94TH CONGRESS
2d Session

SENATE

REPORT
No. 94–755

INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS

BOOK II

FINAL REPORT

OF THE

SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS

WITH RESPECT TO

INTELLIGENCE ACTIVITIES
UNITED STATES SENATE

TOGETHER WITH

ADDITIONAL, SUPPLEMENTAL, AND SEPARATE VIEWS

APRIL 26 (legislative day, APRIL 14), 1976

U.S. GOVERNMENT PRINTING OFFICE
68-786 O WASHINGTON : 1976

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES

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LETTER OF TRANSMITTAL

On behalf of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, and pursuant to the mandate of Senate Resolution 21, I am transmitting herewith to the Senate the volume of the Committee's Final Report which presents the results of the Committee's investigation into Federal domestic intelligence activities.

The Committee's findings and conclusions concerning abuses in intelligence activity and weaknesses in the system of accountability and control are amply documented. I believe they make a compelling case for substantial reform. The recommendations section of this volume sets forth in detail the Committee's proposals for reforms necessary to protect the right of Americans. The facts revealed by the Committee's inquiry into the development of domestic intelligence activity are outlined in the balance of the volume.

I would add one principal comment on the results of the Committee's inquiry: The root cause of the excesses which our record amply demonstrates has been failure to apply the wisdom of the constitutional system of checks and balances to intelligence activities. Our experience as a nation has taught us that we must place our trust in laws, and not solely in men. The founding fathers foresaw excess as the inevitable consequence of granting any part of government unchecked power. This has been demonstrated in the intelligence field where, too often, constitutional principles were subordinated to a pragmatic course of permitting desired ends to dictate and justify improper means.

Our recommendations are designed to place intelligence activities within the constitutional scheme for controlling government power.

The members of this Committee have served with utmost diligence and dedication. We have had 126 Full Committee meetings, scores of other sessions at which Senators presided at depositions for the taking of testimony, and over 40 subcommittee meetings devoted to drafting the two volumes of our final report. I thank each and every one of my colleagues for their hard work and for their determination that the job be done fully and fairly.

John Tower's service as Vice Chairman was essential to our effectiveness from start to finish. This inquiry could have been distracted by partisan argument over allocating the blame for intelligence excesses. Instead, we have unanimously concluded that intelligence problems are far more fundamental. They are not the product of any single administration, party, or man.

At the outset of this particular volume, special mention is also due to Senator Walter F. Mondale for his chairmanship of the subcommittee charged with drafting the final report on domestic intelligence activity. During our hearings, Senator Mondale helped to bring into focus the threats posed to the rights of American citizens. He and his

domestic subcommittee colleagues—Senator Howard Baker, as ranking Minority member, and Senators Philip Hart, Robert Morgan and Richard Schweiker—deserve great credit for the complete and compelling draft which they presented to the Full Committee.

The staff of the Committee has worked long, hard and well. Without their work over the past year—and during many long nights and weekends—the Committee could not have come close to coping with its massive job. I commend and thank them all. The staff members whose work was particularly associated with this volume and its supplementary detailed reports are listed in Appendix C.

FRANK CHURCH,
Chairman.

PREFACE

In January 1975, the Senate resolved to establish a Committee to:

> conduct an investigation and study of governmental operations with respect to intelligence activities and the extent, if any, to which illegal, improper, or unethical activities were engaged in by any agency of the Federal Government.[1]

This Committee was organized shortly thereafter and has conducted a year-long investigation into the intelligence activities of the United States Government, the first substantial inquiry into the intelligence community since World War II.

The inquiry arose out of allegations of substantial wrongdoing by intelligence agencies on behalf of the administrations which they served. A deeper concern underlying the investigation was whether this Government's intelligence activities were governed and controlled consistently with the fundamental principles of American constitutional government—that power must be checked and balanced and that the preservation of liberty requires the restraint of laws, and not simply the good intentions of men.

Our investigation has confirmed that properly controlled and lawful intelligence is vital to the nation's interest. A strong and effective intelligence system serves, for example, to monitor potential military threats from the Soviet Union and its allies, to verify compliance with international agreements such as SALT, and to combat espionage and international terrorism. These, and many other necessary and proper functions are performed by dedicated and hard working employees of the intelligence community.

The Committee's investigation has, however, also confirmed substantial wrongdoing. And it has demonstrated that intelligence activities have not generally been governed and controlled in accord with the fundamental principles of our constitutional system of government.

The task faced by this Committee was to propose effective measures to prevent intelligence excesses, and at the same time to propose sound guidelines and oversight procedures with which to govern and control legitimate activities.

Having concluded its investigation, the Committee issues its reports [2] for the purposes of:

> providing a fair factual basis for informed Congressional and public debate on critical issues affecting the role of governmental intelligence activities in a free society; and

[1] Senate Resolution 21, January 27, 1975, Sec. 1. The full text of S. Res. 21 is printed at Appendix A.

[2] The Committee's final report is divided into two main volumes. The balance of this volume covers domestic activities of intelligence agencies and their activities overseas to the extent that they affect the constitutional rights of Americans. The other volume covers all other activities of United States foreign and military intelligence agencies.

The Committee has previously issued the reports and hearing records set forth in Appendix B.

recommending such legislative and executive action as, in the judgment of the Committee, is appropriate to prevent recurrence of past abuses and to insure adequate coordination, control and oversight of the nation's intelligence resources, capabilities, and activities.

A. The Committee's Mandate

In elaboration of the broad mandate set forth at the outset of this Report, the Senate charged the Committee with investigating fourteen specific "matters or questions" and with reporting the "full facts" on them. The fourteen enumerated matters and questions concern: (i) what kind of activities have been—and should be—undertaken by intelligence agencies; (ii) whether those activities conform to law and the Constitution; and (iii) how intelligence agencies have been—and should be—coordinated, controlled and overseen.[3]

In addition to investigating the "full facts" with respect to such matters, the Committee was instructed to determine:

> Whether any of the existing laws of the United States are inadequate, either in their provisions or manner of enforcement, to safeguard the rights of American citizens, to improve executive and legislative control of intelligence and related activities and to resolve uncertainties as to the authority of United States intelligence and related agencies. [Id., Sec. 2 (12)]

B. The Major Questions

Our investigation addressed the structure, history, activities and policies of America's most important intelligence agencies. The Committee looked beyond the operation of individual agencies to examine common themes and patterns inherent in intelligence operations. In the course of its investigation, the Committee has sought to answer three broad questions:

> First, whether domestic intelligence activities have been consistent with law and with the individual liberties guaranteed to American citizens by the Constitution.
>
> Second, whether America's foreign intelligence activities have served the national interest in a manner consistent with the nation's ideals and with national purposes.

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[3] S. Res. 21, Sec. 2. Examples of the "matters or questions" include:

"The conduct of domestic intelligence or counterintelligence operations against United States citizens" by the FBI or other agencies. [Sec. 2(2)];

"The violation or suspected violation of law" by intelligence agencies [Sec. 2(10)];

Allegations of CIA "domestic" activity, and the relationship between CIA responsibility to protect sources and methods and the prohibition of its exercising law enforcement powers or internal security functions [Sec. 2(1), (6)];

"The origin and disposition of the so-called Huston Plan" [Sec. 2(7)(9)];

"The extent and necessity' of "covert intelligence activities abroad [Sec. 2(14)];

Whether there is excessive duplication or inadequate coordination among intelligence agencies [Sec. 2(4)(13)] and

The "nature and extent" of executive oversight [Sec. 2(7)(9)] and the "need for improved, strengthened or consolidated' Congressional oversight [Sec. 2(7)(9)(11)].

> Third, whether the institutional procedures for directing and controlling intelligence agencies have adequately ensured their compliance with policy and law, and whether those procedures have been based upon the system of checks and balances among the branches of government required by our Constitution.

The Committee fully subscribes to the premise that intelligence agencies perform a necessary and proper function. The Preamble to the Constitution states that our government was created, in part, to "insure domestic tranquility [and] provide for the common defense." Accurate and timely intelligence can and does help meet those goals.

The Committee is also mindful, however, of the danger which intelligence collection, and intelligence operations, may pose for a society grounded in democratic principles. The Preamble to our Constitution also declares that our government was created to "secure the blessings of liberty" and to "establish justice". If domestic intelligence agencies ignore those principles, they may threaten the very values that form the foundation of our society. Similarly, if the government conducts foreign intelligence operations overseas which are inconsistent with our national ideals, our reputation, goals, and influence abroad may be undercut.

C. The Nature of the Committee's Investigation

1. SELECTION OF AGENCIES, PROGRAMS AND CASES TO EMPHASIZE

Necessarily, the Committee had to be selective. To investigate everything relevant to intelligence—and even everything relevant to the fundamental issues on which we had decided to focus—would take forever. Our job was to discover—and suggest solutions for—the major problems "at the earliest practical date".[4]

Accordingly, the Committee had to choose the particular Governmental entities upon which we would concentrate and then further had to choose particular cases to investigate in depth.

Many agencies, departments or bureaus of the Federal Government have an intelligence function. Of these, the Committee spent the overwhelming preponderance of its energies on five:

> The Federal Bureau of Investigation; The Central Intelligence Agency; The National Security Agency; The national intelligence components of the Defense Department (other than NSA); and The National Security Council and its component parts.[5]

The agencies upon which the Committee concentrated are those whose powers are so great and whose practices were so extensive that they must be understood in order fairly to judge whether the intelligence system of the United States needs reform and change.

Having selected the agencies to emphasize, the Committee also had to select representative programs and policies on which to concentrate. There were many more possible issues and allegations to investigate

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[4] S. Res. 21; Sec. 5.

[5] Substantial work was also done on intelligence activities of the Internal Revenue Service and the State Department.

than could be covered fully and fairly. The principles which guided our choices were:

(1) More is learned by investigating tens of programs and incidents in depth rather than hundreds superficially. Our goal was to understand causes and, where appropriate, to suggest solutions.

(2) Cases most likely to produce general lessons should receive the most attention.

(3) Programs were examined from each administration beginning with Franklin Roosevelt's. This assured understanding of the historical context within which intelligence activities have developed. Fundamental issues concerning the conduct and character of the nation deserve nonpartisan treatment. It has become clear from our inquiry, moreover, that intelligence excesses, at home and abroad, have been found in every administration. They are not the product of any single party, administration, or man.

2. LIMITATIONS AND STRENGTHS

(a) *The Focus on Problem Areas*

The intelligence community has had broad responsibility for activities beyond those which we investigated as possibly "illegal, improper, or unethical". Our reports primarily address problem areas and the command and control question generally. However, the intelligence community performs vital tasks outside the areas on which our investigation concentrated. This point must be kept in mind in fairness to the agencies, and to their employees who have devoted their careers to the nation's service. Moreover, one of many reasons for checking intelligence excesses is to restore the confidence, good name, and effectiveness of intelligence agencies so that they may better serve the nation in the future.[6]

(b) *Caution on Questions of Individual "Guilt" or "Innocence"*

A Senate Committee is not a prosecutor, a grand jury or a court. It is far better suited to determine how things went wrong and what can be done to prevent their going wrong again, than to resolve disputed questions of individual "guilt" or "innocence". For the resolution of those questions we properly rely on the courts.

Of course, to understand the past in order to better propose guidance for the future, the Committee had to investigate the facts underlying charges of wrongdoing. Facts involve people. Therefore, the Committee has necessarily had to determine what particular individuals appear to have done and, on occasion, to make judgments on their responsibility. We have, however, recognized our limitations and attempted to be cautious in reaching those judgments; the reader should be similarly cautious in evaluating our judgments.

The Committee's hope is that this report will provoke a national debate not on "Who did it?", but on "How did it happen and what can be done to keep it from happening again?"

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[6] Indeed, it is likely that in some cases the high priority given to activities that appear questionable has reduced the attention given to other vital matters. Thus, the FBI, for example, has placed more emphasis on domestic dissent than on organized crime and, according to some, let its efforts against foreign spies suffer because of the amount of time spent checking up on American protest groups.

(c) Ability to See the Full Scope of the Problem

This Committee examined a very broad range of issues and compiled a hughe factual record [7] which covers:

(i) the origins and development of intelligence programs over seven administrations;

(ii) intelligence activities both at home and abroad; and

(iii) the programs and practices of the several most important intelligence agencies.

Thus, for the first time, based upon the Committee's investigation, it is possible to examine the patterns of intelligence activity and not merely isolated incidents.

The issues for the country to resolve are best posed by looking, as we have done, at the aggregate, rather than at particular incidents in isolation. Neither the dangers, nor the causes, nor the possible solutions can be fairly evaluated without considering both the broad patterns of intelligence activity which emerge from examining particular cases over the past several decades, and the cumulative effect of activities of different agencies. For example, individual cases or programs of governmental surveillance may constitute interference with constitutionally protected rights of privacy and dissent. But only by examining the cumulative impact of many such programs can the danger of "Big Brother Government" be realistically assessed. Only by understanding the full breadth of governmental efforts against dissenters can one weigh the extent to which those efforts may chill lawful assembly and free expression.

D. The Purpose of the Committee's Findings and Recommendations

The central goal of the Committee is to make informed recommendations—based upon a detailed and balanced factual investigation—about:

(1) which intelligence activities ought to be permitted, and which should be restricted or prohibited; and

(2) what controls and organizational structure are needed to keep intelligence operations both effective and consistent with this country's most basic values and fundamental interests.

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[7] Some 800 witnesses were examined, approximately 250 under oath in executive sessions, 50 in public sessions, and the balance in interviews. The aggregate number of transcript pages is almost 30,000. Approximately 110,000 document pages were obtained from the various intelligence agencies (still more were preliminarily reviewed at the agencies), as well as from the White House, presidential libraries, and other sources.

Over the course of its investigation the Committee has had generally good cooperation in obtaining information from the intelligence agencies and the Administration. Of course, there were problems, particularly at the outset—compliance took too long; bureaucratic rules such as the "third agency rule" (which required agencies other than the custodian of the document to review it if they were mentioned) were frustrating. But our experience suggests that those problems can be worked out.

The most important lesson to be derived from our experience is that effective oversight is impossible without regular access to the underlying working documents of the intelligence community. Top level briefings do not adequately describe the realities. For that the documents are a necessary supplement and at times the only source.

The first step for this Committee, its successor oversight Committees and the Congress as a whole is to devise the legal framework within which intelligence agencies can, in the future, be guided, checked and operate both properly and efficiently. A basic law—a charter of powers, duties, and limitations—does not presently exist for some of the most important intelligence activities (*e.g.*, FBI's domestic intelligence or NSA) or, where it does exist, as with CIA, it is vague, conflicting and incomplete.

The absence of laws and the lack of clarity in those that exist has had the effect, if not the intention, of keeping vital issues of national importance away from public debate.

This Committee's job was to pose the issues that have been ignored for decades. The technique for doing so was to investigate and then to propose basic laws and other rules as to what can and cannot be done, and on the appropriate command and control structure for intelligence activities.

There are many other questions, such as the efficiency, cost and quality of intelligence, which are also of vital national importance. We have also examined these matters and consider them in this report. But, the main emphasis of our investigation was on what should be done and not on how it should be done. We seek in our recommendations to lay the underlying legal foundation, and the control and oversight structure for the intelligence community. If these are sound, then we have faith that the other questions will be answered correctly in the future. But if the foundation is unsound or remains unfinished—or if intelligence agencies continue to operate under a structure in which executive power is not effectively checked and examined—then we will have neither quality intelligence nor a society which is free at home and respected abroad.

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I. INTRODUCTION AND SUMMARY

The resolution creating this Committee placed greatest emphasis on whether intelligence activities threaten the "rights of American citizens." [1]

The critical question before the Committee was to determine how the fundamental liberties of the people can be maintained in the course of the Government's effort to protect their security. The delicate balance between these basic goals of our system of government is often difficult to strike, but it can, and must, be achieved. We reject the view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom and have extended to a wide array of citizens engaging in lawful activity.

Americans have rightfully been concerned since before World War II about the dangers of hostile foreign agents likely to commit acts of espionage. Similarly, the violent acts of political terrorists can seriously endanger the rights of Americans. Carefully focused intelligence investigations can help prevent such acts.

But too often intelligence has lost this focus and domestic intelligence activities have invaded individual privacy and violated the rights of lawful assembly and political expression. Unless new and tighter controls are established by legislation, domestic intelligence activities threaten to undermine our democratic society and fundamentally alter its nature.

We have examined three types of "intelligence" activities affecting the rights of American citizens. The first is intelligence collection—such as infiltrating groups with informants, wiretapping, or opening letters. The second is dissemination of material which has been collected. The third is covert action designed to disrupt and discredit the activities of groups and individuals deemed a threat to the social order. These three types of "intelligence" activity are closely related in the practical world. Information which is disseminated by the intelligence community [2] or used in disruptive programs has usually been obtained through surveillance. Nevertheless, a division between collection, dissemination and covert action is analytically useful both in understanding why excesses have occurred in the past and in devising remedies to prevent those excesses from recurring.

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[1] S. Res. 21, sec. 2(12). The Senate specifically charged this Committee with investigating "the conduct of domestic intelligence or counterintelligence operations against United States citizens." (Sec. 2(2)) The resolution added several examples of specific charges of possible "illegal, improper or unethical" governmental intelligence activities as matters to be fully investigated (Sec. (2)(1)—CIA domestic activities; Sec. (2)(3)—Huston Plan; Sec. (2)(10)—surreptitous entries, electronic surveillance, mail opening.)

[2] Just as the term "intelligence activity" encompasses activities that go far beyond the collection and analysis of information, the term "intelligence community" includes persons ranging from the President to the lowest field operatives of the intelligence agencies.

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A. Intelligence Activity: A New Form of Governmental Power to Impair Citizens' Rights

A tension between order and liberty is inevitable in any society. A Government must protect its citizens from those bent on engaging in violence and criminal behavior, or in espionage and other hostile foreign intelligence activity. Many of the intelligence programs reviewed in this report were established for those purposes. Intelligence work has, at times, successfully prevented dangerous and abhorrent acts, such as bombings and foreign spying, and aided in the prosecution of those responsible for such acts.

But, intelligence activity in the past decades has, all too often, exceeded the restraints on the exercise of governmental power which are imposed by our country's Constitution, laws, and traditions.

Excesses in the name of protecting security are not a recent development in our nation's history. In 1798, for example, shortly after the Bill of Rights was added to the Constitution, the Alien and Sedition Acts were passed. These Acts, passed in response to fear of pro-French "subversion", made it a crime to criticize the Government.[3] During the Civil War, President Abraham Lincoln suspended the writ of habeas corpus. Hundreds of American citizens were prosecuted for anti-war statements during World War I, and thousands of "radical" aliens were seized for deportation during the 1920 Palmer Raids. During the Second World War, over the opposition of J. Edgar Hoover and military intelligence,[4] 120,000 Japanese-Americans were apprehended and incarcerated in detention camps.

Those actions, however, were fundamentally different from the intelligence activities examined by this Committee. They were generally executed overtly under the authority of a statute or a public executive order. The victims knew what was being done to them and could challenge the Government in the courts and other forums. Intelligence activity, on the other hand, is generally covert. It is concealed from its victims [5] and is seldom described in statutes or explicit execu-

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[3] The Alien Act provided for the deportation of all aliens judged "dangerous to the peace and safety" of the nation. (1 Stat. 570, June 25, 1798) The Sedition Act made it a federal crime to publish "false, scandalous and malicious writing" against the United States government, the Congress, or the President with the intent to "excite against them" the "hatred of the good people of the United States" or to "encourage or abet any hostile designs of any foreign nation against the United States." (1 Stat. 596, July 14, 1798) There were at least 25 arrests, 15 indictments, and 10 convictions under the Sedition Act. (See James M. Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell U. Press, 1956).)

[4] Francis Biddle, *In Brief Authority* (Garden City: Doubleday, 1962), p. 224; Roger Daniels, *Concentration Camps USA: Japanese Americans and World War II* (New York: Holt, Rinehart, and Winston, 1971), p. 66.

[5] Many victims of intelligence activities have claimed in the past that they were being subjected to hostile action by their government. Prior to this investigation, most Americans would have dismissed these allegations. Senator Philip Hart aptly described this phenomenon in the course of the Committee's public hearings on domestic intelligence activities:

"As I'm sure others have, I have been told for years by, among others, some of my own family, that this is exactly what the Bureau was doing all of the time, and in my great wisdom and high office, I assured them that they were [wrong]—it just wasn't true, it couldn't happen. They wouldn't do it. What you have described is a series of illegal actions intended squarely to deny

tive orders. The victim may never suspect that his misfortunes are the intended result of activities undertaken by his government, and accordingly may have no opportunity to challenge the actions taken against him.

It is, of course, proper in many circumstances—such as developing a criminal prosecution—for the Government to gather information about a citizen and use it to achieve legitimate ends, some of which might be detrimental to the citizen. But in criminal prosecutions, the courts have struck a balance between protecting the rights of the accused citizen and protecting the society which suffers the consequences of crime. Essential to the balancing process are the rules of criminal law which circumscribe the techniques for gathering evidence,[6] the kinds of evidence that may be collected, and the uses to which that evidence may be put. In addition, the criminal defendant is given an opportunity to discover and then challenge the legality of how the Government collected information about him and the use which the Government intends to make of that information.

This Committee has examined a realm of governmental information collection which has not been governed by restraints comparable to those in criminal proceedings. We have examined the collection of intelligence about the political advocacy and actions and the private lives of American citizens. That information has been used covertly to discredit the ideas advocated and to "neutralize" the actions of their proponents. As Attorney General Harlan Fiske Stone warned in 1924, when he sought to keep federal agencies from investigating "political or other opinions" as opposed to "conduct . . . forbidden by the laws":

> When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish.
>
> . . . There is always a possibility that a secret police may become a menace to free government and free institutions because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood.[7]

Our investigation has confirmed that warning. We have seen segments of our Government, in their attitudes and action, adopt tactics unworthy of a democracy, and occasionally reminiscent of the tactics of totalitarian regimes. We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal

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First Amendment rights to some Americans. That is what my children have told me was going on. Now I did not believe it.

"The trick now, as I see it, Mr. Chairman, is for this committee to be able to figure out how to persuade the people of this country that indeed it did go on. And how shall we insure that it will never happen again? But it will happen repeatedly unless we can bring ourselves to understand and accept that it did go on." Senator Philip Hart, 11/18/75, Hearings, Vol. 6, p. 41.

[6] As the Supreme Court noted in *Miranda v. Arizona*, 384 U.S. 436, 483, 486 (1966), even before the Court required law officers to advise criminal suspects of their constitutional rights before custodial interrogation, the FBI had "an exemplary record" in this area—a practice which the Court said should be "emulated by state and local law enforcement agencies." This commendable FBI tradition in the general field of law enforcement presents a sharp contrast to the widespread disregard of individual rights in FBI domestic intelligence operations examined in the balance of this Report.

[7] *New York Times*, 5/13/24.

violence or identifying foreign spies, were expanded to what witnesses characterized as "vacuum cleaners",[8] sweeping in information about lawful activities of American citizens.

The tendency of intelligence activities to expand beyond their initial scope is a theme which runs through every aspect of our investigative findings. Intelligence collection programs naturally generate ever-increasing demands for new data. And once intelligence has been collected, there are strong pressures to use it against the target.

The pattern of intelligence agencies expanding the scope of their activities was well described by one witness, who in 1970 had coordinated an effort by most of the intelligence community to obtain authority to undertake more illegal domestic activity:

> The risk was that you would get people who would be susceptible to political considerations as opposed to national security considerations, or would construe political considerations to be national security considerations, to move from the kid with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate. And you just keep going down the line.[9]

In 1940, Attorney General Robert Jackson saw the same risk. He recognized that using broad labels like "national security" or "subversion" to invoke the vast power of the government is dangerous because there are "no definite standards to determine what constitutes a 'subversive activity', such as we have for murder or larceny." Jackson added:

> Activities which seem benevolent or helpful to wage earners, persons on relief, or those who are disadvantaged in the struggle for existence may be regarded as 'subversive' by those whose property interests might be burdened thereby. Those who are in office are apt to regard as 'subversive' the activities of any of those who would bring about a change of administration. Some of our soundest constitutional doctrines were once punished as subversive. We must not forget that it was not so long ago that both the term 'Republican' and the term 'Democrat' were epithets with sinister meaning to denote persons of radical tendencies that were 'subversive' of the order of things then dominant.[10]

This wise warning was not heeded in the conduct of intelligence activity, where the "eternal vigilance" which is the "price of liberty" has been forgotten.

B. The Questions

We have directed our investigation toward answering the following questions:

Which governmental agencies have engaged in domestic spying?

How many citizens have been targets of Governmental intelligence activity?

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[8] Mary Jo Cook testimony, 12/2/75, Hearings, Vol. 6, p. 111; James B. Adams testimony, 12/2/75, Hearings, Vol. 6, p. 135.

[9] Tom Charles Huston testimony, 9/23/75, Hearings, Vol. 2, p. 45.

