

Taking Liberties program transcript

Larry Pratt: The history of our country, just of the last century, is a history of the erosion of liberty that was greatly accelerated every time we were at war.

Narrator: You are listening to *Taking Liberties*, a documentary series examining national security policy and its impact on constitutional rights.

Background: *The sound of a jet engine.*

Narrator: In the years following the 9/11 terror attacks, the federal government enacted a number of sweeping counterterrorism policies ranging from increased airport security to new laws governing search and seizure powers.

Background – President Bush:
“We’re in for a long struggle.”

Narrator: Since 9/11 there has been an extensive national discussion about laws like the USA Patriot Act, and presidential actions such as the indefinite detention of citizens designated as ‘enemy combatants’.

Background - Unidentified Speaker:
“...work in close coordination with...”

Narrator: Debates over the government’s emergency powers are not new. They have occurred at several points in our nation’s history, often during times of crisis; and with increasing frequency as our national security apparatus has grown.

Andregg: There's always been some tension between liberty and security - ever since the idea of freedom as a human political good came about.

Narrator: Michael Andregg teaches at the University of St. Thomas.

Andregg: In America it's more intense during periods of war.

Background - 1940’s Newsreel Announcer:
“Evacuation. More than a hundred thousand men women and children, all of Japanese ancestry, are moved from their homes in...”

Andregg: In World War II, we all know that we interned hundreds of thousands of Japanese-Americans because people were afraid that they might serve as agents of Japan during World War II. My mother even, in her little town of Elko, Nevada, knew a Japanese-American family and they were taken to a concentration camp and all of their property was divided by the town elders. We look back on periods like that with some embarrassment

Taking Liberties program transcript

because of the excesses.

Background - 1940's Newsreel Announcer:

"...the relocation centers are supervised by the..."

Erlinder: The inclination for all governments to attempt to centralize power, to use extraordinary measures during times of threat that's occurred in our history.

Narrator: Peter Erlinder is a former President of the National Lawyers Guild.

Erlinder: Abraham Lincoln suspended the writ of habeas corpus during the Civil War. There were Congresspeople also during that time who were arrested and imprisoned for speaking out against the war policy.

Narrator: Political association and free speech have been at the center of many of the tensions between emergency security policies and civil liberties, from the Civil War up to the present day.

Background - Unidentified Archival Recording:

"The Communist apparatus activated its trained agitators..."

Narrator: Modern debate over political surveillance in America can be traced back to the Cold War, when the FBI operated a far-reaching surveillance program known as COINTELPRO. Jim Redden is the author of *Snitch Culture*, and has written extensively on the topic of government surveillance.

Redden: The program that people have read about or heard about is known as COINTELPRO, or Counterintelligence Programs, was really not a single program, but a series of initiatives targeted at specific groups. One of the early targets was the Communist Party USA, where the FBI and local law enforcement infiltrated the Communist Party and spied upon its members. But also there were - especially as the civil rights movement and the anti-war protests really picked up steam - then they began specific initiatives to go into those organizations as well. Into the civil rights movement, into the anti-war movement, into the student Free Speech Movement and things like that. And so by the late 60's, early 70's, there were maybe five or six of these programs going on.

Bosque-Pérez: The second target of COINTELPRO was the Puerto Rican independence movement. That was in August 1960 that the FBI decided to expand COINTELPRO to Puerto Rican organizations.

Taking Liberties program transcript

Narrator: Ramón Bosque-Pérez of Hunter College has accumulated and studied thousands of COINTELPRO files related to the Puerto Rican independence movement.

Bosque-Pérez: It was certainly far beyond law enforcement. It was the practice of - clearly the practice of the political police. What is amazing is that 94 – 95% of all of the documentation belongs to legal organizations working in the open, engaging in legal political activities.

Narrator: According to Bosque and others who have studied COINTELPRO, the FBI was engaged not only in surveillance, but also in proactive attempts to disrupt the activities of political groups.

Bosque-Pérez: One thing that distinguishes COINTELPRO operations from other types of activities conducted by the FBI is that this is what is called ‘aggressive intelligence’. It wasn’t only surveillance. It wasn’t only putting together reports on organizations, investigating individuals. It went beyond that, far beyond that. It was aggressive intelligence in the sense that it tried to disrupt the activities of the organizations.

Narrator: Jim Redden.

Redden: It's bad enough that the government will spy on people because of their political beliefs or their ideology, but to a certain extent if the government is merely building a file on someone - it's almost like, get in line. You have files built on you from the day you were - the moment you were born. All the way through your public education, all your encounters with the health system, they're all building files on you. What I think really characterized the COINTELPRO programs, and what had people really upset, is that the government was not merely collecting information, but was actually initiating actions against these activists. Or in the much more serious realm, sending in those operatives known as agent provocateurs to try and stir up trouble within an organization to get people to break the law, so that they could then be arrested and put in jail and the entire organization discredited.

Background - News Announcer from the 1960's:

“Civil rights leader Martin Luther King leads the procession....”

Narrator: COINTELPRO targeted U.S. civil rights organizations including Martin Luther King’s Southern Christian Leadership Conference and the Student Nonviolent Coordinating Committee, or ‘SNCC’ [pronounced ‘snik’]. Larry Gossett is a King County councilmember who worked with SNCC and other groups in the late 1960’s.

