

Research Brief: Selected examples of United States Commissions of Inquiry¹

International Center for Transitional Justice (ICTJ)²

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¹ This Annex relies heavily on quoted sources as referenced. Due to time and resource limitations the ICTJ was unable to investigate primary sources on most of these examples. However, we believe that for the purposes of illustrating some of the strengths, weaknesses and process involved in various forms of commissions in US history, this Annex should provide a helpful digest for readers of the Truth Commission paper.

² This annex was produced by ICTJ Research Interns Annie Gill and Lauren Crain, with Lisa Magarrell and Patty Blum.

I. Congressional inquiries

1.1. Senate and House Committee Investigations of the Palmer Raids

Created by: A congressional investigation launched in 1920³

Mandate: To probe the illegal arrest and deportation of thousands of suspected Communists by the office of Attorney General A. Mitchell Palmer between 1919 and 1920.⁴

Dates of operation: A two-year investigation from 1920 to 1921.

Product/Results: There was much testimony before congress, but apparently no published report. Public opinion was first supportive of Attorney General Palmer but then turned strongly against him because of “his perceived responsibility for the excesses of the raids.”⁵

Under the direction of Attorney General A. Mitchell Palmer, thousands of suspected Communists and others allegedly advocating the overthrow of the government were arrested and hundreds of these deported in 1919 and 1920.⁶ The Senate and House Committee Investigations of the Palmer Raids were held to investigate the legality and circumstances of the raids.

³ “Congress’ power of inquiry extends to all executive departments, agencies, and establishments in equal measure. Over time, however, congressional probes of the Department of Justice (Department or DOJ) have proved to be amongst the most contentious, stemming from the presumptive sensitivity of its principal law enforcement mission. Often, inquiries have been met with claims of improper political interference with discretionary deliberative prosecutorial processes, accompanied by refusals to supply internal documents or testimony sought by jurisdictional committees, based on assertions of constitutional and common law privileges or general statutory exemptions from disclosure. But the notion of, and need for, protection of the internal deliberative processes of agency policymaking, heightened sensitivity to premature disclosures of decision making involving law enforcement investigations, civil and criminal prosecutions, or security matters, is not unique to the DOJ, though the degree of day-to-day involvement there with such matters may be greater.” Morton Rosenberg, “Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice,” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM, accessed November 4, 2008.

⁴ *See also*, Harlan Grant Cohen, “The (Un)Favorable Judgment of History: Deportation Hearings, the Palmer Raids, and the Meaning of History,” 78 NYU. L. Rev. 1431, 1451-1456 (2003) (recounting historical context of Palmer Raids); Morton Rosenberg, “Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice),” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

⁵ David Cole, “Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism,” (New Press, New York 2003) at 127.

⁶ *See* Charges of Illegal Practices of the Department of Justice: Hearings Before a Subcommittee of the Senate Committee on the Judiciary, 66th Congress, 3d Session (1921); Attorney General A. Mitchell Palmer on Charges Made Against Department of Justice by Louis F. Post and Others: Hearings Before the House Committee on Rules, 66th Congress, 2d Session (1920), *as cited in* Morton Rosenberg, “Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice,” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM, accessed November 4, 2008.

Attorney General Palmer, accompanied by his Special Assistant, J. Edgar Hoover, testified during three days of testimony at the Senate hearings and discussed the details of numerous deportation cases.⁷ Palmer provided the Subcommittee with various Department memoranda and correspondence, including Bureau of Investigation reports concerning the deportation cases.⁸ Among the materials provided were the Department's confidential instructions to the Bureau outlining the procedures to be followed in the surveillance and arrest of the suspected Communists,⁹ and a lengthy "memorandum of comments and analysis" prepared by one of Palmer's special assistants, which responded to a District Court opinion, at the time under appeal, critical of the Department's actions in these deportation cases.¹⁰

The investigations were carried out in a climate of extreme xenophobia, making their integrity questionable. For example, Louis Post, the Acting Secretary of Labor, was responsible for reviewing the resulting deportation orders issued by immigration authorities. When he cancelled most of the orders, he "incurred the wrath of Palmer, Hoover, and many members of Congress"¹¹ and Post was "brought up on impeachment charges, and forced to defend himself before the Rules Committee of the House"¹² almost contemporaneously with the investigations.

A report highly critical of the Palmer Raids was authored and signed by "some of the nation's most prestigious lawyers and law professors."¹³ The Justice Department then "launch[ed] investigations of its critics and thereby extend[ed] its tactics across the non-citizen-citizen divide. The government investigated all of the prominent critics of the Palmer raids, including the twelve lawyers who signed" the report critical of the raids.¹⁴ Public opinion supportive of Palmer shifted and became critical.

⁷ Senate Palmer Hearings at 38-98, 421-86, 539-63. House Palmer Hearings at 3-209, *as cited in* Morton Rosenberg, "Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

⁸ E.g., Senate Palmer Hearings at 431-43, 458-69, 472-76, *as cited in* Morton Rosenberg, "Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

⁹ *Id.* at 12-14, 18-19, *as cited in* Morton Rosenberg, "Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

¹⁰ *Id.* at 484-538, *as cited in* Morton Rosenberg, "Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), at CRS-2, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

¹¹ David Cole, "Enemy Aliens: Double Standards and Constitutional Freedoms in the War on Terrorism," (New Press, New York 2003).at 122-123.

¹² *Id.* at 123.

¹³ *Id.*

¹⁴ *Id.*

The Palmer Raids themselves “backfired” according to some scholars.¹⁵ Public opinion was first supportive of Attorney General Palmer but then turned strongly against him because of “his perceived responsibility for the excesses of the raids.”¹⁶ “Tellingly, however, the real backlash did not occur until 1924, when the Justice Department was revealed to have been spying on its critics in Congress, namely, when the government crossed the noncitizen-citizen line.”¹⁷ “While Palmer’s career suffered, Hoover’s most certainly did not. In 1924, he moved on to head the FBI, where he spent the rest of his life seeking to extend to ‘radical’ American citizens the tactics of preventive law enforcement, guilt by association, and summary process that he had employed with respect to ‘radical aliens’ in his first job.”¹⁸

1.2. Senate Committee Investigation of the Teapot Dome Scandal¹⁹

Created By: A resolution for an investigatory panel was introduced on April 15, 1922 by Wyoming Democratic Senator John Kendrick

Mandate: To review the actions of the Department of the Interior in secretly leasing naval oil-reserve lands to private companies.

Dates of operation: A two-year investigation.

Product/Results: The investigation led to a series of civil and criminal suits related to the scandal throughout the 1920s.

“Wisconsin Republican Senator Robert La Follette arranged for the Senate Committee on Public Lands to investigate the matter. ... Expecting this to be a tedious and probably futile inquiry, the committee's Republican leadership allowed the panel's most junior minority member, Montana Democrat Thomas Walsh, to chair the panel.”²⁰ The “Senate Committee on Public Lands and Surveys focused on the actions of the Department of the Interior in leasing naval oil reserves, a Senate select committee was constituted to investigate ‘charges of misfeasance and nonfeasance in the Department of Justice’²¹ in failing to prosecute the malefactors in the Department of the Interior, as well as other cases.”²² One of the committee's goals in its questioning was to identify cases in

¹⁵ Id at 127.

¹⁶ Id.

¹⁷ Id. at 128.

¹⁸ Id.

¹⁹ Morton Rosenberg, “Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice),” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

²⁰ United States Senate, “Historical Minute Essays: US Senate Investigates the ‘Teapot Dome’ Scandal,” *available at*

http://www.senate.gov/artandhistory/history/minute/Senate_Investigates_the_Teapot_Dome_Scandal.htm accessed November 4, 2008.

