

# 'The Scarlet A' of Assassination: Assassination and the US Official Record from the Cold War to 9/11, Luca Trenta

## 1) Introduction

In a National Security Planning Group meeting, on 14 March 1986, members of the Administration of US President Ronald Reagan debated how to deal with Libyan leader Muhammad Qaddafi. 'Our forces should plaster him and the military targets,' stated Secretary of State George Shultz. When some officials objected to this recommendation, Shultz added that it would have been better if Qaddafi was 'put in a box.'<sup>1</sup> By 1986, the Reagan Administration had developed political and legal instruments to target and kill terrorists and leaders of states supporting terrorism (like Qaddafi). These instruments had been developed in spite of the existence of a ban prohibiting agencies of the US government (and their proxies) from engaging in assassination. In peacetime, assassination refers to the killing of a foreign official for political reasons. In wartime, not every killing is an assassination. Assassination requires the use of treacherous means and/or a breach of trust.<sup>2</sup>

This chapter focuses on the place of assassination in US foreign policy and language, as well as in its Official Record. Documents, often in excerpt form, key to the chapter can be found in the Document Appendix. These documents are; *Alleged Assassination plots involving foreign leaders*, a 1975 Interim Report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (hereafter **Document 1**), the *Family Jewels Directive* from 1973 (hereafter **Document 2**), the *Final Report of the Rockefeller Commission* from 1975 (hereafter **Document 3**), minutes from a 1975 National Security Council meeting documenting the views of Henry Kissinger (hereafter **Document 4**), three US bans on assassination from the Ford, Carter and Reagan administrations (hereafter documents **5A**, **5B**, and **5C**), an extract from National Security Decision Directive 138 from 1984 (hereafter **Document 6**), and the 1989 *Hays Parks Memorandum* (hereafter **Document 7**). As with other chapters, the excerpts for certain documents are chosen to reflect broader points or themes. As such, while some of the references to these documents in this chapter refer to the material in the Document Appendix, some refer to material

elsewhere in these documents. To gain a greater understanding of the documents, readers are encouraged to seek out the full documents.

The chapter starts with an analysis of the 1950s and 1960s by exploring the individuals targeted and the language used by the US government. Utilising **Document 1**, it highlights the pervasiveness of both assassination and of circumlocutory language, innuendos, and euphemisms to describe assassination operations. It also showcases efforts by US officials to distance the US Government from assassination, tampering with the Official Record. The next section explores the so-called 'season of inquiry.' It highlights the Family Jewels Directive (**Document 2**) and the folly attributed to an assassination ban by Henry Kissinger during a 1975 National Security Council meeting (**Document 4**), looks at the Rockefeller Commission with the aid of **Document 3**, at the Church Committee's Interim Report on assassination (**Document 1**) and at the Ford Administration's reaction through the publication of Executive Order 11905 that included a ban on assassination (**Document 5A**). Section four discusses how the vagueness of the ban permitted the Reagan Administration to re-interpret it in ways that permitted the pursuit of its preferred policies, drawing on **Document 5C** and **Document 6**. Finally, through engagement with, among other material, **Document 7**, the influence of the Reagan Administration's interpretations of the ban in the late 1980s and 1990s is explored. The chapter concludes these political and legal developments permitted the removal of assassination from the language of US foreign policy and opened the way for the proliferation of so-called 'targeted killings.'

Through a documentary analysis, the chapter highlights how multiple Administrations worked to preserve assassination as a policy option while engaging in a concerted effort to remove assassination from the Official Record and prevent its exposure in the public and historical records. Needless to say, this poses challenges for historians and researchers. While archives do provide documentary evidence and windows into the Official Record, they represent a necessarily limited and biased window. Furthermore, in the case of assassination, US officials altered documents and destroyed evidence, afraid of being branded with the Scarlet A of assassination. Scholars, then, as Patrice McSherry has noted, 'must use care, judgement, and experience and apply knowledge and expertise to draw plausible, if sometimes tentative, conclusions.' They should piece together patterns and fragments of evidence, triangulating archival material with other available sources.<sup>3</sup> Through this

process, the analysis will show, assassination—like torture<sup>4</sup>—is something ‘un-American;’ something the US government does not do, except when it does.

## 2) The ‘Golden Age’ of Assassination: Poison, Proxies and Plausible Deniability

On 10 August 1962, the Special Group (Augmented) within the administration of President John F. Kennedy met to discuss the situation in Cuba and the US Government’s campaign of harassment and sabotage against Fidel Castro’s government, also known as Operation Mongoose. During the meeting, Secretary of Defence Robert McNamara asked that the group explicitly ‘consider the elimination or assassination of Fidel.’ Taken aback by the Secretary’s suggestion, William Harvey, the CIA man in charge of operations in Cuba replied that such options should not have been discussed in that forum. After the meeting, Harvey reviewed the exchange with CIA Director John McCone. The Director called McNamara to warn him against future explicit references to assassination. McNamara’s suggestion never made it into the minutes of the meeting. In the aftermath of the meeting, General Edward Lansdale—then in charge of operations against Cuba—wrote a memorandum assigning the CIA several tasks, including the ‘elimination of leaders.’ Once again, Harvey was incensed. He told Lansdale’s assistant that he [Harvey] ‘would write no document pertaining to this and would participate in no open meeting to discuss it.’<sup>5</sup> The request to eliminate leaders was excised. These developments became part of the Public Record only through revelations during the Church Committee’s investigations.<sup>6</sup>

