Digital files, GFPL.

¹⁰¹ See the three documents, Memorandum, Breckinbridge to Colby, ‘SSC Draft Report on Assassination,’ 20 October 1975, ‘Memorandum for the Record, Thomas Latimer on Draft Report, 20 October 1975 and William Hyland, Memorandum for the record, 20 October 1975, RCF, Box 7, Intelligence Subseries, Folder ‘Intelligence - Report on CIA Assassination Plots (2), GFPL.

¹⁰² William Hyland, Memorandum for the record, 20 October 1975.

¹⁰³ Ford, *William E. Colby*, 152.

have perceived that, according to their judgment and experience, assassination was an acceptable course of action.’ The report, in other words, lamented the ambiguity surrounding the issues of assassination and the fact that such ambiguity left the door open to exploitation from both the CIA and officials within the Executive Branch. Responsibility lay with both these CIA officials and with various Administration officials who had not explicitly ruled out the use of assassination.¹⁰⁴ The report’s recommendations reflected these concerns.

The report recognised the CIA internal directives banning assassination but called for the strongest legal instruments to prevent the reoccurrence of the practice in the future. ‘Administrations change,’ the report read, ‘CIA Directors change, and someday in the future what was tried in the past may once again become a temptation...A law is needed...to resist the temptation.’¹⁰⁵ This law would have made it a criminal offence ‘to conspire within or outside the United States against a foreign official...to attempt to assassinate a foreign official or...to assassinate a foreign official.’ In particular, the report was very clear as to the definition of foreign official. It included an ‘insurgent force, an unrecognized government, or a political party.’ The killing of any of these officials would be punishable if ‘politically motivated’ that is due to the officials’ ‘political views, actions, or statements.’¹⁰⁶ The Committee made clear that the report would not apply in case of war. As the recommendation read: ‘absent a declaration of war or the introduction of United States Armed Forces pursuant to the War Powers Resolution, the killing of foreign official on account of their political views would be a criminal offence.’¹⁰⁷ The recommendations called for the establishment of a statute that could deny flexibility to current and future presidents and identified very specific criteria to define assassination. It is interesting to note that Attorney General Levi made a similar argument at the time. In a memorandum to Ford, Levi wrote that the ‘state of the law’

¹⁰⁴ Senate Select Committee (SSC) to Study Governmental Operations with respect to Intelligence Activities, *Alleged Assassination Plots Involving Foreign Leaders* (Washington: US Government Printing Office, 1975): 7, <https://archive.org/details/allegedassassina00unit> (accessed 19 July 2017).

¹⁰⁵ SSC, Report, 282-283.

¹⁰⁶ SSC, Report, 283.

¹⁰⁷ SSC, Report, 284.

on several issues related to the intelligence community was ‘unsatisfactory.’ The lack of a federal law prohibiting assassination was a particularly glaring omission and Levi suggested that the administration should give ‘enthusiastic...support’ to the legislation proposed by the Committee.¹⁰⁸ Elements in the White House, however, disagreed with this view. As we have seen, from the start of Church’s investigations, Ford himself had precisely feared that Congress might put into law regulations on the intelligence community. In a remarkable outburst, Kissinger had made clear that a law would have been particularly dangerous in the realm of assassination. ‘It is an act of insanity and national humiliation,’ he had stated in National Security Council meeting, ‘to have a law prohibiting the President from ordering assassination.’¹⁰⁹ This view prevailed.

Ford’s Executive Order 11905 reforming the intelligence community was published in February 1976. In terms of tone, as John Oseth has argued, ‘the order was by no means an act of executive contrition. Much of it reads, in fact, as if the major national concern in 1976 was to strengthen, rather than to constrain, our intelligence capabilities.’¹¹⁰ The text of the Order showed no sign that questionable activities had occurred. As to the atmosphere of secrecy, the Order established oversight tools but they were toothless and contained within the Executive.¹¹¹ The position of the President in regard to the intelligence community was strengthened.¹¹² These elements, Oseth concluded reflected the real nature of the Executive Order as a manoeuvre to pre-empt Congressional action more than a genuine effort at reform.¹¹³ What is missing is Oseth analysis, however, is the stark contrast between the Church Committee’s approach to assassination and that of the EO. Whereas the Church

¹⁰⁸ Memorandum From Attorney General Levi to President Ford, FRUS Volume, Volume XXXVIII, Part 2: Organization and Management of Foreign Policy; Public Diplomacy, 1973–1976, Document 66, <https://history.state.gov/historicaldocuments/frus1969-76v38p2> (accessed 19 July 2017).

