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Stephen Pierce

La Salle University, pierces5@student.lasalle.edu

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How The Vietnam War Rolled Back American Civil Liberties

By Stephen Pierce

In post 9/11 America a major policy focus that the citizens, as well as politicians, have set their eyes on is illegal surveillance or government overreach. This is a reaction to the passing of the highly controversial Patriot Act in 2001 which gave President George W. Bush the authority to confiscate the property of any foreign person who is believed to have aided in a war or attack on the United States. Expansion of the government's ability to conduct wiretaps, and perform searches without notification. Many Americans saw this as erosions of the Fourth, Fifth and Sixth Amendments. The act also expanded the roles of the intelligence agencies such as the NSA, CIA, and FBI. Civil libertarians say that post 9/11 has seen the most crushing time for American civil liberties in American history. But after looking over America during the Vietnam era, it seems clear that overreach was at its highest during this period. In the book, *Security V. Liberties* author Daniel Farber says that the aftermath of the Vietnam Era, "seems to have permanently changed the degree of deference that courts, the press and the public are willing to give unilateral presidential action." (pg. 21)

The restriction of Civil liberties starts in the 1950's with the Second Red Scare and the rise of Joseph McCarthy. The House of Un-American Activities Committee created the McCarren Internal Security Act, Communist Control Act of 1954, The Smith Act, or the McCarren-Walter Act. All of these acts made it easier for the J. Edgar Hoover to get away with

illegal actions against left leaning organizations. Out of this came COINTELPRO in the 50's. This was a span of different covert operations were conducted by the FBI who spied on New Left that was in operation in four administrations from 1956 to 1971. COINTELLPRO stood for (COunter INTElligence PROgram). These illegal operations were being exposed at the same time as the Watergate Scandal and the Pentagon Papers but got no news recognition and had way more problems. The exposers of the COINTELLPRO program started with Haverford College physics professor William C. Davidson who was a part of the Committee for Non-Violent Action, The Harrisburg Seven and was a board member of the Philadelphia ACLU chapter. Davidson and eight other anti-war protestors decided to break into an FBI office in Media, PA to expose the FBI's unconstitutional actions. These peaceful demonstrators were parts of draft board flyer destruction and were influenced by the Catonsville Nine. On March 8th, 1971 this anti-war group that called themselves The Citizens' Commission to Investigate the FBI were successful at destroying draft board flies in Philadelphia. The night they broke in there was only two on duty guards at the FBI office. They picked March 8th, 1971 because that was the night that Muhammed Ali was fighting Joe Frazier in the "Fight of the Century" so the burglars knew that was their chance. They broke in quickly and got thousands of FBI documents. They were never caught, and some of them even participated in the Camden 28. After the burglary around 150, FBI agents raided the Powelton Village area trying to find the culprits of the break in. J. Edgar Hoover was furious about the break in. The documents were leaked to Washington Post Journalist Betty Medsger, who then gave the information to Carl Stern of NBC. Stern filed the documents under the Freedom of Information Act. The FBI said that such disclosure would be harmful to the bureau's operations and national security. Stern sued, and the judge found ruled in

favor of Stern, and the FBI gave them four documents that led to references to other documents that indicated that there was not just one COINTELPRO operation but 7. They released 50,000 documents later on. Ex-Attorney General Ramsey Clark called the program “deportable” those who took part in it should have been indicted. This would lead to the Church Committee; the Church Committee led to the first ever set of guidelines limiting the FBI’s powers. In the committee, they found evidence that the FBI did illegal surveillance on Martin Luther King Jr. Telling kill to himself 34 days before he would be awarded the noble peace prize. They also found evidence that the FBI was working with the Chicago police department to assassinate Fred Hampton leader of the Rainbow Coalition. Agents sent letters to college professors who did not have a firm position against the New Left anonymously, threatening them. The entire report stated that the FBI were doing nothing with crime but everything to do with creating political fear. There was another example of a married couple in an anti-war group on a college campus; an FBI agent started a rumor that the wife was sleeping with another man and they divorced, and the agent was proud of it. The FBI paid off a telephone operator at Swarthmore College to keep tabs on who were progressive teachers and radical groups and students. All of this evidence showed that the FBI were breaking the first and four amendments.