Taking Liberties program transcript

Gossett: And they used tactics like wiretapping, following people, but actually sending people into the organizations to be spies, to be provocateurs, to cause problems, and to report the intelligence. They would even write letters and say that two members were messing with the same girl to try to get them fighting amongst each other, particularly the leadership. The other thing that gave me suspicion that the police were trying to disrupt our movement was that we had new people coming in that nobody knew. And all of a sudden they would come to these meetings and act like they were blacker than everybody else. “Yeah, what we should do is tear down, burn the mother down.” And trying to get people involved in criminal activity where they could be led into a setup. So they did a lot of other things besides wiretap. They actually tried to disrupt and destroy these organizations, and in some cases they were successful.

Background: *Crowd noise.*

Narrator: As COINTELPRO expanded it also began to target the anti-Vietnam War movement in conjunction with local and state police agencies. Dennis Stovall was involved in antiwar organizing in Portland, Oregon during the 1960’s.

Stovall: I was walking to a rally up a street in downtown Portland with my younger brother, Eric. We were walking behind a man who was in his fifties, dressed in a suit with an earphone. So we assume we were walking behind some fed on his way to the event. He can’t see us because his back is to us. We’re chatting. Suddenly he stops in front of us and as we get within fifteen feet or so he turns around and he says, “Hi Dennis. Hi Eric,” which meant that there had to be some spotters on top of a rooftop nearby who had identified us. So they knew who we were. And that same weekend, my younger brother, the same brother who lived just outside of town and was active in his union as well as active in antiwar politics, had his house completely ransacked by the sheriffs. They busted in in the middle of the night, threw him and his girlfriend against the wall nude; trashed the house; stole his guns, which were all legal guns. We grew up in the country. We grew up with guns. They were there for hunting and other things. Never returned them. Left the house completely a mess and hauled him off. And of course we bailed him out and there were no charges filed finally. I do know a number of people who I was active with, who have remained paranoid all of their lives as a result of that surveillance. It gets people afraid. It makes them wary of friendships. It makes them suspect other people. You always wonder who in the room is the one who is doing the reporting – the watching, the telling.

Narrator: The COINTELPRO program remained secret until 1971, when unknown individuals broke into an FBI field office in Media, Pennsylvania and stole a number of COINTELPRO files. These files were then sent

Taking Liberties program transcript

anonymously to journalists at major newspapers, and Congress held hearings soon after.

Background – Congressional Hearings:

“...or whether they were legal and constitutional...”

Narrator: Nancy Chang is an attorney with the Center for Constitutional Rights.

Chang: In 1976 Senator Frank Church opened an investigation into COINTELPRO. And his discoveries, which fill several volumes, are quite alarming. And it resulted in a number of changes, including for the first time, guidelines under which FBI agents were required to operate in conducting domestic surveillance.

Background - Congressional Hearings:

“I do not believe that any president has the authority to order...”

Narrator: The Pike and Church Committees not only revealed illegal actions on the part of the FBI, they also uncovered illegal CIA operations and domestic spying conducted by the Defense Department. After the committee hearings a number of reforms were put into place, including the Freedom of Information Act and guidelines which prohibited FBI agents from surveilling individuals engaging in legal First Amendment activity.

Background: *Applause as a brass band plays “Hail to the Chief”*

Narrator: Political surveillance programs ebbed in the years following the Pike and Church revelations, but were reinvigorated after the election of Ronald Reagan.

Background - Reagan at his Inauguration:

“...to serve protect and defend...”

Narrator: Beginning in the 1980’s, the Reagan Administration involved itself in several proxy wars in Central America and supplied military aid to several regional governments, including the military government of El Salvador.

Background: *Band plays, applause swells then fades.*

Narrator: U.S. support for El Salvador became a highly controversial issue after Salvadoran security forces killed four North American nuns in December of 1980. Opposition to Salvadoran aid grew quickly among a broad number of political and church organizations. John Roberts is a former director of the Massachusetts ACLU and was active in Central American issues during the 1980’s.

Taking Liberties program transcript

Roberts: There was enormous interest and concern about that. And even in the Boston area here, in Cambridge, the Old Cambridge Baptist Church - you know, there were five or six organizations working on Central American issues.

Narrator: Ross Gelbspan is a former editor of the *Boston Globe*.

Gelbspan: The first of the groups was called the Committee in Solidarity with the People of El Salvador, CISPES. At the same time that these groups, both church people and political people, were mobilizing around this issue – the Reagan Administration saw Central America as the real battleground between communism and democracy. Bill Casey, who was head of Ronald Reagan's transition team and then became head of the CIA, really felt that this was where the battle was going on. And so you had this tremendous clash of world views between people who were sympathetic to the people who were being brutalized – as opposed to the Administration, who really saw this as drawing the line in the sand between communism and democracy. And I think that sort of sets the stage for two world views that informed the way this whole thing played out.

Narrator: By the early 1980's, the FBI began an investigation of CISPES, to determine whether it was operating as an agent of a foreign power in violation of the Foreign Agents Registration Act, or FARA. Ross Gelbspan.

Gelbspan: The conditions for a FARA violation are that if any group in the United States is being directed or doing the bidding of a foreign power, and in particular a hostile foreign power, it has to register with the State Department as an agent of a foreign government. And the Central America groups never registered as such agents and therefore, the FBI launched an early investigation based on whether there were these violations of this Foreign Agents Registration Act. That was a pretty limited investigation and that basically only involved twelve FBI field offices. It lasted for about a year. At the end of that time, somebody in the Department of Justice said, "Look, you haven't found any violations of this act." So that investigation was terminated.