²¹ *McGrain v. Daugherty*, 273 U.S. 135, 151 (1927)

²² Investigation of Hon. Harry M. Daugherty, Formerly Attorney General of the United States: Hearings Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session (1924), *as cited in* Morton Rosenberg, “Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007:

which the statute of limitations had not run out and prosecution was still possible.²³ In the end, this turned out to be one of the most significant and successful investigations in Senate history. Hearings began on October 15, 1923 and lasted at least until January 1924.

The Select Committee, which wielded subpoena power, heard “[...] from scores of present and former attorneys and agents of the Department and its Bureau of Investigation, who offered detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases.”²⁴ “The committee obtained access to Justice Department documentation, including prosecutorial memoranda, on a wide range of matters. However, given the charges of widespread corruption in the Department and the imminent resignation of Attorney General Daugherty, it would appear that some of the documents furnished the committee early in the hearings may have been volunteered by the witnesses and not officially provided by the Department. Although Attorney General Daugherty had promised cooperation with the committee, and had agreed to provide access to at least the files of closed cases,²⁵ such cooperation apparently had not been forthcoming.”²⁶

“In two instances immediately following Daugherty's resignation, the committee was refused access to confidential Bureau of Investigation investigative reports pending the appointment of a new Attorney General who could advise the President about such production, *Id.* at 1015-16 and 1159-60, though witnesses from the Department were permitted to testify about the investigations that were the subject of the investigative reports and even to read at the hearings from the investigative reports. With the appointment of the new Attorney General, Harlan F. Stone, the committee was granted broad access to Department files. Committee Chairman Smith Brookhard remarked that ‘[Stone] is furnishing us with all the files we want, whereas the former Attorney General, Mr. Daugherty, refused nearly all that we asked.’ *Id.* at 2389.”

The committee uncovered a bribery scandal that resulted in the first time a cabinet officer served time in prison and triggered several court cases that tested the extent of the

History, Law, and Practice),” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007) at CRS-36, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

²³ See, e.g., Investigation of Hon. Harry M. Daugherty, Formerly Attorney General of the United States: Hearings Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session (1924) at 1495-1503, 1529-30, 2295-96.

²⁴ *Id.*

²⁵ Investigation of Hon. Harry M. Daugherty, Formerly Attorney General of the United States: Hearings Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session (1924) at 1120.

²⁶ Morton Rosenberg, “Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice),” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007) at CRS-36, available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008. Citing Investigation of Hon. Harry M. Daugherty, Formerly Attorney General of the United States: Hearings Before the Senate Select Committee on Investigation of the Attorney General, vols. 1-3, 68th Congress, 1st Session (1924) at 1078- 79.

Senate's investigative powers. "As part of its investigation, the select committee issued a subpoena for the testimony of Mally S. Daugherty, the brother of the Attorney General. After Mally Daugherty failed to respond to the subpoena, the Senate sent its Deputy Sergeant at Arms to take him into custody and bring him before the Senate. Daugherty petitioned in federal court for a writ of habeas corpus arguing that the Senate in its investigation had exceeded its constitutional powers. The case ultimately reached the Supreme Court, where, in a landmark decision, *McGrain v. Daugherty*, 273 U.S. 135 (1927), the Court upheld the Senate's authority to investigate these charges concerning the Department: '[T]he subject to be investigated was the administration of the Department of Justice--whether its functions were being properly discharged or were being neglected or misdirected, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers--specific instances of alleged neglect being recited. Plainly the subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit.' 273 U.S. at 177."²⁷

"In another Teapot Dome case that reached the Supreme Court, *Sinclair v. United States*, 279 U.S. 263 (1929), a different witness at the Congressional hearings refused to provide answers, and was prosecuted for contempt of Congress. The witness had noted that a lawsuit had been commenced between the government and the Mammoth Oil Company, and declared, 'I shall reserve any evidence I may be able to give for those courts ... and shall respectfully decline to answer any questions propounded by your committee.' *Id.* at 290. The Supreme Court upheld the witness' conviction for contempt of Congress. The Court considered and rejected in unequivocal terms the witness's contention that the pendency of lawsuits provided an excuse for withholding information. Neither the laws directing that such lawsuits be instituted, nor the lawsuits themselves, 'operated to divest the Senate, or the committee, of power further to investigate the actual administration of the land laws.' *Id.* at 295. The Court further explained: 'It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits. *Id.* at 295.'"²⁸

²⁷ Morton Rosenberg, "Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice)," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007) at CRS-36 and 37, *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

²⁸ Morton Rosenberg, "Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice)," Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007) at CRS-37, *available at* http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

1.3. The Select Committee on Presidential Campaign Activities

Created By: The Senate convened a special committee to investigate the matter in S. Res. 60, which passed unanimously on February 7, 1973²⁹

Mandate: To investigate completely the break-in of the DNC headquarters and any subsequent cover-up, and also all other illegal, improper, or unethical conduct occurring during the Presidential campaign of 1972, including political espionage and campaign financing practices.

Dates of operation: March 28, 1973 – June 27, 1974

Composition: The seven committee members were appointed by the Senate leadership. The committee was chaired by Senator Sam J. Ervin, (D-NC) one of four Democrats on the committee.

Product/Results: The Committee’s final product was a seven-volume, 1,250-page report on June 27, 1974, entitled Report on Presidential Campaign Activities. The commission’s work ultimately led to the resignation of President Nixon in 1974³⁰ and criminal prosecutions of a number of individuals within government and without

In the early morning of June 17, 1972, “five burglars and two accomplices had been arrested in the Democratic National Committee's Watergate offices. Their eventual connection to President Richard Nixon's 1972 reelection campaign, and their conviction in January 1973, led the Senate in February to create the Select Committee on Presidential Campaign Activities—the Watergate Committee.”³¹

The Committee’s enabling resolution specifically instructed the committee “to make a ‘complete’ investigation and study ‘of the extent ... to which illegal, improper, or unethical activities’ occurred in the 1972 Presidential campaign and election and to determine whether new legislation is needed ‘to safeguard the electoral process by which the President of the United States is chosen.’ S. Res. 60, sections 1 (a) and 2.”³² The investigation would then “serve as a basis for the remedial legislation ... and fulfill the historic function of the Congress to oversee the administration of executive agencies of the Government and to inform the public of any wrongdoing or abuses it uncovers.”³³ “The seven committee members [were] appointed by the Senate leadership...”³⁴ and, reflecting the fact that the Democrats held the majority in the Senate, the Committee was composed of 4 Democrats and 3 Republican Senators. The role of Chief Counsel was shared by one Democrat and one Republican.

²⁹ “Final Report of the Select Committee on Presidential Campaign Activities,” US Congress, June 1974 at XXIII.

³⁰ See his resignation speech at: <http://www.hbci.com/~tgort/resign.htm> accessed November 4, 2008.

³¹ “Historical Minute Essay - March 28, 1973 Watergate Leaks Lead to Open Hearings,” U.S. Senate Art & History Home, *available at* http://www.senate.gov/artandhistory/history/minute/Watergate_Investigation.htm accessed November 4, 2008.

³² “Final Report of the Select Committee on Presidential Campaign Activities,” US Congress, June 1974 at XXIII.

³³ *Id* at XXIV.

³⁴ *Id* at XXV.