¹⁰⁹ NSC Meeting, 15 May 1975, NSA, National Security Council Meetings File, 1974-77, Box 1.

¹¹⁰ Oseth *Regulating*, 92.

¹¹¹ Oseth, *Regulating*, 94.

¹¹² Oseth, *Regulating*, 94.

¹¹³ Oseth, *Regulating*, 97.

Committee report (and Levi) had called for specific criteria and lack of flexibility the Executive Order seemed to advocate the exact opposite.

A draft of Ford's statement announcing the Executive Order, clarifies the White House's priority on flexibility. 'We must strike a sensible balance,' the draft read:

Between the need for durable standards and sufficient flexibility to enable me and future Presidents to react appropriately to changing world conditions... We must never bind our own hands so tightly that we become a helpless giant in a very real and very hostile world.¹¹⁴

A law and specific criteria would have prevented current and future Administrations from exploiting definitional ambiguities. Ford had no desire to cede power to Congress and to tie his hands or those of future presidents.¹¹⁵ Whereas the Church Committee had clearly specified the meaning of political, the categories included in 'foreign officials' and the international conditions that made the killing of a foreign official a crime, the ban on assassination included in the Order simply stated: 'No employee of the United States Government shall engage in, or conspire to engage in, political assassination.'¹¹⁶ As Bruce Riedel recently argued, 'The EO represented a way to avoid banning assassination. The Order was "Ford-Administration-bound." This effort was very deliberate.'¹¹⁷

Conclusion: Ford, the 'imperial presidency' and assassination

This article has provided the first in-depth account of the Ford Administration's approach to the revelations regarding the US government's involvement in the assassination of foreign leaders. It has looked at both the administration's reaction to the Congressional inquiries and

¹¹⁴ Draft, 'Speech on intelligence decision,' 12 Feb. 1976, RCF, Box 7, Intelligence Subseries, Folder 'Intelligence - President's action draft report.'

¹¹⁵ Charlie Savage, *Takeover* (New York: Little Brown and Company, New York, 2007): 29.

¹¹⁶ President Gerald R. Ford's Executive Order 11905: United States Foreign Intelligence Activities February 18, 1976, <http://fas.org/irp/offdocs/eo11905.htm#SEC.5> (accessed 19 July 2017).

¹¹⁷ Bruce Riedel, Interview with the author, 4 August 2016, Washington DC. The Executive Order would be reformed and the ban on assassination expanded under the Carter Administration, which included several former members of the Church Committee, including Vice President Mondale. More generally, assassination attempts would have been anathema to Carter. The Order and the ban would be reformed once again under Reagan with Executive Order 12333. The Reagan Administration started questioning the remit and applicability of the ban on assassination. Mondale, Interview with the author.

at its effort to set the terms for future policies and debates on assassination. The article identifies three key steps: first, the creation and management of the Rockefeller Commission; second, the approach adopted towards the Church Committee and its investigation of assassination; third, the stark contrast between the language adopted by the Committee in its interim report and that of the ban included in the Executive Order decided upon by Ford. Through this analysis, the article has challenged prevailing interpretations of the Ford Administration and has made its main contribution.

Contrary to existing literature, this article positions the Ford Administration at the centre of debates regarding the role of assassination in US foreign policy. It identifies the Administration's key contribution to the development of US policy. In particular, the analysis has highlighted the 'special status' of assassination in debates and decisions within the executive. This is demonstrated by three main pieces of evidence. First, the Administration excluded assassination from the remit of the Rockefeller Commission and suppressed the section of the commission's report dealing with the topic. Second, the White House proved particularly unwilling to cooperate with the Church Committee on assassination. Finally, both Ford and Kissinger showed clear concerns that assassination might become the object of Congressional legislative measures. Ford's concerns and Kissinger's outbursts, as well as the language of the assassination ban make clear that this was an area in which the Ford Administration had an interest in preserving presidential flexibility. The aim of the administration was to maintain the issue of assassination in a status of 'strategic ambiguity.'