**Document 1** provides a detailed, if incomplete, account of the US Government’s involvement in assassination during the early Cold War. It describes involvement in the assassination of five foreign officials: Congolese Prime Minister Patrice Lumumba, Cuban leader Fidel Castro, Dominican leader Rafael Trujillo, South Vietnamese Prime minister Ngo Dinh Diem, and Chilean Commander in Chief of the Army, General Rene Schneider. The report also discusses the development, during the early 1960s, of a generalised ‘executive action’ (assassination) capability within the CIA.<sup>7</sup> We now know that, in the same years, the US Government was involved in assassination attempts against other leaders: Zhou Enlai of China, Sukarno in Indonesia, a senior military figure in Iraq in 1960 (either leader Abdul Karim Kassem,

or Colonel Mahdawi), and Gamal Abdel Nasser in Egypt (although this was mostly a British operation).<sup>8</sup>

Policymakers, however, took care to distance themselves from such a distasteful practice as assassination. Assassination was rarely mentioned explicitly. There are, of course, exceptions. Henry Dearborn, State Department and CIA official in the Dominican Republic during the last days of Trujillo's reign, for example, had a penchant for explicit calls for assassination. 'Political assassination,' he wrote in one telegram to Washington 'is ugly and repulsive, but everything must be judged in its own context.'<sup>9</sup> More often, however, senior US officials discussed assassination through circumlocutory language, innuendos and omissions. These were particularly prominent when the meetings included the President.

Certainly, explicit discussions of assassination, let alone presidential orders to assassinate, were unlikely to be put to paper. The closest the Public Record comes to a Presidential request for assassination comes indirectly from Gordon Gray, Special Assistant for National Security Affairs to President Dwight D. Eisenhower. During a meeting to discuss the situation in the Congo, Gray reported 'the President "had expressed extremely strong feelings on the necessity for very straightforward action in this situation."' The meeting concluded with the participants agreeing 'that planning for the Congo would not necessarily rule out "consideration" of any particular kind of activity which might contribute to getting rid of Lumumba.'<sup>10</sup> When officials broke character, as we have seen in the case of McNamara, efforts were made to remove assassination from the Official Record, as well as to scold those who had dared include it in the first place.

Furthermore, US officials also tampered with the Official Record to distance the government from assassination. For example, in 1959, the CIA, through one of its men in Havana, arranged for an assassination attempt against Raul Castro, through an aeroplane accident. After the plane had departed, and it was clearly too late to abort, a cable was sent from Headquarters to Havana, asking the CIA official not to pursue the attempt.<sup>11</sup> A similar pattern emerged in cases surrounding the assassination of Trujillo and Diem. Former CIA Director Richard Bissell agreed this sort of telegram represented a 'save your ass document.' In his view: '[a]n important purpose of the cable was for the record to minimize or to counter charges of US association with an assassination attempt.'<sup>12</sup>

In the early Cold War, policymakers generally took care that no direct instructions made it onto the Official Record. They spoke in euphemisms. Their language blurred the extent of authorizations, the lines of responsibility, and the boundaries between what had been authorised and what was not permissible. Minute takers tended to skip controversial discussions altogether and, when controversial instructions made it into documents, these were physically destroyed.<sup>13</sup> Beyond language, officials also intervened to distance the US Government from allegations that it had been involved in assassination. These techniques, beyond obscuring the Official Record, also opened the door for denials, justifications, and severe episodes of collective 'amnesia', just in case information began to seep into either the public and historical records.

### 3) The 1970s: From the Family Jewels to the Ban on Assassination

If the 1950s and 1960s had represented a golden age for covert action and assassination, the 1970s turned into one of the darkest times for CIA covert warriors. In 1972, Congress questioned the morality and effectiveness of assassination and targeted killings. During Congressional Hearings on the US Government Assistance Program in Vietnam, William Colby, then working for the CIA, was asked to explain the workings of the Phoenix Program. The Phoenix Program aimed at arresting, rallying, or killing members of the Viet Cong Infrastructure, that is South Vietnamese civilians who played a—more or less voluntary—role in supporting the Viet Cong. The aseptic term used at the time was 'neutralization' and Colby rejected accusations the Phoenix Program engaged extensively in 'assassination.' The numbers he presented, however, were staggering. The Program had killed approximately 22,000 people in its five years of existence, often based on the flimsiest of evidence.<sup>14</sup>

Congress's attention to and scrutiny of the CIA increased because of the Watergate scandal and its aftermath. When suspicions emerged that the CIA had been directly involved in the Watergate break-in, CIA Director James Schlesinger signed a directive (**Document 2**) commanding senior officers to compile a report of current or past CIA actions that may have fallen outside the Agency's charter.<sup>15</sup>

The documents were later collected in the so-called 'Family Jewels' and are now part of both the Public Record and the Historical Record as well as the Official

Record. Part of the Family Jewels was leaked to journalist Seymour Hersh. Hersh published a *New York Times* story titled 'Huge CIA Operation reported in US against anti-war forces, other dissidents in Nixon years' on December 22 1974. After the story emerged, National Security Advisor Henry Kissinger and Chief of Staff Donald Rumsfeld asked Colby to compile a report on the activities included in the 'jewels.' Having seen Colby's explosive report, Kissinger wrote Ford that, of the activities discussed, few of them were 'illegal'. Whilst 'others—though not technically illegal raise profound moral questions...A number, while neither illegal nor morally unsound, demonstrated very poor judgment.'<sup>16</sup> Ford decided to appoint a Presidential Commission, headed by Vice President Nelson Rockefeller, to investigate improper activities conducted by the CIA within the US.