Narrator: After the termination of the FARA investigation, elements within the FBI began a more covert, unofficial investigation of CISPES, reminiscent of COINTELPRO. Ross Gelbspan.

Gelbspan: I was a journalist. I was a reporter at the *Boston Globe* at that time. And on one particularly slow news day, there happened to have been a call from a church in Cambridge, Massachusetts. The old Cambridge Baptist Church said they had a break-in and they didn't know why. So I went over there and it turns out that all that was stolen was some files. This church

was harboring one labor organizer from El Salvador in sanctuary, a woman named Estella. And that's what the congregation was doing. The church basement also was renting office space to four or five groups who were active in the Central America work opposing the Reagan Administration. But again – then this break-in – some files were stolen, nothing of value. It was worth about two or three paragraphs in the newspaper. No big deal. And then there began coming in to me – reports of break-ins like this all over the country. In fact, this Old Cambridge Baptist Church suffered about 10 such break-ins. But in short order, I had about 50 such break-ins going on all over the country.

Narrator: Like COINTELPRO, the CISPES operation also involved the use of covert, proactive tactics. Ross Gelbspan.

Gelbspan: There was a woman named Sara Murray in Michigan. She was – headed up some Inter-faith Committee on Central America. Sara Murray had a succession of things happen to her. She mailed out a whole batch of newsletters, and then, several months later she got all of these newsletters returned to her in one box with no return address. She subsequently went to Chicago for a visit to the American Friends Service Committee, which is the Quakers' organization. And when she came out, a cab cut in front of another cab to take her to where she was going. She realized she had left something upstairs in the building. She told the cab to go on. She went up and got what she'd lost. She came back down. That same cab driver was still there. And as he was driving her to her destination he said, "You have to be really careful about doing this Central America work. If not, you can be kidnapped, or you can be killed, and your apartment burned so it will look like an accident. So you really better stop doing this work that you're doing."

Probably the scariest of all these individual episodes involved a woman named Yanira Corea. Yanira Corea worked for the CISPES office in Los Angeles. A couple of days later, she came out of her office in CISPES, and she was abducted by two men, put in a van, driven around for about 12 hours. She was raped with a stick. They cut death squad initials into her hands. They burned her with cigarettes and then they sort of left her 12 hours later. I confirmed all this with the doctor at the hospital who treated her. I confirmed all of these reports with the local police or the attending physicians.

Narrator: Gelbspan's reporting revealed that the majority of these actions were not by FBI personnel, but by Salvadoran agents, including a man named Frank Varelli.

Gelbspan: The FBI didn't do more than one or two or maybe three of these break-ins. They were all done by contracting agents. And this is something that

Reagan enacted in a very early executive order – that the FBI could contract with private groups to collect intelligence, and could conceal the existence of those contracts with those private groups. Varelli himself did a couple of break-ins that he told me about. He told me about two other break-ins that were done by FBI agents. I asked the FBI about it. They did an internal investigation and said, “No, that didn't happen.” But the connection is that all these files that were stolen turned up in FBI files. And when the Center for Constitutional Rights did a big Freedom of Information request and got thousands and thousands of pages of files, much of the material was based on stuff that had been stolen from these break-ins and ended up in FBI files.

Narrator: Political surveillance has not been limited only to left-wing groups in the United States. During the 1990's, the Clinton Administration conducted a broad surveillance program aimed at a cross-section of right-wing groups ranging from violent white supremacist organizations to informal and entirely legal networks of survivalists and gun enthusiasts. Michael Andregg.

Andregg: Waco probably was the single most important event. A lot of these folks watched the government, and in their eyes, the government flat out murdered all those children who died in that confrontation between the government and that religious group. And they saw in that disaster the potential that the government would come after them and a lot of them decided, “Well now the government's really gone over the edge and we have to bring our weapons out and start marching around in uniforms and organizing militias.” So they did.

Narrator: Jim Redden.

Redden: As we saw unfold in the 1990's was that law enforcement really put a lot of resources into cracking down on the right-wing. And they infiltrated the various little militia groups and organizations that had been meeting around the country. I'm sure that some of the people in those groups were dangerous. I'm sure that some of the organizations were dangerous. Others, I think, were just, you know, people getting together to complain about the government - which has happened in this country since the government was first formed. In the 1990's, I had my own newspaper in Portland, Oregon called *PDXS*. Right kind of as I started it, the right-wing began to get more active than it had been in the past. And I kind of picked up on that. And there were some militia groups that were formed around the Portland area. And I began to seek them out and go to their meetings to figure out what was going on there, and to write about them. One group that I was reporting on organized a gathering to go out and shoot guns one day at a regular fire arms range. There was nothing illegal or covert about it, and I went along. And we all went out and spent the morning shooting

Taking Liberties program transcript

guns and talking and went, back on the way into town, and just stopped by a breakfast place to get a bite to eat. And we were sitting - kind of broke up - and were sitting at tables in small groups. And a guy that had not been with us that morning, sort of a middle-aged, short-haired guy, sat down at the table with us and knew that we'd been out shooting and started to strike up a conversation. And the first thing he said was, "Why don't we form a cell?" And I looked at him and I just immediately knew what was going on. And I just said, "You're a cop." And he said, "No, I'm not." And I said, "Yes, you are. I know you're a cop." And he got up and left. And that was early on. But that's when I realized, well the government is watching these people, too.

Background - News Reporter from the 1960's:

"The FBI has arrested two members of the radical Weather Underground..."