[10] "The Federal Prosecutor", *Journal of the American Judicature Society* (June, 1940), p. 18.

What standards have governed the opening of intelligence investigations and when have intelligence investigations been terminated?

Where have the targets fit on the spectrum between those who commit violent criminal acts and those who seek only to dissent peacefully from Government policy?

To what extent has the information collected included intimate details of the targets' personal lives or their political views, and has such information been disseminated and used to injure individuals?

What actions beyond surveillance have intelligence agencies taken, such as attempting to disrupt, discredit, or destroy persons or groups who have been the targets of surveillance?

Have intelligence agencies been used to serve the political aims of Presidents, other high officials, or the agencies themselves?

How have the agencies responded either to proper orders or to excessive pressures from their superiors? To what extent have intelligence agencies disclosed, or concealed them from, outside bodies charged with overseeing them?

Have intelligence agencies acted outside the law? What has been the attitude of the intelligence community toward the rule of law?

To what extent has the Executive branch and the Congress controlled intelligence agencies and held them accountable?

Generally, how well has the Federal system of checks and balances between the branches worked to control intelligence activity?

C. Summary of the Main Problems

The answer to each of these questions is disturbing. Too many people have been spied upon by too many Government agencies and to much information has beeen collected. The Government has often undertaken the secret surveillance of citizens on the basis of their political beliefs, even when those beliefs posed no threat of violence or illegal acts on behalf of a hostile foreign power. The Government, operating primarily through secret informants, but also using other intrusive techniques such as wiretaps, microphone "bugs", surreptitious mail opening, and break-ins, has swept in vast amounts of information about the personal lives, views, and associations of American citizens. Investigations of groups deemed potentially dangerous—and even of groups suspected of associating with potentially dangerous organizations—have continued for decades, despite the fact that those groups did not engage in unlawful activity. Groups and individuals have been harassed and disrupted because of their political views and their lifestyles. Investigations have been based upon vague standards whose breadth made excessive collection inevitable. Unsavory and vicious tactics have been employed—including anonymous attempts to break up marriages, disrupt meetings, ostracize persons from their professions, and provoke target groups into rivalries that might result in deaths. Intelligence agencies have served the political and personal objectives of presidents and other high officials. While the agencies often committed excesses in response to pressure from high officials in the Executive branch and Congress, they also occasionally initiated improper activities and then concealed them from officials whom they had a duty to inform.

Governmental officials—including those whose principal duty is to enforce the law—have violated or ignored the law over long periods of time and have advocated and defended their right to break the law.

The Constitutional system of checks and balances has not adequately controlled intelligence activities. Until recently the Executive branch has neither delineated the scope of permissible activities nor established procedures for supervising intelligence agencies. Congress has failed to exercise sufficient oversight, seldom questioning the use to which its apropriations were being put. Most domestic intelligence issues have not reached the courts, and in those cases when they have reached the courts, the judiciary has been reluctant to grapple with them.

Each of these points is briefly illustrated below, and covered in substantially greater detail in the following sections of the report.

1. The Number of People Affected by Domestic Intelligence Activity

United States intelligence agencies have investigated a vast number of American citizens and domestic organizations. FBI headquarters alone has developed over 500,000 domestic intelligence files,[11] and these have been augmented by additional files at FBI Field Offices. The FBI opened 65,000 of these domestic intelligence files in 1972 alone.[12] In fact, substantially more individuals and groups are subject to intelligence scrutiny than the number of files would appear to indicate, since typically, each domestic intelligence file contains information on more than one individual or group, and this information is readily retrievable through the FBI General Name Index.

The number of Americans and domestic groups caught in the domestic intelligence net is further illustrated by the following statistics:

—Nearly a quarter of a million first class letters were opened and photographed in the United States by the CIA between 1953–1973, producing a CIA computerized index of nearly one and one-half million names.[13]

—At least 130,000 first class letters were opened and photographed by the FBI between 1940–1966 in eight U.S. cities.[14]

—Some 300,000 individuals were indexed in a CIA computer system and separate files were created on approximately 7,200 Americans and over 100 domestic groups during the course of CIA's Operation CHAOS (1967–1973).[15]

—Millions of private telegrams sent from, to, or through the United States were obtained by the National Security Agency from 1947 to 1975 under a secret arrangement with three United States telegraph companies.[16]

—An estimated 100,000 Americans were the subjects of United States Army intelligence files created between the mid-1960's and 1971.[17]

—Intelligence files on more than 11,000 individuals and groups were created by the Internal Revenue Service between

[11] Memorandum from the FBI to the Senate Select Committee, 10/6/75.
[12] Memorandum from the FBI to the Senate Select Committee, 10/6/75.
[13] James Angleton testimony, 9/17/75, p. 28.
[14] See Mail Opening Report: Section IV, "FBI Mail Openings."
[15] Chief, International Terrorist Group testimony, Commission on CIA Activities Within the United States, 3/10/75, pp. 1485–1489.
[16] Statement by the Chairman, 11/6/75; re: SHAMROCK, Hearings, Vol. 5, pp. 57–60.
[17] See Military Surveillance Report: Section II, "The Collection of Information about the Political Activities of Private Citizens and Private Organizations."

1969 and 1973 and tax investigations were started on the basis of political rather than tax criteria.[18]

—At least 26,000 individuals were at one point catalogued on an FBI list of persons to be rounded up in the event of a "national emergency".[19]

2. Too Much Information Is Collected For Too Long

Intelligence agencies have collected vast amounts of information about the intimate details of citizens' lives and about their participation in legal and peaceful political activities. The targets of intelligence activity have included political adherents of the right and the left, ranging from activitist to casual supporters. Investigations have been directed against proponents of racial causes and women's rights, outspoken apostles of nonviolence and racial harmony; establishment politicians; religious groups; and advocates of new life styles. The widespread targeting of citizens and domestic groups, and the excessive scope of the collection of information, is illustrated by the following examples:

(a) The "Women's Liberation Movement" was infiltrated by informants who collected material about the movement's policies, leaders, and individual members. One report included the name of every woman who attended meetings,[20] and another stated that each woman at a meeting had described "how she felt oppressed, sexually or otherwise".[21] Another report concluded that the movement's purpose was to "free women from the humdrum existence of being only a wife and mother", but still recommended that the intelligence investigation should be continued.[22]

(b) A prominent civil rights leader and advisor to Dr. Martin Luther King, Jr., was investigated on the suspicion that he might be a Communist "sympathizer". The FBI field office concluded he was not.[23] Bureau headquarters directed that the investigation continue—using a theory of "guilty until proven innocent:"

> The Bureau does not agree with the expressed belief of the field office that _____[24] is not sympathetic to the Party cause. While there may not be any evidence that _____ is a Communist neither is there any substantial evidence that he is anti-Communist.[25]

(c) FBI sources reported on the formation of the Conservative American Christian Action Council in 1971.[26] In the 1950's, the Bureau collected information about the John Birch Society and passed

[18] See IRS Report: Section II, "Selective Enforcement for Nontax Purposes."

[19] Memorandum from A. H. Belmont to L. V. Boardman, 12/8/54. Many of the memoranda cited in this report were actually written by FBI personnel other than those whose names were indicated at the foot of the document as the author. Citation in this report of specific memoranda by using the names of FBI personnel which so appear is for documentation purposes only and is not intended to presume authorship or even knowledge in all cases.

[20] Memorandum from Kansas City Field Office to FBI Headquarters, 10/20/70. (Hearings, Vol. 6, Exhibit 54–3)

[21] Memorandum from New York Field Office to FBI Headquarters, 5/28/69, p. 2. (Hearings, Vol. 6, Exhibit 54–1)

[22] Memorandum from Baltimore Field Office to FBI Headquarters, 5/11/70, p. 2.

[23] Memorandum from New York Field Office to FBI Headquarters, 4/14/64.

[24] Name deleted by Committee to protect privacy.

[25] Memorandum from FBI Headquarters to New York Field Office 4/24/64, re CPUSA, Negro question.

[26] James Adams testimony, 12/2/75, Hearings, Vol. 6, p. 137.

it to the White House because of the Society's "scurillous attack" on President Eisenhower and other high Government officials.[27]

(d) Some investigations of the lawful activities of peaceful groups have continued for decades. For example, the NAACP was investigated to determine whether it "had connections with" the Communist Party. The investigation lasted for over twenty-five years, although nothing was found to rebut a report during the first year of the investigation that the NAACP had a "strong tendency" to "steer clear of Communist activities."[28] Similarly, the FBI has admitted that the Socialist Workers Party has committed no criminal acts. Yet the Bureau has investigated the Socialist Workers Party for more than three decades on the basis of its revolutionary rhetoric—which the FBI concedes falls short of incitement to violence—and its claimed international links. The Bureau is currently using its informants to collect information about SWP members' political views, including those on "U.S. involvement in Angola," "food prices," "racial matters," the "Vietnam War," and about any of their efforts to support non-SWP candidates for political office.[29]

(e) National political leaders fell within the broad reach of intelligence investigations. For example, Army Intelligence maintained files on Senator Adlai Stevenson and Congressman Abner Mikva because of their participation in peaceful political meetings under surveillance by Army agents.[30] A letter to Richard Nixon, while he was a candidate for President in 1968, was intercepted under CIA's mail opening program.[31] In the 1960's President Johnson asked the FBI to compare various Senators' statements on Vietnam with the Communist Party line [32] and to conduct name checks on leading antiwar Senators.[33]

(f) As part of their effort to collect information which "related even remotely" to people or groups "active" in communities which had "the potential" for civil disorder, Army intelligence agencies took such steps as: sending agents to a Halloween party for elementary school children in Washington, D.C., because they suspected a local "dissident" might be present; monitoring protests of welfare mothers' organizations in Milwaukee; infiltrating a coalition of church youth groups in Colorado; and sending agents to a priests' conference in Washington, D.C., held to discuss birth control measures.[34]

(g) In the late 1960's and early 1970's, student groups were subjected to intense scrutiny. In 1970 the FBI ordered investigations of every member of the Students for a Democratic Society and of "every Black Student Union and similar group regardless of their past or

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[27] Memorandum from F. J. Baumgardner to William C. Sullivan, 5/29/63.

[28] Memorandum from Oklahoma City Field Office to FBI Headquarters, 9/19/41. See Development of FBI Domestic Intelligence Investigations: Section IV, "FBI Target Lists."

[29] Chief Robert Shackleford testimony, 2/6/76, p. 91.

[30] Senate Judiciary Subcommittee on Constitutional Rights, Report, 1973, p. 57.

[31] Senate Select Committee Staff summary of HTLINGUAL File Review, 9/5/75.

[32] FBI Summary Memorandum, 1/31/75, re: Coverage of T.V. Presentation.

[33] Letter from J. Edgar Hoover to Marvin Watson, 7/15/66.

[34] See Military Report: Sec. II, "The Collection of Information About the Political Activities of Private Citizens and Private Organizations."

present involvement in disorders." [35] Files were opened on thousands of young men and women so that, as the former head of FBI intelligence explained, the information could be used if they ever applied for a government job.[36]

In the 1960's Bureau agents were instructed to increase their efforts to discredit "New Left" student demonstrators by tactics including publishing photographs ("naturally the most obnoxious picture should be used"),[37] using "misinformation" to falsely notify members events had been cancelled,[38] and writing "tell-tale" letters to students' parents.[39]

(h) The FBI Intelligence Division commonly investigated any indication that "subversive" groups already under investigation were seeking to influence or control other groups.[40] One example of the extreme breadth of this "infiltration" theory was an FBI instruction in the mid-1960's to all Field Offices to investigate every "free university" because some of them had come under "subversive influence." [41]

(i) Each administration from Franklin D. Roosevelt's to Richard Nixon's permitted, and sometimes encouraged, government agencies to handle essentially political intelligence. For example:

—President Roosevelt asked the FBI to put in its files the names of citizens sending telegrams to the White House opposing his "national defense" policy and supporting Col. Charles Lindbergh.[42]

—President Truman received inside information on a former Roosevelt aide's efforts to influence his appointments,[43] labor union negotiating plans,[44] and the publishing plans of journalists.[45]

—President Eisenhower received reports on purely political and social contacts with foreign officials by Bernard Baruch,[46] Mrs. Eleanor Roosevelt,[47] and Supreme Court Justice William O. Douglas.[47a]

—The Kennedy Administration had the FBI wiretap a Congressional staff member,[48] three executive officials,[49] a lobbyist,[50] and a Washington law firm.[51] Attorney General Robert F. Kennedy received the fruits of a FBI "tap" on Martin Luther King, Jr.,[52] and a "bug" on a Congressman both of which yielded information of a political nature.[53]

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[35] Memorandum from FBI headquarters to all SAC's, 11/4/70.
[36] Charles Brennan testimony, 9/25/75, Hearings, vol. 2 p. 117.
[37] Memorandum from FBI Headquarters to all SAC's, 7/5/68.
[38] Abstracts of New Left Documents #161, 115, 43. Memorandum from Washington Field Office to FBI Headquarters, 1/21/69.
[39] Memorandum from FBI Headquarters to Cleveland Field Office, 11/29/68.
[40] FBI Manual of Instructions, Sec. 87, B (2-f).
[41] Memorandum from FBI Headquarters to San Antonio Field Office, 7/23/69.
[42] Memorandum from Stephen Early to J. Edgar Hoover, 5/21/40; 6/17/40.
[43] Letter from J. Edgar Hoover to George Allen, 12/3/46.
[44] Letter from J. Edgar Hoover to Maj. Gen. Harry Vaughn, 2/15/47.
[45] Letter from J. Edgar Hoover to M. J. Connelly, 1/27/50.
[46] Letter from J. Edgar Hoover to Dillon Anderson, 11/7/55.
[47] Letter from J. Edgar Hoover to Robert Cutler, 2/13/58.
[47a] Letters from J. Edgar Hoover to Robert Cutler, 4/21/53–4/27/53.
[48] Memorandum from J. Edgar Hoover to the Attorney General, 2/16/61.
[49] Memorandum from J. Edgar Hoover to the Attorney General, 2/14/61.
[50] Memorandum from J. Edgar Hoover to the Attorney General, 2/16/61.
[51] Memorandum from J. Edgar Hoover to the Attorney General 6/26/62.
[52] Memorandum from Charles Brennan to William Sullivan, 12/19/66.
[53] Memorandum from J. Edgar Hoover to the Attorney General, 2/18/61.

—President Johnson asked the FBI to conduct "name checks" of his critics and of members of the staff of his 1964 opponent, Senator Barry Goldwater.[54] He also requested purely political intelligence on his critics in the Senate, and received extensive intelligence reports on political activity at the 1964 Democratic Convention from FBI electronic surveillance.[55]

—President Nixon authorized a program of wiretaps which produced for the White House purely political or personal information unrelated to national security, including information about a Supreme Court justice.[56]

3. Covert Action and the Use of Illegal or Improper Means

(*a*) *Covert Action.*—Apart from uncovering excesses in the collection of intelligence, our investigation has disclosed covert actions directed against Americans, and the use of illegal and improper surveillance techniques to gather information. For example:

(i) The FBI's COINTELPRO—counterintelligence program—was designed to "disrupt" groups and "neutralize" individuals deemed to be threats to domestic security. The FBI resorted to counterintelligence tactics in part because its chief officials believed that the existing law could not control the activities of certain dissident groups, and that court decisions had tied the hands of the intelligence community. Whatever opinion one holds about the policies of the targeted groups, many of the tactics employed by the FBI were indisputably degrading to a free society. COINTELPRO tactics included:

—Anonymously attacking the political beliefs of targets in order to induce their employers to fire them;

—Anonymously mailing letters to the spouses of intelligence targets for the purpose of destroying their marriages;[57]

—Obtaining from IRS the tax returns of a target and then attempting to provoke an IRS investigation for the express purpose of deterring a protest leader from attending the Democratic National Convention;[58]

—Falsely and anonymously labeling as Government informants members of groups known to be violent, thereby exposing the falsely labelled member to expulsion or physicial attack;[59]

—Pursuant to instructions to use "misinformation" to disrupt demonstrations, employing such means as broadcasting fake orders on the same citizens band radio frequency used by demonstration marshalls to attempt to control demonstrations,[60] and duplicating and falsely filling out forms soliciting housing for persons coming to a demonstration, thereby causing "long and useless journeys to locate these addresses";[61]

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[54] Memorandum from J. Edgar Hoover to Bill Moyers, 10/27/64.

[55] Memorandum from C. D. DeLoach to John Mohr, 8/29/64.

[56] Letter from J. Edgar Hoover to H.R. Haldeman, 6/25/70.

[57] Memorandum from FBI Headquarters, to San Francisco Field Office, 11/26/68.

[58] Memorandum from [Midwest City] Field Office to FBI Headquarters, 8/1/68; memorandum from FBI Headquarters to [Midwest City] Field Office, 8/6/68.

[59] Memorandum from Columbia Field Office to FBI Headquarters, 11/4/70, re: COINTELPRO-New Left.

[60] Memorandum from Charles Brennan to William Sullivan, 8/15/68.

[61] Memorandum from Chicago Field Office to FBI Headquarters, 9/9/68.

—Sending an anonymous letter to the leader of a Chicago street gang (described as "violence-prone") stating that the Black Panthers were supposed to have "a hit out for you". The letter was suggested because it "may intensify . . . animosity" and cause the street gang leader to "take retaliatory action".[62]

(ii) From "late 1963" until his death in 1968, Martin Luther King, Jr., was the target of an intensive campaign by the Federal Bureau of Investigation to "neutralize" him as an effective civil rights leader. In the words of the man in charge of the FBI's "war" against Dr. King, "No holds were barred." [63]

The FBI gathered information about Dr. King's plans and activities through an extensive surveillance program, employing nearly every intelligence-gathering technique at the Bureau's disposal in order to obtain information about the "private activities of Dr. King and his advisors" to use to "completely discredit" them.[64]

The program to destroy Dr. King as the leader of the civil rights movement included efforts to discredit him with Executive branch officials, Congressional leaders, foreign heads of state, American ambassadors, churches, universities, and the press.[65]

The FBI mailed Dr. King a tape recording made from microphones hidden in his hotel rooms which one agent testified was an attempt to destroy Dr. King's marriage.[66] The tape recording was accompanied by a note which Dr. King and his advisors interpreted as threatening to release the tape recording unless Dr. King committed suicide.[67]

The extraordinary nature of the campaign to discredit Dr. King is evident from two documents:

—At the August 1963 March on Washington, Dr. King told the country of his "dream" that:

> all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, "Free at last, free at last, thank God Almightly, I'm free at last."

The Bureau's Domestic Intelligence Division concluded that this "demagogic speech" established Dr. King as the "most dangerous and effective Negro leader in the country." [68] Shortly afterwards, and within days after Dr. King was named "Man of the Year" by *Time* magazine, the FBI decided to "take him off his pedestal," reduce him completely in influence," and select and promote its own candidate to "assume the role of the leadership of the Negro people." [69]

—In early 1968, Bureau headquarters explained to the field that Dr. King must be destroyed because he was seen as a potential "messiah" who could "unify and electrify" the "black nationalist movement". Indeed, to the FBI he was a potential threat because he might "aban-

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[62] Memorandum from FBI Headquarters to Chicago Field Office, 1/30/69 re: COINTELPRO, Black Nationalist-Hate Groups.

[63] William C. Sullivan testimony, 11/1/75, p. 49.

[64] Memorandum from Baumgardner to Sullivan, 2/4/64.

[65] Memorandum from Chicago Field Office to FBI Headquarters, 12/16/68; memorandum from FBI Headquarters to Chicago Field Office, 1/30/69, re: COINTELPRO, Black Nationalist-Hate Groups.

[66] William C. Sullivan, 11/1/75, pp. 104–105.

[67] Andrew Young testimony, 2/19/76, p. 8.

[68] Memorandum from Sullivan to Belmont, 8/30/63.

[69] Memorandum from Sullivan to Belmont, 1/8/64.

don his supposed 'obedience' to white liberal doctrines (non-violence)." [70] In short, a non-violent man was to be secretly attacked and destroyed as insurance against his abandoning non-violence.

(*b*) *Illegal or Improper Means.*—The surveillance which we investigated was not only vastly excessive in breadth and a basis for degrading counterintelligence actions, but was also often conducted by illegal or improper means. For example:

(1) For approximately 20 years the CIA carried out a program of indiscriminately opening citizens' first class mail. The Bureau also had a mail opening program, but cancelled it in 1966. The Bureau continued, however, to receive the illegal fruits of CIA's program. In 1970, the heads of both agencies signed a document for President Nixon, which correctly stated that mail opening was illegal, falsely stated that it had been discontinued, and proposed that the illegal opening of mail should be resumed because it would provide useful results. The President approved the program, but withdrew his approval five days later. The illegal opening continued nonetheless. Throughout this period CIA officials knew that mail opening was illegal, but expressed concern about the "flap potential" of exposure, not about the illegality of their activity.[71]

(2) From 1947 until May 1975, NSA received from international cable companies millions of cables which had been sent by American citizens in the reasonable expectation that they would be kept private.[72]

(3) Since the early 1930's, intelligence agencies have frequently wiretapped and bugged American citizens without the benefit of judicial warrant. Recent court decisions have curtailed the use of these techniques against domestic targets. But past subjects of these surveillances have included a United States Congressman, a Congressional staff member, journalists and newsmen, and numerous individuals and groups who engaged in no criminal activity and who posed no genuine threat to the national security, such as two White House domestic affairs advisers and an anti-Vietnam War protest group. While the prior written approval of the Attorney General has been required for all warrantless wiretaps since 1940, the record is replete with instances where this requirement was ignored and the Attorney General gave only after-the-fact authorization.

Until 1965, microphone surveillance by intelligence agencies was wholly unregulated in certain classes of cases. Within weeks after a 1954 Supreme Court decision denouncing the FBI's installation of a microphone in a defendant's bedroom, the Attorney General informed the Bureau that he did not believe the decision applied to national security cases and

[70] Memorandum from FBI Headquarters to all SACs, 3/4/68.

[71] See Mail Opening Report: Section II, "Legal Considerations and the 'Flap' Potential."

[72] See NSA Report: Section I, "Introduction and Summary."

permitted the FBI to continue to install microphones subject only to its own "intelligent restraint".[73]

(4) In several cases, purely political information (such as the reaction of Congress to an Administration's legislative proposal) and purely personal information (such as coverage of the extra-marital social activities of a high-level Executive official under surveillance) was obtained from electronic surveillance and disseminated to the highest levels of the federal government.[74]

(5) Warrantless break-ins have been conducted by intelligence agencies since World War II. During the 1960's alone, the FBI and CIA conducted hundreds of break-ins, many against American citizens and domestic organizations. In some cases, these break-ins were to install microphones; in other cases, they were to steal such items as membership lists from organizations considered "subversive" by the Bureau.[75]

(6) The most pervasive surveillance technique has been the informant. In a random sample of domestic intelligence cases, 83% involved informants and 5% involved electronic surveillance.[76] Informants have been used against peaceful, law-abiding groups; they have collected information about personal and political views and activities.[77] To maintain their credentials in violence-prone groups, informants have involved themselves in violent activity. This phenomenon is well illustrated by an informant in the Klan. He was present at the murder of a civil rights worker in Mississippi and subsequently helped to solve the crime and convict the perpetrators. Earlier, however, while performing duties paid for by the Government, he had previously "beaten people severely, had boarded buses and kicked people, had [gone] into restaurants and beaten them [blacks] with blackjacks, chains, pistols." [78] Although the FBI requires agents to instruct informants that they cannot be involved in violence, it was understood that in the Klan, "he couldn't be an angel and be a good informant." [79]

4. Ignoring the Law

Officials of the intelligence agencies occasionally recognized that certain activities were illegal, but expressed concern only for "flap potential." Even more disturbing was the frequent testimony that the law, and the Constitution were simply ignored. For example, the author of the so-called Huston plan testified:

> *Question.* Was there any person who stated that the activity recommended, which you have previously identified as being

[73] Memorandum from Attorney General Brownell to J. Edgar Hoover, 5/20/54.

[74] See finding on Political Abuse. To protect the privacy of the targeted individual, the Committee has omitted the citation to the memorandum concerning the example of purely personal information.

[75] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66, p. 2.

[76] General Accounting Office Report on Domestic Intelligence Operations of the FBI, 9/75.

[77] Mary Jo Cook testimony, 12/2/75, Hearings, Vol. 6, p. 111.

[78] Gary Rowe deposition, 10/17/75, p. 9.

[79] Special Agent No. 3 deposition, 11/21/75, p. 12.

illegal opening of the mail and breaking and entry or burglary—was there any single person who stated that such activity should not be done because it was unconstitutional?

Answer. No.

Question. Was there any single person who said such activity should not be done because it was illegal?