US Government documents make clear that the White House, from the start, aimed at containing the scandal, at protecting the intelligence community, and at preserving the power of the presidency. This was evident in the mandate and composition of the Commission.<sup>17</sup> In the Commission, Executive Director David Belin took charge of the investigation on assassination attempts. He compiled an 86-page draft chapter mentioning the assassination of Lumumba and Sukarno but analysing in detail the plots against Castro and Trujillo, since they originated within the US and, hence, belonged more explicitly within the Commission's remit.<sup>18</sup>

Once a full draft of the Commission report was completed, it was sent to the White House for review. Dick Cheney, at the time Deputy Assistant to the President, took charge of editing the report. Most of the edits aimed at blurring the CIA's responsibilities and at toning down sections that denounced the illegality of CIA's activities. More importantly, however, Cheney also decided to completely exclude Chapter 20 on the assassination of foreign leaders from the final (published) report. The published report (**Document 3**) also included an explicit lie. It stated the Commission's staff did not have time to investigate the allegations surrounding assassination plots.<sup>19</sup> Only after declassification did Belin's chapter and his papers become publicly available. At the time, some of that material was passed to the Church Committee.

While giving an appearance of collaboration, the White House stonewalled the Church Committee's investigation. Several strategies were adopted. The White House kept a tight leash on Congressional testimonies while Colby and the CIA released documents only selectively and strategically.<sup>20</sup> **Document 1** highlights how

testimonies from former policymakers and CIA officials were characterised by frequent cases of 'amnesia.'<sup>21</sup> When **Document 1** was ready, a battle between Congress and the executive ensued as the Administration made a last-ditch effort to prevent publication.<sup>22</sup> This effort to keep assassination and revelations regarding US government plots off the public record failed, but the executive relented only when Senator Church threatened to resign.

In its Recommendations section, the Committee established clear criteria regarding the type of activity prohibited. Killing, attempting to kill, or conspiring to kill were all prohibited. The report recommended the prohibition of 'political' killings and defined 'political motivation' as the killing of a foreign official for his/her political views, actions or statements. It made clear that due to the 'reality of international politics' the label of 'foreign official' applied not only to officials of a foreign government, but also to officials of an insurgent force, an unrecognised government, or a political party. The prohibition, the Committee clarified, did not apply in a state of declared war or during a use of force in accordance with the War Powers Resolution.<sup>23</sup> The Committee did not intend the ban to apply in every foreseeable circumstance, but it only identified two extreme exceptions: 'a Hitler' or a situation of 'grave national emergency,' like the one confronted by President Abraham Lincoln during the American Civil War.<sup>24</sup>

**Document 1** also acknowledged that the CIA had established internal directives to prohibit assassination. The report, however, also stated that these measures were not sufficient. The Report called for a law or a statute prohibiting assassination.<sup>25</sup> This would have made decisions regarding assassination a potential object of public debate and Congressional oversight. Within the Ford Administration, Attorney General Edward Levi agreed with the Committee and advised Ford to support Congressional efforts at legislation.<sup>26</sup> Ford and Kissinger, however, feared that a law would constrain the power of the Presidency and would undermine the intelligence community, as well as the conduct of US foreign policy. As seen in **Document 4**, during a National Security Council meeting, for instance, Kissinger stated: 'It is an act of insanity and national humiliation to have a law prohibiting the President from ordering assassination.' Ford agreed.<sup>27</sup>

The Administration prevented the development of Congressional legislation through the approval of Executive Order 11905. This executive order only mildly reformed the intelligence community and contained a ban on assassination (**Document 5A**). The ban read: 'No employee of the United States Government shall

engage in, or conspire to engage in, political assassination.’ Contrary to the Church Committee’s recommendations, the ban did not specify what type of activities were prohibited, who could be targeted, and under what circumstances. The details were left strategically vague to avoid too tightly constraining future presidents.

The Carter Administration tried to work with Congress to develop legislation to reform the intelligence community. Eventually, the Administration settled for a revised executive order 12036, which contained a new version of the ban seen in **Document 5B**. Carter’s ban read: ‘No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.’ The available evidence suggests that the administration did not consider assassination an option. The Administration also included officials, like Vice President Walter Mondale, who had played a prominent role in the Congressional inquiries into the actions of previous administrations.

#### 4) The Ban under Reagan: From Assassination to ‘Neutralization’

Challenges to the ban emerged as soon as the Reagan Administration came to power. After heated internal debate, the Administration published its own executive order 12333 (still on the books today). While the structure is similar to the Carter order, the language of the order made clear that regulating and constraining the intelligence community was not a primary aim. The language of restrictions—prominent in Carter’s order—disappeared. Intelligence activities only needed to avoid explicit illegality.<sup>28</sup> This opened the possibility that the CIA might simply request favourable legal opinions to legalise previously controversial or prohibited policies. The order also contained a new ban on assassination (**Document 5C**). The ban read: ‘No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.’ In Reagan’s order, Section 2.12 also added that: ‘No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.’