Narrator: The current threat of terrorism has once again forced a public debate over government surveillance methods. As with violent political groups of the past such as the Weather Underground, the confluence of ideology and criminal activity can steer terrorism investigations into murky areas. Jim Redden.

Redden: Political groups, and especially those political groups that consider themselves to be radical or revolutionary pose a real problem for law enforcement. I've had an opportunity in recent years to see a lot of police intelligence files from the 1960's and the 1970's. And one of the things that really surprised me were the amount of reports the police were getting that the anti-war groups were, in fact, planning serious crimes. So a lot of these reports were probably bogus. Some of them may have been planted by the police themselves as a pretext to look further at the groups. But some of them appeared to be serious. So what is law enforcement supposed to do? On the one hand you can look at it in very simple terms: "Law enforcement shouldn't monitor people because of their political beliefs." But out in the real world it gets more complicated than that. And I think it does really pose a real dilemma to law enforcement.

Background - John Ashcroft:

"Frankly, I'll look forward to working with the United States Congress..."

Narrator: Shortly after 9/11, Attorney General John Ashcroft rewrote FBI guidelines that were put in place after the Pike and Church Committee hearings. The FBI's new guidelines grant field agents much broader discretion in conducting surveillance. Michael Ratner is an attorney with the Center for Constitutional Rights.

Taking Liberties program transcript

Ratner: Just basically with the stroke of a pen and no process, Ashcroft took away the idea that you need a criminal predicate before you can start an investigation of any group or person in the United States. That they can go to every single public meeting they want to. They can go to every single political meeting they want to without any idea that criminal stuff is going on. And they can go to every religious meeting they want to.

Narrator: Jonathan Turney is a law professor at George Washington University.

Turney: The FBI said that they needed new authority to be able to put religious institutions and services under surveillance. And they insisted that under the current system they couldn't, for example, put a mosque under surveillance and that they needed a big change. That happens to be absolutely false. The FBI has had mosques under surveillance for years. The only standard is that the agent had to go to a supervisor and show why he or she wanted to put a mosque or a temple or a church under surveillance. That is now gone. Agents are now allowed to go as much as a year in conducting surveillance against a citizen without going to a supervisor to defend it. So an agent who doesn't like the cut of your jib or maybe has a bias against a religion or nationality can do greater harm now.

Narrator: Since the FBI guideline changes were implemented, some observers have pointed to a series of law enforcement actions which they claim signal a return to COINTELPRO-style tactics in which law enforcement is conflating protest activity with terrorism.

Background: *Crowd street noise.*

Narrator: In October of 2003, an FBI intelligence bulletin devoted to circulating terrorist information, instead contained summaries of activities undertaken by antiwar demonstrators such as videotaping police actions and raising money over the Internet. During the summer of 2004, FBI agents visited dozens of left-wing activists around the country, inquiring about their plans to protest at the Republican National Convention. Likewise at a state level, the California Antiterrorism Center or CATIC, issued a bulletin announcing an antiwar protest at the Port of Oakland.

Background: *Crowd noise at a protest.*

Narrator: Mark Schlosberg is an attorney with the ACLU of Northern California.

Schlosberg: This is the only piece of information that we have in terms of the CATIC bulletin. But it does raise our concern about why is this Antiterrorism Information Center, which was set up to combat terrorism, the likes of Al-Qaeda and things like that; why is this center issuing a bulletin about a protest at the Port of Oakland? And that raises real serious questions for

us about how this Center is being used, and what regulations are in place to prevent intelligence abuses.

Narrator: Michael McConnell is the Executive Director of the American Friends Service Committee, a Quaker organization that recently filed a lawsuit against the FBI and the Chicago Police Department in order to obtain documents related to the surveillance of First Amendment activity in the Chicago area.

McConnell: The American Friends Service Committee, among four other groups, were under surveillance according to the police's own audit that they did two years ago when the TransAtlantic Business Dialogue was meeting here. And AFSC and a number of groups were planning a march and demonstration. We were negotiating with police about a route and were very open about what we were doing, but in this audit they came out with the fact that there had been an undercover agent involved in the planning meetings and perhaps even fundraising meetings of some of the groups. And in the audit itself they said there's a whole boxful of CD-ROMs, videotapes, mini-DVDs of we don't know what. Was it meetings? Was it individual people? Was it the march? And we want to know. And we also want to know what they gave to the FBI, if anything. Criminal activity is one area where FBI law enforcement has the right, and we intend that they should look into those cases. However, dissent, being against present policy of the United States government, that's not criminal activity. That is legitimate First Amendment protected rights of freedom of speech and assembly.

Narrator: Michael Andregg.

Andregg: First off, if I were advising the heads of government in America today, I'd tell them that we have some very severe problems within our intelligence community - solvable problems - but getting even more secretive is not going to solve those problems. We have to re-establish a positive, constructive relationship with polite society. Because the paranoia level and the dysfunction that comes from excessive secrecy and classification is really disrupting the basic goal - which is warning against real dangers and detecting people that really men harm. And not scaring the heck out of your own population by thinking that they might be the enemy, and using these highly secretive and intrusive methods to go find out.

Narrator: A fundamental protection against the abuse of the state's police powers is contained in the Fourth Amendment to the Constitution which prohibits unreasonable searches and seizures. This Amendment is at the heart of many of the controversies surrounding post-9/11 laws like the Patriot Act. Debates over the Fourth Amendment are also a part of a much older

Taking Liberties program transcript

discussion. Elaine Cassel is an attorney and the author of *The War on Civil Liberties*.