The Watergate Committee is a high water mark in the power and influence of a Congressional investigation. The Committee has been compared to the Teapot Dome investigation half a century earlier because both were “born in the crisis of a serious loss of confidence by the public in its national government.”³⁵ “The Senate Select Committee was given the broadest mandate to investigate completely not only the break-in of the DNC headquarters and any subsequent coverup [sic], but also all other illegal, improper, or unethical conduct occurring during the Presidential campaign of 1972, including political espionage and campaign financing practices. All the investigative powers at the Senate’s disposal were given the committee. Thus the committee had the power of subpoena [sic], the power to grant limited or ‘use’ immunity to witnesses to obtain their testimony and the power to enforce the committee’s subpoenas [sic] by initiating contempt procedures.”³⁶ Thousands of document, records and other tangible evidence materials were subpoenaed [sic] by the committee...”³⁷ However, many officials were questioned by Committee but not made to formally testify.³⁸

“On March 28, 1973, the Senate held its first hearing on the Watergate break-in. That nearly five-hour meeting generated so many leaks to the media that committee leaders decided to conduct all future hearings in public session.”³⁹ The first public hearing was May 17, 1973.⁴⁰

Elliot Richardson, Nixon’s newly appointed Attorney General was given the authority to appoint a special prosecutor to investigate the Watergate scandal. The office of the Special Prosecutor was created to ease suspicions that the Department of Justice was incapable of properly investigating the Watergate affair because it was controlled by the President. The Special Prosecutor’s mandate included the investigation of the burglary and other crimes connected with the 1972 presidential election.⁴¹ Richardson tapped former Solicitor General Archibald Cox for the job on May 19, 1973; two days after the televised hearings began.⁴² He would be the first of three special prosecutors to work on this case. Five months into his appointment, Archibald was, upon Nixon’s insistence, fired from the post after insisting on having access to Nixon’s secret tapes of White House conversations.⁴³ Of his dismissal Cox memorably said to Congress, “Whether ours shall continue to be a government of laws and not of men is now before Congress and

³⁵ Id.

³⁶ Id at XXVI.

³⁷ Id at XXX.

³⁸ Id at XXVIII.

³⁹ “Historical Minute Essay - March 28, 1973 Watergate Leaks Lead to Open Hearings,” U.S. Senate Art & History Home, *available at* http://www.senate.gov/artandhistory/history/minute/Watergate_Investigation.htm accessed November 4, 2008.

⁴⁰ “Final Report of the Select Committee on Presidential Campaign Activities,” US Congress, June 1974 at XXIX.

⁴¹ John M. Goshko, “Special Prosecutor To Close His Books,” *The Washington Post*, May 26, 1977.

⁴² George Lardner, Jr., “Cox Is Chosen as Special Prosecutor Democrat Served Under Kennedy as Solicitor General,” *The Washington Post*, May 19, 1973.

⁴³ Carroll Kilpatrick, “Nixon Forces Firing of Cox; Richardson, Ruckelshaus Quit President Abolishes Prosecutor’s Office; FBI Seals Records,” *The Washington Post*, October 21, 1973.

ultimately the American people.”⁴⁴ Cox’s successor, a Texas attorney and a confidante of President Lyndon Johnson, Leon Jaworski, led the successful charge to make the Nixon tapes public, in addition to successfully prosecuting several of Nixon’s top aides. Henry S. Ruth and Charles F.C. Ruff succeeded Jaworski and the office was officially closed in 1977, after spending four-years and \$8 million in pursuit of justice and accountability.⁴⁵

The work of the office of the Special Prosecutor’s office resulted in 50 individuals and 18 corporations or business associations being convicted or pleading guilty to assorted felony or misdemeanor charges.⁴⁶ John Mitchell, former Attorney General was convicted Feb 21 1975 and was later paroled from federal prison Jan. 19, 1979, after serving 19 months of a 2 and a half to eight year sentence for conspiracy and obstruction of justice.⁴⁷ John Erlichman, Nixon’s former senior advisor on domestic affairs, served 18 months in federal prison following his conviction on conspiracy, conspiracy to obstruct justice, and perjury charges.⁴⁸ Former Nixon Chief-of-Staff H.R. Haldeman spent 18 months in prison after being convicted of conspiracy and obstruction of justice charges.⁴⁹ G. Gordon Liddy and James W. McCord, both officials in President Nixon’s re-election committee, were convicted of conspiracy, burglary and bugging the Democratic Party’s Watergate headquarters.⁵⁰ McCord served only 69 days of a 1- to 5-year sentence for conspiracy, burglary and wiretapping convictions after agreeing to cooperate with prosecutors.⁵¹ White House Aide and CIA Agent E. Howard Hunt Jr. was convicted of burglary, conspiracy and wiretapping in connection with the Watergate burglary. He served 33 months in prison.⁵²

1.4. The [Sen. Frank] Church Committee

Created By: By the Senate on January 27, 1975

Mandate: To investigate abuses by the U.S. Intelligence community

Dates of Operation: A nine-month investigation

Composition: The Committee was made up of 11 Senators (six Democrats and five Republicans) and had the support of 150 staffers.

Product/Results: The Church Committee produced 14 reports. The final report “revealed that the CIA had engaged in nine hundred covert actions since 1961; that its computers contained the names of 1.5 million potentially ‘subversive’ Americans; and that it had spied on 7,000 of them. With the CIA, the FBI had opened 380,000 letters, and it had investigated over 500,000 dissidents without proving that any of them were guilty of

⁴⁴ Id.

⁴⁵ John M. Goshko, “Special Prosecutor To Close His Books,” *The Washington Post*, May 26, 1977.

⁴⁶ Id.

⁴⁷ Larry Lopez, “Former Attorney General is Indicted,” *The Associated Press*, April 15, 1981.

⁴⁸ “Ehrlichman Seeking Presidential Pardon For His Watergate Role,” *Associated Press*, August 14, 1987.

⁴⁹ “Haldeman Gains Parole; Release Date Is Dec. 20,” *The Washington Post*, June 15, 1978.

⁵⁰ Lawrence Meyer, “Last Two Guilty in Watergate Plot,” *The Washington Post*, January 31, 1973

⁵¹ “Watergate Figures: Where Are They? What Do They Say?,” *Associated Press*, June 18, 1983.

⁵² Judi Hasson “Hunt Seeks Watergate Pardon,” *United Press International*, January 4, 1982.

committing a crime.”⁵³

“On Dec 22nd [1975], the *New York Times* revealed that the CIA had been engaged in a massive campaign of spying on American citizens. Although forbidden by law to operate in the United States, the CIA had used illegal break-ins, wiretaps, and mail openings to gather information on over ten thousand antiwar protesters and other dissidents.”⁵⁴ Over two weeks, Seymour Hersh and others *Times* reporters had published 32 stories on CIA misbehavior,⁵⁵ including reports of CIA-backed assassination attempts on foreign leaders. According to one source, the Senate took action because, “After years of deferring to the executive branch in matters involving national security, [Congress] had been infused with new blood as a result of the first post-Watergate elections.”⁵⁶ (Nor was the Senate alone in taking action. The House convened the Pike Committee to examine the quality of the CIA’s intelligence estimates.”⁵⁷)

The Senate resolution charged the Committee with “describing the operations of the ‘shadow government’ created by the intelligence agencies.”⁵⁸ The committee reviewed a similar range of issues as the Rockefeller Committee but delved deeper into questions of CIA-sponsored assassinations than the executive probe.⁵⁹ There was tension between the two investigations and President Ford in his memoirs “blasts the Church Committee as ‘sensational and irresponsible’”⁶⁰ and blamed the legislative effort for the “‘crippling of our foreign intelligence services.’”⁶¹ In conducting its research, the Committee interviewed 800 individuals, and held 250 executive and 21 public hearings in nine months.⁶² Though much of the Committee’s work was done behind closed doors, there were also dramatic public hearings.⁶³

Reforms were essential to eliminate the systemic abuse of civil liberties, the final report concluded. It recommended nearly two hundred changes in foreign and domestic intelligence gathering.”⁶⁴ The committee recommended in its reports that Congress

⁵³ Christopher M. Finan, “From the Palmer Raids to the Patriot Act : a history of the fight for free speech in America” at 234, *citing* Katheryn S. Olmsted, *Challenging the Secret Governments: The Post-Watergate Investigations of the CIA and the FBI* (Chapel Hill: University of North Carolina Press, 1996), at 65, 107, 175.