Answer. No.[80]

Similarly, the man who for ten years headed FBI's Intelligence Division testifed that:

> . . . never once did I hear anybody, including myself, raise the question: "Is this course of action which we have agreed upon lawful, is it legal, is it ethical or moral." We never gave any thought to this line of reasoning, because we were just naturally pragmatic.[81]

Although the statutory law and the Constitution were often not "[given] a thought",[82] there was a general attitude that intelligence needs were responsive to a higher law. Thus, as one witness testified in justifying the FBI's mail opening program:

> It was my assumption that what we were doing was justified by what we had to do . . . the greater good, the national security.[83]

5. Deficiencies in Accountability and Control

The overwhelming number of excesses continuing over a prolonged period of time were due in large measure to the fact that the system of checks and balances—created in our Constitution to limit abuse of Governmental power—was seldom applied to the intelligence community. Guidance and regulation from outside the intelligence agencies—where it has been imposed at all—has been vague. Presidents and other senior Executive officials, particularly the Attorneys General, have virtually abdicated their Constitutional responsibility to oversee and set standards for intelligence activity. Senior government officials generally gave the agencies broad, general mandates or pressed for immediate results on pressing problems. In neither case did they provide guidance to prevent excesses and their broad mandates and pressures themselves often resulted in excessive or improper intelligence activity.

Congress has often declined to exercise meaningful oversight, and on occasion has passed laws or made statements which were taken by intelligence agencies as supporting overly-broad investigations.

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[80] Huston testimony, 9/23/75. Hearings. Vol. 2, p. 41.

[81] William Sullivan testimony, 11/1/75, pp. 92–93.

[82] The quote is from a Bureau official who had supervised for the "Black Nationalist Hate Group" COINTELPRO.

"*Question.* Did anybody at any time that you remember during the course of the programs discuss the Constitutionality or the legal authority, or anything else like that?

"Answer. No, we never gave it a thought. As far as I know, nobody engaged or ever had any idea that they were doing anything other than what was the policy of the Bureau which had been policy for a long time." (George Moore deposition, 11/3/75, p. 83.)

[83] Branigan, 10/9/75, p. 41.

On the other hand, the record reveals instances when intelligence agencies have concealed improper activities from their superiors in the Executive branch and from the Congress, or have elected to disclose only the less questionable aspects of their activities.

There has been, in short, a clear and sustained failure by those responsible to control the intelligence community and to ensure its accountability. There has been an equally clear and sustained failure by intelligence agencies to fully inform the proper authorities of their activities and to comply with directives from those authorities.

6. The Adverse Impact of Improper Intelligence Activity

Many of the illegal or improper disruptive efforts directed against American citizens and domestic organizations succeeded in injuring their targets. Although it is sometimes difficult to prove that a target's misfortunes were caused by a counter-intelligence program directed against him, the possibility that an arm of the United States Government intended to cause the harm and might have been responsible is itself abhorrent.

The Committee has observed numerous examples of the impact of intelligence operations. Sometimes the harm was readily apparent—destruction of marriages, loss of friends or jobs. Sometimes the attitudes of the public and of Government officials responsible for formulating policy and resolving vital issues were influenced by distorted intelligence. But the most basic harm was to the values of privacy and freedom which our Constitution seeks to protect and which intelligence activity infringed on a broad scale.

(*a*) *General Efforts to Discredit.*—Several efforts against individuals and groups appear to have achieved their stated aims. For example:

—A Bureau Field Office reported that the anonymous letter it had sent to an activist's husband accusing his wife of infidelity "contributed very strongly" to the subsequent breakup of the marriage.[84]

—Another Field Office reported that a draft counsellor deliberately, and falsely, accused of being an FBI informant was "ostracized" by his friends and associates.[85]

—Two instructors were reportedly put on probation after the Bureau sent an anonymous letter to a university administrator about their funding of an anti-administration student newspaper.[86]

—The Bureau evaluated its attempts to "put a stop" to a contribution to the Southern Christian Leadership Conference as "quite successful." [87]

—An FBI document boasted that a "pretext" phone call to Stokeley Carmichael's mother telling her that members of the Black Panther Party intended to kill her son left her "shocked". The memorandum intimated that the Bureau believed it had been responsible for Carmichael's flight to Africa the following day.[88]

(*b*) *Media Manipulation.*—The FBI has attempted covertly to influence the public's perception of persons and organizations by disseminating derogatory information to the press, either anonymously or through "friendly" news contacts. The impact of those articles is

[84] Memorandum from St. Louis Field Office to FBI Headquarters, 6/19/70.
[85] Memorandum from San Diego Field Office to FBI Headquarters, 4/30/69.
[86] Memorandum from Mobile Field Office to FBI Headquarters, 12/9/70.
[87] Memorandum from Wick to DeLoach, 11/9/66.
[88] Memorandum from New York Field Office to FBI Headquarters, 9/9/68.

generally difficult to measure, although in some cases there are fairly direct connections to injury to the target. The Bureau also attempted to influence media reporting which would have any impact on the public image of the FBI. Examples include:

—Planting a series of derogatory articles about Martin Luther King, Jr., and the Poor People's Campaign.[89]

For example, in anticipation of the 1968 "poor people's march on Washington, D.C.," Bureau Headquarters granted authority to furnish "cooperative news media sources" an article "designed to curtail success of Martin Luther King's fund raising." [90] Another memorandum illustrated how "photographs of demonstrators" could be used in discrediting the civil rights movement. Six photographs of participants in the poor people's campaign in Cleveland accompanied the memorandum with the following note attached: "These [photographs] show the militant aggressive appearance of the participants and might be of interest to a cooperative news source." [91] Information on the Poor People's Campaign was provided by the FBI to friendly reporters on the condition that "the Bureau must not be revealed as the source." [92]

—Soliciting information from Field Offices "on a continuing basis" for "prompt . . . dissemination to the news media . . . to discredit the New Left movement and its adherents." The Headquarters directive requested, among other things, that:

> specific data should be furnished depicting the scurrilous and depraved nature of many of the characters, activities, habits and living conditions representative of New Left adherents.

Field Offices were to be exhorted that: "Every avenue of possible embarrassment must be vigorously and enthusiastically explored." [93]

—Ordering Field Offices to gather information which would disprove allegations by the "liberal press, the bleeding hearts, and the forces on the left" that the Chicago police used undue force in dealing with demonstrators at the 1968 Democratic Convention.[95]

—Taking advantage of a close relationship with the Chairman of the Board—described in an FBI memorandum as "our good friend"—of a magazine with national circulation to influence articles which related to the FBI. For example, through this relationship the Bureau: "squelched" an "unfavorable article against the Bureau" written by a free-lance writer about an FBI investigation; "postponed publication" of an article on another FBI case; "forestalled publication" of an article by Dr. Martin Luther King, Jr.; and received information about proposed editing of King's articles.[96]

(c) *Distorting Data to Influence Government Policy and Public Perceptions*

Accurate intelligence is a prerequisite to sound government policy. However, as the past head of the FBI's Domestic Intelligence Division reminded the Committee:

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[89] See King Report: Sections V and VII.
[90] Memorandum from G. C. Moore to W. C. Sullivan, 10/26/68.
[91] Memorandum from G. C. Moore to W. C. Sullivan, 5/17/68.
[92] Memorandum from FBI Headquarters to Miami Field Office, 7/9/68.
[93] Memorandum from C. D. Brennan to W. C. Sullivan, 5/22/68.
[95] Memorandum from FBI Headquarters to Chicago Field Office, 8/28/68.
[96] Memorandum from W. H. Stapleton to DeLoach, 11/3/64.

> The facts by themselves are not too meaningful. They are something like stones cast into a heap.[97]

On certain crucial subjects the domestic intelligence agencies reported the "facts" in ways that gave rise to misleading impressions.

For example, the FBI's Domestic Intelligence Division initially discounted as an "obvious failure" the alleged attempts of Communists to influence the civil rights movement.[98] Without any significant change in the factual situation, the Bureau moved from the Division's conclusion to Director Hoover's public congressional testimony characterizing Communist influence on the civil rights movement as "vitally important." [98a]

FBI reporting on protests against the Vietnam War provides another example of the manner in which the information provided to decision-makers can be skewed. In acquiescence with a judgment already expressed by President Johnson, the Bureau's reports on demonstrations against the War in Vietnam emphasized Communist efforts to influence the anti-war movement and underplayed the fact that the vast majority of demonstrators were not Communist controlled.[99]

(*d*) *"Chilling" First Amendment Rights.*—The First Amendment protects the Rights of American citizens to engage in free and open discussions, and to associate with persons of their choosing. Intelligence agencies have, on occasion, expressly attempted to interfere with those rights. For example, one internal FBI memorandum called for "more interviews" with New Left subjects "to enhance the paranoia endemic in these circles" and "get the point across there is an FBI agent behind every mailbox." [100]

More importantly, the government's surveillance activities in the aggregate—whether or not expressly intended to do so—tends, as the Committee concludes at p. 290 to deter the exercise of First Amended rights by American citizens who become aware of the government's domestic intelligence program.

(*e*) *Preventing the Free Exchange of Ideas.* Speakers, teachers, writers, and publications themselves were targets of the FBI's counterintelligence program. The FBI's efforts to interfere with the free exchange of ideas included:

—Anonymously attempting to prevent an alleged "Communist-front" group from holding a forum on a midwest campus, and then investigating the judge who ordered that the meeting be allowed to proceed.[101]

—Using another "confidential source" in a foundation which contributed to a local college to apply pressure on the school to fire an activist professor.

—Anonymously contacting a university official to urge him to "persuade" two professors to stop funding a student newspaper, in order to "eliminate what voice the New Left has" in the area.

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[97] Sullivan, 11/1/75, p. 48.

[98] Memorandum from Baumgardner to Sullivan, 8/26/63 p. 1. Hoover himself construed the initial Division estimate to mean that Communist influence was "infinitesimal."

[98a] See Finding on Political Abuse, p. 225.

[99] See Finding on Political Abuse, p. 225.

[100] "New Left Notes—Philadelphia," 9/16/70, Edition #1.

[101] Memorandum from Detroit Field Office to FBI Headquarters 10/26/60; Memorandum from FBI Headquarters to Detroit Field Office 10/27, 28, 31/60; Memorandum from Baumgardner to Belmont, 10/26/60.

—Targeting the New Mexico Free University for teaching "confrontation politics" and "draft counseling training".[102]

7. Cost and Value

Domestic intelligence is expensive. We have already indicated the cost of illegal and improper intelligence activities in terms of the harm to victims, the injury to constitutional values, and the damage to the democratic process itself. The cost in dollars is also significant. For example, the FBI has budgeted for fiscal year 1976 over $7 million for its domestic security informant program, more than twice the amount it spends on informants against organized crime.[103] The aggregate budget for FBI domestic security intelligence and foreign counterintelligence is at least $80 million.[104] In the late 1960s and early 1970s, when the Bureau was joined by the CIA, the military, and NSA in collecting information about the anti-war movement and black activists, the cost was substantially greater.

Apart from the excesses described above, the usefulness of many domestic intelligence activities in serving the legitimate goal of protecting society has been questionable. Properly directed intelligence investigations concentrating upon hostile foreign agents and violent terrorists can produce valuable results. The Committee has examined cases where the FBI uncovered "illegal" agents of a foreign power engaged in clandestine intelligence activities in violation of federal law. Information leading to the prevention of serious violence has been acquired by the FBI through its informant penetration of terrorist groups and through the inclusion in Bureau files of the names of persons actively involved with such groups.[105] Nevertheless, the most sweeping domestic intelligence surveillance programs have produced surprisingly few useful returns in view of their extent. For example:

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[102] See COINTELPRO Report: Section III. "The Goals of COINTELPRO: Preventing or disrupting the exercise of First Amendment Rights."

[103] The budget for FBI informant programs includes not only the payments to informants for their services and expenses, but also the expenses of FBI personnel who supervise informants, their support costs, and administrative overhead. (Justice Department letter to Senate Select Committee, 3/2/76).

[104] The Committee is withholding the portion of this figure spent on domestic security intelligence (informants and other investigations combined) to prevent hostile foreign intelligence services from deducing the amount spent on counterespionage. The $80 million figure does not include all costs of separate FBI activities which may be drawn upon for domestic security intelligence purposes. Among these are the Identification Division (maintaining fingerprint records), the Files and Communications Division (managing the storage and retrieval of investigative and intelligence files), and the FBI Laboratory.

[105] Examples of valuable informant reports include the following: one informant reported a plan to ambush police officers and the location of a cache of weapons and dynamite; another informant reported plans to transport illegally obtained weapons to Washington, D.C.; two informants at one meeting discovered plans to dynamite two city blocks. All of these plans were frustrated by further investigation and protective measures or arrest. (FBI memorandum to Select Committee, 12/10/75; Senate Select Committee Staff memorandum: Intelligence Cases in Which the FBI Prevented Violence, undated.)

One example of the use of information in Bureau files involved a "name check" at Secret Service request on certain persons applying for press credentials to cover the visit of a foreign head of state. The discovery of data in FBI files indicating that one such person had been actively involved with violent groups led to further investigation and ultimately the issuance of a search warrant. The search produced evidence, including weapons, of a plot to assassinate the foreign head of state. (FBI memorandum to Senate Select Committee, 2/23/76)

—Between 1960 and 1974, the FBI conducted over 500,000 separate investigations of persons and groups under the "subversive" category, predicated on the possibility that they might be likely to overthrow the government of the United States.[106] Yet not a single individual or group has been prosecuted since 1957 under the laws which prohibit planning or advocating action to overthrow the government and which are the main alleged statutory basis for such FBI investigations.[107]

—A recent study by the General Accounting Office has estimated that of some 17,528 FBI domestic intelligence investigations of individuals in 1974, only 1.3 percent resulted in prosecution and conviction, and in only "about 2 percent" of the cases was advance knowledge of any activity—legal or illegal—obtained.[108]

—One of the main reasons advanced for expanded collection of intelligence about urban unrest and anti-war protest was to help responsible officials cope with possible violence. However, a former White House official with major duties in this area under the Johnson administration has concluded, in retrospect, that "in none of these situations . . . would advance intelligence about dissident groups [have] been of much help," that what was needed was "physical intelligence" about the geography of major cities, and that the attempt to "predict violence" was not a "successful undertaking." [109]

—Domestic intelligence reports have sometimes even been counterproductive. A local police chief, for example, described FBI reports which led to the positioning of federal troops near his city as:

> . . . almost completely composed of unsorted and unevaluated stories, threats, and rumors that had crossed my desk in New Haven. Many of these had long before been discounted by our Intelligence Division. But they had made their way from New Haven to Washington, had gained completely unwarranted credibility, and had been submitted by the Director of the FBI to the President of the United States. They seemed to present a convincing picture of impending holocaust.[110]

In considering its recommendations, the Committee undertook an evaluation of the FBI's claims that domestic intelligence was necessary to combat terrorism, civil disorders, "subversion," and hostile

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[106] This figure is the number of "investigative matters" handled by the FBI in this area, including as separate items the investigative leads in particular cases which are followed up by various field offices. (FBI memorandum to Select Committee, 10/6/75.)

[107] Schackelford 2/13/76, p. 32. This official does not recall any targets of "subversive" investigations having been even referred to a Grand Jury under these statutes since the 1950s.

[108] "FBI Domestic Intelligence Operations—Their Purpose and Scope: Issues That Need To Be Resolved." Report by the Comptroller General to the House Judiciary Committee, 2/24/76, pp. 138–147. The FBI contends that these statistics may be unfair in that they concentrate on investigations of individuals rather than groups. (Ibid., Appendix V) In response, GAO states that its "sample of organization and control files was sufficient to determine that generally the FBI did not report advance knowledge of planned violence." In most of the fourteen instances where such advance knowledge was obtained, it related to "such activities as speeches, demonstrations or meetings—all essentially nonviolent." (Ibid., p. 144)

[109] Joseph Califano testimony, 1/27/76, pp. 7–8.

[110] James Ahern testimony, 1/20/76, pp. 16, 17.

foreign intelligence activity. The Committee reviewed voluminous materials bearing on this issue and questioned Bureau officials, local police officials, and present and former federal executive officials.

We have found that we are in fundamental agreement with the wisdom of Attorney General Stone's initial warning that intelligence agencies must not be "concerned with political or other opinions of individuals" and must be limited to investigating essentially only "such conduct as is forbidden by the laws of the United States." The Committee's record demonstrates that domestic intelligence which departs from this standard raises grave risks of undermining the democratic process and harming the interests of individual citizens. This danger weighs heavily against the speculative or negligible benefits of the ill-defined and overbroad investigations authorized in the past. Thus, the basic purpose of the recommendations contained in Part IV of this report is to limit the FBI to investigating conduct rather than ideas or associations.

The excesses of the past do not, however, justify depriving the United States of a clearly defined and effectively controlled domestic intelligence capability. The intelligence services of this nation's international adversaries continue to attempt to conduct clandestine espionage operations within the United States.[111] Our recommendations provide for intelligence investigations of hostile foreign intelligence activity.

Moreover, terrorists have engaged in serious acts of violence which have brought death and injury to Americans and threaten further such acts. These acts, not the politics or beliefs of those who would commit them, are the proper focus for investigations to anticipate terrorist violence. Accordingly, the Committee would permit properly controlled intelligence investigations in those narrow circumstances.[112]

Concentration on imminent violence can avoid the wasteful dispersion of resources which has characterized the sweeping (and fruitless) domestic intelligence investigations of the past. But the most important reason for the fundamental change in the domestic intelligence operations which our Recommendations propose is the need to protect the constitutional rights of Americans.

In light of the record of abuse revealed by our inquiry, the Committee is not satisfied with the position that mere exposure of what has occurred in the past will prevent its recurrence. Clear legal standards and effective oversight and controls are necessary to ensure that domestic intelligence activity does not itself undermine the democratic system it is intended to protect.

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[111] An indication of the scope of the problem is the increasing number of official representatives of communist governments in the United States. For example, the number of Soviet officials in this country has increased from 333 in 1961 to 1,079 by early 1975. There were 2,683 East-West exchange visitors and 1,500 commercial visitors in 1974. (FBI Memorandum, "Intelligence Activities Within the United States by Foreign Governments," 3/20/75.)

[112] According to the FBI, there were 89 bombings attributable to terrorist activity in 1975, as compared with 45 in 1974 and 24 in 1973. Six persons died in terrorist-claimed bombings and 76 persons were injured in 1975. Five other deaths were reported in other types of terrorist incidents. Monetary damage reported in terrorist bombings exceeded 2.7 million dollars. It should be noted, however, that terrorist bombings are only a fraction of the total number of bombings in this country. Thus, the 89 terrorist bombings in 1975 were among a total of over 1,900 bombings, most of which were not, according to the FBI, attributable clearly to terrorist activity. (FBI memorandum to Senate Select Committee, 2/23/76.)

II. THE GROWTH OF DOMESTIC INTELLIGENCE: 1936 TO 1976

A. Summary

1. The Lesson: History Repeats Itself

During and after the First World War, intelligence agencies, including the predecessor of the FBI, engaged in repressive activity.[1] A new Attorney General, Harlan Fiske Stone, sought to stop the investigation of "political or other opinions."[2] This restraint was embodied only in an executive pronouncement, however. No statutes were passed to prevent the kind of improper activity which had been exposed. Thereafter, as this narrative will show, the abuses returned in a new form. It is now the responsibility of all three branches of government to ensure that the pattern of abuse of domestic intelligence activity does not recur.

2. The Pattern: Broadening Through Time

Since the re-establishment of federal domestic intelligence programs in 1936, there has been a steady increase in the government's capability and willingness to pry into, and even disrupt, the political activities and personal lives of the people. The last forty years have witnessed a relentless expansion of domestic intelligence activity beyond investigation of criminal conduct toward the collection of political intelligence and the launching of secret offensive actions against Americans.

The initial incursions into the realm of ideas and associations were related to concerns about the influence of foreign totalitarian powers.

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[1] Repressive practices during World War I included the formation of a volunteer auxiliary force, known as the American Protective League, which assisted the Justice Department and military intelligence in the investigation of "un-American activities" and in the mass round-up of 50,000 persons to discover draft evaders. These so-called "slacker raids" of 1918 involved warrantless arrests without sufficient probable cause to believe that crime had been or was about to be committed (FBI Intelligence Division memorandum, "An Analysis of FBI Domestic Security Intelligence Investigations," 10/28/75.)

The American Protective League also contributed to the pressures which resulted in nearly 2,000 prosecutions for disloyal utterances and activities during World War I, a policy described by John Lord O'Brien, Attorney General Gregory's Special Assistant, as one of "wholesale repression and restraint of public opinion." (Zechariah Chafee, *Free Speech in the United States* (Cambridge: Harvard University Press, 1941) p. 69.)

Shortly after the war the Justice Department and the Bureau of Investigation jointly planned the notorious "Palmer Raids", named for Attorney General A. Mitchell Palmer who ordered the overnight round-up and detention of some 10,000 persons who were thought to be "anarchist" or "revolutionary" aliens subject to deportation. (William Preston, *Aliens and Dissenters* (Cambridge: Harvard University Press, 1963), chs. 7–8; Stanley Coben, *A. Mitchell Palmer: Politician* (New York: Columbia University Press, 1963), chs. 11–12.)

[2] See Attorney General Stone's full statement, p. 23.

Ultimately, however, intelligence activity was directed against domestic groups advocating change in America, particularly those who most vigorously opposed the Vietnam war or sought to improve the conditions of racial minorities. Similarly, the targets of intelligence investigations were broadened from groups perceived to be violence prone to include groups of ordinary protesters.

3. Three Periods of Growth for Domestic Intelligence

The expansion of domestic intelligence activity can usefully be divided into three broad periods: (a) the pre-war and World War II period; (b) the Cold War era; and (c) the period of domestic dissent beginning in the mid-sixties. The main developments in each of these stages in the evolution of domestic intelligence may be summarized as follows:

a. 1936–1945

By presidential directive—rather than statute—the FBI and military intelligence agencies were authorized to conduct domestic intelligence investigations. These investigations included a vaguely defined mission to collect intelligence about "subversive activities" which were sometimes unrelated to law enforcement. Wartime exigencies encouraged the unregulated use of intrusive intelligence techniques; and the FBI began to resist supervision by the Attorney General.

b. 1946–1963

Cold War fears and dangers nurtured the domestic intelligence programs of the FBI and military, and they became permanent features of government. Congress deferred to the executive branch in the oversight of these programs. The FBI became increasingly isolated from effective outside control, even from the Attorneys General. The scope of investigations of "subversion" widened greatly. Under the cloak of secrecy, the FBI instituted its COINTELPRO operations to "disrupt" and "neutralize" "subversives". The National Security Agency, the FBI, and the CIA re-instituted instrusive wartime surveillance techniques in contravention of law.

c. 1964–1976

Intelligence techniques which previously had been concentrated upon foreign threats and domestic groups said to be under Communist influence were applied with increasing intensity to a wide range of domestic activity by American citizens. These techniques were utilized against peaceful civil rights and antiwar protest activity, and thereafter in reaction to civil unrest, often without regard for the consequences to American liberties. The intelligence agencies of the United States—sometimes abetted by public opinion and often in response to pressure from administration officials or the Congress—frequently disregarded the law in their conduct of massive surveillance and aggressive counterintelligence operations against American citizens. In the past few years, some of these activities were curtailed, partly in response to the moderation of the domestic crisis; but all too often improper programs were terminated only in response to exposure, the threat of exposure, or a change in the climate of public opinion, such as that triggered by the Watergate affair.

B. Establishing a Permanent Domestic Intelligence Structure: 1936–1945

1. Background: The Stone Standard

The first substantial domestic intelligence programs of the federal government were established during World War I.

The Justice Department's Bureau of Investigation (as the FBI was then known), military intelligence, other federal investigative agencies, and the volunteer American Protective League were involved in these programs.[3] In the period immediately following World War I, the Bureau of Investigation took part in the notorious Palmer Raids and other activities against persons characterized as "subversive."[4]

Harlan Fiske Stone, who became Attorney General in 1924, described the conduct of Justice Department and the Bureau of Investigation before he took office as "lawless, maintaining many activities which were without any authority in federal statutes, and engaging in many practices which were brutal and tyrannical in the extreme."[5]

Fearing that the investigative activities of the Bureau could invade privacy and inhibit political freedoms, Attorney General Stone announced:

> There is always the posibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood. ... It is important that its activities be strictly limited to the performance of those functions for which it was created and that its agents themselves be not above the law or beyond its reach. ... The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only with such conduct as is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish.[6]

When Stone appointed J. Edgar Hoover as Acting Director of the Bureau of Investigation, he instructed Hoover to adhere to this standard:

> The activities of the Bureau are to be limited strictly to investigations of violations of law, under my direction or under

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[3] See Joan Jensen, *The Price of Vigilance* (Chicago: Rand McNally, 1968). One FBI official recalled later, "There were probably seven or eight such active organizations operating at full force during war days and it was not an uncommon experience for an Agent of this Bureau to call upon an individual in the course of his investigation, to find out that six or seven other Government agencies had been around to interview the party about the same matter." (Memorandum of F. X. O'Donnell, Subject: Operations During World War I, 10/4/38).

[4] See footnote 1, p. 21.

