The Church Committee and FISA

October 26, 2007

On January 27, 1975, the Senate, in the wake of the Watergate scandal and alarmed by recent allegations of intelligence service misdeeds, voted to establish an 11-member investigating body along the lines of the recently concluded Watergate Committee.

The resulting body was chaired by Senator Frank Church (D-Idaho). Additional members of the Church Committee, or more formally the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities included its Vice-Chairman, John Tower (R-TX), Walter Mondale (D-MN) and prominent conservative, Barry Goldwater (R-AZ). Over nine months, the committee interviewed over 800 officials, held 250 executive and 21 public hearings, probing widespread intelligence abuses by the CIA, FBI and NSA.

The resulting legislative changes were momentous no matter who is looking at them — Bill Moyers' guest Fritz Schwarz was lead counsel for the Committee and Charles Fried is a critic: "The Church Committee was one of the unfortunate prices that we have to pay for Nixon and we're still paying."

>Read the Church reports here

The Origins of FISA

As chief counsel of the Church Committee, Frederick Schwarz tells Bill Moyers that the most fundamental lessons learned from the Committee include that "when you start small, you go big...When you start in a way that seems legitimate, it inevitably goes too far."

In reaction to the Church Committee reports pushing for oversight, Congress passed the Foreign Intelligence Surveillance Act (FISA) of 1978, which established a secret FISA court responsible for issuing warrants for domestic wiretapping activity. The FISA court consists of seven judges appointed by the Chief Justice and who serve for seven years.

In December 2005, the NEW YORK TIMES reported that President Bush had authorized the NSA to eavesdrop on American phone calls and emails without obtaining a warrant from the FISA court. That revelation was met with consternation, and investigations, by many in and outside of the political realm.

In August 2007, a temporary amendment to FISA passed called the Protect America
Act, which as President Bush explains, modernizes FISA by "accounting for changes in technology and restoring the statute to its original focus on appropriate protections for the rights of persons in the United States - and not foreign targets located in foreign lands." But the battle's not over yet — civil libertarians on both the left and right accused the Democratic Congress of giving in easily on wiretapping and several Members of Congress have vowed to readdress the issue.

Project Shamrock

One important program brought to light by the Committee was Project Shamrock — domestic surveillance that was subsequently prohibited by FISA. Shamrock was a NSA surveillance program stretching from 1947 to the mid-70's that involved the copying of telegrams sent by American citizens to international organizations. L. Britt Snider, former CIA Inspector General and council on the Church Committee, describes the project he was tasked to investigate:

Every day, a courier went up to New York on the train and returned to Fort Meade with large reels of magnetic tape, which were copies of the international telegrams sent from New York the preceding day using the facilities of three telegraph companies. The tapes would then be electronically processed for items of foreign intelligence interest, typically telegrams sent by foreign establishments in the United States or telegrams that appeared to be encrypted.

Shamrock actually predated the NSA, which was created by President Truman in 1952, and began as a continuation of censorship efforts conducted by the the Army Security Agency during WWII. As Fritz Schwarz explains to Bill Moyers, the program began with benign intentions, yet, "if you have secrecy and lack of oversight, you're going to get abuse." By the time the hearings began, many estimate the NSA was analyzing 150,000 messages a month.

When Snider submitted his report to chief counsel Schwarz, he initially recommended leaving out the names of the three telegraph companies since they could be subject to litigation and that "the companies had cooperated purely out of patriotic motives." Schwarz decided to leave the names in the report, even after repeated pressing by the Ford Administration that such disclosure would damage national security.

FISA and Telecom Immunity

On October 19, 2007, the Senate Intelligence Committee passed a surveillance bill which would solidify amendments to the Foreign Intelligence Surveillance Act passed in August under the title, The Protect America Act.

One particularly contentious section of this bill, which echoes concerns by telegraph companies regarding Project Shamrock, includes retroactive immunity for telecom companies. Such immunity could be obtained at the discretion of the attorney general provided that the attorney general "certifies that the company rendered assistance between Sept. 11, 2001, and Jan. 17, 2007, in response to a written request authorized by the President, to help detect or prevent an attack on the United States."

Senator Dodd (D-CT) recently released a statement against this provision, threatening to filibuster the law in its current form if it comes before the full Senate:

"While the President may think that it's right to offer immunity to those who break the law and violate the right to privacy of thousands of law-abiding Americans, I want to assure him it is not a value we have in common and I hope the same can be said of my fellow Democrats in the Senate.

"For too long we have failed to respect the rule of law and failed to protect our fundamental civil liberties. I will do what I can to see to it that no telecommunications giant that was complicit in this Administration's assault on the Constitution is given a get-out-of-jail-
"There is no immunity for government officials," Senator Rockefeller, chairman of the Senate Intelligence Committee, recently stated. "It is the administration who must be accountable for warrantless wiretapping." For Charles Fried this sentiment is overkill — "The warrantless eavesdropping is absolutely necessary They do no harm. They do a great deal of good."

What do you think? Tell us on the blog.

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Bill Moyers talks with former Congressman Mickey Edwards and ACLU Executive Director Anthony Romero about revisions to the Foreign Intelligence Surveillance Act.

REFERENCES AND READING:

More on FISA and the Church Committee

FRONTLINE: Spying on the Homefront
Watch this program in full about the Foreign Intelligence Surveillance Act and recent allegations that President Bush bypassed the act after 9/11.

Foreign Intelligence Surveillance Act Orders 1979-2006
Read the chart of FISA wiretapping requests since the act went to effect in 1979. Note the steep rise in applications presented and the extreme rarity when an application was rejected.

Bush Lets U.S. Spy on Callers Without Courts
by James Risen and Eric Lichtblau, THE NEW YORK TIMES, December 16, 2005
"Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials."

Press Release: Senate Intelligence Committee, Oct. 18, 2007
"Rockefeller and Bond Announce Committee Passage of Legislation to Modernize Foreign Intelligence Surveillance Act (FISA)." Read the Senate Intelligence Committee bill (pdf).

Recollections from the Church Committee's Investigation of NSA
L. Britt Snider, counsel for the Church Committee and former CIA Inspector General, discusses his investigation of the NSA and Project Shamrock.

CIA "Family Jewels"
Read the recently declassified CIA document detailing numerous secret agency activities, including dealings with the NSA and Project Shamrock.

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