Cassel: The War on Terrorism really has its roots in the war against crime – I mean the get-tough-on-crime policies that began in the 1980's. And the first antiterrorism law was passed in response to the Oklahoma City bombing – but also it came out of the drug wars at home, you know, when many, many parts of this country were armed camps because of gang wars and drug wars and things like that.

Narrator: Sam Smith is the editor of the *Progressive Review*.

Smith: I don't think anybody set out to use on the War on Drugs to destroy the Constitution. But it certainly was the place where the idea that we no longer could have a true constitutional system really got its start.

Narrator: Tim Lynch is a policy analyst for the Cato Institute and has written extensively about legal aspects of the drug war.

Lynch: The primary way in which it has had a negative impact on the Constitution is with the Fourth Amendment, which protects Americans against unreasonable searches and seizures. And that's simply because of the sheer number of searches and raids that are conducted with the War on Drugs. When you have a criminal code that consists of murder, rape, robbery, there's going to be searches that take place. But when you declare a War on Drugs, on products like marijuana and cocaine, things that millions and millions of people consume and want – there's drugs everywhere. And the police when they have to try to prosecute this drug war - it just exponentially increases the number of searches out on the streets of people, the number of vehicles, the number of homes and businesses. It's just, the number of searches just goes straight through the roof when you have something like alcohol prohibition or the more modern War on Drugs.

Background: *Police raid – a man yelling “Police.” The sound of yelling and a door being battered.*

Lynch: So what happens is there's just a tidal wave of cases that then enter into the court system.

Background: *Sound of police raid swells.*

Lynch: And then the prosecutors are trying to defend the legality of many of these questionable raids. “It was an emergency. Exigent circumstances. We thought they were going to flush the marijuana down the toilet, therefore it was an emergency. That's why we had to go in right away.”

Just a tidal wave of these searches get into the court system and many of them are questionable. And the judges toss some out but because of the sheer number, they end up stretching and diluting our rights, in order to let more of these searches be declared legal. And so it's one of these things that happens slowly over time. But the protections that were there thirty or forty years ago, searches that would have been tossed out as illegal violations of the Fourth Amendment are slowly, over time, considered to be legal and consistent with the Fourth Amendment thirty or forty years later.

Narrator: The drug war also blurred the lines between law enforcement and military policy as the Reagan, Bush and Clinton Administrations moved to transfer military hardware and training to domestic law enforcement agencies. The result has been an explosive growth in the number of paramilitary-style SWAT teams in American policing. While the early generation of SWAT teams were used primarily for emergency situations, paramilitary teams are now used in many aspects of routine police work. Paul Richmond is a Seattle attorney who has documented police tactics in the Pacific Northwest since the late 1980's.

Richmond: There was a paramilitary invasion that took place in one of the streets in Oregon, on a street called Leeby Street [sic]. You had National Guard utilizing a light armored vehicle that was essentially a tank without a turret. It had some people with armed weapons on there - helicopter flying overhead.

Background: *Sound of police raid swells.*

Richmond: So we went in there. We did some interviews with some of the people there and we found out that this was a complete debacle. We found out for example when they were talking about this massive drug raid in the police press release - one marijuana cigarette. The fellow who was named in the warrant, Robert Cosay [sic], had moved out of there about three weeks ago. So it was like tenants of his that ended up getting hit by this.

Narrator: In 2002, state and municipal police conducted a drug raid on two residential properties in Eugene, Oregon. Leah Roderick lived across from the homes where the warrant was served.

Roderick: Well the first thing that happened, we were sleeping, it was before 7:00 a.m., and there was a loud blast that sounded like a bomb. I thought something had happened in our house, something had blown up. And so I pulled my husband Michael out of bed with me and we ran to the front door to try to figure out what had happened. And we peeked out and we saw what felt like hundreds of men crawling all around our property and out in the street. And we went out on the porch to see what was

Taking Liberties program transcript

happening and around the corner came what looked like a tank to us – some sort of vehicle carrying a whole lot of men dressed in very military-looking clothing. They all had large rifles, and they were headed toward Tam and Marcella’s house.

Narrator: Tam Davage and Marcella Monroe owned the two houses raided by the Eugene Police Department. Marcella Monroe.

Monroe: We heard explosions and they were so loud they shook the windows of where we were sleeping. We have two large dogs and they’re frightened of fireworks and they hurled themselves up onto our bed. And I thought, “Oh, no. What’s happening?” So I didn’t think about it at the time. I was – had just jumped out of bed in my t-shirt and underwear, and I began running for the door. And just as I reached the door, and was about to open it, it came exploding in – and this is a metal door. And there were a number of armed, masked gunmen – they were dressed all in black with ski masks over their heads – all you could see was their eyes. I was looking at maybe five or six - looking down the barrel at five or six assault rifles all pointed at me. And I just froze. They weren’t moving and I was standing there like this and thought, “I’d better try to clarify this situation – find out what’s going on.” So I asked tentatively, I said, “Are we under arrest?” And I didn’t see it happen, but the soldier right in front of me - apparently he grabbed me and threw me to the ground so quickly I hit my head on a metal door sill and it gashed my forehead – cut my forehead. And he stepped on my neck and back and yanked my arms behind me. They never answered me.

Narrator: Leah Roderick.