⁵⁴ Christopher M. Finan, “From the Palmer Raids to the Patriot Act: a history of the fight for free speech in America” at 233.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 62.

⁵⁸ Christopher M. Finan, “From the Palmer Raids to the Patriot Act : a history of the fight for free speech in America” at 234.

⁵⁹ Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 62.

⁶⁰ *Id.*

⁶¹ *Id.*, *quoting* “Transcript of President’s State of the Union Message,” *New York Times*, 20 January 1976, p.18.

⁶² United States Senate, “Historical Minute Essays: Church Committee Created,” *available at* http://www.senate.gov/artandhistory/history/minute/Church_Committee_Created.htm.

⁶³ *Id.*

⁶⁴ Christopher M. Finan, “From the Palmer Raids to the Patriot Act : a history of the fight for free speech in America” at 234, *citing* Katheryn S. Olmsted, *Challenging the Secret Governmnet: The Post-Watergate*

engage in increased oversight of covert intelligence operations. “Whereas the Rockefeller Commission was significant in suggesting that the legality of CIA operations is a function of its purpose (whether it is engaged in foreign intelligence as opposed to domestic law enforcement), the input from the Church Committee was valuable because it recommended that Congress engage in increased oversight in monitoring how agencies conduct covert operations. Among other things, the result was the creation of new committees that tied appropriations to intelligence gathering, along with the passage of the Freedom of Information Act, and related statutes safeguarding citizen privacy. Most importantly, Congress isolated, through regulation, the CIA’s covert operations from the FBI’s domestic investigation duties.”⁶⁵ The Committee also inspired the passage of the Foreign Intelligence Surveillance Act of 1978 (FISA), which created the Foreign Intelligence Surveillance Court (FISC).⁶⁶

The Committee’s work, however, has also been a source of controversy. In December 1975, a CIA station chief in Greece was assassinated, intensifying the public backlash against the Church Committee’s mission.⁶⁷ More recently, critics have contended that the legislation resulting from the Church Committee has reduced the CIA’s capabilities to fight the “War on Terror.”⁶⁸

II. Presidential Commissions

2.1. Roberts Commission

Created By: Executive order of President Roosevelt in December of 1941

Mandate: To investigate and report the facts relating to the attack on Pearl Harbor

Dates of operation: A one-year investigation.

Composition: Headed by Associate Justice Owen Josephus Roberts and also served by Adm. William H. Standley, Adm. Joseph M. Reeves, Gen. Frank R. McCoy, and Gen. Joseph T. McNarney.⁶⁹

Product/Results: The commission found the commanders of Pearl Harbor, Adm. Husband Kimmel and Gen. Walter Short had committed “dereliction of duty,” and the

Investigations of the CIA and the FBI (Chapel Hill: University of North Carolina Press, 1996), at 65, 107, 175.

⁶⁵ Christopher P. Banks, “Protecting (or Destroying) Freedom through Law: The USA PATRIOT Act’s Constitutional Implications,” in David B. Cohen and John W. Wells, eds, *American National Security and Civil Liberties in an Era of Terrorism* (Palgrave Macmillan 2004) at 33.

⁶⁶ Id at 34.

⁶⁷ United States Senate, “Historical Minute Essays: Church Committee Created,” *available at* http://www.senate.gov/artandhistory/history/minute/Church_Committee_Created.htm accessed November 4, 2008.

⁶⁸ Stephen F. Knott, “Congressional Oversight and the Crippling of the CIA,” History News Network, November 4, 2001, *available at* <http://hnn.us/articles/380.html> accessed November 4, 2008. For an answer to these criticisms, see Frederick A.O. Schwarz Jr. & Aziz Z. Huq, “Unchecked and Unbalanced: Presidential Power in a Time of Terror,” (The New Press 2007).

⁶⁹ Information on this commission is drawn from Jonathan Simon, “Parrhesiastic Accountability: Investigatory Commissions and Executive Power in an Age of Terror”, 114 Yale L.J. 1419 (2005); <http://www.ibiblio.org/pha/pha/roberts/roberts.html> accessed November 4, 2008.

Commission presented their findings to Congress January 28, 1942.

While blame tended to focus on senior commanders for operations at the site of the attack, one scholar notes that “those who most deeply opposed the changes associated with [then President] Roosevelt’s stewardship of the nation during the Great Depression” believed that “a darker scenario was possible,” involving higher levels of authority.⁷⁰ This prompted Roosevelt to assemble the Roberts Commission. Congress – strongly aligned with Roosevelt politically - held off from launching its own investigation.⁷¹ Relying on unsworn testimony from military officers and only partial access to intelligence, the information obtained by the Commission was “fragmentary enough to conceal the great extent of American success in breaking Japan’s codes” and thus, able to conclude that responsibility lay squarely on the commanders’ shoulders.⁷² Courts-martial of the two followed, though later pressure from Republican critics led to Army and Navy commissions of inquiry and some blame shifted “back toward Washington.”⁷³

The Roberts Commission, like the Rockefeller Commission that followed more than 30 years later, were expected to perform their tasks quickly and bring stability and trust in government back without necessarily having the time and tools to adequately delve into the facts. In the case of the Rockefeller Commission, “Due to the serious time constraints under which the panel operated, the investigators were heavily dependent on the CIA to produce the needed documentation.”⁷⁴ This obviously raised questions of objectivity and thoroughness.⁷⁵ Thus, motives, timing and access to information are critical factors to be considered.

2.2. The National Advisory Commission on Civil Disorders

Created By: Executive order of President Lyndon B. Johnson in July, 1967⁷⁶

Mandate: To investigate the causes of the 1967 race riots in the United States.

Dates of operation: Eight months

Composition: Consisted of 11 members and was chaired by Illinois governor Otto Kerner.

Product/Results: The Kerner Report was released on February 29, 1968. Its findings are summed up in its most famous quote, “Our nation is moving toward two societies, one black, one white—separate and unequal.”⁷⁷

⁷⁰ Jonathan Simon, “Parrhesiastic Accountability: Investigatory Commissions and Executive Power in an Age of Terror,” 114 Yale L.J. 1419 (2005) at 1438.

⁷¹ Id at 1439.

⁷² Id.

⁷³ Id.

⁷⁴ Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 59.

⁷⁵ Id.

⁷⁶ <http://www.archives.gov/federal-register/executive-orders/1967.html> accessed November 4, 2008.

⁷⁷ <http://www.presidency.ucsb.edu/ws/?pid=28369> accessed November 4, 2008.

