

In Memoriam

Walter Mondale and His Crusade for Public Accountability

Lawrence R. Jacobs[†]

Public accountability was a cornerstone of Walter Mondale's public service and his instruction to students in our team-taught courses at the University of Minnesota for fourteen years. One of his overriding concerns, as he explained to students, was the "tendency to abuse power," and the means for combatting it were the Constitution's "fundamental, profound, and sacred principles" of public accountability, which he revered as its "greatest idea."¹

The former Vice President exuded an optimistic view of people and America's future but counseled realism about the meaner lessons of history. He drilled students in the wisdom of James Madison's Federalist Paper 51, which is devoted to "control[ing] the abuses of government."² Mondale often read from his favorite passage: "[W]hat is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary."³ Like a drill master, Mondale schooled students in the wisdom of Madison's organizing principle that "[a]mbition must be made to counteract ambition"⁴ and the power of the Fourth Amendment—that, if followed, prohibited "unreasonable searches and seizures" without demonstrated "probable cause" based on "particularly describing the place to be searched, and the persons or things to be seized."⁵

[†] Walter F. and Joan Mondale Chair for Political Studies, Humphrey School of Public Affairs. Copyright © 2021 by Lawrence R. Jacobs.

1. All direct quotes – unless otherwise noted – are Walter Mondale's comments in our classes at the University of Minnesota from 2007 to 2020 (notes are on file with author).

2. THE FEDERALIST NO. 51, at 398 (James Madison) (John C. Hamilton ed., J.B. Lippincott & Co. 1864).

3. *Id.* at 398–99.

4. *Id.* at 398.

5. U.S. CONST. amend. IV.

Mondale read Madison as a contemporary guide to “government run amok.” We used historical cases to illustrate the bleak consequences of unaccountable executive action, which lingered in our own time.

As a U.S. Senator, Mondale was lured into initially supporting the Vietnam War—a decision he regretted more than any other.⁶ He was blunt in assessing the War’s cause: Lyndon Johnson’s deception in orchestrating the uproar over the alleged North Vietnamese attacks on U.S. vessels in the Gulf of Tonkin and the error of Congress in responding with a veritable blank check. The consequences were dire: the President used the Gulf of Tonkin Resolution to escalate U.S. military involvement from about 10,000 troops to over half a million,⁷ drop more than three-fold greater tonnage of bombs than dropped in the Second World War,⁸ and contribute to the death of about 58,000 Americans and millions of Vietnamese soldiers and civilians.⁹ The Pentagon Papers revealed President Johnson’s scheming to change and expand the U.S. military mission without letting Americans know. At Johnson’s behest, the National Security Advisor instructed the Pentagon to “change [the] mission for all Marine Battalions . . . to permit their more active use” while avoiding “premature publicity . . . [by taking action] as rapidly as practicable, but in ways that should minimize any appearance of sudden changes in policy.”¹⁰

Although Mondale strongly supported Johnson’s Great Society programs, he was blunt in assessing the President’s damage to his own administration and America: His “fraud or misrepresentation of the Gulf of Tonkin incidents failed to bring the public along. Americans felt tricked or cheated, and this haunted the President.” In questioning the Secretary of Defense, Clark Clifford, Mondale circled back to this

6. Finlay Lewis, *Walter Mondale, Minnesota Liberal Who Transformed Vice Presidency, Dies at 93*, ROLL CALL (Apr. 19, 2021), <https://www.rollcall.com/2021/04/19/walter-mondale-minnesota-liberal-who-transformed-vice-presidency-dies-at-93> [<https://perma.cc/FW93-CY9S>] (claiming that Mondale considered his support for the Vietnam War to be the worst mistake of his political career).

7. See *Vietnam*, U.S. DEP’T VETERAN AFFS., <https://www.va.gov/oaa/pocketcard/m-vietnam.asp> [<https://perma.cc/M8NU-PMVJ>] (claiming that after the Gulf of Tonkin Resolution, between 1965 and 1969, U.S. troop strength in Vietnam rose to over 543,000 soldiers).

8. Edward Miguel & Gérard Roland, *The Long-Run Impact of Bombing Vietnam*, 96 J. DEV. ECONS. 1, 2 (2011).

9. Kimberly Amadeo, *Vietnam War Facts, Costs and Timeline*, BALANCE (Feb. 19, 2020), <https://www.thebalance.com/vietnam-war-facts-definition-costs-and-timeline-4154921> [<https://perma.cc/YS75-K7A9>].

10. McGeorge Bundy, *National Security Action Memorandum No. 328* (Apr. 6, 1965), <https://www.mtholyoke.edu/acad/intrel/pentagon3/doc254.htm> [<https://perma.cc/5Q5U-NM9P>].

theme and asked about the President's unilateral decision to authorize covert U.S. military incursions into Laos, authorized as if "the congressional powers of declarations of war just disappeared." Secretary Clifford's response that the administration was "adjust[ing] the practicals of the age to the language of the Constitution" prompted Senator Mondale to protest that a "strategy based upon secrecy . . . [violates] our system of accountability found in the Constitution."