[5] Letter from Justice Harlan Fiske Stone to Jack Alexander, 9/21/37, cited in Alpheus T. Mason, *Harlan Fiske Stone: Pillar of the Law* (New York, Viking, 1956), p. 149.

[6] New York Times, 5/10/24.

> the direction of an Assistant Attorney General regularly conducting the work of the Department of Justice.[7]

Nevertheless, beginning in the mid-thirties, at White House direction, the FBI reentered the realm of collecting intelligence about ideas and associations.

2. Main Developments of the 1936–1945 Period

In the years preceding World War II, domestic intelligence activities were reinstituted, expanded, and institutionalized. Based upon vague and conflicting orders to investigate the undefined areas of "subversion" and "potential crimes" related to national security, the FBI commenced a broad intelligence program. The FBI was authorized to preempt the field, although the military engaged in some investigation of civilians.

The FBI's domestic intelligence jurisdiction went beyond investigations of crime to include a vague mandate to investigate foreign involvement in American affairs. In the exercise of this jurisdictional authority, the Bureau began to investigate law abiding domestic groups and individuals; its program was also open to misuse for political purposes. The most intrusive intelligence techniques—initially used to meet wartime exigencies—were based on questionable statutory interpretation, or lacked any formal legal authorization.

The executive intentionally kept the issue of domestic intelligence-gathering away from the Congress until 1939, and thereafter the Congress appears to have deliberately declined to confront the issue. The FBI generally complied with the Attorney General's policies, but began to resist Justice Department review of its activities. On one occasion, the Bureau appears to have disregarded an Attorney General's policy directive.

However important these developments were in themselves, the enduring significance of this period is that it opened the institutional door to greater excesses in later years.

3. Domestic Intelligence Authority: Vague and Conflicting Executive Orders

The executive orders upon which the Bureau based its intelligence activity in the decade before World War II were vague and conflicting. By using words like "subversion"—a term which was never defined—and by permitting the investigation of "potential" crimes, and matters "not within the specific provisions of prevailing statutes", the foundation was laid for excessive intelligence gathering about Americans.

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[7] Stone to Hoover. 5/13/24, quoted in Mason, *Harlan Fiske Stone*, at p. 151. Although Hoover had served as head of the General Intelligence Division of the Justice Department at the time of the "Palmer Raids" and became an Assistant Director of the Bureau in 1921, he persuaded Attorney General Stone and Roger Baldwin of the American Civil Liberties Union that he had played an "unwilling part" in the excesses of the past, and he agreed to disband the Bureau's "radical division." Baldwin advised Stone, "I think we were wrong in our estimate of his attitude." (Baldwin to Stone. 8/6/24, quoted in Donald Johnson, *The Challenge to American Freedoms* (University of Kentucky Press, 1963), pp. 174–175.)

In December 1924, Stone made Hoover Director of the Bureau of Investigation.

a. The Original Roosevelt Orders

In 1934, according to a memorandum by J. Edgar Hoover, President Roosevelt ordered an investigation of "the Nazi movement in this country." In response, the FBI conducted a one-time investigation, described by FBI Director Hoover as "a so-called intelligence investigation." It concentrated on "the Nazi group," with particular reference to "anti-racial" and "anti-American" activities having "any possible connection with official representatives of the German government in the United States." [8]

Two years later, in August 1936, according to a file memorandum of Director Hoover, President Roosevelt asked for a more systematic collection of intelligence about:

> subversive activities in the United States, particularly Fascism and Communism.

Hoover indicated further that the President wanted:

> a broad picture of the general movement and its activities as [they] may affect the economic and political life of the country as a whole.

The President and the FBI Director discussed the means by which the Bureau might collect "general intelligence information" on this subject.[9] The only record of Attorney General Homer Cummings' knowledge of, or authorization for, this intelligence assignment is found in a memorandum from Director Hoover to his principal assistant.[10]

b. Orders in 1938–39: The Vagueness of "Subversive Activities" and "Potential" Crimes

In October 1938, Director Hoover advised President Roosevelt of the "present purposes and scope" of FBI intelligence investigations, "together with suggestions for expansion." His memorandum stated that the FBI was collecting:

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[8] Memorandum from J. Edgar Hoover to Mr. Cowley, 5/10/34.

[9] J. Edgar Hoover memorandum to the files, 8/24/36. This memorandum states that, earlier in the conversation, Director Hoover had told the President:

(i) Communists controlled or planned to take control of the West Coast longshoreman's union, the United Mine Workers Union and the Newspaper Guild (and using those unions would be "able at any time to paralyze the country");

(ii) "activities . . . inspired by Communists" had recently taken place in the Government, "particularly in some of the Departments and the National Labor Relations Board"; and

(iii) The Communist Internationale had recently issued instructions for all Communists to "vote for President Roosevelt and against Governor Landon because of the fact that Governor Landon is opposed to class warfare."

These comments indicate that the Bureau had already begun some intelligence gathering on Communists and activities "inspired" by them prior to any Presidential order. In addition, Hoover's memorandum referred to prior intelligence collection on domestic right-wing figures Father Charles Coughlin and General Smedley Butler.

[10] Hoover stated that Secretary of State Hull "at the President's suggestion, requested of me, the representative of the Department of Justice, to have investigation made of the subversive activities in this country, including communism and fascism." He added that "the Attorney General verbally directed me to proceed with this investigation." (Memorandum from J. Edgar Hoover to E. A. Tamm, 9/10/36.)

information dealing with various forms of activities of either a subversive or so-called intelligence type.[11]

Despite the references in Director Hoover's 1938 memorandum to "subversive-type" investigations, an accompanying letter to the President from Attorney General Homer Cummings made no mention of "subversion" and cited only the President's interest in "the so-called espionage situation." [12] Cummings' successor, Attorney General Frank Murphy, appears to have abandoned the term "subversive activities." [13] Moreover, when Director Hoover provided Attorney General Frank Murphy a copy of his 1938 plan, he described it, without mentioning "subversion," as a program "intended to ascertain the identity of persons engaged in espionage, counterespionage, and sabotage of a nature *not within the specific provisions of prevailing statutes.*" [14] [Emphasis added.] Murphy thereafter recommended to the President that he issue an order concentrating "investigation of all espionage, counterespionage, and sabotage matters" in the FBI and military intelligence.[15]

President Roosevelt agreeed and issued an order which, like Murphy's letter, made no mention of "subversive" or general intelligence:

> It is my desire that the investigation of all espionage, counter espionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation of the Department of Justice, the Military Intelligence Division of the War Department, and the Office of Naval Intelligence in the Navy Department. The directors of these three agencies are to function as a committee to coordinate their activities.
>
> No investigations should be conducted by any investigative agency of the Government into matters involving actually *or potentially* any espionage, counterespionage, or sabotage, ex-

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[11] Memorandum on "domestic intelligence," prepared by J. Edgar Hoover, enclosed with letter from Attorney General Cummings to Roosevelt, 10/20/38. Director Hoover met with the President who, according to Hoover's memorandum, "approved the plan which I had prepared and which had been sent to him by the Attorney General." (Memorandum to the files from J. Edgar Hoover, 11/7/38.)

[12] Letter from Attorney General Cummings to the President, 10/20/38.

[13] On 2/7/39, the Assistant to the the Attorney General wrote letters to the Secret Service, the Bureau of Internal Revenue, the Narcotics Bureau, the Customs Service, the Coast Guard, and the Postal Inspection Service stating that the FBI and military intelligence had "undertaken activities to investigate matters relating to espionage and subversive activities." (Letter from J. B. Keenan, Assistant to the Attorney General, to F. J. Wilson, Chief, Secret Service, 2/7/39.)

A letter from Attorney General Murphy to the Secretary of the Treasury shortly thereafter also referred to "subverisive activities." (Letter from Attorney General Murphy to the Secretary of the Treasury, 2/16/39.)

However, a similar letter two days later referred only to matters "involving espionage, counterespionage, and sabotage," without mentioning "subversive activities." (Letter from Attorney General Murphy to the Secretary of the Treasury, 2/18/39.) This may have reflected a decision by Murphy to cease using "subversive activities" to describe FBI investigations. The record does not clarify the reason for his deletion of the phrase.

[14] Memorandum from J. Edgar Hoover to Attorney General Murphy, 3/16/39. Murphy was aware that the FBI contemplated investigations of subversive activities, since Hoover enclosed his 1938 plan with this memorandum.

[15] Letter from Attorney General Murphy to the President, 6/17/39.

> cept by the three agencies mentioned above. [Emphasis added.] [16]

Precisely what the President's reference to "potential" espionage or sabotage was intended to cover was unclear. Whatever it meant, it was apparently intended to be consistent with Director Hoover's earlier description of the FBI program to Attorney General Murphy.[17]

Three months later, after the outbreak of war in Europe, Director Hoover indicated his concern that private citizens might provide information to the "sabotage squads" which local police departments were creating rather than to the FBI. Hoover urged the Attorney General to ask the President to request local officials to give the FBI all information concerning "espionage, counterespionage, sabotage, subversive activities, and neutrality regulations." [18]

The President immediately issued a statement which continued the confusing treatment of the breadth of the FBI's intelligence authority. On the one hand, the statement began by noting that the FBI had been instructed to investigate:

> matters relating to espionage, sabotage, and violations of the neutrality regulations.

On the other hand, the President concluded by adding "subversive activities" to the list of information local law enforcement officials should relay to the FBI.[19]

c. Orders 1940–43: The Confusion Continues

President Roosevelt used the term "subversive activities" in a secret directive to Attorney General Robert Jackson on wiretapping in 1940. Referring to activities of other nations engaged in "propaganda of so-called 'fifth columns'" and "preparation for sabotage," he directed the Attorney General to authorize wiretaps "of persons suspected of subversive activities against the Government of the United States, including suspected spies." The President instructed that such wiretaps be limited "insofar as possible" to aliens.[20] Neither the President

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[16] Confidential Memorandum from the President to Department Heads, 6/26/39.

[17] Memorandum from Hoover to Murphy, 3/16/39, enclosing Hoover memorandum on "domestic intelligence," 10/20/38.

[18] Memorandum from J. Edgar Hoover to Attorney General Murphy, 9/6/39.

[19] Statement of the President, 9/6/39.

President Roosevelt never formally defined "subversive activities"—a term whose vagueness has proven a problem throughout the FBI's history. However, a hint as to his definition is contained in his remarks at a press conference on September 9, 1939. A national emergency had just been declared, and pursuant thereto, the President had issued an authorization for up to 150 extra FBI agents to handle "additional duties." In explaining that action, he stated he was concerned about "things that happened" before World War I, specifically "sabotage" and "propaganda by both belligerents" to "sway public opinion. . . . [I]t is to guard against that and the spread by any foreign nation of propaganda in this nation which would tend to be subversive—I believe that is the word—of our form of Government." (1939 Public Papers of Franklin D. Roosevelt, pp. 495–496.)

[20] Confidential memorandum from President Roosevelt to Attorney General Jackson, 5/21/40. In May 1941, the Secretary of War and the Secretary of the Navy urged "a broadening of the investigative responsibility of the Federal Bureau of Investigation in the fields of subversive control of labor." (Memorandum from the Secretary of War and the Secretary of the Navy to the President, 5/29/41.) The President replied that he was sending their letter to the Attorney General "with my general approval." (Memorandum from President Roosevelt to the Secretaries of War and Navy, 6/4/41.)

nor the Attorney General subsequently clarified the scope of the FBI's authority to investigate "subversive activity."

The confusion as to the breadth of President Roosevelt's authorization reappeared in Attorney General Francis Biddle's description of FBI jurisdiction in 1942 and in a new Presidential statement in 1943.

Biddle issued a lengthy order defining the duties of the various parts of the Justice Department in September 1942. Among other things, the FBI was charged with a duty to "investigate" criminal offenses against the United States. In contrast, the FBI was to function as a "clearing house" with respect to "espionage, sabotage, and other subversive matters." [21]

Four months later, President Roosevelt renewed his public appeal for cooperation by police and other "patriotic organizations" with the FBI. In this statement, he described his September 1939 order as granting "investigative" authority to the FBI for "espionage, sabotage, and violation of the neutrality regulations." The President did not adopt Attorney General Biddle's "clearing-house" characterization, nor did he mention "subversion." [22]

4. The Role of Congress

a. Executive Avoidance of Congress

In 1938, the President, the Attorney General, and the FBI Director explicitly decided not to seek legislative authorization for the expanding domestic intelligence program.

Attorney General Cummings cautioned that the plan for domestic intelligence "should be held in the stricest confidence." [23] Director Hoover contended that no special legislation should be sought "*in order to avoid criticism or objections* which might be raised to such an expansion by either ill-informed persons or individuals with some ulterior motive." [Emphasis added.] Hoover thought it "undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counter-espionage drive of any great magnitude" because the FBI's intelligence activity was already "much broader than espionage or counterespionage." [24]

Director Hoover contended that the FBI had authority to engage in intelligence activity beyond investigating crimes at the request of the

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[21] Attorney General's Order No. 3732, 9/25/42, p. 19. But see Delimitation Agreement between the FBI and Military Intelligence, 2/9/42, at footnote 56.

[22] Statement of the President on "Police Cooperation," 1/8/43. A note in the President's handwriting added that the FBI was to receive information "relating to espionage and related matters." (Copy in FDR Library.)

[23] Cummings to Roosevelt, 10/20/38.

[24] Hoover memorandum, enclosed with letter from Cummings to Roosevelt, 10/20/38. Director Hoover's full point was that:

"In considering the steps to be taken for the expansion of the present structure of intelligence work, it is believed imperative that it be proceeded with, with the utmost degree of secrecy in order to avoid criticism or objections which might be raised to such an expansion by either ill-informed persons or individuals having some ulterior motive. The word 'espionage' has long been a word that has been repugnant to the American people and it is believed that the structure which is already in existence is much broader than espionage or counterespionage, but covers in a true sense real intelligence values to the three services interested, namely, the Navy, the Army, and the civilian branch of the Government—the Department of Justice. Consequently, it would seem undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counterespionage drive of any great magnitude."

Attorney General or the Department of State. He relied on an amendment to the FBI Appropriations Act, passed before World War I, authorizing the Attorney General to appoint officials not only to "detect and prosecute" federal crimes but also to:

> conduct such other investigations regarding official matters under the control of the Department of Justice, or the Department of State, as may be directed by the Attorney General.[25]

After conflicts with the State Department in 1939, however, the FBI no longer relied upon this vague statute for its authority to conduct intelligence investigations, instead relying upon the Executive orders.[26]

b. Congress Declines to Confront the Issue

Even though Executive officials originally avoided Congress to prevent criticism or objections, after the President's proclamation of emergency in 1939 they began to inform Congress of FBI intelligence activities. In November 1939, Director Hoover told the House Appropriations Committee that the Bureau had set up a General Intelligence Division, "by authority of the President's proclamation." [27] And in January 1940, he told the same Committee that the FBI had authority under the President's September 6, 1939 statement to investigate espionage, sabotage, neutrality violations, and "any other subversive activities." [28]

There is no evidence that the Appropriations Committee objected or inquired further into the meaning of that last vague term, although members did seek assurance that FBI intelligence could be curtailed when the wartime emergency ended.[29]

In 1940, a joint resolution was introduced by New York City Congressman Emmanuel Celler which would have given the FBI broad jurisdiction to investigate, by wiretapping or other means, or "frustrate" any "interference with the national defense" due to certain specified crimes (sabotage, treason, seditious conspiracy, espionage, and violations of the neutrality laws) or "in any other manner." [30] Although the resolution failed to reach the House floor, it seems likely that, rather than opposing domestic intelligence investigations, Congress was simply choosing to avoid the issue of defining the FBI's intelligence jurisdiction. This view is supported by Congress' passage in 1940 and 1941 of two new criminal statutes: the Smith Act made it a crime to advocate the violent overthrow of the Government; [31] and the Voorhis Act required "subversive" organizations advocating the

[25] 28 U.S.C. 533(3).

[26] The conflicts between the FBI and the State Department in 1939 are discussed at footnote 54.

[27] Emergency Supplemental Appropriation Bill, 1940, Hearings before the House Appropriations Committee, 11/30/39, pp. 303–307.

In fact, the FBI had established a General Intelligence Section in its Investigative Division shortly after the President's 1936 requests. Congress was not advised of the Bureau's activities undertaken prior to September 1939, nor of the President's earlier directives.

[28] Justice Department Appropriation Bill, 1941, Hearings before the House Appropriations Committee, 1/5/40, p. 151. The President's 1939 statement did not specifically say that the FBI had authority to investigate "subversive activities."

[29] 1939 Hearings, p. 307; First Deficiency Appropriation Bill, 1941, Hearings before the House Appropriations Committee, 2/19/41, pp. 188–189.

[30] H.J. Res. 571, 76th Cong., 2d Sess. (1940).

[31] 18 U.S.C. 2385, 2387.

Government's violent overthrow and having foreign ties to register or be subject to criminal penalties.[32]

Although, as indicated, the Executive branch disclosed the fact that the FBI was doing intelligence work and Congress generally raised no objection, there was one occasion when an Executive description of the Bureau's work was less than complete. Following Director Hoover's testimony about the establishment of an Intelligence Division and some public furor over the FBI arrest of several Communist Party members in Detroit, Senator George Norris (R. Neb.) asked whether the Bureau was violating Attorney General Stone's assurance in 1924 that it would conduct only criminal investigations. Attorney General Jackson replied:

> Mr. Hoover is in agreement with me that the principles which Attorney General Stone laid down in 1924 when the Federal Bureau of Investigation was reorganized and Mr. Hoover appointed as Director are sound, and that the usefulness of the Bureau depends upon a faithful adherence to these limitations.
>
> The Federal Bureau of Investigation will confine its activities to the investigation of violation of Federal statutes, the collecting of evidence in cases in which the United States is or may be a party in interest, and the service of process issued by the courts.[33]

The FBI was, in fact, doing much more than that and had informed the Appropriations Committee of its practice in general terms. Attorney General Jackson himself stated later that the FBI was conducting "steady surveillance" of persons beyond those who had violated federal statutes, including persons who were a "likely source" of federal law violation because they were "sympathetic with the systems or designs of foreign dictators."[34]

5. Scope of Domestic Intelligence

a. Beyond Criminal Investigations

According to Director Hoover's account of his meeting with President Roosevelt in 1936, the President wanted "a broad picture" of the impact of Communism and Fascism on American life.[35] Similarly, the FBI Director described his 1938 plan as "broader than espionage" and covering "in a true sense real intelligence."[36] Thus it appears that one of the first purposes of FBI domestic intelligence was to perform the "pure intelligence" function of supplying executive officials with information believed of value for making policy decisions. This aspect of the assignment to investigate "subversion" was entirely unrelated to the enforcement of federal criminal laws. The second purpose of FBI domestic intelligence gathering was essentially "preventive,"

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[32] 18 U.S.C. 2386.

[33] Letter from Attorney General Jackson to Senator Norris, 86 Cong. Rec. 5642–5643.

[34] Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense, 8/5–6/40.

Several months earlier, Attorney General Jackson had warned federal prosecutors about the dangers of prosecuting "subversives" because of the lack of standards and the danger of overbreadth. (Robert H. Jackson, "The Federal Prosecutor," *Journal of the American Judicature Society*, 6/40, p. 18.)

[35] Hoover memorandum to the files, 8/24/36.

[36] Hoover memorandum, enclosed with Cummings to Roosevelt, 10/20/38, see p. 28.

in compliance with the President's June 1939 directive to investigate "potential" espionage or sabotage.[37] As war moved closer, preventive intelligence investigations focused on individuals who might be placed on a Custodial Detention List for possible internment in case of war.[38]

Both pure intelligence about "subversion" and preventive intelligence about "potential" espionage or sabotage involved investigations based on political affiliations and group membership and association. The relationship to law enforcement was often remote and speculative; the Bureau did not focus its intelligence gathering solely on tangible evidence of preparation for crime.

Directives implementing the general preventive intelligence instruction to investigate "potential" espionage or sabotage were vague and sweeping. In 1939, for instance, field offices were told to investigate persons of German, Italian, and Communist "sympathies" and any other persons "whose interests may be directed primarily to the interest of some other nation than the United States." FBI offices were directed to report the names of members of German and Italian societies, "whether they be of a fraternal character or of some other nature," and members of any other groups "which might have pronounced Nationalistic tendencies." The Bureau sought lists of subscribers and officers of German, Italian, and Communist foreign-language newspapers, as well as of other newspapers with "notorious Nationalistic sympathies." [39] The FBI also made confidential inquiries regarding "various so-called radical and fascist organizations" to identify their "leading personnel, purposes and aims, and the part they are likely to play at a time of national crisis." [40]

The criteria for investigating persons for inclusion on the Custodial Detention List was similarly vague. In 1939, the FBI said its list included persons with "strong Nazi tendencies" and "strong Communist tendencies." [41] FBI field offices were directed in 1940 to gather information on individuals who would be considered for the list because of their "Communistic, Fascist, Nazi, or other nationalistic background." [42]

b. "Infiltration" Investigations

The FBI based its pure intelligence investigations on a theory of subversive "infiltration" which remained an essential part of the rationale for domestic intelligence after the war: anyone who happened to associate with Communists or Fascists or was simply alleged to have such associations became the subject of FBI intelligence reports.[43] Thus, "subversive" investigations produced intelligence about

[37] Confidential memorandum from the President to Department heads, 6/26/39.

[38] See pp. 34–35.

[39] The above-mentioned directives were all contained in a memorandum from J. Edgar Hoover to FBI Field Offices, 9/2/39.

[40] Memorandum from Clyde Tolson to J. Edgar Hoover, 10/30/39.

[41] Internal FBI memorandum of E. A. Tamm, 11/9/39.

[42] Memorandum from J. Edgar Hoover to FBI Field Offices, 6/15/40.

[43] Director Hoover declared in 1940 that advocates of foreign "isms" had "succeeded in boring into every phase of American life, masquerading behind 'front' organizations." (Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense, August 5–6, 1940.) In his best-selling book on Communists, Hoover stated, "Infiltration is the method whereby Party members move into noncommunist organizations for the purpose of exercising influence for communism. If control is secured, the organization becomes a communist front." (J. Edgar Hoover, *Masters of Deceit* (New York: Henry Holt, 1958), Ch. 16.)

a wide variety of lawful groups and law-abiding citizens. By 1938, the FBI was investigating alleged subversive infiltration of:

> the maritime industry;
> the steel industry;
> the coal industry;
> the clothing, garment, and fur industries;
> the automobile industry;
> the newspaper field;
> educational institutions;
> organized labor organizations;
> Negroes;
> youth groups;
> Government affairs; and
> the armed forces.[44]

This kind of intelligence was transmitted to the White House. For example, in 1937 the Attorney General sent the President an FBI report on a proposed pilgrimage to Washington to urge passage of legislation to benefit American youth. The report stated that the American Youth Congress, which sponsored the pilgrimage, was understood to be strongly Communistic.[45] Later reports in 1937 described the Communist Party's role in plans by the Workers Alliance for nationwide demonstrations protesting the plight of the unemployed, as well as the Alliance's plans to lobby Congress in support of the federal relief program.[46]

Some investigations and reports (which went into Justice Department and FBI permanent files) covered entirely legal political activities. For example, one local group checked by the Bureau was called the League for Fair Play, which furnished "speakers to Rotary and Kiwanis Clubs and to schools and colleges." The FBI reported in 1941 that:

> the organization was formed in 1937, apparently by two Ministers and a businessman for the purpose of furthering fair play, tolerance, adherence to the Constitution, democracy, liberty, justice, understanding and good will among all creeds, races and classes of the United States.

A synopsis of the report stated, "No indications of Communist activities." [47]

In 1944, the FBI prepared an extensive intelligence report on an active political group, the Independent Voters of Illinois, apparently because it was considered a target for Communist "infiltration." The Independent Voters group was reported to have been formed:

> for the purpose of developing neighborhood political units to help in the re-election of President Roosevelt, and the elec-

[44] Hoover memorandum, enclosed with Cummings to Roosevelt, 10/20/38.

[45] Letter from Attorney General Cummings to the President (and enclosure), 1/30/37 (FDR Library).

[46] Letter from Attorney General Cummings to the President (and enclosure), 8/13/37 (FDR Library).

[47] Report of New York City field office, 10/22/41, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/10/47.