One of the most famous restrictions of civil liberties during the Vietnam Era was of Bobby Seale who was a Black Panther Party co-founder. He was a part of a group called the Chicago Eight; these were individuals accused of inciting riots during the Democratic National Convention of 1968. When the "Chicago 8" trial began, Bobby Seale claimed he had no lawyer to defend him since his usual lawyer Charles Garry was recovering from surgery. Seale

demanded to defend himself until Garry was at the trial and rejected William Kunstler, the appointed lawyer. Judge Julius Hoffman ignored this request and refused to allow Seale to make an opening statement, cross-examine witnesses, or speak to the jury in any way. Since the judge had denied Seale, the right to counsel, Seale begins to interrupt the proceedings. When he attempted to speak and to question witnesses, Judge Hoffman ordered him to remain quiet. Seale starts having a verbal confrontation with the Judge. On one occasion Seale called Judge Hoffman, "a bigot, a racist, and a fascist." Judge Hoffman ordered Bobby Seale chained to a chair with a gag in his mouth. His jaw was tied shut by a strip of cloth wrapped from the bottom of his chin to the top of his head. Defense attorney Kunstler declared, "This is no longer a court of order, Your Honor, this is a medieval torture chamber." Later on, the judge allowed Bobby Seale into court without his chains saying he will put them back on if he keeps interrupting. Seale continued to disrupt the case. Judge Hoffman then declared a mistrial in Bobby Seale's case. Judge Hoffman then found the Black Panther leader guilty of 16 acts of contempt of court sentencing him to four years in prison. The case did not end there. On May 11, 1972, the Court of Appeals sent the contempt convictions to a new judge for a trial. The appeals court also ruled that Judge Hoffman abused his power by rejecting Bobby Seale's claim that he lacked legal representation. Six months later, the same appeals court reversed the convictions of most of the accused. In Seale's case, the government dropped both the inciting to riot charges because he was denied his fifth and sixth amendment privileges. Finally, in 1973 Seale's appointed defense attorney William Kunstler were found guilty of contempt. But the judge decided that prison sentences were unnecessary.

Another example of Civil Liberties being trampled upon during the war was Daniel Ellsberg and the Pentagon Papers. Daniel Ellsberg worked for the RAND Corporation as a strategic analyst primarily focusing on nuclear strategy in 1959. As the war was starting up he was hired by the Pentagon in August of 1964 working under Secretary of State Robert McNamara he then went to South Vietnam for two years, working for the State Department under General Edward Lansdale. Ellsberg was ordered by McNamara to find atrocities made by Viet Cong, graphic details to persuade LBJ to do a systematic bombing campaign in Vietnam. He felt horrible about this because it started one of the heaviest bombing campaigns in human history. Daniel Ellsberg was one of the main contributors to changing McNamara's opinion about the bombing campaign. On his return from South Vietnam, Ellsberg resumed working at RAND. In 1967, he was a part of a top-secret study of classified documents on the conduct of the Vietnam War that had been commissioned by Defense Secretary McNamara. These documents, completed in 1968, later became known collectively as the Pentagon Papers. He would marry his second wife Patricia Marx Ellsberg in 1970 who was a nationally syndicated reporter for public radio. She started to bring Daniel Ellsberg to anti-war rallies. Ellsberg said his life changed forever when he saw an activist named Randy Kehler refused to be a part of the draft in August of 1969 at the meeting of the War Resisters International, held at Haverford College. Kehler believed that conscientious objectors were just helping the U.S government, so he went to prison. Ellsberg and his RAND co-worker Anthony Russo photocopied the Pentagon Papers to the *New York Times*. Federal Courts placed an injunction against the times; this hadn't happened to a media company in the United States since the Civil War. At the same time, Ellsberg was trying to get Senators William Fulbright and George McGovern who were staunch opponents of the