Reporting by Seymour Hersh in *The New York Times* and Betty Medsger in the *Washington Post* in the early 1970s revealed the CIA's schemes to assassinate the heads of foreign governments and the FBI's spying and infiltration of domestic political and civil rights organizations exercising their constitutional rights to criticize and protest their government's policies.¹¹ Mondale joined Republican leaders Barry Goldwater and Howard Baker on a small bipartisan Senate Committee in 1975 to produce what he considered the "single most important document on government abuse." After the Senate Committee's Chair, Frank Church, was seduced by the illusion of becoming president and entered the 1976 Democratic primaries, Mondale took control of investigating the FBI's domestic operations.¹² The abuse of government power was fueled, Mondale concluded, by "exaggerated fears of danger and disloyalty" and a disregard for the law and the Fourth Amendment's protections of privacy. Nixon aide Tom Huston, who authored a plan to spy on "radicals" and set up camps to detain anti-war protesters, conceded to the Church Committee¹³ that no one objected to the "illegal opening of the mail and breaking and entry or burglary . . . because it was unconstitutional"¹⁴; the head of the FBI's Intelligence Division confirmed that he did not "hear anybody,

11. Seymour M. Hersh, "Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years," N.Y. TIMES, Dec. 22, 1974, at 1; BETTY MEDSGER, THE BURGLARY: THE DISCOVERY OF J. EDGAR HOOVER'S SECRET FBI (2014); MEDSGER, *supra*, at 12 (explaining that the former Director of Central Intelligence Richard Helms admitted to various congressional committees that the CIA conducted plans to assassinate foreign leaders of other countries).

12. *Walter F. Mondale: Spokesman for Reform and Justice in the U.S. Senate*, UNIV. MINN., <https://wayback.archive-it.org/4852/20210110200714/http://moses.law.umn.edu/mondale/intelligence.php> (last visited Oct. 22, 2021).

13. "The Church Committee" is the common label that is used to refer to the bipartisan Senate Committee that Mondale served on. See generally Andrew Glass, *Church Committee Established: Jan. 27, 1975*, POLITICO (Jan. 27, 2017), <https://www.politico.com/story/2017/01/church-committee-established-jan-27-1975-234079> [<https://perma.cc/YGH4-W8R3>] (providing a brief summary of the Church Committee's history).

14. *Hearings Before the S. Select Comm. to Study Governmental Operations with Respect to Intel. Activities*, 94th Cong. 41 (1975) (statement of Sen. Frank Church, Chairman, S. Select Committee to Study Governmental Operations with Respect to Intel. Activities).

including myself, raise the question: 'Is this course of action . . . legal, . . . ethical or moral' . . . because we were just naturally pragmatic."¹⁵ The FBI official who supervised its program for "Black Nationalist Hate Groups" matter-of-factly conceded that "we never gave [the constitutionality and legal authority] a thought."¹⁶ In one chilling exchange, the Director of the FBI, Clarence Kelly, told then-Senator Mondale that you have to give up some rights to protect others, which prompted the devastating follow-up question: "Would you tell me which rights you are willing to give up?"¹⁷

The Church Committee's Report in 1976 offered a stinging rebuke of government intelligence and security agencies. It described the FBI's Counter Intelligence Program (COINTELPRO) as "a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association [in the guise of] . . . protect[ing] the national security and deter[ring] violence."¹⁸ Among its victims was Dr. Martin Luther King, Jr., who was labeled a "[B]lack hate group" leader and, at the urging of Director J. Edgar Hoover, was the target of a campaign to destroy him.¹⁹

Mondale adopted the unyielding principle that "no matter who you are, you must be held accountable." The Fourth Amendment's protections for privacy was a foundation stone that "should be the center of all of our discussions." As Senator and, later, as Vice President, Mondale spearheaded reforms that established the House and Senate intelligence oversight committees and a process established by the Foreign Intelligence Surveillance Act (FISA) for senior judges to secretly review subpoenas from intelligence agencies.²⁰

15. SENATE SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTEL. ACTIVITIES, BOOK II: INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 94-755, at 14 (1976) (quoting testimony from one William Sullivan, dated Nov. 1, 1975).

16. *Id.* at n.82 (quoting deposition testimony from one George Moore, dated November 3, 1975).

17. WALTER F. MONDALE WITH DAVID HAGE, *THE GOOD FIGHT* 149 (2010).

18. SENATE SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTEL. ACTIVITIES, BOOK III: SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 94-755, at 3 (1976).

19. *Strengthening Intelligence Oversight*, BRENNAN CTR. FOR JUST. 11 (2015), https://www.brennancenter.org/sites/default/files/analysis/Strengthening_Intelligence_Oversight_Conference_Report.pdf [<https://perma.cc/6DGY-WSGD>] (presenting a discussion with Mondale about Hoover's antagonism towards King); *see also* BOOK III: SUPPLEMENTARY DETAILED STAFF REPORTS ON INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 94-755, at 81-183 (presenting a detailed case study of the FBI's campaign against King).