The article also challenges prevailing interpretations surrounding the Ford presidency. First, scholars of the 'imperial presidency' have generally ignored the Ford Administration, focusing, instead, on what could be defined as the 'usual suspects' when it comes to Imperial Presidents: Ronald Reagan and George W. Bush.¹¹⁸ There seems to be a consensus regarding

¹¹⁸ Kenneth Sharper, 'The post-Vietnam formula under siege: The Imperial Presidency and Central America,' *Political Science Quarterly*, 102, no. 4 (1987-1988): 549-569; Donald R. Wolfensberger, 'The Return of the Imperial Presidency?'

the place of the Ford Administration in the ebb and flow of Presidential power. Katherine Scott has argued that during the Ford Administration Congress and groups within the civil society had completed a process of ‘reining in’ the Executive.¹¹⁹ Similarly, Andrew Rudalevige positions the Ford Administration at the high point of what he calls the congressional ‘resurgence regime.’¹²⁰ Rudalevige, in particular, has suggested that the presidency is ‘contingently’ imperial; that is, the power of the President expands when Congress is inactive or permits such expansion.¹²¹ Furthermore, as Rudalevige wrote, confronted by Congressional inquiries on the activities of the intelligence community, ‘Ford felt he had little choice but to provide Congress with virtually all it requested.’¹²² The account above has shown that, in the middle of the 1970s, when the power of Congress seemed formidable, the Ford Administration was still able to fend off Congressional offensives as well as to maintain and, to a certain extent, expand Presidential power and control. Looking back at the Ford Administration, Richard Cheney agreed with this assessment. As he recalled, during the Ford years nothing was ‘as perilous as the collapse of executive authority.’ Ford prevented such collapse.¹²³ Furthermore, the Administration was largely in control of the confrontation with Congress and the Church Committee. The Committee was (almost) as managed as the Rockefeller Commission. As Frank Smist concluded, the Committee’s agenda was driven by the Executive decisions regarding the release of information and what information to release.¹²⁴

The Wilson Quarterly (1976-) 26, no. 2 (Spring, 2002): 36-41 and Savage, *Takeover*. Arthur M. Schlesinger, *Imperial Presidency* and Arthur M. Schlesinger, ‘The Imperial Presidency Redux,’ *The Washington Post*, 28 June 2003, <https://www.washingtonpost.com/archive/opinions/2003/06/28/the-imperial-presidency-redux/82f81d56-d3bb-41cf-9ed6-8dcc9cc5a807/> (accessed 10 July 2017)

¹¹⁹ Katherine Scott, *Reining in the state* (Lawrence: University Press of Kansas, 2013).

¹²⁰ Andrew Rudalevige, *The New Imperial Presidency: Renewing Presidential Power after Watergate* (Ann Arbor: The University of Michigan Press, 2009): 8.

¹²¹ Rudalevige, *The New Imperial Presidency*, 262.

¹²² Rudalevige, *The New Imperial Presidency*, 106.

¹²³ Dick Cheney, ‘The Ford Presidency in perspective,’ in *Gerald R. Ford and the Politics of Post-Watergate America*, Eds. Bernard Firestone and Alexej Ugrinsky (Westport: Greenwood Press, 1993): 3 and 8.

¹²⁴ Frank Smist, *Congress oversees the United States Intelligence Community 1947-1994* (Knoxville: The University of Tennessee Press, 1994): 56.

Second, a review of the establishment and management of the Rockefeller Commission and of the early decisions taken by the Administration also suggests the need for a re-interpretation of the Administration's early approach to scandals and Congressional inquiries. Far from being unprepared, as Olmsted and Johnson suggested, the Administration was, from the start, in control of the process. Finally, in this process, the Administration was also helped by the CIA where, Director William Colby, far from adopting a supine attitude towards Congress, helped the White House in carefully managing and stymying Congressional inquiries. The CIA and the White House made sure that the option of assassination would not be completely cut-off by Congressional intervention.

The article has reinterpreted the role and approach of the Ford Administration and it has identified the role of the Administration in setting the parameters for future US policy on assassination. Rather than Reagan's 'war on terror,' the ban on assassination contained in Executive Order 11905, the rationale and the decision that led to that order, are the real starting point for any analysis of the evolution of US policy surrounding assassination. Having identified more clearly this starting point, this article suggests the need for future research to investigate the extent to which administrations after Ford's as well as intelligence officials recognised and exploited the ambiguity of the executive order. Future research should not take debates in the 1980s at face value and should avoid tropes regarding a linear evolution of counter-terrorism policy. It should explore how each Administration confronted, debated and, at times, challenged the ban on assassination, as well as the motives behind these challenges. As several interviewees have suggested, the ambiguity of the ban in EO11905 has given each president and each White House an opportunity to interpret the ban in line with their strategic interests, as well as the power to suspend it at will.¹²⁵

¹²⁵ Doyle McManus, Interview with the author, 3 August 2016, Washington DC; Scott Shane, Skype interview with the author, 3 August 2016.