From the start, however, the restraints imposed by the ban conflicted with the Administration’s priorities.<sup>29</sup> CIA Director William Casey pushed for an expansion of the CIA’s powers, especially in the realm of counterterrorism. In this effort, he obtained a favourable legal opinion from Stanley Sporkin. First, contrary to the Church



Committee's interpretation, the opinion stated the ban on assassination only applied to Heads of State. Second, it stated killings conducted in counter-terrorism operations could not be considered assassination.<sup>30</sup> Building on this opinion, the Administration developed broader political instruments for the pre-emptive targeting of terrorists. Oliver North, working at the NSC, drafted a new counter-terrorism directive in the shape of **Document 6**. The Directive recommended the Administration should have adopted a policy of 'pre-emptive neutralization'.<sup>31</sup> The word neutralization, as we have seen, has often accompanied US policies of assassination and targeted killing (e.g. Phoenix). It clearly represents a euphemism like those identified in **Document 1**. While its practice was acceptable, the word 'assassination' as Noel Koch (Assistant Secretary of Defence for International Affairs and the Pentagon's counterterrorism chief) recalled, was still taboo in meetings of US Government officials and in the documents they produced.<sup>32</sup> The more aseptic 'neutralization,' however, was acceptable.

In the Reagan years, one of the main counter-terrorism targets was Libyan leader Muammar Qaddafi. On 5 April 1986, a bomb exploded at the *La Belle Discoteque* in Berlin, killing US servicemen. The US identified Libya as the culprit. The Administration, however, had set its sight on Qaddafi even before the attack. Building on **Document 6** and on counter-terrorism cooperation, the US was also able to rely on Mossad's intelligence to track with precision Qaddafi's location.<sup>33</sup> On 14 April, the US launched Operation *El Dorado Canyon*, a night-time bombing raid on Qaddafi's Headquarters and residences. The attack and the selection of Qaddafi's residences as a permissible target seemingly violated the ban on assassination. Qaddafi was a Head of State and was being targeted for political reasons. In press conferences and public statements, however, US officials denied the intent of the raid was the killing of Qaddafi.<sup>34</sup> In spite of the Administration's denial, several sources agree the raid amounted to assassination.<sup>35</sup>

More importantly, Abraham Sofaer, White House Legal Counsel, made the administration's position clear in Congressional hearings. He argued that the strike against Qaddafi represented a self-defensive and pre-emptive military measure. In his view such a measure did not require notification to Congress (it was outside of War Power Resolution requirements) and, more importantly, could not be considered assassination even if the target of the strike was a head of state. With this opinion, in other words, the Administration had established a far-reaching exception to the ban

on assassination. No operation taken in self-defence, even pre-emptive self-defence, could amount to assassination, regardless of the target.<sup>36</sup>

By the end of the Reagan Administration, the United States had conducted or supported assassinations in the context of both unconventional warfare and counterterrorism. Furthermore, the administration had developed legal (Sporkin's and Sofaer's opinions) and political (**Document 6**) instruments that permitted the use of assassination in US foreign policy. To be sure, none of these policies explicitly named 'assassination' or explicitly suspended the ban. These policies more accurately 'evacuated' assassination from US discourse and practice, while permitting activities that amounted to assassination in all but name. Assassination did not appear in the US Official Record and, when accusations of involvement in assassination emerged in the public sphere, they were shut down through reinterpretations of the ban and its meaning.

## 5) Narcos, Dictators and Terrorists: The Ban on Assassination before 9/11

This process continued during the administration of George H. W. Bush. Debates over the ban emerged in three main areas: the so-called 'war on drugs,' US involvement in coups, and the targeting of foreign leaders. These debates highlighted the importance of the precedents established in the Reagan years and the weakened status of the ban. They established new legal and political instruments to conduct assassination, while removing the term from the practice of US foreign policy.

In the realm of counter-narcotics, as Mark Bowden reported, by mid-1989, US officials were calling for the direct targeting of drug-traffickers and the Justice Department Office of Legal Counsel was working on making this policy option legal.<sup>37</sup> The Administration started considering the killing of narco-traffickers. Debates within the NSC raised the possibility these killings might violate the ban on assassination. Most officials involved, however, agreed that, since the targeting of terrorists was legal (based on Reagan-era precedents) drug traffickers and drug lords did not deserve more protection. The term 'narcoterrorist' was frequently used in internal debate to blur the distinction between the two categories. As one official put it: 'Certainly drug cartel leaders fall into the same camp as terrorist leaders—in fact, they don't even

have the political cachet of terrorists.’<sup>38</sup> These developments combined with the US effort to undermine Panamanian leader Manuel Noriega.

In late 1989, the US became involved in a coup plot to overthrow Panamanian leader Noriega, led by Major Moises Giroldi. From the start, US officials were suspicious of Giroldi’s chances. As Bob Woodward put it, the US government felt ‘getting rid of Noriega was something to do on a US timetable; not a half-baked coup with a half-baked coup leader.’<sup>39</sup> After a one-day delay, the coup went ahead on 3 October and, without US support, it quickly collapsed. News of the failed coup exposed the Administration to domestic criticisms. The reasons for the failure of the coup are multiple and beyond the purposes of this chapter. What is certain is that the administration built on this failure to reshape the meaning and further constrain the remit of the ban on assassination.