> tion of progressive congressmen. Apparently, IVI endorsed or aided Democrats for the most part, although it was stated to be "independent." It does not appear that it entered its own candidates or that it endorsed any Communists. IVI sought to help elect those candidates who would favor fighting inflation, oppose race and class discrimination, favor international cooperation, support a "full-employment" program, oppose Facism, etc.[48]

Thus, in its search for subversive "influence," the Bureau gathered extensive information about the lawful activities of left-liberal political groups. At the opposite end of the political spectrum, the activities of numerous right-wing groups like the Christian Front and Christian Mobilizers (followers of Father Coughlin), the American Destiny Party, the American Nationalist Party, and even the less extreme "America First" movement were reported by the FBI.[49]

c. Partisan Use

The collection of pure intelligence and preventive intelligence about "subversives" led to the inclusion in FBI files of political intelligence about the President's partisan critics. In May 1940, President Roosevelt's secretary sent the FBI Director hundreds of telegrams received by the White House. The attached letter stated:

> As the telegrams all were more or less in opposition to national defense, the President thought you might like to look them over, noting the names and addresses of the senders.[50]

Additional telegrams expressing approval of a speech by one of the President's leading critics, Colonel Charles Lindbergh, were also referred to the FBI.[52] A domestic intelligence program without clearly defined boundaries almost invited such action.

d. Centralized Authority: FBI and Military Intelligence

The basic policy of President Roosevelt and his four Attorneys General was to centralize civilian authority for domestic intelligence in the FBI. Consolidation of domestic intelligence was viewed as a means of protecting civil liberties. Recalling the hysteria of World War I, Attorney General Frank Murphy declared:

> Twenty years ago, inhuman and cruel things were done in the name of justice; sometimes vigilantes and others took over the work. We do not want such things done today, for the work has now been localized in the FBI.[53]

Centralization of authority for domestic intelligence also served the FBI's bureaucratic interests. Director Hoover complained about

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[48] Report of Chicago field office. 12/29/44, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/9/47.

[49] Justice Department memorandum re: Christian Front, 10/28/41.

[50] Letter from Stephen Early, Secretary to the President, to J. Edgar Hoover, 5/21/40 (FDR Library).

[52] Memorandum from Stephen Early, Secretary to the President, to J. Edgar Hoover, 6/17/40.

[53] New York Times, 10/1/39, p. 38.

attempts by other agencies to "literally chisel into this type of work." [54] He exhorted: "We don't want to let it slip away from us." [55]

Pursuant to President Roosevelt's 1939 directive authorizing the FBI and military intelligence to conduct all investigations of "potential" espionage and sabotage, an interagency Delimitation Agreement in June 1940 assigned most such domestic intelligence work to the FBI. As revised in February 1942, the Agreement covered "investigation of all activities coming under the categories of espionage, subversion and sabotage." The FBI was responsible for all investigations "involving civilians in the United States" and for keeping the military informed of "the names of individuals definitely known to be connected with subversive activities." [56]

The military intelligence agencies were interested in intelligence about civilian activity. In fact, they requested extensive information about civilians from the FBI. In May 1939, for instance, the Army G–2 Military Intelligence Division (MID) transmitted a request for the names and locations of "citizens opposed to our participation in war and conducting anti-war propaganda." [57] Despite the Delimitation Agreement, the MID's Counterintelligence Corps collected intelligence on civilian "subversive activity" as part of a preventive security program using volunteer informers and investigators.[58]

6. Control by the Attorney General: Compliance and Resistance

The basic outlines of the FBI's domestic intelligence program were approved by Attorney General Cummings in 1938 and Attorney General Murphy in 1939.[59] Director Hoover also asked Attorney General Jackson in 1940 for policy guidance concerning the FBI's "suspect list

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[54] Memorandum from J. Edgar Hoover to Attorney General Murphy, 3/16/39. The "literally chisel" reference reflects concern with a State Department attempt to "coordinate" all domestic intelligence. It may explain why, after 1938, the FBI no longer relied for its intelligence authority on the statutory provision for FBI investigations of "official matters under control of . . . the Department of State." Director Hoover stated that the FBI required State Department authorization only where "the subject of a particular investigation enjoys any diplomatic status."

[55] Note attached to letter from Col. J. M. Churchill, Army G–2, to Mr. E. A. Tamm, FBI, 5/16/39.

[56] Delimitation of Investigative Duties of the Federal Bureau of Investigation, the Office of Naval Intelligence, and the Military Intelligence Division. 2/9/42.

[57] Memorandum from Colonel Churchill, Counter Intelligence Branch, MID, to E. A. Tamm, FBI, 5/16/39.

[58] Victor J. Johanson, "The Role of the Army in the Civilian Arena, 1920–1970," U.S. Army Intelligence Command Study (1971). The scope of wartime Army intelligence has been summarized as follows:

"It reported on radical labor groups, communists, Nazi sympathizers, and 'semi-radical' groups concerned with civil liberties and pacifism. The latter, well intentioned but impractical groups as one corps area intelligence officer labeled them, were playing into the hands of the more extreme and realistic radical elements. G–2 still believed that it had a right to investigate 'semi-radicals' because they undermined adherence to the established order by propaganda through newspapers, periodicals, schools, and churches." (Joan M. Jensen, "Military Surveillance of Civilians, 1917–1967," in *Military Intelligence*. Hearings before the Senate Subcommittee on Constitutional Rights (1974), pp. 174–175.)

[59] Letter from Attorney General Cummings to the President, 10/20/38; letter from Attorney General Murphy to the President, 6/17/39. The confusion as to whether Attorney General Murphy, Attorney General Jackson and Attorney General Biddle defined the FBI's duties to cover investigation of "subversive activities" is indicated at footnotes 13, 21 and 34.

of individuals whose arrest might be considered necessary in the event the United States becomes involved in war." [60]

The FBI Director initially opposed, however, Attorney General Jackson's attempt to require more detailed supervision of the FBI's role in the Custodial Detention Program. To oversee this program and others, Jackson created a Neutrality Laws Unit (later renamed the Special War Policies Unit) in the Justice Department. When the Unit proposed to review FBI intelligence reports on individuals, Director Hoover protested that turning over the FBI's confidential reports would risk the possibility of "leaks." He argued that if the identity of confidential informants became known, it would endanger their "life and safety" and thus the Department would "abandon" the "subversives field." [61]

After five months of negotiation, the FBI was ordered to transmit its "dossiers" to the Justice Department Unit.[62] To satisfy the FBI's concerns, the Department agreed to take no formal action against an individual if it "might interfere with sound investigative techniques" and not to disclose confidential informants without the Bureau's "prior approval." [63] Thus, from 1941 to 1943, the Justice Department had the machinery to oversee at least this aspect of FBI domestic intelligence.[64]

In 1943, however, Attorney General Biddle ordered that the Custodial Detention List should be abolished as "impractical, unwise, and dangerous." His directive stated that there was "no statutory authority or other present justification" for keeping the list. The Attorney General concluded that the system for classifying "dangerous" persons was "inherently unreliable;" the evidence used was "inadequate;" and the standards applied were "defective." [65] Biddle observed:

> the notion that it is possible to make a valid determination as to how dangerous a person is in the abstract and without reference to time, environment, and other relevant circumstances, is impractical, unwise, and dangerous.

Returning to the basic standard espoused by Attorney General Stone, Attorney General Biddle declared:

> The Department fulfills its proper function by investigating the activities of persons who may have violated the law. It is not aided in this work by classifying persons as to dangerousness.[66]

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[60] Memorandum from J. Edgar Hoover to Attorney General Jackson, 10/16/40.

[61] Memorandum from J. Edgar Hoover to L.M.C. Smith, Chief, Neutrality Law Unit, 11/28/40.

[62] Memorandum from M. F. McGuire, Assistant to the Attorney General, to J. Edgar Hoover and L. M. C. Smith, 4/21/41.

[63] Memorandum from M. F. McGuire, Assistant to the Attorney General, to J. Edgar Hoover, 4/17/41.

[64] The Custodial Detention Program should not be confused with the internment of Japanese Americans in 1942. The mass detention of Americans solely on the basis of race was exactly what the Program was designed to prevent, by making it possible for the government to decide in individual cases whether a person should be arrested in the event of war. When the Program was implemented after Pearl Harbor, it was limited to dangerous enemy aliens only. FBI Director Hoover opposed the mass round-up of Japanese Americans.

[65] Memorandum from Attorney General Biddle to Assistant Attorney General Cox and J. Edgar Hoover, Director, FBI, 7/16/43.

[66] Memorandum for Attorney General Biddle to Assistant Attorney General Cox and J. Edgar Hoover, Director, FBI, 7/16/43.

Upon receipt of this order, the FBI Director did not in fact abolish its list. The FBI continued to maintain an index of persons "who may be dangerous or potentially dangerous to the public safety or internal security of the United States." In response to the Attorney General's order, the FBI merely changed the name of the list from Custodial Detention List to Security Index. Instructions to the field stated that the Security Index should be kept "strictly confidential," and that it should never be mentioned in FBI reports or "discussed with agencies or individuals outside the Bureau" except for military intelligence agencies.[67]

This incident provides an example of the FBI's ability to conduct domestic intelligence operations in opposition to the policies of an Attorney General. Despite Attorney General Biddle's order, the "dangerousness" list continued to be kept, and investigations in support of that list continued to be a significant part of the Bureau's work.

7. Intrusive Techniques: Questionable Authorization

a. Wiretaps: A Strained Statutory Interpretation

In 1940, President Roosevelt authorized FBI wiretapping against "persons suspected of subversive activities against the United States, including suspected spies," requiring the specific approval of the Attorney General for each tap and directing that they be limited "insofar as possible to aliens." [68]

This order was issued in the face of the Federal Communications Act of 1934, which had prohibited wiretapping.[69] However, the Attorney General interpreted the Act of 1934 so as to permit government wiretapping. Since the Act made it unlawful to "intercept *and* divulge" communications, Attorney General Jackson contended that it did not apply if there was no divulgence *outside* the Government. [Emphasis added.] [70] Attorney General Jackson's questionable interpretation was accepted by succeeding Attorneys General (until 1968) but never by the courts.[71]

Jackson informed the Congress of his interpretation. Congress considered enacting an exception to the 1934 Act, and held hearings in which Director Hoover said wiretapping was "of considerable importance" because of the "gravity" to "national safety" of such of-

[67] Memorandum from J. Edgar Hoover to FBI Field Offices, Re: Dangerousness Classification, 8/14/43. This is the only document pertaining to Director Hoover's decision which appears in the material provided by the FBI to the Select Committee covering Bureau policies for the "Security Index." The FBI interpreted the Attorney General's order as applying only to "the dangerous classifications previously made by the . . . Special War Policies Unit" of the Justice Department. (The full text of the Attorney General's order and the FBI directive appear in Hearings, Vol. 6, pp. 412–415.)

[68] Confidential memorandum from President Roosevelt to Attorney General Jackson, 5/21/40.

[69] 47 U.S.C. 605. The Supreme Court held that this Act made wiretap-obtained evidence or the fruits thereof inadmissible in federal criminal cases. *Nardone* v. *United States*, 302 U.S. 379 (1937); 308 U.S. 338 (1939).

[70] Letter from Attorney General Jackson to Rep. Hatton Summers, 3/19/41.

[71] E.g., *United States* v. *Butenko*, 494 F.2d 593 (3d Cir. 1974), *cert. denied* sub nom. *Ivanov* v. *United States*, 419 U.S. 881 (1974). The Court of Appeals held in this case that warrantless wiretapping could only be justified on a theory of inherent Presidential power, and questioned the statutory interpretation relied upon since Attorney General Jackson's time. Until 1967, the Supreme Court did not rule that wiretapping violated the Fourth Amendment. [*Olmstead* v. *United States*, 275 U.S. 557 (1927); *Katz* v. *United States*, 389 U.S. 347 (1967).]

fenses as espionage and sabotage.[72] Apparently relying upon Jackson's statutory interpretation, Congress then dropped the matter, leaving the authorization of wiretaps to Executive discretion, without either statutory standards or the requirement of a judicial warrant.[73]

The potential for misuse of wiretapping was demonstrated during this period by several FBI wiretaps approved by the Attorney General or by the White House. In 1941, Attorney General Biddle approved a wiretap on the Los Angeles Chamber of Commerce with the caveat:

> There is no record of espionage at this time; and, unless within a month from today there is some evidence connecting the Chamber of Commerce with espionage, I think the surveillance should be discontinued.[74]

However, in another case Biddle disapproved an FBI request to wiretap a Philadelphia bookstore "engaged in the sale of Communist literature" and frequented by "important Communist leaders" in 1941.[75]

Materials located in Director Hoover's "Official and Confidential" file indicate that President Roosevelt's aide Harry Hopkins asked the FBI to wiretap his own home telephone in 1944. Additional reports from "technical" surveillance of an unidentified target were sent to Hopkins in May and July 1945, when he served as an aide to President Truman.[76]

In 1945 two Truman White House aides, E. D. McKim and General H. H. Vaughn, received reports of electronic surveillance of a high executive official. One of these reports included "transcripts of telephone conversations between [the official] and Justice Felix Frankfurter and between [the official] and Drew Pearson." [76a]

From June 1945 until May 1948, General Vaughn received reports from electronic surveillance of a former Roosevelt White House aide. A memorandum by J. Edgar Hoover indicates that Attorney General Tom Clark "authorized the placing of a technical surveillance" on this individual and that, according to Clark, President Truman "was particularly concerned" about the activities of this individual "and his associates" and wanted "a very thorough investigation" so that "steps might be taken, if possible, to see that such activities did not interfere with the proper administration of government." Hoover's memorandum did not indicate what these "activities" were.[76b]

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[72] Hearings before the House Judiciary Committee, To Authorize Wiretapping, 77th Cong., 1st Sess. (1941), p. 112.

[73] Congress continued to refrain from setting wiretap standards until 1968 when the Ominbus Crime Control Act was passed. The Act was limited to criminal cases and, once again, avoided the issue of intelligence wiretaps. [18 U.S.C. 2511(3).]

[74] Memorandum from Attorney General Biddle to J. Edgar Hoover, 11/19/41. Biddle advised Hoover that wiretaps (or "technical surveillances") would not be authorized unless there was "information leading to the conclusion that the activities of any particular individual or group are connected with espionage or are authorized sources outside of this country."

[75] Memorandum from J. Edgar Hoover to Attorney General Biddle, 10/2/41; memorandum from Attorney General Biddle to J. Edgar Hoover, 10/22/41.

[76] Memorandum from FBI to Select Committee, 3/26/76 and enclosures.

[76a] Memorandum from D. M. Ladd to Hoover, 5/23/45.

[76b] Hoover memorandum, 11/15/45; a memorandum headed "Summaries Delivered to the White House" lists over 175 reports sent to General Vaughn from this surveillance; memorandum from FBI to Select Committee, 3/26/76, and enclosures.

b. Bugging, Mail Opening, and Surreptitious Entry.

Intrusive techniques such as bugging, mail opening and surreptitious entry were used by the FBI without even the kind of formal Presidential authorization and requirement of Attorney General approval that applied to warrantless wiretapping.

During the war, the FBI began "chamfering" or surreptitious mail opening, to supplement the overt censorship of international mail authorized by statute in wartime.[77] The practice of surreptitious entry—or breaking-and-entering—was also used by the FBI in wartime intelligence operations.[78] The Bureau continued or resumed the use of these techniques after the war without explicit outside authorization.

Furthermore, the installation of microphone surveillance ("bugs"), either with or without trespass, was exempt from the procedure for Attorney General approval of wiretaps. Justice Department records indicate that no Attorney General formally considered the question of microphone surveillance involving trespass, except on a hypothetical basis, until 1952.[79]

C. Domestic Intelligence in the Cold War Era: 1946–1963

1. Main Developments of the 1946–1963 Period

The domestic intelligence programs of the FBI and the military intelligence agencies, which were established under presidential authority before World War II, did not cease with the end of hostilities. Instead, they set the pattern for decades to come.

Despite Director Hoover's statement that the intelligence structure could be "discontinued or very materially curtailed" with the termination of the national emergency, after the war intelligence operations were neither discontinued nor curtailed.[80] Congressional deference to the executive branch, the broad scope of investigations, the growth of the FBI's power, and the substantial immunity of the Bureau from effective outside supervision became increasingly significant features of domestic intelligence in the United States. New domestic intelligence functions were added to previous responsibilities. No attempt was

[77] FBI memorandum from C. E. Hennrich to A. H. Belmont, 9/7/51.

[78] Memorandum from the FBI to the Senate Select Committee, 9/23/75.

[79] A 1944 Justice Department memorandum discussed the "admissibility of evidence obtained by trash covers and microphone surveillance," in response to a series of hypothetical questions/submitted by the FBI. The memorandum concluded that evidence so obtained was admissible even if the microphone surveillance involved a trespass. (Memorandum from Alexander Holtzoff, Special Assistant to the Attorney General, to J. Edgar Hoover, 7/4/44; c.f., memorandum from Attorney General J. Howard McGrath to J. Edgar Hoover, 2/26/52.) See footnote 229 for the 1950s consideration of bugs by the Attorney General.

[80] In early 1941, Director Hoover had had the following exchange with members of the House Appropriations Committee:

"Mr. Ludlow. At the close of the present emergency, when peace comes, it would mean that much of this emergency work necessarily will be discontinued."

"Mr. Hoover. That is correct. . . . If the national emergency should terminate, the structure dealing with national defense can immediately be discontinued or very materially curtailed according to the wishes of Congress." (*First Deficiency Appropriation Bill, 1941*, Hearings before the House Committee on Appropriations, 3/19/41, pp. 188–189.)

made to enact a legislative charter replacing the wartime emergency orders, as was done in the foreign intelligence field in 1947.

The main developments during the Cold War era may be summarized as follows:

a. Domestic Intelligence Authority

During this period there was a national consensus regarding the danger to the United States from Communism; little distinction was made between the threats posed by the Soviet Union and by Communists within this country. Domestic intelligence activity was supported by that consensus, although not specifically authorized by the Congress.

Formal authority for FBI investigations of "subversive activity" and for the agreements between the FBI and military intelligence was explicitly granted in executive directives from Presidents Truman and Eisenhower, the National Security Council, and Attorney General Kennedy. These directives provided no guidance, however, for conducting or controlling such investigations.

b. Scope of Domestic Intelligence

The breadth of the FBI's investigation of "subversive infiltration" continued to produce intelligence reports and massive files on lawful groups and law-abiding citizens who happened to associate, even unwittingly, with Communists or with socialists unconnected with the Soviet Union who used revolutionary rhetoric. At the same time, the scope of FBI intelligence expanded to cover civil rights protest activity as well as violent "Klan-type" and "hate" groups, vocal anticommunists, and prominent opponents of racial integration. The vagueness of the FBI's investigative mandate and the overbreadth of its collection programs also placed it in position to supply the White House with numerous items of domestic political intelligence apparently desired by Presidents and their aides.

In response to White House and congressional interest in right-wing organizations, the Internal Revenue Service began comprehensive investigations of right-wing groups in 1961 and later expanded to left-wing organizations. This effort was directed at identifying contributions and ascertaining whether the organizations were entitled to maintain their exempt status.

c. Accountability and Control

Pervasive secrecy enabled the FBI and the Justice Department to disregard as "unworkable" the Emergency Detention Act intended to set standards for aspects of domestic intelligence. The FBI's independent position also allowed it to withhold significant information from a presidential commission and from every Attorney General; and no Attorney General inquired fully into the Bureau's operations.

During the same period, apprehensions about having a "security police" influenced Congress to prohibit the Central Intelligence Agency from exercising law enforcement powers or performing "internal security functions." Nevertheless, in secret and without effective internal controls, the CIA undertook programs for testing chemical and biological agents on unwitting Americans, sometimes with tragic consequences. The CIA also used American private institutions as

"cover" and used intrusive techniques affecting the rights of Americans.

d. Intrusive Techniques

The CIA and the National Security Agency illegally instituted programs for the interception of international communications to and from American citizens, primarily first class mail and cable traffic.

During this period, the FBI also used intrusive intelligence gathering techniques against domestic "subversives" and counterintelligence targets. Sometimes these techniques were covered by a blanket delegation of authority from the Attorney General, as with microphone surveillance; but frequently they were used without outside authorization, as with mail openings and surreptitious entry. Only conventional wiretaps required the Attorney General's approval in each case, but this method was still misused due to the lack of adequate standards and procedural safeguards.

e. Domestic Covert Action

In the mid-fifties, the FBI developed the initial COINTELPRO operations, which used aggressive covert actions to disrupt and discredit Communist Party activities. The FBI subsequently expanded its COINTELPRO activities to discredit peaceful protest groups whom Communists had infiltrated but did not control, as well as groups of socialists who used revolutionary rhetoric but had no connections with a hostile foreign power.

. . . . . .

Throughout this period, there was a mixture of secrecy and disclosure. Executive action was often substituted for legislation, sometimes with the full knowledge and consent of Congress and on other occasions without informing Congress or by advising only a select group of legislators. There is no question that Congress, the courts, and the public expected the FBI to gather domestic intelligence about Communists. But the broad scope of FBI investigations, its specific programs for achieving "pure intelligence" and "preventive intelligence" objectives, and its use of intrusive techniques and disruptive counterintelligence measures against domestic "subversives" were not fully known by anyone outside the Bureau.

2. Domestic Intelligence Authority

a. Anti-Communist Consensus

During the Cold War era, the strong consensus in favor of governmental action against Communists was reflected in decisions of the Supreme Court and acts of Congress. In the Korean War period, for instance, the Supreme Court upheld the conviction of domestic Communist Party leaders under the Smith Act for conspiracy to advocate violent overthrow of the government. The Court pinned its decision upon the conspiratorial nature of the Communist Party of the United States and its ideological links with the Soviet Union at a time of stress in Soviet-American relations.[81]

[81] The Court held that the grave and probable danger posed by the Communist Party justified this restriction on free speech under the First Amendment:

"The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of

Several statutes buttressed the FBI's claim of legitimacy for at least some aspects of domestic intelligence. Although Congress never directly authorized Bureau intelligence operations, Congress enacted the Internal Security Act of 1950 over President Truman's veto. Its two main provisions were: the Subversives Activities Control Act, requiring the registration of members of communist and communist "front" groups; and the Emergency Detention Act, providing for the internment in an emergency of persons who might engage in espionage or sabotage. In this Act, Congress made findings that the Communist Party was " a disciplined organization" operating in this nation "under Soviet Union control" with the aim of installing "a Soviet style dictatorship." [82] Going even further in 1954, Congress passed the Communist Control Act, which provided that the Communist Party was "not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States." [83]

In 1956, the Supreme Court recognized the existence of FBI intelligence aimed at "Communist seditious activities." [84] The basis for Smith Act prosecutions of "subversive activity" was narrowed in 1957, however, when the Court overturned the convictions of second-string Communist leaders, holding that the government must show advocacy "of action and not merely abstract doctrine." [85] In 1961, the Court sustained the constitutionality under the First Amendment of the requirement that the Communist Party register with the Subversive Acivities Control Board.[86]

The consensus should not be portrayed as monolithic. President Truman was concerned about risks to constitutional government posed

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world conditions, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score." [*Dennis* v. *United States*, 341 U.S. 494 510–511 (1951).]

[82] 64 Stat. 987 (1950) The Subversive Activities Control Act's registration provision was held not to violate the First Amendment in 1961. [*Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1 (1961).] However, registration of Communists under the Act was later held to violate the Fifth Amendment privilege against self-incrimination. [*Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965).] The Emergency Detention Act was repealed in 1971.

[83] 68 Stat. 775 (1954), 50 U.S.C. 841–844. The constitutionality of the Communist Control Act of 1954 has never been tested.

[84] In light of the facts now known, the Supreme Court seems to have overstated the degree to which Congress had explicitly "charged" the FBI with intelligence responsibilities:

"Congress has devised an all-embracing program for resistance to the various forms of totalitarian aggression. . . . It has charged the Federal Bureau of Investigation and the Central Intelligence Agency with responsibility for intelligence concerning Communist seditious activities against our Government, and has denominated such activities as part of a world conspiracy." [*Pennsylvania* v. *Nelson*, 350 U.S. 497, 504–505 (1956).]

This decision held that the federal government had preempted state sedition laws, citing President Roosevelt's September 1939 statement on FBI authority and an address by FBI Director Hoover to state law enforcement officials in August 1940.

[85] *Yates* v. *United States*, 354 U.S. 298, 325 (1957).

[86] Justice Douglas, who dissented on Fifth Amendment grounds, agreed with the majority on the First Amendment issue:

"The Bill of Rights was designed to give fullest play to the exchange and dissemination of ideas that touch the politics, culture, and other aspects of our life. When an organization is used by a foreign power to make advances here, questions of security are raised beyond the ken of disputation and debate between the people resident here." [*Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, 174 (1961).]

by the zealous anti–Communism in Congress. According to one White House staff member's notes during the debate over the Internal Security Act:

> The President said that the situation . . . was the worst it had been since the Alien and Sedition Laws of 1798, that a lot of people on the Hill should know better but had been stampeded into running with their tails between their legs.