The National Advisory Commission on Civil Disorders, commonly known as the “Kerner Commission,” was appointed by President Lyndon Johnson in 1967⁷⁸ in response to widespread “racial disorders” in American cities (including riots in Newark and Detroit) that brought “shock, fear and bewilderment to the nation.”⁷⁹ Simply put, its mandate was “to answer three basic questions: What happened? Why did it happen? What can be done to prevent it from happening again?”⁸⁰ Importantly, commissioners visited cities where riots occurred, listened to experts, and was exposed to more than government-agency truths about what was happening in the country. But a political shift with the installation of the Nixon government less than a year after the report came out may have limited its impact. One notable feature of this commission is that another institution was created to provide follow-up. According to that institution’s website:

The Milton S. Eisenhower Foundation is the international, nonprofit continuation of the [National Advisory Commission on Civil Disorders](#) (the Kerner Riot Commission, after the big city riots of the 1960s) and the National Commission on the Causes and Prevention of Violence (the National Violence Commission, after the assassinations of the Reverend Martin Luther King, Jr. and Senator Robert Kennedy). We identify, fund, evaluate, build the capacities of and replicate multiple solution ventures for the inner city, the truly disadvantaged, children, youth and families. Through national policy reports, the Foundation communicates what works (and what doesn't) to citizens, media and decision makers. We run a strategic communications school for nonprofit organization staff and youth to help change political will and create action.⁸¹

2.3. The Rockefeller Commission

Created By: President Ford by Executive Order 11828 on January 4, 1975⁸²

Mandate: To investigate allegations of domestic misconduct by the Central Intelligence Agency and other intelligence agencies within the U.S. and to make appropriate recommendations.⁸³

Dates of operation: 153 days, though it was initially only granted three months to complete its investigation⁸⁴

Composition: There were eight commissioners⁸⁵ selected by President Ford and his advisors. The commission was chaired by Vice President Nelson Rockefeller. The appointments by President Ford were seen as political.⁸⁶

⁷⁸ <http://www.archives.gov/federal-register/executive-orders/1967.html> accessed November 4, 2008 .

⁷⁹ Summary of Report, Report of the National Advisory Commission on Civil Disorders.

⁸⁰ Id.

⁸¹ <http://www.eisenhowerfoundation.org/about.php> accessed November 4, 2008:

⁸² Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 12.

⁸³ The Rockefeller Commission Report at ix, *available at*

http://www.aarclibrary.org/publib/contents/church/contents_church_reports_rockcomm.htm accessed November 4, 2008.

⁸⁴ Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 59.

⁸⁵ Id at 52.

⁸⁶ Id at 47.

Product/Results: The Rockefeller Commission Report, which was delivered to the President on June 6, 1975, determined that although ‘the great majority’ of the CIA’s activities were legal, some were more ‘doubtful,’ and still others were ‘plainly unlawful.’”⁸⁷

Journalist Seymour Hersh wrote a story entitled “Huge CIA Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years” that appeared in the *New York Times* on December 22, 1974.⁸⁸ This prompted a public outcry and those in President Ford’s inner circle urged the establishment of a commission.⁸⁹ According to Kitts, “In late 1974, the postwar US intelligence community came under the sharpest attack of its thirty-year existence. The accusations against the community included spying at home, questionable activities abroad, and misconduct at high levels... The growing controversy threatened to disrupt President Gerald Ford’s effort to heal the wounds left by Watergate and restore faith in the government. In response, he created a blue-ribbon panel, headed by Vice President Nelson Rockefeller, and gave it the task of examining the various charges leveled against the spy agencies. Once under way, the panel secured a place in history as one of the most important investigations into the means and ends of US intelligence.”⁹⁰

President Ford “directed the Commission to determine whether any domestic CIA activities exceeded the Agency’s statutory authority and to make appropriate recommendations.”⁹¹ Commissioners were selected by President Ford and his aides, including his close friend and White House counsel Phil Buchen, deputy assistant for national security affairs Brent Scowcroft, de facto chief of staff Donald Rumsfeld, Deputy White House Assistant Richard Cheney, Press Secretary Ron Nessen, Counselor Jack Marsh, and Henry Kissinger.⁹² Aside from Vice President Rockefeller, named as Chair, the Commission included: John T. Connor, Secretary of Commerce (1965-67) and CEO of Allied Chemical Corp; C. Douglas Dillon, Secretary of the Treasury (1960-65) and Chairman of Dillon, Read & Company; Erwin Griswold, Solicitor General (1967-1972) and partner at law firm Jones, Day, Reavis and Pogue; Ronald Reagan, governor of California (1966-74); Lyman Lemnitzer, (USA ret.) chairman of the Joint Chiefs of Staff (1960-63); Edgar Shannon, pres of University of Virginia (1959-74); and Lane Kirkland, Secretary and Treasurer of AFL-CIO.⁹³

Ford’s Executive Order initially “granted the panel a lifespan of only three months. This is less than half the time normally allotted for a blue-ribbon probe. But Ford and his advisers must have realized that a short inquiry would be far less likely to

⁸⁷ Id at 62-3.

⁸⁸ Id at 48.

⁸⁹ Id at 49.

⁹⁰ Id at 47.

⁹¹ The Rockefeller Commission Report at ix, *available at* http://www.aarclibrary.org/publib/church/rockcomm/html/Rockefeller_0005a.htm accessed November 4, 2008.

⁹² Kenneth Kitts, “Presidential Commissions and National Security,” Lynne Rienner Publishes 2006) at 48-9.

⁹³ Id at 52.

uncover material that might prove embarrassing to the administration.”⁹⁴ It eventually worked for 153 days. The Commission heard from 51 witnesses, including William Colby, the Director of Central Intelligence, and former Director of Central Intelligence Richard Helms,⁹⁵ and produced almost 3,000 pages of testimony. However, the Commission’s short time frame severely limited its investigative potential.⁹⁶ As one scholar notes, “Due to the serious time constraints under which the panel operated, the investigators were heavily dependent on the CIA to produce the needed documentation.”⁹⁷ This obviously raised questions of objectivity and thoroughness.⁹⁸ Despite the political nature of the appointments and the time limitation, the Rockefeller Commission “secured a place in history as one of the most important investigations into the means and ends of US intelligence.”⁹⁹

The Commission produced a Report that was delivered to the President on June 6, 1975.¹⁰⁰ It was 299 pages, “almost half of which were devoted to the CIA’s history and statutory status. The remaining chapters covered the individual charges that had been leveled against the agency, the findings of the commission regarding each allegation, and recommendations for reform in those areas where abuses were uncovered. The panel determined that although ‘the great majority’ of the CIA’s activities were legal, some were more ‘doubtful,’ and still others were ‘plainly unlawful.’”¹⁰¹ Though the President was undecided whether to release it to the public, public outcry convinced President Ford to make it available to the public on June 10, 1975.¹⁰²

2.4. The Tower Commission¹⁰³

Created By: President Reagan established the commission in December 1986 by Executive Order 12575

Mandate: To “conduct a comprehensive study of the future role and procedures of the National Security Council staff.”¹⁰⁴ Though the mandate of the Commission was vague, President Reagan indicated at the beginning of the investigation “that he desired a more tightly focused investigation”¹⁰⁵ concerning the Iran-Contra scandal

Dates of Operation: 87 days

⁹⁴ Id at 52.

⁹⁵ Id at 60.

⁹⁶ Id at 52.

⁹⁷ Id at 59.

⁹⁸ Id.

⁹⁹ Id at 47.

¹⁰⁰ Id at 62.

¹⁰¹ Id at 62-3.

¹⁰² Id at 62.

¹⁰³ See Morton Rosenberg, “Appendix. Selected congressional investigations of the Department of Justice, 1920-2007 (Congressional Investigations of the Department of Justice, 1920-2007: History, Law, and Practice),” Congressional Research Service (CRS) Reports and Issue Briefs (Oct 1, 2007), available at http://www.accessmylibrary.com/coms2/summary_0286-33862725_ITM accessed November 4, 2008.

¹⁰⁴ Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 107.

¹⁰⁵ Id at 108.

Composition: The Commission was made up of 3 commissioners, chosen by the President and his advisors, and 26 staff. Though the commissioners had known political affiliations, they were largely seen as carrying out their work in a non-partisan fashion.¹⁰⁶

Product/Results: The Tower Commission's report was delivered to President Reagan on February 26, 1987. It was less critical of the administration than either the special investigator or the congressional hearings being conducted at the same time, but still did not reflect well on the President of his staff and hurt his public approval ratings.