First, CIA Director William Webster called explicitly on the President and Congress to renegotiate the meaning of the ban on assassination. As Webster put it, ‘[t]he United States does not engage in selective, individual assassination...But the United States has other important overriding concerns about security and protecting democracy...And when despots take over, there has to be a means to deal with that short of making us to be hired killers.’<sup>40</sup> By November 1989, the CIA had drafted and submitted to Congress a new interpretation of the ban on assassination. The interpretation established that the US involvement in a coup that led to the death of a foreign official did not necessarily violate the ban on assassination.<sup>41</sup> As we have seen, however, cases like this represented the bulk of cases examined in **Document 1**. Seemingly, this interpretation also violated Section 2.12 of Reagan’s order, which was arguably, still in force. Second, Hays Parks—from the Office of the Judge Advocate General of the Department of the Army—prepared a memorandum clarifying the meaning of assassination and the ban’s remit (**Document 7**). According to Parks in **Document 7**, **Document 5C** only applied to ‘selected foreign officials.’ With **Document 7** also stating that a use of force in (pre-emptive) self-defence against a terrorist or terrorist organisation did not constitute a violation of the ban on assassination but a legitimate use of force.<sup>42</sup> These conclusions clearly built on the precedents set during the Reagan years.

The re-interpretation of the ban pushed by Webster helped the administration in its confrontation with Saddam Hussein. An episode at the time, however, made clear that while political and legal instruments had been put in place for the assassination

of terrorists and foreign officials, assassination still represented something the US government could not discuss publicly.

As the campaign against Saddam was being ramped up, Air Force Chief General Michael Dugan was interviewed by the *Washington Post* and *Los Angeles Times*. Dugan publicly admitted that '[t]he Joint Chiefs of Staff have concluded that US military air power—including a massive bombing campaign against Baghdad that specifically targets Iraqi President Saddam Hussein—is the only effective option to force Iraqi forces from Kuwait if war erupts.' Dugan also added that since Saddam's regime was heavily centralised, it might crumble if the leader was removed. As he put it: "if and when we choose violence, he [Saddam] ought to be the focus of our efforts"—a military strategy known as decapitation.<sup>43</sup> The admission cost Dugan his job. And yet, although Dugan was fired, the first air raids of operation Desert Storm struck the Saddam regime military and security infrastructure targets, as well as targets that could help in fomenting a coup and might lead to the dictator's killing like 'frequented locations and personal compounds.'<sup>44</sup> By the end of the Bush Administration, the US government could kill terrorists and 'narcoterrorists' in more or less pre-emptive self-defence, participate in coups that might lead to the death of foreign officials, and target foreign leaders' infrastructure.

Assassination, counterterrorism, and regime change remained prominent topics in the Clinton years. While failed plots against Saddam Hussein again raised the question of whether the CIA could support a coup that might lead to the killing of a foreign leader, most of the debate during the Clinton Administration surrounded the hunt for Osama Bin Laden. As the 9/11 Commission Report and memoirs of participants detail, some CIA officials were concerned kill/capture operations against Bin Laden might be viewed as assassination and expose the CIA to scandal. Members of the Administration, however, worried about the broader consequences of a strike against Bin Laden. Concerns included civilian casualties, the political fallout of a failed mission, and the security of CIA assets and agents.<sup>45</sup>

The complexity of these decisions is reflected in the Administration's and in President Clinton's approach to the Memoranda of Notification (MON) giving the CIA authority to target Bin Laden. While these remain classified, the 9/11 Commission and work exploring the conduct of the Commission suggest that—at least on one occasion—Clinton gave the CIA an explicit, written order to kill Bin Laden. As the Commission's Executive Director, Philip Zelikow who saw the text of the MON put it,

it contained a 'kill authority;' there were 'no euphemisms in the language.'<sup>46</sup> To be sure, in other memoranda of notification, the language was more fudged, thus increasing both the US Government's plausible deniability and CIA confusion regarding the extent of its authority.

The Administration's position on assassination and the ban, however, built on arguments and legal precedents established under its predecessors. First, the Administration relied on an argument regarding the targeting of infrastructure. Discussing the Reagan Administration's strike on Qaddafi, Judge Sofaer had stated that Qaddafi's position as the leader of a country did not make him immune from targeting when present at a legitimate military target. As Vlasic asserted, this argument established an important precedent that permitted the conduct of assassination as long as it was presented as the targeting of a military target rather than a specific individual who might be present at that target.<sup>47</sup> The Clinton Administration used this justification after it conducted missile strikes on the city of Khost in Afghanistan in August 1998. As National Security Council spokesman David Leavy put it, 'the terrorist group's "Infrastructure" and "command and control" are "justifiable targets" and such "infrastructures" are often "human."'<sup>48</sup> Second, and beyond the convoluted nature of this argument, the Administration accepted the precedent set in **Document 6** and in **Document 7** regarding the legitimacy of (pre-emptive) strikes in (pre-emptive) self-defence against terrorists. As the 9/11 Commission Report summarised, '[t]he administration's position was that under the law of armed conflict, killing a person who posed an imminent threat to the United States would be an act of self-defense, not an assassination.'<sup>49</sup>

This justification, based on the notion that strikes against imminent threats are legitimate, combined with an expanded understanding of 'imminence' would inform the US government targeted killing and drone program in the aftermath of 9/11.<sup>50</sup> By then, however, the word assassination had been completely replaced by the more aseptic 'targeted killing,' and US officials made public and repeated efforts to distinguish one practice from the other.<sup>51</sup>

## 6) Conclusion

The chapter has discussed the place of assassination in the practice, language, and Official Record of US foreign policy. First, it has detailed the evolution of the

discourse surrounding assassination. It has been suggested that in the early Cold War, while the practice of assassination was considered permissible, officials refrained from adopting explicit language and instead relied on euphemisms and circumlocutory language. This was particularly true when the aim was to shield presidents from controversial decisions. This process was accompanied by extensive 'massaging' of the Official Record to remove inconvenient outbursts and to distance the US Government from assassination plots. Second, the chapter has traced the origins and evolution of the ban on assassination. It has suggested that the ban emerged not as a genuine concern for the reform of the intelligence community, but as part of an executive (Presidential) effort to stifle Congressional oversight and prevent legislation in the same area.