Truman announced that he would veto the Internal Security Act "regardless of how politically unpopular it was—election year or no election year." [87] But President Truman's veto was overridden by an overwhelming margin.

b. The Federal Employee Loyalty-Security Program

(1) *Origins of the Program.*—President Truman established a federal employee loyalty program in 1947.[88] Its basic features were retained in the federal employee security program authorized by President Eisenhower in public Executive Order 10450, which, with some modifications, still applies today.[89]

Although it had a much broader reach, the program originated out of well-founded concern that Soviet intelligence was then using the Communist Party as a vehicle for the recruitment of espionage agents.[90] President Truman appointed a Temporary Commision on Employee Loyalty in 1946 to examine the problem. FBI Director Hoover submitted a memorandum on the types of activities of "subversive or disloyal persons" in government service which would constitute a "threat" to security. As Hoover saw it, however, the danger was not limited to espionage or recruitment for espionage. It extended to "influencing" government policies in favor of "the foreign country of their ideological choice." Consequently, he urged that attention be given to the associations of government employees with "front" organizations, including "temporary organizations, 'spontaneous' campaigns, and pressure movements so frequently used by subversive groups." [91]

The President's Commission accepted Director Hoover's broad view of the threat, along with the view endorsed by a Presidential Commission on Civil Rights that there also was a danger from "those who would subvert our democracy by . . . destroying the civil rights of some groups." [92] Consequently, the Executive Order included, as an indica-

[87] File memorandum of S. J. Spingarn, assistant counsel to the President, 7/22/50. (Spingarn Papers, Harry S. Truman Library.)

[88] Executive Order 9835, 12 Fed. Reg. 1935 (1947).

[89] Executive Order 10450, 18 Fed. Reg. 2489 (1953).

[90] A report by a Canadian Royal Commission in June 1946 greatly influenced United States government policy. The Royal Commission stated that "a number of young Canadians, public servants and others, who begin with a desire to advance causes which they consider worthy, have been induced into joining study groups of the Communist Party. They are persuaded to keep this adherence secret. They have been led step by step along the ingeneous psychological development course . . . until under the influence of sophisticated and unscrupulous leaders they have been persuaded to engage in illegal activities directed against the safety and interests of their own society." The Royal Commission recommended additional security measures "to prevent the infiltration into positions of trust under the Government of persons likely to commit" such acts of espionage. (The Report of the Royal Commission, 6/27/46, pp. 82–83, 686–689.)

[91] Memorandum from the FBI Director to the President's Temporary Commission on Employee Loyalty, 1/3/47.

[92] President's Committee on Civil Rights, *To Secure These Rights* (1947), p. 52.

tion of disloyalty, membership in or association with groups designated on an "Attorney General's list" as:

> totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.[93]

The Executive Order was used to provide a legal basis for the FBI's investigation of allegedly "subversive" organizations which might fall within these categories.[94] Such investigations supplied a body of intelligence data against which to check the names of prospective federal employees.[95]

(2) *Breadth of the Investigations.*—By the mid-1950s, the Bureau believed that the Communist Party was no longer used for Soviet espionage; it represented only a "potential" recruiting ground for spies.[96] Thereafter, FBI investigations of Communist organizations and other groups unconnected to espionage but falling within the standards of the Attorney General's list frequently became a means for monitoring the political background of prospective federal employees by means of the "name check" of Bureau files. These investigations also served the "pure intelligence" function of informing the Attorney General of the influence and organizational affiliations of so-called "subversives." [97]

No organizations were formally added to the Attorney General's list after 1955.[98] However, the FBI's "name check" reports on prospective employees were never limited to information about listed organizations. The broad standards for placing a group on the Attorney General's list were used to evaluate an employee's background, regardless of whether or not he was a member of a group on the list.[99] If a "name check" uncovered information about a prospective employee's association with a group which *might* come within those standards, the

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[93] Executive Order 9835, part I, section 2; cf. Executive Order 10450, section 8(a)(5).

[94] In 1960, for instance, the Justice Department advised the FBI to continue investigating an organization not on the Attorney General's list in order to secure "additional information . . . relative to the criteria" of the employee security order. (Memorandum from Assistant Attorney General J. Walter Yeagley to J. Edgar Hoover, 5/17/60.)

[95] FBI "name checks" are authorized as one of the "national agencies checks" required by Executive Order 10450, section 3(a).

[96] FBI Monograph, "The Menace of Communism in the United States Today", 7/29/55, pp. iv–v. See footnote 271.

[97] The FBI official in charge of the Internal Security Section of the Intelligency Division in the fifties and early sixties testified that the primary purpose of FBI investigations of communist "infiltration" was to advise the Attorney General so that he could determine whether a group should go on the Attorney General's list. He also testified that investigations for this purpose continued after the Attorney General ceased adding names of groups to the list. (F. J. Baumgardner testimony, 10/8/75, pp. 48–49.) See pp. 48–49 for discussion of the FBI's COMINFIL program.

[98] Memoranda from the Attorney General to heads of Departments and Agencies, 4/29/53; 7/15/53; 9/28/53; 1/22/54. Groups designated prior to that time included numerous defunct German and Japanese societies, Communist and Communist "front" organizations, the Socialist Workers Party, the Nationalist Party of Puerto Rico, and several Ku Klux Klan organizations.

[99] Executive Order 10450, section 8(a)(5).

FBI would report the data and attach a "characterization" of the organization relating to the standards.[100]

(3) *FBI Control of Loyalty-Security Investigations.*—President Eisenhower's 1953 order specifically designated the FBI as responsible for "a full field investigation" whenever a "name check" or a background investigation by the Civil Service Commission or any other agency uncovered information indicating a potential security risk.[101] President Truman had refused to give the Bureau this exclusive power initially, but he fought a losing battle.[102]

Director Hoover had objected that President Truman's order did not give the FBI excusive power and threatened "to withdraw from this field of investigation rather than to engage in a tug of war with the Civil Service Commission." [103] President Truman was apprehensive about the FBI's growing power. The notes of one presidential aide on a meeting with the President reflect that Truman felt "very strongly anti-FBI" on the issue and wanted "to be sure and hold FBI down, afraid of 'Gestapo.' " [104]

Presidential assistant Clark Clifford reviewed the situation and came down on the side of the FBI as "better qualified" than the Civil Service Commission.[105] But the President insisted on a compromise which gave Civil Service "discretion" to call on the FBI "if it wishes." [106] Director Hoover protested this "confusion" about the FBI's jurisdiction.[107] When Justice Department officials warned that Congress would "find flaws" with the compromise, President Truman noted on a memorandum from Clifford:

> J. Edgar will in all probability get this backward looking Congress to give him what he wants. It's dangerous.[108]

President's Truman's prediction was correct. His budget request of $16 million for Civil Service and $8.7 million for the FBI to conduct loyalty investigations was revised by Congress to allocate $7.4 million to the FBI and only $3 million to Civil Service.[109] The issue was finally resolved to the FBI's satisfaction when the President issued a statement declaring that there were "to be no exceptions" to the rule that the FBI would make all loyalty investigations.[110]

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[100] The FBI's field offices were supplied with such "thumb-nail sketches" or characterizations to supplement the Attorney General's list and the reports of the House Committee on Un-American Activities. (*E.g.*, SAC Letter No. 60–34, 7/12/60.)

[101] Executive Order 10450, section 8(d).

[102] The reference to a "full field investigation" where there was "derogatory information with respect to loyalty" did not, in the Truman order, say who would conduct the investigation. (Executive Order 9835, part I, section 4.)

[103] Memoranda from J. Edgar Hoover to Attorney General Tom Clark, 3/19/47 and 3/31/47.

[104] File memorandum of George M. Elsey, 5/2/47. (Harry S. Truman Library.)

[105] Memorandum from Clark Clifford to the President, 5/7/47.

[106] Memorandum from Clark Clifford to the President, 5/9/47; letter from President Truman to H. B. Mitchell, U.S. Civil Service Commission, 5/9/47. (Harry S. Truman Library.)

[107] Memorandum from J. Edgar Hoover to Attorney General Clark, 5/12/47.

[108] Memorandum from Clark Clifford to the President, 5/9/47. (Harry S. Truman Library.)

[109] Eleanor Bontecou, *The Federal Loyalty-Security Program* (Ithaca: Cornell University Press, 1953), pp. 33–34.

[110] Memorandum from J. R. Steelman, Assistant to the President, to the Attorney General, 11/3/47.

c. Executive Directives: Lack of Guidance and Controls

Two public presidential statements on FBI domestic intelligence authority—by President Truman in 1950 and by President Eisenhower in 1953—specifically declared that the FBI was authorized to investigate "subversive activity," electing the broader interpretation of the conflicting Roosevelt directives. Moreover, a confidential directive of the National Security Council in 1949 granted authority to the FBI and military intelligence for investigation of "subversive activities." In 1962 President Kennedy issued a confidential order shifting supervision of these investigations from the NSC to the Attorney General, and the NSC's 1949 authorizations were reissued by Attorney General Kennedy in 1964.

As with the earlier Roosevelt directives, these statements, orders and authorizations failed to provide guidance on conducting or controlling "subversive" investigations.

Under President Truman, the Interdepartmental Intelligence Conference (IIC) [111] was formally authorized in 1949 to supervise coordination between the FBI and the military of "all investigation of domestic espionage, counterespionage, sabotage, *subversion*, and *other related intelligence matters* affecting internal security." [112] [Emphasis added.]

The confidential Delimitations Agreement between the FBI and the military intelligence agencies was also revised in 1949 to require greater exchange of "information of mutual interest" and to require the FBI to advise military intelligence of developments concerning "subversive" groups who were "potential" dangers to the security of the United States.[113]

In 1950, after the outbreak of the Korean war and in the midst of Congressional consideration of new internal security legislation, Director Hoover recommended that Attorney General J. Howard McGrath [114] and the NSC draft a statement which President Truman issued in July 1950 providing that the FBI:

> should take charge of investigative work in matters relating to espionage, sabotage, *subversive activities and related matters*.[115] [Emphasis added.]

[111] In a March 1949 directive on coordination of internal security President Truman approved the creation of the Interdepartmental Intelligence Conference ("IIC"). Memorandum by J. P. Coyne, Major Chronological Developments on the Subject of Internal Security, 4/8/49 (Harry S. Truman Library), and NSC Memorandum 17/4, 3/23/49.

[112] NSC Memorandum 17/5, 6/15/49. The National Security Council was established by the National Security Act of 1947, which authorized the NSC to advise the President with respect to "the integration of domestic, foreign, and military policies" relating to the "national security." (Section 101 of the National Security Act of 1947.) Under this authority, the NSC then approved a secret charter for the ICC, composed of the FBI Director (as chairman) and the heads of the three military intelligence agencies.

[113] Delimitation of Investigative Duties and Agreement for Coordination, 2/23/49. A supplementary agreement required FBI and military intelligence officials in the field to "maintain close personal liaison," particularly to avoid "duplication in . . . the use of informers." Where there was "doubt" as to whether another agency was interested in information, it "should be transmitted." (Supplemental Agreement No. 1 to the Delimitation Agreement, 6/2/49.)

[114] Letter from Attorney General McGrath to Charles S. Murphy, Counsel to the President, 7/11/50.

[115] Statement of President Truman, 7/24/50.

Despite concern among his assistants,[115a] President Truman's statement clearly placed him on the record as endorsing FBI investigations of "subversive activities." The statement said that such investigations had been authorized initially by President Roosevelt's "directives" of September 1939 and January 1943. However, those particular directives had not used this precise language.[116]

Shortly after President Eisenhower took office in 1953, the FBI advised the White House that its "internal security responsibility" went beyond "statutory" authority. The Bureau attached a copy of the Truman statement, but not the Roosevelt directive. The FBI again broadly interpreted the Roosevelt directive by saying that it had authorized "investigative work" related to "subversive activities." [117]

In December 1953 President Eisenhower issued a statement reiterating President Truman's "directive" and extending the FBI's mandate to investigations under the Atomic Energy Act.[118]

President Kennedy issued no public statement comparable to the Roosevelt, Truman, and Eisenhower "directives." However, in 1962 he did transfer the Interdepartmental Intelligence Conference to "the supervision of the Attorney General;" [119] and in 1964 Attorney General Robert Kennedy re-issued the IIC charter, citing as authority the President's 1962 order and retaining the term "subversion." The charter added that it did not "modify" or "affect" the previous "Presidential Directives" relating to the duties of the FBI, and that the Delimitations Agreement between the FBI and military intelligence "shall remain in full force and effect." [120]

None of the directives, orders, or charters provided any definition of the broad and loose terms "subversion" or "subversive activities;" and none of the administrations provided effective controls over the FBI's investigations in this area.

3. Scope of Domestic Intelligence

a. "Subversive Activities"

The breadth of the FBI's investigations of "subversive activity" led to massive collection of information on law abiding citizens. FBI domestic intelligence investigations extended beyond known or suspected Communist Party members. They included other individuals who regarded the Soviet Union as the "champion of a superior way of life" and "persons holding important positions who have shown sympathy for Communist objectives and policies." Members of "non-Stal-

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[115a] One noted, "This is the most inscrutable Presidential statement I've seen in a long time." Another asked, "How in H—— did this get out?" A third replied, "Don't know—I thought you were handling." Notes initialed D. Bell, SJS (S. J. Spingarn), and GWE (George W. Elsey), 7/24–25/50 (Elsey Papers, Harry S. Truman Library). Even before the statement was issued, one of these aides had warned the President's counsel that the Justice Department was attempting "an end run." [Memorandum from G. W. Elsey to Charles S. Murphy, Counsel to the President, 7/12/50. (Murphy Papers, Harry S. Truman Library.)]

[116] See footnotes 19 and 22.

[117] Letter from J. Edgar Hoover to Sherman Adams, Assistant to the President, 1/28/53, and attached memorandum on "FBI Liaison Activities," 1/26/53.

[118] Statement of President Eisenhower, 12/15/53.

[119] National Security Action Memorandum 161, Subject: U.S. Internal Security Programs, 6/9/62.

[120] Memorandum from Attorney General Kennedy to J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, 3/5/64.

inist" revolutionary socialist groups were investigated because, even though they opposed the Soviet regime, the FBI viewed them as regarding the Soviet Union "as the center for world revolution." [121] Moreover, the FBI's concept of "subversive infiltration" was so broad that it permitted the investigation for decades of peaceful protest groups such as the NAACP.

(1) *The Number of Investigations.*—By 1960 the FBI had opened approximately 432,000 files at headquarters on individuals and groups in the "subversive" intelligence field. Between 1960 and 1963 an additional 9,000 such files were opened.[122] An even larger number of investigative files were maintained at FBI field offices.[123] Under the Bureau's filing system, a single file on a group could include references to hundreds or thousands of group members or other persons associated with the group in any way; and such names were indexed so that the information was readily retrievable.

(2) *Vague and Sweeping Standards.*—The FBI conducted continuing investigations of persons whose membership in the Communist Party or in "a revolutionary group" had "not been proven," but who had "anarchistic or revolutionary beliefs" and had "committed past acts of violence during strikes, riots, or demonstrations." Persons not currently engaged in "activity of a subversive nature" were still investigated if they had engaged in such activity "several years ago" and there was no "positive indication of disaffection." [124]

The FBI Manual stated that it was "not possible to formulate any hard-and-fast standards" for measuring "the dangerousness of individual members or affiliates of revolutionary organizations." Persons could be investigated if they were "espousing the line" of "revolutionary movements". Anonymous allegations could start an investigation if they were "sufficiently specific and of sufficient weight." The Manual added,

> Where there is doubt an individual may be a current threat to the internal security of the nation, the question should be resolved in the interest of security and investigation conducted.[125]

The FBI Manual did not define "subversive" groups in terms of their links to a foreign government. Instead, they were "Marxist revolutionary-type" organizations "seeking the overthrow of the U.S. Government." [126] One purpose of investigation was possible prosecu-

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[121] Memorandum from J. Edgar Hoover to Attorney General Clark, 3/5/46.

[122] Memorandum from the FBI to the Senate Select Committee, 10/28/75. An indication of the breadth of the investigations is illustrated by the fact that the number of files far exceeded the Bureau's estimate of the "all time high" in Communist Party membership which was 80.000 in 1944 and steadily declined thereafter. (William C. Sullivan testimony, 11/1/75, pp. 33–34.)

[123] Report to the House Committee on the Judiciary by the Comptroller General of the United States, 2/24/76, pp. 118–119.

[124] Such investigations were conducted because the Communist Party had issued instructions that "sleepers" should leave the Party and go "underground," still maintaining secret links to the Party. (Memorandum from J. F. Bland to A. H. Belmont, 7/30/58.)

"Refusal to cooperate" with an FBI agent's interview was "taken into consideration along with other facts" in determining whether to continue the investigation. (Memorandum from J. Edgar Hoover to Deputy Attorney General Peyton Ford, 6/28/51.)

[125] 1960 FBI Manual Section 87, p. 5.

[126] 1960 FBI Manual Section 87, p. 5.

tion under the Smith Act. But no prosecutions were initiated under the Act after 1957.[127] The Justice Department advised the FBI in 1956 that such a prosecution required "an actual plan for a violent revolution." [128] The Department's position in 1960 was that "incitement to action in the foreseeable future" was needed.[129] Despite the strict requirements for prosecution, the FBI continued to investigate "subversive" organizations "from an intelligence viewpoint" to appraise their "strength" and "dangerousness." [130]

(3) *COMINFIL.*—The FBI's broadest program for collecting intelligence was carried out under the heading COMINFIL, or Communist infiltration.[131] The FBI collected intelligence about Communist "influence" under the following categories:

Political activities
Legislative activities
Domestic administration issues
Negro question
Youth matters
Women's matters
Farmers' Matters
Cultural activities
Veterans' matters
Religion
Education
Industry [132]

FBI investigations covered "the entire spectrum of the social and labor movement in the country." [133] The purpose—as publicly disclosed in the Attorney General's Annual Reports—was pure intelligence: to "fortify" the Government against "subversive pressures," [134] or to "strengthen" the Government against "subversive campaigns." [135]

In other words, the COMINFIL program supplied the Attorney General and the President with intelligence about a wide range of groups seeking to influence national policy under the rationale of determining whether Communists were involved.[136] The FBI said it was not concerned with the "legitimate activities" of "nonsubversive groups," but only with whether Communists were "gaining a dominant

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[127] The Supreme Court's last decision upholding a Smith Act conviction was *Scales* v. *United States*, 367 U.S. 203 (1961), which reiterated that there must be "advocacy of action." See *Yates* v. *United States*, 354 U.S. 298 (1957).

[128] Memorandum from Assistant Attorney General Tompkins to Director, FBI, 3/15/56.

[129] Memorandum from Assistant Attorney General Yeagley to Director, FBI, 5/17/60.

[130] 1960 FBI Manual Section 87, p. 5.

[131] 1960 FBI Manual Section 87, pp. 83–84.

[132] 1960 FBI Manual Section 87, pp. 5–11.

[133] Annual Report of the Attorney General for Fiscal Year 1955, p. 195.

[134] Annual Report for 1958, p. 338.

[135] Annual Report for 1964, p. 375.

[136] (Examples of such reports to the White House are set forth later, pp. 51–53.) The Chief of the Internal Security Section of the FBI Intelligence Division in 1948–1966 testified that the Bureau "had to be certain" that a group's position did not coincide with the Communist line "just by accident." The FBI would not "open a case" until it had "specific information" that "the Communists were there" and were "influencing" the group to "assist the Communist movement." (F. J. Baumgardner testimony, 10/8/75 p. 47.)

role."[137] Nevertheless, COMINFIL reports inevitably described "legitimate activities" totally unrelated to the alleged "subversive activity." This is vividly demonstrated by the COMINFIL reports on American's leading civil rights group in this period, the NAACP.[138] The investigation continued for at least twenty-five years in cities throughout the nation, although no evidence was ever found to rebut the observation that the NAACP had a "strong tendency" to "steer clear of Communist activities."[139]

(4) *Exaggeration of Communist Influence.*—The FBI and the Justice Department justified the continuation of COMINFIL investigations, despite the Communist Party's steady decline in the fifties and early sixities, on the theory that the Party was "seeking to repair its losses" with the "hope" of being able to "move in" on movements with "laudable objectives."[140]

The FBI reported to the White House in 1961 that the Communist Party had "attempted" to take advantage of "racial disturbances" in the South and had "endeavored" to bring "pressure to bear" on government officials "through the press, labor unions, and student groups." At that time the FBI was investigating "two hundred known or suspected communist front and communist-infiltrated organizations."[141] By not stating how effective the "attempts" and "endeavors" of the Communists were, and by not indicating whether they were becoming more or less successful, the FBI offered a deficient rationale for its sweeping intelligence collection policy.

William C. Sullivan, a former head of the FBI Intelligence Division, has testified that such language was deliberately used to exaggerate the threat of Communist influence. "Attempts" and "influence" were "very significant words" in FBI reports, he said. These terms obscured what he felt to be the more significant criterion—the degree of Communist success. The Bureau "did not discuss this because we would have to say that they did not hit the target, hardly any."[142]

A distorted picture of Communist "infiltration" later served to justify the FBI's intensive investigations of the groups involved in protests against the Vietnam War and the civil rights movement, including Dr. Martin Luther King, Jr., and the Southern Christian Leadership Conference.

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[137] Annual Report for 1955, p. 195.

[138] For more detailed discussion of the FBI investigations of the NAACP and other civil rights groups see the Report on the Development of FBI Domestic Intelligence Investigations.

[139] Report of Oklahoma City Field Office, 9/19/41. This report continued: "Nevertheless, there is a strong movement on the part of the Communists to *attempt* to dominate this group . . . Consequently, the activities of the NAACP will be closely observed and scrutinized in the future." [Emphasis added.] This stress on Communist "attempts" rather than their actual achievements is typical of COMINFIL reports. The annual reports on the FBI's COMINFIL investigation of the NAACP indicate that the Communists consistently failed in these "attempts" at the national level, although the Bureau took credit for using covert tactics to prevent a Communist takeover of a major NAACP chapter. (Letter from J. Edgar Hoover to Attorney General-elect Robert F. Kennedy, 1/10/61 attached memorandum, subject: Communist Party, USA–FBI Counterattack.)

[140] Annual Report of the Attorney General for Fiscal Year 1959, pp. 247–248.

[141] Memorandum from J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, to McGeorge Bundy, Special Assistant to the President for National Security, 7/25/61, enclosing IIC Report, Status of U.S. Internal Security Programs.

[142] William C. Sullivan testimony, 11/1/75, pp. 40–41.

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b. "Racial Matters" and "Hate Groups"

In the 1950s, the FBI also developed intelligence programs to investigate "Racial Matters" and "hate organizations" unrelated to "revolutionary-type" subversives. "Hate organizations" were investigated if they had "allegedly adopted a policy of advocating, condoning, or inciting the use of force or violence to deny others their rights under the Constitution." Like the COMINFIL program, however, the Bureau used its "established sources" to monitor the activities of "hate groups" which did not "qualify" under the "advocacy of violence" standard.[143]

In 1963, FBI field offices were instructed to report "the formation and identities" of "rightist or extremist groups" in the "anticommunist field." Headquarters approval was needed for investigating "groups in this field whose activities are not in violation of any statutes." [144]

Under these programs, the FBI collected and disseminated intelligence about the John Birch Society and its founder, Robert Welch, in 1959.[145] The activities of another right-wing spokesman, Gerald L. K. Smith, who headed the Christian Nationalist Crusade, were the subject of FBI reports even after the Justice Department had concluded that the group had not violated federal law and that there was no basis for including the group on the "Attorney General's list." [146]

The FBI program for collecting intelligence on "General Racial Matters" was even broader. It went beyond "race riots" to include "civil demonstrations" and "similar developments." These "developments" included:

> proposed or actual activities of individuals, officials, committees, legislatures, organizations, etc., in the racial field.[147]

The FBI's "intelligence function" was to advise "appropriate" federal and local officials of "pertinent information" about "racial incidents." [148]

A briefing of the Cabinet by Director Hoover in 1956 illustrates the breadth of collection and dissemination under the racial matters program. The briefing covered not only incidents of violence and the "efforts" and "plans" of Communists to "influence" the civil rights movement, but also the legislative strategy of the NAACP and the activities of Southern Governors and Congressmen on behalf of groups opposing integration peacefully.[149]

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[143] 1960 FBI Manual Section 122, p. 1.

[144] SAC Letter No. 63–27, 6/11/63.

[145] The FBI has denied that it ever conducted a "security-type investigation" of the Birch Society or Welch, but states the Boston field office "was instructed in 1959 to obtain background data" on Welch using public sources. (Memorandum from the FBI to the Senate Select Committee, 2/10/76.) A 1963 internal FBI memorandum stated that the Bureau "checked into the background of the Birch Society because of its scurrilous attack on President Eisenhower and other high Government officials." (Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/29/63.) Reports were sent to the White House, see footnote 164.

[146] Letter from Assistant Attorney General Tompkins to Sherman Adams, Assistant to the President, 11/22/54; letters from J. Edgar Hoover to Robert Cutler, Special Assistant to the President, 10/15/57, and 1/17/58. (Eisenhower Library.)

[147] 1960 FBI Manual Section 122, pp. 5–6.

[148] 1960 FBI Manual Section 122, pp. 5–6.