Roderick: After this whole raid started happening, I had to start getting ready for work. I was nervous about leaving the house and so I went – we went out on the porch to ask what was happening. The officers wouldn’t tell us, they just said that they were executing a warrant. And we asked what that meant and that’s all they would tell us. Eventually I had to get dressed and get in my car but there were officers standing in our front lawn with rifles. And I didn’t want to go out to my car with people with guns. And so I asked one of the officers if I was going to get shot if I left the house. And he turned to the side, turned his head to the side and didn’t actually look at me and said, “I haven’t shot anybody in two weeks,”

Narrator: Lauren Regan is a Eugene attorney who represented Tam and Marcella after the raid.

Regan: In this instance, the police in their affidavit for a search warrant and in other statements that they’ve made to the public had indicated that the reason that they showed up in the way that they did was because they were

expecting to find a large marijuana grow. But the bare reality was that they did not find a single marijuana plant in this home, nor did they find any evidence that would link this home to any type of marijuana growing operation. Despite the lack of evidence of any illegal activity in the home, they charged or cited Tam and Marcella both with Class A felonies for manufacturing marijuana. Those charges were later dismissed as a result of there being no evidence that a crime occurred.

Narrator: Other mistaken drug raids have ended more tragically. In May of 2002, 57 year-old Brooklyn resident Alberta Spruill was preparing for work when a New York City SWAT team knocked down her front door, threw concussion grenades into her apartment, and subdued and handcuffed her. By the time officers realized that they had acted on faulty information, Spruill had gone into cardiac arrest.

Background: *Ambulance siren.*

Narrator: She died shortly after a nearby hospital. Larry Pratt is the Executive Director of Gun Owners of America.

Pratt: What we're really dealing with is the perception that you can't serve a warrant unless you've got 10, 20, 100 guys standing around with their fingers on the trigger, with the justification that, "Well the suspect might flush the heroin down the toilet. So we can't knock. We can't go through all those constitutional niceties." And if the American people are willing to go along with this kind of police state tactic in an area that's viewed as justifiable - what we've done is establish the precedent for the next area that 'needs' to be addressed with wartime tactics. And we've seen that's actually happening in an immediate threat to the Second Amendment where in center city areas, where supposedly the drug problem is the greatest - no-knock door-to-door searches are being done from time to time - of people's homes, looking for guns. Sometimes they force their way in. Generally, they can intimidate their way in. And if somebody absolutely stands on their rights, then they become a marked person, a suspect. Every time they don't put their turn indicator on, they're going to get harassed.

Narrator: Fourth Amendment controversies in the post-9/11 era center around provisions of the USA Patriot Act. The Act's most controversial provisions are those that enhance search and seizure powers, including provisions that expand the powers of the secretive FISA Intelligence Court. Peter Erlinder.

Erlinder: This is a court created by the Chief Justice of the United States, made up of selected members of the federal judiciary that meets in secret. And initially it was empowered only to hear cases in which the Justice

Taking Liberties program transcript

Department could show that the persons for whom the warrants were being requested were agents of a foreign power. Spy stuff.

Narrator: Nancy Chang is an attorney with the Center for Constitutional Rights.

Chang: The Foreign Intelligence Surveillance Act is a law that was first put on the books in 1978 that allows law enforcement to avoid the standard Fourth Amendment requirement of probable cause of criminal activity before conducting searches and seizures. It merely requires probable cause that the target is the agent of a foreign power, a much lesser standard. The Patriot Act vastly expands the ability of the government to obtain secret warrants from the Foreign Intelligence Surveillance Court.

Narrator: While the original FISA statute allowed intelligence information to be shared with criminal prosecutors in certain circumstances, FISA searches were not allowed to be directed by prosecutors, since these searches do not comply with the Fourth Amendment's probable cause standard. Under the Patriot Act, this arrangement has now changed. Jonathan Turney is a law professor at George Washington University.

Turney: When FISA Court was created, its very foundation was a guarantee that there would be a separation between foreign intelligence and prosecution, so that FISA could not be used for law enforcement purposes. The great specter of that time was that FISA would become an alternative to the Fourth Amendment. If you could use it for law enforcement purposes, then you wouldn't have to satisfy the Fourth Amendment. You would essentially be creating an alternative that the Framers had rejected. And that guarantee is the reason FISA was enacted. I don't think there would be any chance that FISA could have been enacted if someone had said that it would be used for law enforcement purposes. So today we have the very circumstance that Congress guaranteed would never come about, the use of the secret court for law enforcement purposes. So America now has a secret court, a secret court that has issued more warrants for eavesdropping than under the conventional constitutional standard.

Narrator: After the passage of the Patriot Act, the FISA Court issued the first public opinion in its history. The Court ruled that the Justice Department was exceeding the bounds of the original FISA law, by seeking to allow criminal prosecutors to use the FISA process. In their opinion, the FISA judges drew attention to an internal report that had identified 75 instances where FBI agents had tried to mislead the Court in their search warrants affidavits. Jonathan Turney.

Turney: For those of us who've been critics of FISA for years, we always heard the same refrain. Former general counsels of the NSA and CIA would say, "You can't point to a single time where, you know, the Court was misled."

Taking Liberties program transcript

And in fact, that same defense was heard after 9/11 when FISA was expanded. You had people in the administration who were making that argument even though they knew that there was an unpublished report documenting dozens of such cases. And now we know that the U.S. government misled the FISA Court in dozens of cases, the very abuse that has long been denied. You know, these abuses are not surprising. What's surprising is that the Court finds dozens of cases in which it was misled or lied to, and the response of Congress was to expand the authority of the government under FISA.