The analysis has traced the approach to the ban adopted by multiple administrations. It has suggested that, starting in the Reagan years, when a conflict emerged between the ban and the pursuit of US foreign policy, the ban was set aside and/or re-interpreted to permit the controversial policies. Multiple administrations developed legal and political arguments and linguistic sleights-of-hand to re-interpret the ban and redefine its remit. This also permitted administrations to remove assassination from the language of foreign policy. In particular, US officials developed and refined a multiplicity of arguments to permit the killing of both terrorists and of leaders of states supporting terrorism, thus allowing them to avoid discussing the Scarlett A of assassination.

This process was accompanied by public denials that assassination was the explicit intent of US operations. It is in this context that the Official Record with its deceptions and omissions plays a prominent role. As the chapter has detailed, US officials made every effort to evacuate assassination and discourses surrounding assassination from the language and the documents of policymaking. While Kissinger's outburst and Shultz's policy recommendation to put Qaddafi 'in a box' could almost be considered smoking guns, the aim remains that of carefully sifting through the Historical Record to piece together a series of 'exhibits' or 'fingerprints.'

## 7) Document Appendix

- 1) Excerpt from: Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Alleged Assassination plots involving foreign leaders*, Interim Report (1975). 6-7.
- 2) James R. Schlesinger, *Family Jewels Directive* (9 May 1973)
- 3) Extract from: Rockefeller Commission, *Final Report*, (1975) XI
- 4) NSC Meeting, minutes, Henry Kissinger's view of assassination (15 May 1975)
- 5) The US ban on assassination as featured in:
  - A: *Executive Order 11905* (Ford Administration)
  - B: *Executive Order 12036* (Carter Administration)
  - C: *Executive Order 12333* (Reagan Administration)
- 6) Extract from: *National Security Decision Directive 138* (1984)
- 7) Extract from: *Hays Parks Memorandum* (1989)

**1) Excerpt from: Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Alleged Assassination plots involving foreign leaders*, Interim Report (1975). 6-7.**

To put the inquiry into assassination allegations in context, two points must be made clear. First, there is no doubt that the United States Government opposed the various leaders in question. Officials at the highest levels objected to the Castro and Trujillo regimes, believed the accession of Allende to power in Chile would be harmful to American interests, and thought of Lumumba as a dangerous force in the heart of Africa. Second, the evidence on assassinations has to be viewed in the context of other, more massive activities against the regimes in question. For example, the plots against Fidel Castro personally cannot be understood without considering the fully authorized, comprehensive assaults upon his regime, such as the Bay of Pigs invasion in 1961 and Operation MONGOOSE in 1962.

[..]

While we are critical of certain individual actions, the Committee is also mindful of the inherent problems in a system which relies on secrecy, compartmentation, circumlocution, and the avoidance of clear responsibility. This system creates the risk of confusion and rashness in the very areas where clarity and sober judgment are most necessary.

**2) James R. Schlesinger, *Family Jewels Directive* (9 May 1973)**

CENTRAL INTELLIGENCE AGENCY - OFFICE OF THE DIRECTOR, 9 May 1973

MEMORANDUM FOR ALL CIA EMPLOYEES

1. Recent press reports outline in detail certain alleged CIA activities with respect to Mr. Howard Hunt and other parties

[...]

2. All CIA employees should understand my attitude on this type of issue. I shall do everything in my power to confine CIA activities to those which fall within a strict interpretation of its legislative charter. I take this position because I am determined

that the law shall be respected and because this is the best way to foster the legitimate and necessary contributions we in CIA can make to the national security of the United States.

3. I am taking several actions to implement this objective:

– I have ordered all the senior operating officials of this Agency to report to me immediately on any activities now going on, or that have gone on in the past, which might be construed to be outside the legislative charter of this Agency.

– I hereby direct every person presently employed by CIA to report to me on any such activities of which he has knowledge. I invite all ex-employees to do the same. Anyone who has such information should call my secretary (extension 6363) and say that he wishes to talk to me about “activities outside CIA’s charter”

[...]

Any CIA employee who believes that he has received instructions which in any way appear inconsistent with the CIA legislative charter shall inform the Director of Central Intelligence immediately.

James R. Schlesinger  
Director

### **3) Extract from: Rockefeller Commission, Final Report, (1975) XI.**

#### **D. Alleged plans to assassinate certain foreign leaders.**

Allegations that the CIA had been involved in plans to assassinate certain leaders of foreign countries came to the Commission's attention shortly after its inquiry was under way. Although it was unclear whether or not those allegations fell within the scope of the Commission's authority, the Commission directed that an inquiry be undertaken. The President concurred in this approach.

The Commission's staff began the required inquiry, but time did not permit a full investigation before this report was due. The President therefore requested that the materials in the possession of the Commission which bear on these allegations be turned over to him. This has been done.