20. *See generally Strengthening Intelligence Oversight*, *supra* note 25, at 15 (furnishing a discussion with Mondale where he argues that the FISC court has expanded beyond its intended scope).

Mondale rejected criticism from Dick Cheney and others that accountability to the Constitution weakened America and necessitated the sacrificing of rights for security.²¹ From his perspective, it was a false choice to counterpose security with the Constitution and the law. Complying with the Constitution and the law created a more powerful nation and was “the genius of America.”

Despite his hand in building landmark protections, Mondale was candid with students at his disappointment at the breakdown in public accountability and reversion to “pre-Church violations”—that is, the abuses that existed before the Church Committee. “The Founders are rolling over in their graves” was a familiar refrain.

Mondale was surprised at the sharp reversals or weakening of “Church reforms.” He was particularly pained at the failure of Congress (including former colleagues) and its intelligence committees. Instead of checking the agencies, they “ended up becoming a buffer for the intelligence agencies and preventing transparency.”

Mondale was searing in his criticism of George Bush’s defiance of the FISA process during his first term, even though it “worked for three decades and agencies liked it because . . . [it protected them from the] risk of acting alone and later being blamed.” He repudiated the steps by the Foreign Intelligence Surveillance Court (FISC) to “do things that were never intended”—namely, breaching its important but contained role of approving or denying warrants for intelligence gathering. Instead, FISC issued opinions in private and without the adversarial process, as if it legitimately possessed the authority of an Article III court with general jurisdiction.²² The effect was to undermine public accountability as agencies opted for FISC instead of facing the more demanding tests of opposing attorneys and public scrutiny in the Article III courts.²³

Mondale was equally disturbed at the pattern of Democratic and Republican presidents ordering the unilateral use of military forces. Part of his concern was that the language and requirements of the Constitution disappeared, as a practical matter. Debate over the commitment of U.S. troops devolved to a matter of preference and party loyalty, shorn of principled commitments to the Constitution and the

21. See generally Joel Goldstein, *Two Vice Presidents – Walter Mondale and Dick Cheney – in Contrast*, STAR TRIBUNE (Jan. 8, 2019), <https://www.startribune.com/two-vice-presidents-walter-mondale-and-dick-cheney-in-contrast/504075412> [<https://perma.cc/T4VF-N7PG>] (comparing Mondale’s and Cheney’s political ideologies, including restraints on intelligence agencies).

22. See *Strengthening Intelligence Oversight*, *supra* note 25, at 15–16 (continuing the discussion with Mondale as he claims that the FISC court was never intended to be a private court of general jurisdiction).

23. See *id.*

law. He was not shy about criticizing a president of his own party—Barack Obama—in his expanded use of drones. His unleashing of “black birds on a dark night” shared, in Mondale’s estimation, the same dodging of accountability and reliance on secrecy as Bush’s bypassing of FISA. The bipartisan deviation from the Constitution prompted Mondale to wonder: “What kind of nation are we?”

Mondale was also deeply concerned about Obama’s bypassing of the Constitution’s treaty process to unilaterally reach a deal with Iran. In our class and public conversation, Mondale pressed Jake Sullivan, who oversaw the Iran nuclear agreement in the Obama administration and now serves as President Biden’s National Security Advisor: “Do you think we should go back to what the constitution means or are you sort of lawless on [reaching international understandings without the Senate]?”²⁴ Mr. Sullivan’s response confirmed Mondale’s fear of the Constitution’s erosion: “Count me as slightly lawless, I suppose.”²⁵

Mondale was studious; his office and home were stacked with books. But his seasoned political antenna was also attuned to the real-world “balancing [of] power and accountability.” While doctrinal disputes are argued in academic journals, presidents wrestle with real issues and high stakes. Contrary to presidential advisers who press for unilateral action, Mondale warned of a damaging paradox: presidents take unilateral action in the conviction it will expand their power only to later discover the costly backlash—greater public and congressional scrutiny, a drop in their approval ratings, and election losses for their party. Unaccountable assertions of power violated the U.S. Constitution and were bad politics.

For Mr. Mondale, holding the government accountable was an ongoing process and one that he invited our thousands of students to join. His approach was to instill awe in America’s “fundamental, profound, and sacred principles” for justice and accountability and its expectation of “robust citizens and not scared citizens.” He recruited students to engage in the fight to prevent a “government beyond the reach of our own people.”

Mondale’s instruction for students at the University of Minnesota was an extension of a public life that continues to stand as a beacon for principled defense of public accountability and the Bill of Rights.

Note: Professor Jacobs and Walter Mondale started to plan their first course in 2006 and would teach together to within a few months

24. Jake Sullivan, Walter Mondale & Lawrence R. Jacobs, *The Shrinking International Relevance of Donald Trump*, UNIV. MINN., at 1:04:21 (Oct. 25, 2018), <https://conservancy.umn.edu> [<https://perma.cc/QN9T-QUKA>].

25. *Id.* at 1:04:34.

of his passing in 2021. He thanks the research assistance of Zakariya Abdullahi and Penny Thomas.