[149] "Racial Tensions and Civil Rights," 3/1/56, statement used by the FBI Director at Cabinet briefing, 3/9/56.

c. FBI Political Intelligence for the White House

Numerous items of political intelligence were supplied by the FBI to the White House in each of the three administrations during the Cold War era, apparently satisfying the desires of Presidents and their staffs.[150]

President Truman and his aides received regular letters from Director Hoover labeled "Personal and Confidential" containing tidbits of political intelligence. The letters reported on such subjects as: inside information about the negotiating position of a non-Communist labor union;[151] the activities of a former Roosevelt aide who was trying to influence the Truman administration's appointments;[152] a report from a "confidential source" that a "scandal" was brewing which would be "very embarrassing" to the Democratic administration;[153] a report from a "very confidential source" about a meeting of newspaper representatives in Chicago to plan publication of stories exposing organized crime and corrupt politicians;[154] the contents of an in-house communication from *Newsweek* magazine reporters to their editors about a story they had obtained from the State Department,[155] and criticism of the government's internal security programs by a former Assistant to the Attorney General.[156]

Letters discussing Communist "influence" provided a considerable amount of extraneous information about the legislative process, including lobbying activities in support of civil rights legislation[157] and the political activities of Senators and Congressmen.[158]

President Eisenhower and his aides received similar tid-bits of political intelligence, including an advance text of a speech to be delivered by a prominent labor leader,[159] reports from Bureau "sources" on the meetings of an NAACP delegation with Senators Paul Douglas and Everett Dirksen of Illinois;[160] the report of an "informant" on the role of the United Auto Workers Union at an NAACP conference,[161] summaries of data in FBI files on thirteen persons (including Norman Thomas, Linus Pauling, and Bertrand Russell) who had filed suit to stop nuclear testing,[162] a report of a "confidential source" on plans of Mrs. Eleanor Roosevelt to hold a reception for the head of

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[150] See p. 37 for discussion of White House wiretap requests in 1945–1948.

[151] Letter from J. Edgar Hoover to George E. Allen, Director, Reconstruction Finance Corporation, 12/13/46. (Harry S. Truman Library.)

[152] Letter from J. Edgar Hoover to Maj. Gen. Harry H. Vaughn, Military Aide to the President, 2/15/47. (Harry S. Truman Library.)

[153] Letter from Hoover to Vaughn, 6/25/47. (Harry S. Truman Library.)

[154] Letter from J. Edgar Hoover to Matthew J. Connelly, Secretary to the President, 1/27/50. (Harry S. Truman Library.)

[155] Memorandum from J. Edgar Hoover to Attorney General Clark, 4/1/46. (Harry S. Truman Library.)

[156] Letter from J. Edgar Hoover to Maj. Gen. Harry H. Vaughn, Military Aide to the President, 11/13/47. (Harry S. Truman Library.)

[157] Letters from J. Edgar Hoover to Brig. Gen. Harry H. Vaughn, Military Aide to the President, 1/11/46 and 1/17/46. (Harry S. Truman Library.)

[158] Letter from J. Edgar Hoover to George E. Allen, Director, Reconstruction Finance Corporation, 5/29/49. (Harry S. Truman Library.)

[159] Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 4/21/55. (Eisenhower Library.)

[160] Letter from Hoover to Anderson, 3/6/56. (Eisenhower Library.)

[161] Letter from Hoover to Anderson, 3/5/56. (Eisenhower Library.)

[162] Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 4/11/58. (Eisenhower Library.)

a civil rights group,[163] and reports on the activities of Robert Welch and the John Birch Society.[164]

The FBI also volunteered to the White House information from its most "reliable sources" on purely political or social contacts with foreign government officials by a Deputy Assistant to the President,[165] Bernard Baruch,[166] Supreme Court Justice William O. Douglas,[167] and Mrs. Eleanor Roosevelt.[168]

Director Hoover sent to the White House a report from a "confidential informant" on the lobbying activities of a California group called Women for Legislative Action because its positions "paralleled" the Communist line.[169]

As in the prior administrations, requests also flowed from the Eisenhower White House to the FBI.[170] For example, a presidential aide asked the FBI to check its files on Rev. Carl McIntyre of the International Council of Christian Churches.[171]

The pattern continued during the Kennedy administration. A summary of material in FBI files on a prominent entertainer was volunteered to Attorney General Kennedy because Hoover thought it "may be of interest." [172] Attorney General Kennedy sent to the President an FBI memorandum on the purely personal life of Dr. Martin Luther King, Jr.[173] Director Hoover supplied Attorney General Kennedy with background information on a woman who told an Italian newspaper that she had once been engaged to marry President Kennedy [174] and on the husband of a woman who was reported in the press to have stated that the President's daughter would enroll in a cooperative nursery with which she was connected.[175] The FBI Director also passed on

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[163] Letter from J. Edgar Hoover to Robert Cutler, Special Assistant to the President, 2/13/58. (Eisenhower Library.) The group was described as the "successor" to a group cited by the House Un-American Activities Committee as a "communist front."

[164] Letters from J. Edgar Hoover to Gordon Gray, Special Assistant to the President, 9/11/59 and 9/16/59.

[165] Letter from Hoover to Cutler, 6/6/58. (Eisenhower Library). This involved contact with a foreign official whose later contacts with U.S. officials were reported by the FBI under the Kennedy Administration in connection with the "sugar lobby," see pp. 64–65.

[166] Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 11/7/55. (Eisenhower Library.)

[167] Letters from J. Edgar Hoover to Robert Cutler, Administrative Assistant to the President, 4/21/53 and 4/27/53. (Eisenhower Library.)

[168] Letter from Hoover to Cutler, 10/1/57. (Eisenhower Library.)

[169] Letter from Hoover to Gray, 11/9/59. (Eisenhower Library.) Hoover added that membership in the group "does not, of itself, connote membership in or sympathy with the Communist Party."

[170] Requests under the Roosevelt and Truman administrations, including wiretap requests, are discussed at pp. 33 and 37.

[171] Letter from J. Edgar Hoover to Thomas E. Stephens, Secretary to the President, 4/13/54. (Eisenhower Library.)

[172] Memorandum from J. Edgar Hoover to R. F. Kennedy, 2/10/61, "Personal." (John F. Kennedy Library.)

[173] Memorandum from the Attorney General to the President, 8/20/63, attaching memorandum from Hoover to Deputy Attorney General Katzenbach, 8/13/63. (John F. Kennedy Library.)

[174] Memorandum from J. Edgar Hoover to R. F. Kennedy, 2/6/61, "Personal." (John F. Kennedy Library.)

[175] Memorandum from J. Edgar Hoover to R. F. Kennedy, 2/8/61, "Personal." (John F. Kennedy Library.)

information from a Bureau "source" regarding plans of a group to publish allegations about the President's personal life.[176]

In 1962 the FBI complied unquestioningly with a request from Attorney General Kennedy to interview a Steel Company executive and several reporters who had written stories about the Steel executive. The interviews were conducted late at night and early in the morning because, according to the responsible FBI official, the Attorney General indicated the information was needed for a White House meeting the next day.[177]

Throughout the period, the Bureau also disseminated reports to high executive officials to discredit its critics. The FBI's inside information on plans of the Lawyers Guild to denounce Bureau surveillance in 1949 gave the Attorney General the opportunity to prepare a rebuttal well in advance of the expected criticism.[178] When the Knoxville Area Human Relations Council charged in 1960 that the FBI was practicing racial discrimination, the FBI did "name checks" on member of the Council's board of directors and sent the results to the Attorney General. The name checks dredged up derogatory allegations from as far back as the late thirties and early forties.[179]

d. IRS Investigations of Political Organizations

The IRS program that came to be used against the domestic dissidents of the 1960s was first used against Communists in the 1950s. As part of its COINTELPRO against the Communist Party, the FBI arranged for IRS investigations of Party members, and obtained their tax returns.[180] In its efforts against the Communist Party, the FBI had unlimited access to tax returns: it never told the IRS why it wanted them, and IRS never attempted to find out.[181]

In 1961, responding to White House and congressional interest in right-wing organizations, the IRS began comprehensive investigations of right-wing groups to identify contributors and ascertain whether or not some of them were entitled to their tax exempt status.[182] Left-wing groups were later added, in an effort to avoid charges that such IRS activities were all aimed at one part of the political spectrum. Both right- and left-wing groups were selected for review and investigation because of their political activity and not because of any information that they had violated the tax laws.[183]

While the IRS efforts begun in 1961 to investigate the political activities of tax exempt organizations were not as extensive as later

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[176] Memorandum from J. Edgar Hoover to R. F. Kennedy, 11/20/63. (John F. Kennedy Library.)

[177] Memorandum from Attorney General Kennedy to the President, 4/12/62 enclosing memorandum from Director, FBI, to the Attorney General, 4/12/62; testimony of Courtney Evans, former Assistant Director, FBI, 12/1/75, p. 39.

[178] Letter from Attorney General McGrath to President Truman, 12/7/49; letter from J. Edgar Hoover to Maj. Gen. Harry H. Vaughn, Military Aide to the President, 1/14/50.

[179] Memorandum from J. Edgar Hoover to Attorney General William P. Rogers, 5/25/60.

[180] Memorandum from A. H. Belmont to L. V. Boardman, 8/28/56, p. 4.

[181] Leon Green testimony, 9/12/75, pp. 6–8.

[182] Memorandum, William Loeb, Assistant Commissioner, Compliance to Dem. J. Barron, Director of Audit, 11/30/61.

[183] Memorandum, Attorney Assistant to Commission to Director, IRS Audit Division, 4/2/62.

programs in 1969–1973, they were a significant departure by the IRS from normal enforcement criteria for investigating persons or groups on the basis of information indicating noncompliance. By directing tax audits at individuals and groups solely because of their political beliefs, the Ideological Organizations Audit Project (as the 1961 program was known)[184] established a precedent for a far more elaborate program of targeting "dissidents."[185]

4. Accountability and Control

During the Cold War period, there were serious weaknesses in the system of accountability and control of domestic intelligence activity. On occasion the executive chose not to comply with the will of Congress with respect to internal security policy; and the Congressional attempt to exclude U.S. foreign intelligence agencies from domestic activities was evaded. Intelligence agencies also conducted covert programs in violation of laws protecting the rights of Americans. Problems of accountability were compounded by the lack of effective congressional oversight and the vagueness of executive orders, which allowed intelligence agencies to escape outside scrutiny.

a. The Emergency Detention Act

In 1946, four years before the Emergency Detention Act of 1950 was passed, the FBI advised Attorney General Clark that it had secretly compiled a security index of "potentially dangerous" persons.[186] The Justice Department then made tentative plans for emergency detention based on suspension of the privilege of the writ of habeas corpus.[187] Department officials deliberately avoided going to Congress, advising the FBI in a "blind memorandum:"

> The present is no time to seek legislation. To ask for it would only bring on a loud and acrimonious discussion.[188]

In 1950, however, Congress passed the Emergency Detention Act which established standards and procedures for the detention, in the event of war, invasion or insurrection "in aid of a foreign enemy," of any person:

> as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage or sabotage.

The Act did not authorize the suspension of the privilege of the writ of habeas corpus, and it provided that detained persons could appeal to a review board and to the courts.[189]

Shortly after passage of the Detention Act, according to a Bureau document, Attorney General J. Howard McGrath told the FBI to

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[184] IRS referred to it as Tax Political Action Groups Project. It was apparently labeled as above by the Joint Committee on Internal Revenue Taxation.

[185] See pp. 94–96 for discussion of later IRS programs.

[186] Memorandum from J. Edgar Hoover to Attorney General Clark, 3/8/46. See footnote 67 for the origins of the Security Index in contravention of Attorney General Biddle's policy.

[187] Memorandum from Assistant Attorney General T. L. Caudle to Attorney General Clark, 7/11/46.

[188] Quoted in internal FBI memorandum from D. M. Ladd to J. Edgar Hoover, 1/22/48.

[189] Internal Security Act of 1950, Title II—Emergency Detention, 64 Stat. 987 (1950).

disregard it and to "proceed with the program as previously outlined." Department officials stated that the Act was "in conflict with" their plans, and was "unworkable." FBI officials agreed that the statutory procedures—such as "recourse to the courts" instead of suspension of habeas corpus—would "destroy" their program.[190] Moreover, the Security Index used broader standards to determine "potential dangerousness" than those prescribed in the statute; and, unlike the Act, Department plans provided for issuing a Master Search Warrant and a Master Arrest Warrant.[191] Two subsequent Attorneys General endorsed the decision to ignore the Emergency Detention Act.[192]

b. Withholding Information

Not only did the FBI and the Justice Department jointly keep their noncompliance with the Detention Act secret from Congress, but the FBI withheld important aspects of its program from the Attorney General. FBI personnel had been instructed in 1949 that:

> no mention must be made in any investigative report relating to the classifications of top functionaries and key figures, nor to the Detcom and Comsab Programs, nor to the Security Index or the Communist Index. These investigative procedures and administrative aides are confidential and should not be known to any outside agency.[193]

FBI documents indicate that only the Security Index was made known to the Justice Department.

In 1955, the FBI tightened formal standards for the Security Index, reducing its size from 26,174 to 12,870 by 1958.[194] However, there is no indication that the FBI told the Department that it kept the names of persons taken off the Security Index on a Communist Index, because the Bureau believed such persons remained "potential threats."[194a] The secret Communist Index was renamed the Reserve Index in 1960 and expanded to include "influential" persons deemed likely to "aid subversive elements" in an emergency because of their "subversive associations and ideology." Such individuals fell under the following categories:

> Professors, teachers, and educators; labor union organizers and leaders; writers, lecturers, newsmen and others in the mass media field; lawyers, doctors, and scientists; other potentially influential persons on a local or national level; individuals who could potentially furnish financial or material aid.

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[190] Memorandum from A. H. Belmont to D. M. Ladd, 10/15/52.

[191] Memorandum from D. M. Ladd to J. Edgar Hoover, 11/13/52.

[192] Memorandum from Attorney General James McGranery to J. Edgar Hoover, 11/25/52; memorandum from Attorney General Herbert Brownell to J. Edgar Hoover, 4/27/53.

[193] SAC Letter No. 97, Series 1949, 10/19/49. Field offices gave special attention to "key figures" and "top functionaries" of the Communist Party. The "Comsab" program concentrated on potential Communist saboteurs, and the "Detcom" program was the FBI's own "priority arrest" list. The Communist Index was "a comprehensive compilation of individuals of interest to the internal security."

[194] Memorandum from J. Edgar Hoover to Attorney General Brownell, 3/9/55; memorandum from J. F. Bland to A. H. Belmont, 7/30/58.

[194a] Memorandum from A. H. Belmont to L. V. Boardman, 1/14/55.

Persons on the Reserve Index would receive "priority consideration" for "action" after detention of Security Index subjects. The breadth of this list is illustrated by the inclusion of the names of author Norman Mailer and a professor who merely praised the Soviet Union to his class.[195]

In addition to keeping these programs secret, the FBI withheld information about espionage from the Justice Department on at least two occasions. In 1946 the FBI had "identified over 100 persons" whom it "suspected of being in the Government Communist Underground." Neither this number nor any names from this list were given to the Department because Director Hoover feared "leaks," *and* because the Bureau conceded in its internal documents that it did "not have evidence, whether admissible or otherwise, reflecting actual membership in the Communist Party." [196] Thus the Bureau's "suspicions" were not tested by outside review by the Justice Department and the investigations could continue. In 1951 the FBI again withheld from the Department names of certain espionage subjects "for security reasons," since disclosure "would destroy chances of penetration and control." [197]

Even the President's Temporary Commission on Employee Loyalty could not get highly relevant information from the Bureau. FBI Assistant Director D. M. Ladd told the Commission in 1946 that there was a "substantial" amount of Communist "infiltration of the government." But Ladd declined to answer when Commission members asked for more details of FBI intelligence operations and the information which served as the basis for his characterization of the extent of infiltration.[198] The Commission prepared a list of questions for the FBI and asked that Director Hoover appear in person. Instead, Attorney General Clark made an "informal" appearance and supplied a memorandum stating that the number of "subversives" in government had "not yet reached serious proportions," but that the possibility of "even one disloyal person" in government service constituted a "serious threat." [199] Thus, the President's Commission chose not to insist upon making a serious evaluation of FBI intelligence operations or the extent of the danger.

The record suggests that executive officials were forced to make decisions regarding security policy without full knowledge. They had to depend on the FBI's estimate of the problem, rather than being able to make their own assessment on the basis of complete information. It is also apparent that by this time outside officials were sometimes unwilling to oppose Director Hoover or to inquire fully into FBI operations.[200]

c. CIA Domestic Activity

(1) *Vague Controls on CIA.*—The vagueness of Congress's prohibitions of "internal security functions" by the CIA left room for the

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[195] Memorandum from A. H. Belmont to Mr. Parsons, 6/3/60.

[196] Memorandum from D. M. Ladd to J. Edgar Hoover, 9/5/46; memorandum from Hoover to Attorney General Clark, 9/5/46.

[197] Memorandum from A. H. Belmont to D. M. Ladd, 4/17/51.

[198] Minutes of the President's Temporary Commission on Employee Loyalty, 1/17/47. (Harry S. Truman Library.)

[199] Memorandum from Attorney General Clark to Mr. Vanech, Chairman, President's Temporary Commission, 2/14/47. (Truman Library.)

[200] See finding (G) for a full discussion of the problem of FBI accountability.

Agency's subsequent domestic activity. A restriction against "police, law enforcement or internal security functions" first appeared in President Truman's order establishing the Central Intelligence Group in 1946.[201]

General Vandenburg, then Director of Central Intelligence, testified in 1947 that this restriction was intended to "draw the lines very sharply between the CIG and the FBI" and to "assure that the Central Intelligence Group can never become a Gestapo or security police." [202] Secretary of the Navy James Forrestal testified that the CIA would be "limited definitely to purposes outside of this country, except the collection of information gathered by other government agencies." The FBI would be relied upon "for domestic activities." [203]

In the House floor debate Congressman Holifield stressed that the work of the CIA:

> is strictly in the field of secret foreign intelligence—what is known as clandestine intelligence. They have no right in the domestic field to collect information of a clandestine military nature. They can evaluate it; yes.[204]

Consequently, the National Security Act of 1947 provided specifically that the CIA

> shall have no police, subpoena, law-enforcement powers, or internal security functions.[205]

However, the 1947 Act also contained a vague and undefined duty to protect intelligence "sources and methods" which later was used to justify domestic activities ranging from electronic surveillance and break-ins to penetration of protest groups.[206]

(2) *Drug Testing and Cover Programs.*—In the early 1950s, the CIA began a program of surreptitiously testing chemical and biological materials, which included drug testing on unwitting Americans. The existence of such a program was kept secret because, as the CIA's Inspector General wrote in 1957, it was necessary to "protect operations from exposure" to "the American public" as well as "enemy forces." Public knowledge of the CIA's "unethical and illicit activities" was thought likely to have serious "political repercussions." [207] CIA drug experimentors disregarded instructions of their superiors within the Agency and failed to take "reasonable precautions" when

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[201] Presidential Directive, Coordination of Federal Foreign Intelligence Activities, 1/22/46, 11 Fed. Reg. 1337. Fears that a foreign intelligence agency would intrude into domestic matters went back to 1944, when General William Donovan, head of the Office of Strategic Services (the CIA's wartime predecessor) proposed that OSS be transformed from a wartime basis to a permanent "central intelligence service." Donovan's plan was leaked to the *Chicago Tribune*, allegedly by FBI Director Hoover, and it was denounced as a "super spy system" which would "pry into the lives of citizens at home." [Corey Ford, *Donovan of the OSS* (Boston: Little, Brown, 1970), pp. 303–304.]

[202] Hearings before the Senate Armed Services Committee on S. 758, 80th Cong. (1947), p. 497.

[203] Hearings before the House Committee on Expenditures in the Executive Departments on H.R. 2319, 80th Cong. (1947), p. 127.

[204] 93 Cong. Rec. 9430 (1947).

[205] 50 U.S.C. 403(d)(3).

[206] See pp. 102–103.

[207] Inspector General's Report on the Technical Services Division, Central Intelligence Agency, 1957.

they undertook the test which resulted in the death of Dr. Frank Olsen.[208]

The CIA made extensive use of the Bureau of Narcotics and Dangerous Drugs in conducting its program of drug testing on unwitting subjects.

Military intelligence also administered drugs to volunteer subjects who were unaware of the purpose or nature of the tests in which they were participating.[209]

The CIA's drug research was conducted in part through arrangements with universities, hospitals, and "private research organizations" in a manner which concealed "from the institution the interests of the CIA," although "key individuals" were made witting of Agency sponsorship.[210] There were similar covert relationships with American private institutions in other CIA intelligence activities.[211]

5. Intrusive Techniques

Throughout the cold war period, the intelligence agencies used covert techniques which invaded personal privacy to execute their vague, uncontrolled, and overly broad mandate to collect intelligence. Intelligence techniques were not properly controlled by responsible authorities; some of the techniques were misused by senior administration officials. On the other hand, the nature of the programs—and, in some cases, their very existence—was often concealed from those authorities.

a. Communications Interception: CIA and NSA

During the 1950s the Central Intelligence Agency instituted a major program for opening mail between the United States and the Soviet Union as it passed through postal facilities in New York City.[212] Two other short-term CIA projects in the fifties also involved the opening of international mail within the United States, through access to Customs Service facilities.[213] Moreover, in the late 1940s the Department of Defense made arrangements with several communications companies to receive international cable traffic, reinstating a relationship that had existed during World War II.[214] These programs violated not only the ban on internal security functions by foreign intelligence agencies in the 1947 Act, but also specific statutes protecting the privacy of the mails and forbidding the interception of communications.[215]

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[208] Memorandum from the CIA General Counsel to the Inspector General, 1/5/54.

[209] U.S. Army Intelligence Center Staff Study: Material Testing Program EA 1729, 10/15/59.

[210] CIA Inspector General's Report, 1963.

[211] This issue is examined more fully in the Committee's Report on Foreign and Military Intelligence Activities.

[212] Memorandum from James Angleton, Chief, Counterintelligence Staff, to Chief of Operations, 11/21/55 (attachment).

[213] CIA Memorandum re: Project SETTER, undated (New Orleans); Memorandum from "Identity #13" to Deputy Director of Security, 10/9/57 (New Orleans); Rockefeller Commission Staff Summary of CIA Office Officer Interview, 3/18/75 (Hawaii).

[214] Robert Andrews, Special Assistant to the General Counsel, Department of Defense, testimony, 9/23/75, pp. 34–40.

[215] 18 U.S.C. 1701–1703 (mail); 47 U.S.C. 605 (Federal Communications Act of 1934).

While their original purpose was to obtain foreign intelligence, the programs frequently did not distinguish between the messages of foreigners and of Americans.[216] Furthermore, by the late fifties and early sixties, the CIA and NSA were sharing the "take" with the FBI for domestic intelligence purposes.[217]

In this period, the CIA opened mail to and from the Soviet Union largely at random, intercepting letters of Americans unrelated to foreign intelligence or counterintelligence.[218] After the FBI learned of the CIA program, it levied requests in certain categories. Apart from foreign counterintelligence criteria, the Bureau expressed interest in letters from citizens professing "pro-Communist sympathies" [219] and "data re U.S. peace groups going to Russia." [220]

The secret arrangements with cable companies to obtain copies of international traffic were initially authorized by Secretary of Defense James Forrestal and Attorney General Tom Clark, although it is not clear that they knew of the interception of American as well as foreign messages.[221] They developed no formal legal rationale, and their later successors were never consulted to renew the authorization.[222]

The CIA sought no outside authorization before instituting its mail opening program. Several Post Office officials were misled into believing that the CIA's request for access to the mail only involved examing the exterior of the envelopes.[223] President Kennedy's Postmaster General, J. Edward Day, testified that he told CIA Director Allen Dulles he did not want to "know anything about" what the CIA was doing.[224] Beyond undocumented assumptions by CIA officials, there is no evidence that the President or the Attorney General was ever informed about any aspect of CIA mail-opening operations in this period.[225]

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[216] CIA memorandum "For the Record" from Thomas B. Abernathy, 8/21/61; Dr. Louis Tordella, former Deputy Director, National Security Agency, testimony 10/21/75, pp. 17–20.

[217] High FBI officials decided to use the CIA mail opening program for "our internal security objectives" in 1958. They did not want the Bureau to "assume this coverage" itself because its "sensitive nature" created "inherent dangers" and due to its "complexity, size, and expense." Instead, the Bureau would hold CIA "responsible to share their coverage with us." (Memorandum from A. H. Belmont to Mr. Boardman, 1/22/58.) The initial FBI request to NSA involved "commercial and personal communications between persons in Cuba and the United States." (Memorandum from W. R. Wannall to W. C. Sullivan, Assistant Director, Domestic Intelligence Division, 5/18/62.)

[218] Abernathy memorandum, 8/21/61.

[219] Memorandum from W. A. Branigan to W. C. Sullivan (attachment), 8/21/61.

[220] Memorandum from W. A. Branigan to W. C. Sullivan, 2/15/62.

[221] Select Committee Memorandum, Subject: Review of Documents at DOD Regarding LP MEDLEY, 9/17/75. ("LP MEDLEY" was the CIA's codename for this program; the NSA codename was SHAMROCK.)