### **4) NSC Meeting, minutes, Henry Kissinger’s view of assassination (15 May 1975)**

**Colby:** ‘Then. I talked about Radio Free Europe. And then at the end I got to assassination. I described the delicacy of the problem and how little of this sort of thing the U. S. has really done. There were attempts against Castro, in the early 1960s but our information is very scarce... Then they wanted to know whether we had ever had any of our own agents assassinated, you know, the Green Beret stuff. I told them we never do that. I also told them that our policy and our orders are very clear: we will have nothing to do with assassination: Church ended by saying that is not enough.



That to be certain we need more than orders...We need to have a law which prohibits assassination in time of peace.

**President:** Who was in the meeting?

**Colby:** All of the senators.

**Kissinger:** It is an act of insanity and national humiliation to have a law prohibiting the President from ordering assassination.'

**5) Three iterations of the US ban on assassination as featured in Executive Order 11905 (Ford Administration), Executive Order 12036 (Carter Administration), and Executive Order 12333 (Reagan Administration)**

**Document 5A: EO11905:** '(g) *Prohibition of Assassination.* No employee of the United States Government shall engage in, or conspire to engage in, political assassination.'

**Document 5B: EO12036:** '2-305. Prohibition on Assassination. No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.'

**Document 5C: EO12333:** '2.11*Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12*Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.'

**6) Extract from: National Security Decision Directive 138 (1984)**

The Director of Central Intelligence, in consultation with the Secretaries of State, Treasury, and Defense and the Attorney General, shall:

- Enhance foreign collection, analysis, and dissemination of information on state-sponsored terrorist organizations and anti-Western international terrorist movements/groups including relationships with hostile intelligence services. This effort shall include a prioritization of those terrorist organizations (whether or not state-sponsored) which are most threatening to the U.S. and an assessment of their potential vulnerabilities.

- Develop, in coordination with other friendly security services, capabilities for the pre-emptive neutralization of anti-American terrorist groups which plan, support, or conduct hostile terrorist acts against U.S. citizens, interests, and property overseas.

- Develop a clandestine service capability, using all lawful means, for effective response overseas against terrorist acts committed against U.S. citizens, facilities, or interests.

- Provide a new Finding on combatting terrorism which includes, inter alia, lawful measures to:

- Increase cooperation with the security agencies of other friendly governments.  
(S)
- Unilaterally and/or in concert with other countries neutralize or counter terrorist organizations and terrorist leaders.
- Develop an information exploitation program, aimed at disrupting and demoralizing terrorist groups.

## 7) Extract from: *Hays Parks Memorandum (1989)*

MEMORANDUM OF LAW SUBJECT: Executive Order 12333 and assassination

1. Summary. Executive Order 12333 prohibits assassination as a matter of national policy, but does not expound on its meaning or application. This memorandum explores the term and analyzes application of the ban to military operations at three levels: (a) conventional military operations; (b) counterinsurgency operations; and (c) peacetime counterterrorist operations. It concludes that the clandestine, low visibility or overt use of military force against legitimate targets in time of war, or against similar targets in time of peace where such individuals or groups pose an immediate threat to United States citizens or the national security of the United States, as determined by competent authority, does not constitute assassination or conspiracy to engage in assassination, and would not be prohibited by the proscription in EO 12333 or by international law.

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<sup>1</sup> National Security Planning Group (NSPG), Memorandum of conversation, NSPG on Libya, March 14 (1986). In *Digital National Security Archives, Collection: CIA Covert Operations, from Carter to Obama, 1977–2010*.

<sup>2</sup> M. Schmitt, 'State-Sponsored Assassination in International and Domestic Law', *Yale Journal of International Law*, 17:2 (1992), 609–85.

<sup>3</sup> Patrice McSherry, *Predatory States* (New York: Rowman and Littlefield, 2005), xxviii.

<sup>4</sup> Fitzhugh Brundage, *Civilizing Torture* (Cambridge: Belknap Press, 2018).

<sup>5</sup> Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities (hereinafter, SSCIA), 'Alleged Assassination plots involving foreign leaders,' *Interim Report* (1975), 105-106.

<sup>6</sup> SSCIA, *Interim Report*, 168

<sup>7</sup> SSCIA, *Interim Report*.

<sup>8</sup> SSCIA, *Interim Report*; Stephen Kinzer, *Poisoner in Chief* (New York: Henry Holt, 2019); Stephen Kinzer, Interview with the author, Skype, 14 February 2021.

<sup>9</sup> Dearborn to Department of State, *Telegram*, 22 March (1961). In Colección Bernardo Vega, National Archives of the Dominican Republic.

<sup>10</sup> SSCIA, *Interim Report*, 13.

<sup>11</sup> Peter Kornbluh, 'CIA Assassination Plot Targeted Cuba's Raul Castro,' (2021), *National Security Archives*. Available at: <https://nsarchive.gwu.edu/briefing-book/cuba/2021-04-16/documents-cia-assassination-plot-targeted-raul-castro> (Accessed: 6 February 2023).

<sup>12</sup> SSCIA, *Richard Bissell Testimony*, 22 July (1975). In Digital National Security Archives, Covert Operations II. 138.

<sup>13</sup> CIA Inspector General, *Report on Plots to assassinate Fidel Castro*, 23 May (1967), JFK Release.

<sup>14</sup> US House of Representatives, *US Assistance programs in Vietnam*, '22<sup>nd</sup> report, Committee on Government operations, 17 October (1972). 46.