This commission was composed of only 3 commissioners, Senator John Tower (R-Texas), Edmund Muske (Dem.), former Secretary of State, and Brent Scowcroft (Rep.), former National Security Advisor.

The Executive Order "directed all executive departments and agencies to provide, on request, 'such information as it may require for purposes of carrying out its functions.'"¹⁰⁷ However, "the commission was hindered by a lack of documentary evidence about the National Security Council's role in the scandal. Cooperation from executive agencies was not always forthcoming,"¹⁰⁸ and so the commission placed heavy emphasis on personal interviews.¹⁰⁹ A total of 53 people appeared before the board in private interviews, "including four presidents, three vice presidents, and every living individual who had served as secretary of state or defense or as national security advisor. Former directors of the CIA and members of the Joint Chiefs of Staff also participated."¹¹⁰ However, the Commission did not have subpoena power and six individuals refused to be interviewed.¹¹¹

The Tower Commission overlapped with the Congressional hearings on the Iran-Contra scandal, which convened in January 1987, a month before the release of the Tower Report. There was some tension between the two efforts. Senator Tower, for example, criticized the public platform provided to Oliver North by the Congressional hearings.¹¹² Comparing the motivations of the two efforts is also revealing. According to Kenneth Kitts, "Reagan administration officials knew that external inquiries into the Iran-Contra affair were unavoidable. What they sought with the blue-ribbon panel, then, was not preemption of other actors but a more sympathetic inquiry. They needed an alternative story line that would put the president's conduct in a more favorable light. When completed, the board's findings were not flattering to Reagan. They were, however, less politically damning than the judgment rendered by Congress and the independent counsel."¹¹³

In early December 1986, President Reagan reluctantly bowed to political and

¹⁰⁶ Id at 115.

¹⁰⁷ Id at 107.

¹⁰⁸ Id at 109.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Id at 109-10.

¹¹² Id at 122. Senator Tower was very critical of choice to give Oliver North a platform to "showcase the misty-eyed patriotism that endeared him to millions of citizens."

¹¹³ Id at 124.

public pressure and ordered his Attorney General Edwin Meese to request an Independent Counsel be appointed to investigate and, if necessary, prosecute possible crimes arising from the Iran-Contra scandal.¹¹⁴ The public and many member of congress felt that the Tower Commission was less than objective and hoped the Independent Counsel would have the ability to effectively hold individuals accountable in the scandal. As authorized by the 1978 Ethics in Government Act, the Special Division of the United States Court of Appeals for the District of Columbia Circuit appointed former Federal Judge and President of the American Bar Association Lawrence E. Walsh as the nation's seventh Independent Counsel (formerly known as "Special Prosecutor") on December 19, 1986.¹¹⁵

Notably, AG Meese sought to limit the Independent Counsel's mandate to investigating Iranian arms sales and the resulting funds transfers to Nicaraguan rebels.¹¹⁶ After six-years and \$35 million, Walsh's investigation¹¹⁷ led to the charging of 14 people with criminal offenses, eleven of whom were convicted, although two of these convictions were overturned on appeal. Lieutenant Colonel Oliver North, one of the more controversial figures of the scandal, was indicted on 16 counts, and was found guilty on three counts, including accepting an illegal gratuity, aiding and abetting in the obstruction of a congressional inquiry, and destruction of documents.¹¹⁸ However, his convictions were vacated on appeal because North's Fifth Amendment rights may have been violated by the indirect use of his testimony to Congress, which had been given under a grant of limited immunity.¹¹⁹ North's superior, Vice Admiral John Poindexter, was convicted on several felony counts of conspiracy, lying to Congress, obstruction of justice, and altering and destroying documents pertinent to the investigation, but these were also overturned, on grounds similar to North's appeal.¹²⁰

Controversy was reignited in 1992 when President George H. W. Bush pardoned six of the administration officials embroiled in the scandal. Of the pardons, Walsh said "the Iran-contra cover-up, which has continued for more than six years, has now been completed."¹²¹

¹¹⁴ Michael Binyon, "Iran Deal Prosecutor Appointed / Investigation into US-Iran Arms Deal," *The Times*, December 20, 1986; "The Iran-Contra Report; Excerpts From the Iran-Contra Report: A Secret Foreign Policy," *The New York Times*, January 19, 1994.

¹¹⁵ Pete Yost, "Justice Department Continues Attack on Independent Counsels," *The Associated Press*, June 16, 1987.

¹¹⁶ "Mr. Walsh and the Price of Trust," *The New York Times*, December 20, 1986.

¹¹⁷ Carleton R. Bryant and Jerry Seper, "End is in sight for Walsh's Inquiry; 1 Week to Decide on Bush Case" *The Washington Times*, January 5, 1993

¹¹⁸ Philip Shenon, "North, Poindexter and 2 Others Indicted on Iran-Contra Fraud and Theft Charges," *The New York Times*, March 17, 1988.

¹¹⁹ Id.

¹²⁰ Id.

¹²¹ David Johnston, "Bush Pardons 6 in Iran Affair, Aborting a Weinberger Trial; Prosecutor Assails 'Cover-Up'," *The New York Times*, December 25, 1992. Those pardoned included: Robert C. "Bud" McFarlane, former National Security Adviser, who pled guilty to four cover-up misdemeanors; Elliott Abrams, former assistant secretary of state, who pleaded guilty to two misdemeanor charges of withholding information from Congress about government efforts to support the Nicaraguan resistance; Clair E. George, former CIA deputy director of operations, who was found guilty on two felony counts of lying to Congress

III. Commissions created by legislation

3.1. The Commission on Wartime Relocation and Internment of Civilians (CWRIC)

Created By: Act of Congress on July 31, 1980 (Public Law 96-317)

Mandate: To investigate and report the facts relating to the forced relocation and detention of mainland Japanese Americans and Alaskan Aleuts during World War II.

Dates of operation: A six-month investigation.

Composition: The commission consisted of nine people appointed by Congress and was largely non-partisan, though some of the appointees were former congressmen and senators.

Product/Results: The commission released its report, "Personal Justice Denied," in 1983 and concluded that the incarceration of Japanese Americans had not been justified by military necessity and was instead the result of "race prejudice, war hysteria, and a failure of political leadership." The Commission recommended legislative remedies consisting of an official Government apology, redress payments of \$20,000 to each of the survivors, and a public education fund to prevent similar future injustices.¹²²

The nine commissioners were a somewhat diverse group appointed by Congress. The Chair, Joan Bernstein, was the former general counsel of the Department of Health and Human Services. Four of the commissioners were former members of Congress, balanced by party affiliation: two former Senators, Edward Brooke (Rep.) and Hugh Mitchell (Dem.), and two former Representatives, Rev. (Father) Robert Drinan (Dem., a Jesuit priest who headed Americans for Democratic Action) and Daniel Lungren (Rep.). Former Federal Judge William Marutani (an Asian-American judge who was himself a victim of the detention policy¹²³) and Former Supreme Court Justice, Arthur Goldberg, were also named to the Commission, along with Rev. Ishmael V. Gromoff, a priest of the Russian Orthodox Church and an official spokesman for the Aleut People and of individuals of Aleut ancestry.¹²⁴ Arthur Flemming, President of the U.S. Commission on Civil Rights (1972-82) with a long history of government service¹²⁵, rounded out the panel.

about a secret Nicaraguan supply network; Alan D. Fiers Jr., former chief of the CIA's Central American task force, who pleaded guilty to two misdemeanor counts of withholding information from Congress about the diversion of proceeds from arms sales to the Contras; and former Defense Secretary Caspar W. Weinberger, who was indicted for lying to the Independent Counsel, was pardoned by President Bush days before his trial was set to begin. Also pardoned while awaiting trial was Duane R. Clarridge, the former head of the C.I.A.'s European division, who was to be tried on charges that he misled Congressional investigators about a missile shipment to Iran in 1985.