Narrator: Larry Pratt.

Pratt: They basically passed much of this legislation that restricts our liberties during times of crisis. It provides the opportunity when we're all out waving a flag and we're not looking down at our pockets to see if anybody's got his hand there.

Narrator: Tensions between civil liberties and security that have arisen over recent decades are the result of multiple interlocking influences. Observers from across the political spectrum cite a variety of reasons for these trends, but parts of their critiques are also shared in common. Since 9/11, civil libertarians have roundly criticized a shift in the balance of powers within the American government – a shift which they claim has resulted in a centralizing of authority in the executive branch. Many constitutional scholars have noted that this trend began well before the events of 9/11. Tim Lynch.

Lynch: Over the years, more and more power has been accumulated in the executive branch. And this is a function of a couple of different variables. Sometimes the legislature passes laws which purposely expand the power of the executive. In other instances, it's the executive branch officials themselves asserting new claims about the scope of their powers. And we've certainly seen this since the September 11th terrorist attacks is a prime example of both of these things happening - the Congress passing the Patriot Act, giving FBI agents more powers to acquire private financial information, educational information, medical records on people, through a subpoena process, subpoena powers. But then we're also seeing the president make new claims about what he can do as commander-in-chief of the armed forces during wartime.

Narrator: The growth of executive branch power has occurred during both Republican and Democratic administrations during the course of the 20th century. But its recent manifestations have intellectual underpinnings reaching back to the 1970's.

Background: Unidentified Voice – Congressional Hearings:

Taking Liberties program transcript

“...to spy on Americans – to burgle their homes.”

Narrator: Like the FBI, the reputation of the CIA had been badly damaged by the revelations of the Pike and Church Committees during the 1970's.

Background: Unidentified Voice – Congressional Hearings:
“...one of the most disturbing aspects...”

Narrator: During the Carter Administration, a major restructuring of the CIA was undertaken, which removed scores of covert operations personnel associated with the controversial programs exposed by the Congress. Gene Wheaton is a former private security contractor and Iran-Contra whistleblower.

Wheaton: Jimmy Carter was elected president in November of 1976 and he appointed Navy Admiral Stansfield Turner as Director of the CIA. And one of their first orders of business was to try to dismantle the out-of-control covert operators. October of '77, he fired over 800 covert operators within the CIA, in what they refer to now, or they did afterward, as the Halloween Massacre.

Narrator: Angered by the policies of the Carter Administration as well as the aftermath of the Pike and Church Committee hearings, certain members of the intelligence community began to actively search for a candidate to defeat Jimmy Carter. David MacMichael is a former CIA intelligence analyst.

MacMichael: There were definitely moves and the old OSS Veterans Association with which William Casey was a leader. There were people of that background who were very supportive of him. And he became, as you know, the campaign manager for Ronald Reagan. And so there was, yes, there's no doubt in my mind, that there was strong political support among OSS veterans and others associated with Casey and unhappy with Stan Turner.

Narrator: Michael Andregg.

Andregg: Reagan's head of his campaign was Bill Casey, who had been an OSS operative in World War II and became the Director of Central Intelligence. So he was advised from the very beginning at the top by seasoned, experienced political professionals in the spy world.

Narrator: Ross Gelbspan.

Gelbspan: When Bill Casey was head of the transition team for the Reagan Administration, he commissioned a couple of studies by the Heritage Foundation, and they came out with a couple of studies and they

Taking Liberties program transcript

recommended several things. First of all, they recommended restoring expanded powers to the FBI that would allow them to do burglaries, much more intensive telephone taps, surveillance, infiltrating organizations – many of the powers that had been cut back in the late 70's after the Church Committee and Pike Committee and Rockefeller Committee had found these earlier abuses.

Narrator: Beau Grosscup is a professor at the University of California, Chico.

Grosscup: They went after the Freedom of Information Act right away. Trying to close it off, trying to make it more expensive, trying to, “yes you could have it” but a lot of the stuff was didacted out. They began to reinvigorate the CIA. They tried to insulate the CIA and the other intelligence agencies from public scrutiny.

Narrator: David MacMichael.

MacMichael: But this was once again the idea that after the revelations of the Church and Pike committees, you know, and the supposed tying of the hands of the Agency - the covert warriors would be unleashed once again and could charge again up San Juan Hill or something else. Every institution likes to expand. And the hiring binge that went on at the CIA during the 1980's was extraordinary. Someone asked Bobby Gates when he was Deputy Director, “Where are we going to put all these people we’ve been hiring?” He said, “We'll just stack them up in the halls like cord wood, you know. We'll find a use for them.”

Background - George W. Bush:

“We have an obligation to our citizens to work together to...”

Narrator: After the inauguration of George W. Bush in 2001, many former intelligence and foreign policy officials from the Reagan Administration were given influential positions, including individuals who had been convicted of lying to Congress during the Iran-Contra affair. David MacMichael.

MacMichael: John Poindexter, who had been President Reagan's National Security Advisor, was convicted for his perjured testimony to the Congress while there was an investigation of the transfer of arms to Iran.

Background - Senator Daniel Inouye at Iran-Contra Hearings:

“We wish to get into this on certain arrangements...”

MacMichael: Poindexter comes back to head the very powerful, hugely budgeted DARPA, the Defense Department Advanced Research Project Agency, and immediately coming forward with this Total Information Awareness

Program, which you know, is Orwellian in its very title. And with the technology we now have today to probe and access people's - information about people, is you know, frightening to any person with the remotest knowledge of constitutional protections. And there are others, you know, who've been connected with this and they, and they all, to a considerable extent, are composed of these so-called 'neocons', who have strong ideological views about the role of the United States in the world. And hold them, I presume, sincerely. And have now the opportunity, or believe they have the opportunity, to impose these views.