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- <sup>15</sup> John Prados, *The Family Jewels* (Austin: University of Texas Press, 2014).
- <sup>16</sup> Henry Kissinger, "Colby Report," *Memorandum to President Ford, 25 December 1975*, Richard Cheney Files, Box 5, Intelligence Subseries, Folder Intelligence - Appointment of CIA Director, Folder Intelligence – Colby Report, Gerald Ford Presidential Library.
- <sup>17</sup> L. Trenta, 'An act of insanity and national humiliation': the Ford Administration, Congressional inquiries and the ban on assassination', *Journal of Intelligence History*, 17:2 (2018), pp. 121-140.
- <sup>18</sup> J. Prados and A. Jimenez-Bacardi, 'Gerald Ford White House Altered Rockefeller Commission Report in 1975; Removed Section on CIA Assassination Plots' (2016) *National Security Archives*. Available at: <https://nsarchive.gwu.edu/briefing-book/intelligence/2016-02-29/gerald-ford-white-house-altered-rockefeller-commission-report> (Accessed: 6 February 2023).
- <sup>19</sup> Commission on CIA activities within the United States, *Report to the President, 6 June* (1975) Gerald Ford Presidential Library. Available at: <https://www.fordlibrarymuseum.gov/library/document/0005/1561495.pdf> (Accessed: 6 February 2023). xi
- <sup>20</sup> Trenta, 'An act of insanity.'
- <sup>21</sup> SSCIA, *Interim Report*.
- <sup>22</sup> Trenta, 'An act of insanity,' 136.
- <sup>23</sup> SSCIA, *Interim Report*, 283-284.
- <sup>24</sup> SSCIA, *Interim Report*, 285-286.
- <sup>25</sup> SSCIA, *Interim Report*, 283.
- <sup>26</sup> Trenta, 'An act of insanity.'
- <sup>27</sup> Trenta, 'An act of insanity,' 137.
- <sup>28</sup> John Oseth, *Regulating U.S. Intelligence Operation* (Lexington: University of Kentucky Press, 1985).
- <sup>29</sup> For a detailed discussion of the Administration's effort to challenge the ban see:  
L. Trenta, 'Death by Reinterpretation: Dynamics of Norm Contestation and the US Ban on Assassination in the Reagan Years', *Journal of Global Security Studies*, 6:4 (2021) DOI: <https://doi.org/10.1093/jogss/ogab012>.
- <sup>30</sup> Joseph Persico, *Casey* (New York: Penguin, 1991), 429.
- <sup>31</sup> Ronald Reagan, *National Security Decision Directive 138—Combatting Terrorism* (1984). Available at: <https://fas.org/irp/offdocs/nsdd/nsdd-138.pdf> (Accessed: 6 February 2023).
- <sup>32</sup> David Martin and John Walcott, *Best Laid Plans* (New York: Simon and Schuster, 1988), 65.
- <sup>33</sup> Persico, *Casey*. 498.
- <sup>34</sup> Joseph Stanik, *El Dorado Canyon* (Annapolis, MD: Naval Institute Press, 2003).
- <sup>35</sup> B. Woodward, *Veil* (New York: Pocket Books, 1988); S. Hersh, 'Target Gaddafi', *The New York Times* (22 February 1987).
- <sup>36</sup> Trenta, 'Death by reinterpretation'.; M. Vlasic, 'Cloak and Dagger Diplomacy: The US and Assassination', *Georgetown Journal of International Affairs*, 1:2 (2000), 95-104. 101.
- <sup>37</sup> Mark Bowden, *Killing Pablo* (New York: Atlantic Books, 2012), 107
- <sup>38</sup> Frank Greve, 'US weighs assassination of foreign drug traffickers', *Philadelphia Inquirer* (10 June 1989).
- <sup>39</sup> Bob Woodward, *The Commanders* (New York: Touchstone Books, 1991), 120.
- <sup>40</sup> Stephen Engelberg, 'C.I.A. Seeks Looser Rules On Killings During Coups', *The New York Times* (17 October 1989).
- <sup>41</sup> D. B. Ottaway and D. Oberdorfer, 'Administration alters assassination ban', *Washington Post* (4 November 1989).
- <sup>42</sup> Hayes Parks, *Memorandum of Law: Assassination*, Department of the Army (1989). Available at: <https://nsarchive2.gwu.edu/IMG/assassinations.pdf> (Accessed: 6 February 2023).
- <sup>43</sup> Woodward, *The Commanders*, 291.
- <sup>44</sup> Leif Mollo, *The United States and assassination policy: diluting the absolute*, Naval Postgraduate School, Thesis, (2003). Available at: <http://hdl.handle.net/10945/6164> (Accessed: 6 February 2023). 18.  
The killing of Saddam during the Gulf War might not have violated the ban. It seemingly also conformed to the Church Committee's distinction between war time and peace time.

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<sup>45</sup> George Tenet, *At the Center of the Storm* (New York: Harper Collins, 2007); 9/11 Commission, *9/11 Commission Report* (2004), 113.

<sup>46</sup> Philip Shenon, *The Commission* (New York: Twelve, 2009), 357-358.

<sup>47</sup> Vlasic, 'Cloak and dagger', 101.

<sup>48</sup> Vlasic, 'Cloak and dagger', 102.

<sup>49</sup> 9/11 Commission, *Report*, 132.

<sup>50</sup> N. Erakat, 'New Imminence in the Time of Obama: The Impact of Targeted Killings on the Law of Self-Defense', *Arizona Law Review*, 56 (2014), pp. 195-248.

<sup>51</sup> L. Trenta, 'The Obama administration's conceptual change: Imminence and the legitimization of targeted killings', *European Journal of International Security*. 3:1. (2018), 69–93.