¹²² "Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians," at 462-3.

¹²³ Obituary, The Philadelphia Tribune, November 28, 2004.

¹²⁴ Roger Daniels, "Asian America," (University of Washington Press 1990) at 336.

¹²⁵ See biographical information at:

<http://millercenter.org/academic/americanpresident/eisenhower/essays/cabinet/592>.

“The Commission on Wartime Relocation and Internment of Civilians (CWRIC) was set up to review the facts and circumstances surrounding the forced relocation and internment and the impact it had on American citizens and permanent resident aliens.”¹²⁶ Its mandate included three specific charges: 1) to “Review the facts and circumstances surrounding Executive Order Numbered 9066 ... and the impact of such Executive Order on American citizens and permanent resident aliens;” 2) to “Review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands;” and 3) to “Recommend appropriate remedies.”¹²⁷

Its work consisted of factual review, interviews with experts and victims, and the formulation of recommendations for redress. The commission held 20 days of public hearings around the country in 1982, listening to more than 750 witnesses, including survivors of WWII, government officials, public figures, people who had been interned, advocacy organizations, historians and others who had studied the subjects of the inquiry.

In 1983, the CWRIC issued its findings in “Personal Justice Denied,”¹²⁸ concluding that the incarceration of Japanese Americans had not been justified by military necessity and was instead the result of “race prejudice, war hysteria, and a failure of political leadership.” The Commission recommended legislative remedies consisting of an official Government apology, redress payments of \$20,000 to each of the survivors, and a public education fund to prevent similar future injustices.¹²⁹ Congress later adopted, and the President signed into law, Public Law 100-383 (The Civil Liberties Act of 1988), which created The Civil Liberties Public Education Fund (CLPEF).¹³⁰

3.2. National Commission on Terrorist Attacks Upon the United States (9/11 Commission)

Created By: Congressional legislation (Public Law 107-306) signed into law by President George W. Bush on November 27, 2002

Mandate: “To prepare a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, including preparedness for and the immediate response to the attacks. The Commission [was] also mandated to provide recommendations designed to guard against future attacks.”¹³¹

Dates of operation: November 27, 2002 - August 24, 2004.

¹²⁶ “Japanese Americans During WWII: Relocation and Internment,” The National Archives, *available at* <http://www.archives.gov/research/japanese-americans/hearings.html>.

¹²⁷ “Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians,” p XVII.

¹²⁸ <http://www.archives.gov/research/japanese-americans/justice-denied/summary.pdf> accessed November 4, 2008.

¹²⁹ “Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians,” at 462-3.

¹³⁰ *Id* at X.

¹³¹ “National Commission on Terrorist Attacks Upon the United States,” *available at* <http://www.9-11commission.gov/s> accessed November 4, 2008.

Composition: Congress and the President appointed 10 commission members to the commission, which was chaired by Thomas Keane and was assisted by three primary staff members. The committee was divided evenly in terms of political identity, with five Democrats and five Republicans chosen to create the image of a bi-partisan commission.¹³²

Product/Results: On July 22, 2004 the Commission released its public report.

Specifically, the law directed the Commission to investigate “‘facts and circumstances relating to the terrorist attacks of September 11, 2001,’ including those relating to intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, commercial aviation, the role of congressional oversight and resource allocation, and other areas determined relevant by the Commission.”¹³³ The commission compiled its report based on extensive interviews and testimony, in the end totaling 2.5 million pages of documents and interviewing more than 1,200 individuals in ten countries, including “‘nearly every senior official from the current and previous administrations who had responsibility for topics covered in our mandate.’”¹³⁴ President George W. Bush, Vice President Dick Cheney, former President Bill Clinton, former Vice President Al Gore and then National Security Advisor Condoleezza Rice all gave private testimony without oaths. President Bush and Vice President Cheney insisted on testifying together, while Clinton and Gore met with the panel separately.

Despite the broad nature of the investigation, the Commission’s mission was limited in that it explicitly sought to “‘not ... assign individual blame.’”¹³⁵ Rather the Commission’s aim was “‘to provide the fullest possible account of the events surrounding 9/11 and to identify lessons learned.’”¹³⁶ The 9/11 Commission has also been criticized thoroughly by many different actors, including victims’ families, investigative journalists, and those inside the Commission itself. It was suggested that the Commission was set up for partisan purposes¹³⁷ and that the Commission ignored or censored key evidence for political purposes.¹³⁸ Thomas Kean and Lee Hamilton, the co-chairs of the National Commission on Terrorist Attacks Upon the United States, better known as the “9/11 Commission,” wrote a book on their experience entitled “Without Precedent: The Inside Story of the 9/11 Commission.” In its first chapter, they listed the faults of the Commission, ultimately determining that it was “‘set up to fail.’”

¹³² Kenneth Kitts, “Presidential Commissions and National Security,” (Lynne Rienner Publishes 2006) at 140.

¹³³ “9/11 Commission Report,” at XV, available at <http://govinfo.library.unt.edu/911/report/index.htm> accessed November 4, 2008.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id.

¹³⁷ “Administration Drags Feet Cooperating With 9/11 Probes: Investigation Into Intelligence Agencies Suffers From Stonewalling,” KRCA.com, November 10, 2003, available at <http://www.krcra.com/helenthomas/2626584/detail.html> accessed November 4, 2008.

¹³⁸ Edmonds, Sibel and Weaver, Bill, “The 9/11 Commission: A Play on Nothing in Three Acts”, National Security Whistleblowers Coalition, September 5, 2006, available at <http://www.nswbc.org/Press%20Releases/NSWBC-911Comm.htm> accessed November 4, 2008.

A number of institutional and political factors contributed to this disappointment. Several figures involved in the 9/11 Commission were suspected of having conflicts of interest that impeded their independent judgment. Philip Zelikow, the Commission's Executive Director, had been an advisor to George W. Bush's transition team on National Security issues and was accused of trying to influence the Commission's report to diminish the administration's role and bolster its case for the Iraq invasion.¹³⁹ Phone records indicated that he made and received frequent calls with the White House during the Commission's investigation.¹⁴⁰ Jamie Gorelick, one of the Commissioners, had written a memo during her stint as a Deputy Attorney General in the Clinton administration advocating for restricting of communication between law enforcement and intelligence agencies.¹⁴¹ Also, she was, and remains, a Director of the military contractor United Technologies.¹⁴²

Throughout the investigation, the Bush administration took several actions that were seen as resistant to the Commission's work. President Bush initially opposed the idea of an independent commission altogether, favoring a Congressional investigation as a means of protecting the confidentiality of national intelligence and its sources.¹⁴³ He eventually acceded, under pressure from Congress and 9/11 families' advocacy groups.¹⁴⁴ Once the investigation was under way, various executive departments were often reluctant to release information to the Commission, forcing it to threaten the use of its subpoena power.¹⁴⁵ Also, the administration initially appropriated only \$3 million for the Commission to complete its work under a stringent deadline, granting it additional funds only after originally denying them.¹⁴⁶ In comparison, the commission investigating the space shuttle *Challenger* explosion was given \$50 million.¹⁴⁷

Some intelligence and military agencies not only hesitated in working with the commission, but actively deceived it. The C.I.A. claimed to have made complete disclosure of documents and information, although many pertinent records were in fact withheld, including videotapes of interrogation of al-Qaeda operatives.¹⁴⁸ Officials from North American Aerospace Defense Command (NORAD) and the Federal Aviation Administration (FAA) stated that air defenses reacted quickly to the hijackings, and that fighter jets were in position to shoot down United Flight 93. Later, Commissioners reported that audiotapes and other evidence contradicted this, indicating that the hijacked

¹³⁹ "Ex-9/11 Panel Chief Denies Secret White House Ties", *ABC News*, January 30, 2008.