Background – Former Congressman Bob Barr giving a speech:

“...we as conservatives, not as neocons, because we are not neocons - we are true conservatives here.” Applause.

Narrator: Recent criticism of neoconservative policy has come from across the political spectrum - from the Left, but also from elements of the Right, who view the neoconservatives embrace of a larger activist government as a betrayal of traditional conservative values. This same Left-Right coalition was similarly critical of many of the security powers enacted by the Clinton Administration. Tim Lynch.

Lynch: President Clinton attacked the Fourth Amendment by declaring that his administration and the police and federal executive branch agencies could conduct warrantless searches of people's homes. He was very strong in advocating warrantless searches of public housing units. He also said that whenever national security was involved, his people could go into the homes of Americans - whenever national security was involved, without warrants, without that judicial check. So it seemed like across the board, whether we're talking about the First Amendment, or whether we're talking about the Fourth Amendment, separation of powers, the president was expanding executive power left and right.

Narrator: Beau Grosscup

Grosscup: The Clinton Administration was the first administration to actually designate a set of legislation as “counterterrorism” or “antiterrorism.” And of course it happens after the Oklahoma City bombing, immediately. And it's that legislation that was on the books after Oklahoma City that didn't raise that much controversy at the time, until Congress began to look - and the ACLU and some conservative groups actually had strange bedfellows in opposition to that legislation, some aspects of that legislation, thinking it went too far.

Narrator: Many Clinton Administration initiatives, including provisions of the 1996 Antiterrorism Law laid the groundwork for the USA Patriot Act and have been utilized extensively since 9/11. One controversial provision of the

1996 law allows for the use of secret evidence in immigration hearings.
Peter Erlinder.

Erlinder: Well I think that this is one of the more troubling aspects of the 1996 act. It empowered the federal government to deport individuals based on evidence that neither they nor their lawyers could ever see. And essentially it created a situation that made it impossible for either the defendant or their lawyer to respond to claims that a person was involved in some sort of improper activity. However, this was something that also resulted in a fair amount of resistance. There was a broad coalition, political coalition from the Right to the Left that had reached consensus that secret evidence under the 1996 law should be repealed. That coalition in Congress was very close to proposing the repeal of the secret evidence law on September 10th, 2001. And of course once the tragedy in New York occurred, then the effort to repeal the secret evidence law was lost, and it became part of the repertoire of prosecutorial powers that the Bush Administration has been using as well.

Background – Vice President Dick Cheney

“...Dr. Rice, gives America the kind of national security team that President Bush promised...”

Narrator: The unconventional nature of the current conflict against Al-Qaeda has many observers concerned that the wartime contraction of liberties could become a permanent feature of American life.

Background – Vice President Dick Cheney:

“...ladies and gentlemen, it’s a very special privilege for me...”

Narrator: Shortly after September 11th, Vice President Cheney delivered a speech in which he noted that many of the security measures implemented after 9/11 would become permanent parts of American society. In his words: “A new normal.”

Background – Vice President Dick Cheney:

“I guess this is our first official....”

Narrator: Elisa Massimino is the Washington Director of Human Rights First.

Massimino: It’s really quite extraordinary, this movement by the administration, in particular in this speech by Vice President Cheney, where he talks about this being ‘the new normal’ – really laying it out there for people. And we need to be evaluating these fundamental shifts in the way the democracy works and what rights people think they have; not in terms of you know, months or years, but you know, in lifetimes and generations. We’ve done a lot of work in my organization looking at other countries that have faced

Taking Liberties program transcript

domestic terrorist threats and how they've dealt with it. And one thing that we've seen time and again is that once the emergency subsides, government is very reluctant to give up any of these new powers. So that's how it works. And so, "This is the new normal," is something that we really need to take seriously. It's not just rhetoric, it's reality.

Narrator: Larry Pratt.

Pratt: There's been a consistent march, Republican and Democratic Administrations alike, against the First Amendment, against the Fourth Amendment, certainly against the Second Amendment. The history of our country, just of the last century, is a history of the erosion of liberty that was greatly accelerated every time we were at war. And following the war, there would be a resumption of some of the liberties, but never all. And, generally, the laws that were used to curtail our liberties were left on the books. And in any case, there was corporate memory - of, "It was really neat to just be able to pick up the phone and call anybody in the country and tell them 'this is what you will do.'" Franklin Roosevelt worked in the War Department under Woodrow Wilson. When he became President, he remembered those good old days when he could just pick up the phone and tell a tycoon of industry, "You will do such and such - whatever we want." That kind of power can be very intoxicating.

Narrator: In the years since 9/11, people from across the political spectrum have organized to oppose laws and executive actions seen to infringe on constitutional rights. Tim Lynch.

Lynch: We're talking about that things that are being established in the law now will have implications 10, 20, 30 years down the road for future generations. And I think that's - people who are taking the long-term view are coming together with people on all points of the political spectrum to recognize that these things represent a danger to liberty and privacy. And that's why they need to come together to oppose these things and to try to have them corrected. There are plenty of things that the government can do to make ourselves more safe without restricting our civil liberties.

Narrator: Copies and transcripts of this program are available at ETSPictures.com.

END OF PROGRAM