war to release these papers on the Senate floor, senators could not be prosecuted for anything he said on the record before the Senate. They never did anything, Republican Representative Pete McCloskey who ran against Richard Nixon in 1972 because he opposed the Vietnam War wanted to speak out about the importance of the papers but didn't know how to. As the Supreme Court was looking over the *New York Times* injunction case, Ellsberg leaked the rest of the papers the *Washington Post* and 17 other newspapers before the F.B.I could catch him. Ellsberg would publish 47 volumes which were 7000 pages of the Pentagon Papers to the media. Alaskan Junior Senator Mike Gravel got the Pentagon Papers from *Washington Post* editor Ben Bagdikian to be used in a filibuster against the Vietnam War; Gravel had to stop at the end from crying getting emotional from the information in the Pentagon Papers. The day after the filibuster the Supreme Court ruled that the *New York Times* had the first amendment right to publish the Pentagon papers. Justice Hugo Black stated that "the press must be left free to publish whatever the source without censorship, injunction or prior restraint. The press was meant to serve the governed, not the governors." Justice Thurgood Marshall stated that that the term "national security" was too broad to legitimize prior restraint. Making this a landmark supreme court case for the first amendment. Afterward, Ellsberg turned himself into authorities, both he and Anthony Russo were charged under the Espionage Act of 1917, but the case was dismissed after evidence of illegal wiretapping and evidence gathering by the F.B.I. To prevent future leaks Nixon aids Egil Krogh, and David Young created the "White House Plumbers" to try to smear Ellsberg in the public eye by getting his mental health records. The plumbers would be known to be headed by G. Gordon Liddy and E. Howard Hunt during the Watergate breakings. So many people give Ellsberg credit in taking down Richard Nixon because he made

his administration create the Plumbers, hence is why Henry Kissinger called Ellsberg “the most dangerous man in America.”

Even before the Pentagon Papers were released, the Nixon administration was doing illegal wiretaps on certain private individuals. Like in 1969 after the New York Times exposed the secret bombings of Cambodia, White House aide Jack Caulfield arranges for a wiretap on a private citizen, syndicated columnist Joseph Kraft. He also gets the FBI to wiretap some of his National Security advisors in early 1970. Nixon aide Tom Charles Huston comes up with the “Hudson Plan”, giving the CIA, FBI, NSA, and military intelligence agencies to escalate their electronic surveillance against “domestic security threats”. Giving the agencies the power to read of private mail, lift restrictions against surreptitious entries or break-ins to gather information, plant informants on college campuses. Nixon approves the plan, but rejects one element that he personally authorizes any break-ins. CREEP (The committee to re-elect the President) is established in 1971. The Plumbers start to bug Democrats and in 1972 E. Howard Hunt and Virgilio Gonzales attempt to break into the Democratic headquarters but are unsuccessful. This leads to the entire Watergate scandal, Nixon’s resignation, The Watergate committee, and new anti-corruptions bills most notably the creation of the FEC in 1974 overseeing campaign finance.

Some other examples of Civil liberties being trampled on during the Vietnam Era included Operation CHAOS that took place from 1967-1974. This operation was conducted by the CIA within the United States which is illegal to start with because the CIA is not a law enforcement agency. It has no authority to arrest anyone or to enforce any laws, just gather information. It is also illegal for the CIA to investigate any US citizen or company inside the US,

unless an investigation is part of a foreign intelligence. Like a U.S citizen planning an attack in a foreign country. CHAOS was meant to find foreign influence in the protest movements. This was the CIA's COINTELPRO and was disbanded after two former CIA agents were caught in the Watergate break-ins. Project MK Ultra was also planned experiments the CIA conducted on humans that the Supreme Court ruled were cruel and unusual against the eighth amendment.

During the Vietnam War, we see different examples on how presidents, intelligence agencies, and courts tried to undermine the Bill of Rights in order to keep dissent down during the Vietnam War. After a bunch of Supreme Court decisions, committee reports, and public outcry I think that the Vietnam Era actually strengthened American democracy along with its institutions. In the 21st century in the post 9/11 Era we see a lot of parallels like Edward Snowden to Daniel Ellsberg and the anti-war movement, but in my opinion, it seems that the Vietnam Era was more successful in fighting bringing back civil liberties because there was less corruption when it came to money interests in our government. We also have the internet which is a hub for potential terrorists, so it is hard to figure out how we can protect the civil liberties as well as getting intelligence to hunt down people who will do us harm.

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