¹⁴⁰ *Id.*

¹⁴¹ Sheryl Gay Stolberg, "Threats and Responses: Reporter's Notebook; Clandestine, or at Least He Was Until Yesterday," *The New York Times*, April 15, 2004.

¹⁴² <http://investors.utc.com/bios-detail.cfm?ID=2191>

¹⁴³ "Bush Opposes 9/11 Query Panel," *CBS News*, May 23, 2002.

¹⁴⁴ "9-11 Relatives Grill Bush Administration," *CBS News*, September 19, 2002; "Bush Backs Independent 9-11 Probe," *CBS News*, September 20, 2002.

¹⁴⁵ "Bush: Documents Sought by 9/11 Commission 'Very Sensitive,'" *CNN*, October 28, 2003.

¹⁴⁶ Timothy Burger, "9-11 Commission Funding Woes," *Time*, March 26 2003.

¹⁴⁷ *Id.*

¹⁴⁸ Mark Mazzetti, "9/11 Panel Study Finds that C.I.A. Withheld Tapes," *The New York Times*, December 22, 2007.

airliners were never successfully located and targeted. The Commission was forced to use its subpoena power to obtain further evidence.¹⁴⁹

IV. Department of Defense Inquiries

4.1. The Peers Commission

Created By: General Westmoreland, Chief of Staff of the Army, and Stanley R. Resor, Secretary of the Army ordered the investigation on November 26, 1969

Mandate: To look into the “nature and the scope” of the original Army investigations of the My Lai massacre, though given the incomplete nature of the previous investigations, Peers’ investigation began investigating the massacre itself.¹⁵⁰

Dates of operation: November 26, 1969 to March 14, 1970

Composition: Headed by Lieutenant General William R. Peers and the designated deputy was Bland West, Army Assistant General Counsel.

Product/Results: The Peers Report was delivered to Westmoreland on March 14, 1970, but was kept secret until November 1974, when the Secretary of the Army authorized publication of Volumes I and III.¹⁵¹ Several men were charged in connection with the massacre, but only one court-martial conviction resulted. Lieutenant William Calley was convicted of the premeditated murder of at least 22 civilians.¹⁵²

On March 16, 1968, U.S. Army forces massacred 347 to 504 unarmed citizens of the Republic of Vietnam (South Vietnam), almost entirely civilians and some of them, women and children. Journalists had begun to investigate the atrocities, and on November 12, 1969, Seymour Hersh broke the My Lai story.¹⁵³ On November 20, *Time*, *Life* and *Newsweek* magazines also reported the story, and CBS televised an interview with Paul Meadlo, a soldier who was involved in the atrocity. Explicit photographs of dead villagers killed at My Lai also became publicly available.

Fourteen days after journalist Seymour Hersh’s exposure of the atrocities committed by U.S. troops in the hamlet of My Lai, the Army launched the Peers Commission. The Chief of Staff and Secretary of the Army initially ordered Lieutenant Peers to investigate the adequacy of previous reports of the atrocity,¹⁵⁴ but the inquiry soon expanded to the facts of the My Lai massacre when the inadequacy of the previous

¹⁴⁹ Dan Eggen, “9/11 Panel Suspected Deception by Pentagon,” *The Washington Post*, August 2, 2006,

¹⁵⁰ Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 29-30.

¹⁵¹ Joseph Goldstein, Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 2.

¹⁵² “My Lai Massacre 20 Years Ago Shocked A Nation” *Associated Press*, 12 March, 1988.

¹⁵³ Seymour Hersh, “Cover-up: [the Army’s secret investigation of the massacre at My Lai,” New York, Random House [1972]

¹⁵⁴ Memorandum for Lieutenant General W. C. William R. Peers from General Westmoreland, available at <http://www.law.umkc.edu/faculty/projects/ftrials/mylai/directive.html>, accessed November 4, 2008 (The Memorandum is also printed in Joseph Goldstein, Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 33.)

reports became apparent.¹⁵⁵ Peers was given authority “to select and use on a full-time basis officer and civilian members of the Army whom you deem necessary for the conduct of the investigation.”¹⁵⁶ His orders specifically dictated that, “The scope of your investigation does not include, nor will it interfere with, ongoing criminal investigations in progress.”¹⁵⁷ As a result, “no direct effort was made to establish the criminal liability of particular individuals for possible violations of criminal statutes or the law of war.”¹⁵⁸

“General Peers informed the Chief of Staff and Secretary of the Army on 30 November 1969 that he intended to proceed by: 1. Reviewing the facts then available for background information; 2. Collecting pertinent official records of units in Vietnam; 3. Locating and interrogating all witnesses known or determined to have information bearing on the incident; and 4. Preparing a report on the results of the investigation, including appropriate finding and recommendations.”¹⁵⁹ The Peers report was delivered to General Westmoreland on March 14, 1970, but was kept secret until November 1974, when the Secretary of the Army authorized publication only of Volumes I and III.¹⁶⁰ However, journalism coverage of the massacre was extensive before the public release of the report and prompted public outcry and the strengthening of the anti-war movement. In March 1970, the United States Army charged 14 officers with suppressing information related to the incident.

The report was generally well received, with some calling it “a powerful vindication for the laws of war,”¹⁶¹ and a “...damning indictment of those who participated in My Lai and in the cover-up.”¹⁶² It was criticized by some for its lack of strong punitive suggestions¹⁶³ for those responsible and for not making any “direct effort [...] to establish the criminal liability of particular individuals for possible violations of criminal statutes or the law of war.”¹⁶⁴

Lieutenant William Calley was convicted of premeditated murder and sentenced to life in prison for the atrocities he committed in My Lai, though his sentence was later

¹⁵⁵ Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 29-30.

¹⁵⁶ Memorandum for Lieutenant General W. C. William R. Peers from General Westmoreland, available at <http://www.law.umkc.edu/faculty/projects/ftrials/mylai/directive.html>. accessed November 4, 2008 (The Memorandum is also printed in Joseph Goldstein, Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?*, (The Free Press, London 1976) at 33.)

¹⁵⁷ Id.

¹⁵⁸ Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 30.

¹⁵⁹ Joseph Goldstein, Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 30.

¹⁶⁰ Id at 2.

¹⁶¹ Id..

¹⁶² Henry W Van Deventer, *The American Journal of International Law*, Vol. 70, No. 4 (Oct., 1976), pp. 865-866

¹⁶³ Joseph Goldstein, Burke Marshall and Jack Schwartz etc. “The My Lai Massacre and its Cover-up: Beyond the Reach of Law? The Peers Commission Report with a Supplement and Introductory Essay on the Limits of Law” New York. The Free Press 1976.

¹⁶⁴ Burke Marshall & Jack Schwartz, *The My Lai Massacre and Its Cover-Up: Beyond the Reach of Law?* (The Free Press, London 1976) at 30.

reduced and he served only slightly more than four years in military jail. Calley's commanding officer, Captain Ernest Medina, who Calley said had ordered the killings, denied any such responsibility and was acquitted of all charges. Of the 30 men mentioned in Peers' report, Calley's was the lone conviction.