[222] Secretary Forrestal's immediate successor, Louis Johnson, renewed the arrangement in 1949. To the knowledge of those interviewed by the Committee, this was the last instance in which the companies raised any question as to the authority for the arrangements. (Andrews, 9/23/75, pp. 34, 40.)

[223] Richard Helms Testimony, 10/22/75, Hearings, Vol. 4, p. 84. Memorandum from Richard Helms to Sheffield Edwards, Director of Security, 5/17/54.

[224] J. Edward Day Testimony, 10/22/75, *Hearings*, Vol. 4, p. 45. However, a contemporaneous CIA memorandum stated that "no relevant details" were withheld from Day when he was briefed in 1961 by CIA officials. (Memorandum from Richard Helms to Deputy Chief of the Counterintelligence Staff, 2/16/61.)

[225] Helms, 10/22/75, Hearings, Vol. 4, pp. 87–89.

b. FBI Covert Techniques

(1) *Electronic Surveillance.*

(*a*) *The Question of Authority:* In 1946 Attorney General Tom Clark asked President Truman to renew the authorization for warrantless wiretapping issued by President Roosevelt in 1940. Clark's memorandum, however, did not refer to the portion of the Roosevelt directive which said wiretaps should be limited "insofar as possible to aliens." It stressed the danger from "subversive activity here at home," and requested authority to wiretap "in cases vitally affecting the domestic security." [226] The President gave his approval. Truman's aides later discovered Attorney General Clark's omission and the President considered, but decided against, returning to the terms of Roosevelt's authorization.[227]

In 1954 the Supreme Court denounced the Fourth Amendment violation by police who placed a microphone in a bedroom in a local gambling case.[228]

Soon thereafter, despite this decision—and despite his predecessor's ruling that trespassory installation of bugs was in the "area" of the Fourth Amendment—Attorney General Herbert Brownell authorized the "unrestricted use" in the "national interest" of "trespass in the installation of microphones." [229]

From 1954 until 1965, when Attorney General Nicholas Katzenbach reconsidered the policy and imposed stricter regulations,[230] the FBI had unsupervised discretion to use microphone surveillance and to conduct surreptitious entries to install microphones. Thus, the safeguard of approval by the Attorney General for each wiretap had been undercut by the FBI's ability to intrude into other, often more intimate conversations by microphone "bugging."

(*b*) *Extensive Bugging:* In May 1961, Director Hoover advised Deputy Attorney General Byron White that the FBI was using "microphone surveillances" involving "trespass" for "intelligence purposes" in the "internal security field." He called White's attention to the 1954 Brownell memorandum, although he said microphones were used "on a restricted basis" and cited as examples only "Soviet intelligence agents and Communist Party leaders." [231]

In fact, the FBI had already used microphone surveillance for broader coverage than Communists or spies. Indeed, it had "bugged" a hotel room occupied by a Congressman in February 1961. There is no evidence that Attorney General Kennedy or Deputy Attorney

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[226] Letter from Attorney General Clark to President Truman, 7/17/46.

[227] Memorandum from G. M. Elsey, Assistant Counsel to the President, to S. J. Spingarn; memorandum from Elsey to the President, 2/2/50, (Spingarn Papers, Harry S. Truman Library).

[228] *Irvine* v. *California*, 347 U.S. 128 (1954).

[229] Memorandum from Attorney General Brownell to J. Edgar Hoover, 5/20/54. In 1952 Attorney General J. Howard McGrath refused to authorize microphone surveillance involving trespass because it was "in the area of the Fourth Amendment." (Memorandum from Attorney General McGrath to J. Edgar Hoover, 2/26/52.)

[230] See p. 105. (The Chief Counsel to the Select Committee disqualified himself from participating in Committee deliberations concerning either Mr. Katzenbach or former Assistant Attorney General Burke Marshall because of a previous attorney-client relationship with those two persons.)

[231] Memorandum from J. Edgar Hoover to Deputy Attorney General Byron White, 5/4/61.

General White were specifically informed of this surveillance. But the Attorney General received information which came from the "bug" and authorized a wiretap of the Congressman's secretary.[233]

Furthermore, FBI records disclose that the FBI conducted warrantless microphone surveillances in 1960–1963 directed at a "black separatist group," "black separatist group functionaries" and a "(white) racist organization."[234] There may have been others for purely domestic intelligence purposes.[235]

The FBI maintained no "central file or index" to record all microphone surveillances in this period, and FBI records did not distinguish "bugs" involving trespass.[236]

(2) "*Black Bag Jobs.*"—There is no indication that any Attorney General was informed of FBI "black bag" jobs, and a "Do Not File" procedure was designed to preclude outside discovery of the FBI's use of the technique.

No permanent records were kept for approvals of "black bag jobs," or surreptitious entries conducted for purposes other than installing a "bug." The FBI has described the procedure for authorization of surreptitious entries as requiring the approval of Director Hoover or his Assistant Clyde Tolson. The authorizing memorandum was filed in the Assistant Director's office under a "Do Not File" procedure, and there-

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[233] In the course of an investigation, authorized by Attorney General Kennedy, into lobbying efforts on behalf of a foreign country regarding sugar quota legislation, the FBI determined that Congressman Harold D. Cooley, chairman of the House Agriculture Committee, planned to meet with representatives of a foreign country in a hotel room. (FBI memorandum, 2/15/61; Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/66.)

At the instruction of Director Hoover, the Bureau installed a microphone in the hotel room to record this meeting. (FBI memorandum, 2/15/61; Memorandum from D. E. Moore to A. H. Belmont, 2/16/61.) The results of the meeting were subsequently disseminated to the Attorney General. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/18/61.)

A reviw of this case by FBI officials in 1966 concluded that "our files contain no clear indication that the Attorney General was specifically advised that a microphone surveillance was being utilized. . ." (Memorandum from Wannall to Sullivan, 12/21/66.) It was noted, however, that on the morning of February 17, 1961—after the microphone was in place but an hour or two before the meeting actually occurred—Director Hoover spoke with Attorney General Kennedy and, according to Hoover's contemporaneous memorandum, advised him that the Cooley meeting was to take place that day and that "we are trying to cover" it. (Memorandum from J. Edgar Hoover to Messrs. Tolson, Parsons, Mohr, Belmont, and DeLoach, 2/17/61.)

[234] According to records compiled by the FBI, there was FBI microphone surveillance of one "black separatist group" in 1960; one "black separatist group" and one "black separatist group functionary" in 1961; two "black separatist groups," one "black separatist group functionary," and one "(white) racist organization" in 1962; and two "black separatist groups" and one "black separatist group functionary" in 1963. (Memorandum from FBI to Select Committee, 10/23/75.)

[235] The Select Committee has determined that the FBI, on at least one occasion, maintained no records of the approval of a microphone surveillance authorized by an Assistant Director. (FBI Memorandum, 1/30/75, Subject: Special Squad at Democratic National Convention, Atlantic City, New Jersey, 8/22–28/64.)

[236] Memorandum from the FBI to the Senate Select Committee, 10/17/75. This memorandum also states that, on the basis of the recollections of agents and a review of headquarters files, the FBI has "been able to identify" the following number of "surreptitious entries for microphone installations" in "internal security, intelligence, and counterintelligence" investigations: 1960: 49; 1961: 63; 1962: 75; 1963: 79; and the following number of such entries "in criminal investigations" (as opposed to intelligence): 1960: 11; 1961: 69; 1962: 106; 1963: 84.

after destroyed. In the field office, the Special Agent in Charge maintained a record of approval in his office safe. At the next yearly field office inspection, an Inspector would review these records to ensure that the SAC had secured FBI headquarters approval in conducting surreptitious entires. Upon completion of the review, these records were destroyed.[237]

The only internal FBI memorandum found discussing the policy for surreptitious entries confirms that this was the procedure and states that "we do not obtain authorization from outside the Bureau" because the technique was "clearly illegal." The memorandum indicates that "black bag jobs" were used not only "in the espionage field" but also against "subversive elements" not directly connected to espionage activity. It added that the techniques resulted "on numerous occasions" in obtaining the "highly secret and closely guarded" membership and mailing lists of "subversive" groups.[238]

(3) *Mail Opening.*—The FBI did not seek outside authorization when it reinstituted mail opening programs in the fifties and early sixties. Eight programs were conducted for foreign intelligence and counterespionage purposes, and Bureau officials who supervised these programs have testified that legal considerations were simply not raised at the time.[239]

Beyond their original purpose, the FBI mail opening programs produced some information of an essentially domestic nature. For example, during this period one program supplied "considerable data" about American citizens who expressed pro-Communist sympathies or made "anti-U.S. statements."[240] Some of the mail-opening by-product regarding Americans was disseminated to other agencies for law enforcement purposes, with the source disguised.[241]

c. Use of FBI Wiretaps

The authorization for wiretapping issued by President Truman in 1946 allowed the Attorney General to approve wiretaps in the investigation of "subversive activity" to protect the "domestic security."[242]

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[237] Memorandum from the FBI to the Senate Select Committee, 9/23/75.

[238] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66. Subject: "Black Bag" Jobs. Initials on this memorandum indicate that it was prepared by F. J. Baumgardner, an FBI Intelligence Division Section Chief, and approved by J. A. Sizoo, principal deputy to Assistant Director W. C. Sullivan. This memorandum was located in Director Hoover's "Official and Confidential" files, and it appears that the memorandum was shifted from Hoover's "Personal Files" shortly before his death. (Helen Gandy deposition, 11/12/75, pp. 4–6.)

The FBI compiled a list of the "domestic subversive" targets, based "upon recollections of Special Agents who have knowledge of such activities, and review of those files identified by recollection as being targets of surreptitious entries." The list states "at least fourteen domestic subversive targets were the subject of at least 238 entries from 1942 to April 1968. In addition, at least three domestic subversive targets were the subject of numerous entries from October 1952 to June 1966. . . . One white hate group was the target of an entry in March 1966." The Bureau admits that this list is "incomplete." (Memorandum from the FBI to the Senate Select Committee, 9/23/75.)

[239] Deposition of William R. Branigan, Section Chief, FBI Intelligence Division, 10/9/75, pp. 13, 39, 40. Testimony of Assistant Director W. Raymond Wannall, FBI Intelligence Division, 10/24/75, Hearings, vol. 4, pp. 148–49.

[240] Memorandum from San Francisco field office to FBI Headquarters, 3/11/60.

[241] Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61; Memorandum from San Francisco field office to FBI headquarters, 7/28/61.

[242] Letter from Attorney General Clark to President Truman, 7/17/46.

A wiretap on an official of the Nation of Islam, originally authorized by Attorney General Herbert Brownell in 1957, continued thereafter without re-authorization until 1965.[243] Attorney General Robert Kennedy approved FBI requests for wiretaps on an Alabama Klan leader in 1963 [244] and on black separatist group leader Malcolm X in 1964. [245] Kennedy also authorized wiretap coverage requested by the Warren Commission in 1964.[246] Kennedy's approval of FBI requests for wiretaps on Dr. Martin Luther King and several of his associates are discussed in greater detail elsewhere in the Committee's report.[247]

In addition, Attorney General Kennedy approved wiretaps on four American citizens during investigations of "classified information leaks." The taps failed to discover the sources of the alleged "leaks" and involved procedural irregularities. In 1961 Attorney General Kennedy told Director Hoover that the President wanted the FBI to determine who was responsible for an apparent "leak" to Newsweek reporter Lloyd Norman, author of an article about American military plans in Germany.[248] But the Attorney General was not asked to approve a wiretap on Norman's residence until after it was installed.

According to contemporaneous Bureau memoranda, wiretaps in 1962 on the residence of New York Times reporter Hanson Baldwin and his secretary to determine the source of an article about Soviet missile sites were also instituted without prior written approval of the Attorney General; and one of them—the tap on the secretary—was instituted without the Attorney General's prior knowledge.[249] Kennedy's written approval was obtained, however, three days after the Baldwin tap was installed and four days after the tap on the secretary was installed.[250]

The pattern, including *ex post facto* approval, was repeated for wiretaps of a former FBI agent who disclosed "confidential" Bureau information in a public forum. The first tap lasted for eight days in 1962, and it was reinstituted in 1963 for an undetermined period.[251] Attorney General Kennedy was advised that the FBI desired to place the initial coverage; but he was not informed that it had been effected the day before, and he did not grant written approval until the day

[243] Memorandum from Hoover to Brownell, 12/31/56.

[244] Memorandum from Hoover to Kennedy, 10/9/63.

[245] Memorandum from Hoover to Kennedy, 4/1/64.

[246] Memorandum from Hoover to Kennedy, 2/24/64.

[247] See Findings C and G and Committee Report on the FBI and Dr. Martin Luther King, Jr.

[248] Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66. On the same day, and without specific authorization from the Attorney General, the FBI placed a wiretap on Norman's residence. Attorney General Kennedy was informed of the wiretap two days later, and approved it the following day. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 6/29/61.) The tap continued for four days until Norman went on vacation. (Memorandum from S. B. Donahoe to W. C. Sullivan, 7/3/61.) At no time did this or any other aspect of the FBI's investigation produce any evidence that Norman had actually obtained classified information. An FBI summary stated: "The majority of those interviewed thought a competent, well-informed reporter could have written the article without having reviewed or received classified information." (Memorandum from Cotter to Sullivan, 12/15/66.)

[249] Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/27/62.

[250] Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/31/62. The tap on the secretary lasted three weeks, and the tap on Baldwin a month. Memoranda from W. R. Wannall to W. C. Sullivan, 8/13/62 and 8/28/62.

[251] Unaddressed memorandum from A. H. Belmont, 1/9/63.

it was terminated.[252] It appears that only oral authorization was obtained for reinstituting the tap in 1963.[253]

In February 1961, Attorney General Kennedy requested the FBI to initiate an investigation for the purpose of developing:

> intelligence data which would provide President Kennedy a picture of what was behind pressures exerted on behalf of [a foreign country] regarding sugar quota deliberations in Congress . . . in connection with pending sugar legislation.[254]

This investigation lasted approximately nine weeks, and was reinstituted for a three-month period in mid-1962.

According to an FBI memorandum, the Attorney General authorized the wiretaps in 1961 on the theory that "the administration has to act if money or gifts are being passed by the [representatives of a foreign country]."[255] Specifically, he approved wiretaps on several American citizens: three officials of the Agriculture Department (residences only);[256] the clerk of the House Committee on Agriculture who was also secretary to the chairman (residence only);[257] and a registered agent of the foreign country (both residence and business telephones).[258] After passage of the Administration's own sugar bill in April 1961, these wiretaps were discontinued.[259]

The investigation was reinstituted in June 1962, when the Bureau learned that representatives of the same foreign country again might be influencing congressional deliberations concerning an amendment to the sugar quota legislation.[260] Attorney General Kennedy approved wiretaps on the office telephone of an attorney believed to be an agent of the foreign country and, again, on the residence telephone of the Clerk of the House Agriculture Committee.[261] The latter tap continued for one month, but the former apparently lasted for three months.[262]

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[252] Memorandum from J. Edgar Hoover to Attorney General Kennedy, 10/19/62.

[253] Unaddressed memorandum from "hwg" (Director Hoover's secretary was Helen W. Gandy), 1/9/63. This memorandum reads: "Mr. Belmont called to say (Courtney) Evans spoke to the Attorney General replacing the tech on [former FBI agent] again, and the Attorney General said by all means do this. Mr. Belmont has instructed New York to do so." (Assistant Director Courtney Evans was the FBI's normal liaison with Attorney General Kennedy.)

[254] Memorandum from W. R. Wanall to W. C. Sullivan, 12/22/66. The Sugar Lobby investigation is also discussed at footnote 233.

[255] Memorandum from A. H. Belmont to Mr. Parsons, 2/14/61.

[256] Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/14/61.

[257] Memoradum from Hoover to the Attorney General, 2/16/61.

[258] Memorandum from Hoover to the Attorney General, 2/16/61.

[259] According to a memorandum of a meeting between Attorney General Kennedy and Courtney Evans, Kennedy stated that "now the law was passed he did not feel there was justification for continuing this extensive investigation." (Memorandum from C. A. Evans to Mr. Parsons 4/14/61.) The investigation did discover possibly unlawful influence was being exerted by representatives of the foreign country involved, but it did not reveal that money was actually being passed to any Executive or congressional official. (Memorandum from Wannall to Sullivan, 12/22/66.)

[260] FBI letterhead memoranda, 6/15, 18, 19/62.

[261] Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62.

[262] The wiretap on the House Committee Clerk had "produced no information of value." While there is no indication that the other wiretaps, including five directed at foreign targets, produced evidence of actual payoffs, they did reveal that possibly unlawful influence was again being exerted by the foreign government, and internal Bureau permission was obtained to continue them for sixty days beyond the initial thirty-day period. (Memorandum from W. R. Wannall to W. C. Sullivan, 8/16/62.)

These wiretaps in 1961 and 1962 were arguably related to "foreign intelligence"—but not to "subversive activity" unless that term is interpreted beyond its conventional meaning.[263] More important, they generated information which was potentially useful to the Kennedy administration for purely political purposes relating to the legislative process.[264]

The wiretap authorized by Attorney General Kennedy on another high executive official in this period did not relate to political considerations, but to concern about possible disclosure of classified information to a foreign government.[265] There is no indication that the wiretap authorized by Attorney General Katzenbach in 1965 on the editor of an anti-communist newsletter, was related in any way to the book he had written in 1964 alleging personal impropriety by Attorney General Kennedy.[266]

6. Domestic Covert Action

In its COINTELPRO operation, the FBI went beyond excessive information-gathering and dissemination to the use of secret tactics designed to "disrupt" and "neutralize" domestic intelligence targets. At the outset, the target was the Communist Party, U.S.A. But, consistent with the pattern revealed in other domestic intelligence activities, the program widened to other targets, increasingly concentrating on domestic dissenters. The expansion of COINTELPRO began in the Cold War period and accelerated in the latter part of the 1960s.

a. COINTELPRO: Communist Party

The COINTELPRO program, authorized by Director Hoover against the Communist Party in 1956, had its roots in two lines of Bureau policy going back to the 1940s. The first was the accepted FBI

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[263] A White House "briefing paper," prepared in February 1961, stated, "It is thought by some informed observers that the outcome of the sugar legislation which comes up for renewal in the U.S. Congress in March 1961 will be all-important to the future of U.S./(foreign country) relations." (Memorandum from Richard M. Bissell, Jr. to McGeorge Bundy, 2/17/61.) Another White House "briefing memorandum" in June 1962 stated, "The action taken by the House of Representatives in passing the House Agriculture Committee bill (The Cooley bill) has created a furor in the (foreign country) . . ." Officials of that country said that the legislation "would be disastrous" to its "economy." (Memorandum from William H. Brubeck to McGeorge Bundy and Myer Feldman, 6/23/62.) (JFK Library.)

[264] See Finding on Political Abuse, pp. 233, 234. The wiretapping of American citizens in these instances could only serve "intelligence," rather than law enforcement purposes, since any criminal prosecution (i.e., for bribery) would have been "tainted" by the warrantless wiretaps. [*Coplon* v. *United States*, 185 F. 2d 629 (1950), 191 F. 2d 749 (1951).]

[265] The circumstances indicating this possibility and the eventual determination that the allegation was unfounded are set forth in a memorandum from Director Hoover to Attorney General Kennedy in 1964. (Hoover to Kennedy, 5/4/64 and enclosure. (John F. Kennedy Library))

[266] The FBI requested the wiretap on the editor and an accompanying tap on a Washington attorney in contact with the editor because of its concern about possible "leaks" of information about FBI loyalty-security investigations of government officials. Director Hoover advised that publication of this "classified information" constituted "a danger to the internal security of the United States." (Memorandum from Hoover to Katzenbach, 4/19/65.) However, in 1964 Director Hoover had volunteered to Attorney General Kennedy information about the publication of the book alleging impropriety. The author himself had supplied information about the book to the FBI. (Memoranda from Hoover to Attorney General Kennedy, 7/8/64 and 7/15/64.)

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practice of attempting to disrupt "subversive" organizations. A former head of the FBI Intelligence Division has testified:

> We were engaged in COINTELPRO tactics, to divide, confuse, weaken, in diverse ways, an organization. We were engaged in that when I entered the Bureau in 1941.[267]

The memorandum recommending the institution of COINTELPRO stated that the Bureau was already seeking to "foster factionalism" and "cause confusion" within the Communist Party.[268]

The second line of pre-existing Bureau policy involved propaganda to discredit the Communist Party publicly. For example, in 1946, an earlier head of the FBI Intelligence Division proposed that efforts be made to release "educational material" through "available channels" to influence "public opinion." The "educational" purpose was to undermine Communist support among "labor unions," "persons prominent in religious circles," and "the Liberal elements," and to show "the basically Russian nature of the Communist Party in this country." [269] By 1956, a propaganda effort was underway to bring the Party and its leaders "into disrepute before the American public." [270]

The evidence indicates that the FBI did not believe that the Communist Party, when the COINTELPRO program was formalized in 1956, constituted as serious a threat in terms of actual espionage as it had in the 1940s.[271] Nevertheless, the FBI systematized its covert action program against the Communist Party in part because the surfacing of informants in legal proceedings had somewhat limited the Bureau's coverage of Party activities and also to take advantage of internal conflicts within the Party.[272] Covert "disruption" was also designed to make sure that the Party would not reorganize under a new label and thus would remain an easier target for prosecution.[273]

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[267] Testimony of William C. Sullivan, Assistant Director for the Domestic Intelligence Division (1961–1970) and Assistant to the Director (1970–1971), 11/1/75, pp. 42–43.

[268] Memorandum from A. H. Belmont to L. V. Boardman, 8/28/56.

[269] Memorandum from D. M. Ladd to J. Edgar Hoover, 2/27/46. According to this memorandum the underlying reason for such Bureau propaganda was to anticipate and counteract the "flood of propaganda from Leftist and so-called Liberal sources" which would "be encountered in the event of extensive arrests of Communists" if war with the Soviet Union broke out.

[270] Belmont to Boardman, 8/28/56.

[271] A Bureau monograph in mid-1955 "measured" the Communist Party threat as:

"Influence over the masses, ability to create controversy leading to confusion and disunity, penetration of specific channels in American life where public opinion is molded, and espionage and sabotage *potential*." [Emphasis supplied.] (Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 7/29/55, and enclosed FBI monograph, "The Menace of Communism in the United States Today," pp. iv–v.)

The FBI official who served as Director Hoover's liaison with the CIA in the 1950s stated that "the Communist Party provided a pool of talent for the Soviet [intelligence] services" in the "30s and into the 40s." During that period the Soviets recruited agents "from the Party" to penetrate "the U.S. Government" and "scientific circles." He added, however, that "primarily because of the action and counter-action taken by the FBI during the late 40s, the Soviet services changed their tactics and considerably reduced any programs or projects designed to recruit CP members, realizing or assuming that they were getting heavy attention from the Bureau." (Testimony of former FBI liaison with CIA, 9/22/75, p. 32.)

[272] Belmont to Boardman, 8/28/65.

[273] Belmont to Boardman, 9/5/56; memorandum from FBI headquarters to SAC, New York, 9/6/56.

In the years after 1956, the purpose of the Communist Party COINTELPRO changed somewhat. Supreme Court decisions substantially curbed criminal prosecution of Communists.[274] Subsequently, the FBI "rationale" for COINTELPRO was that it had become "impossible to prosecute Communist Party members" and some alternative was needed "to contain the threat." [275]

b. Early Expansion of COINTELPRO

From 1956 until 1960, the COINTELPRO program was primarily aimed at the Communist Party organization. But, in March 1960, participating FBI field offices were directed to make efforts to prevent Communist "infiltration" of "legitimate mass organizations, such as Parent-Teacher Associations, civil organizations, and racial and religious groups." The initial technique was to notify a leader of the organization, often by "anonymous communications," about the alleged Communist in its midst.[276] In some cases, both the Communist *and* the "infiltrated" organization were targeted.

This marked the beginning of the progression from targeting Communist Party members, to those allegedly under Communist "influence," to persons taking positions supported by the Communists. For example, in 1964 targets under the Communist Party COINTELPRO label included a group with some Communist participants urging increased employment of minorities [277] and a non-Communist group in opposition to the House Committee on Un-American Activities.[278]

In 1961, a COINTELPRO operation was initiated against the Socialist Workers Party. The originating memorandum said it was not a "crash" program; and it was never given high priority.[279] The SWP's support for "such causes as Castro's Cuba and integration problems arising in the South" were noted as factors in the FBI's decision to target the organization. The Bureau also relied upon its assessment that the SWP was "not just another socialist group but follows the revolutionary principles of Marx, Lenin, and Engels as interpreted by Leon Trotsky" and that it was "in frequent contact with international Trotskyite groups stopping short of open and direct contact with these groups." [280] The SWP had been designated as "subversive" on the "Attorney General's list" since the 1940s.[281]

D. Intelligence and Domestic Dissent: 1964–1976

1. Main Developments of the 1964–1976 Period

Beginning in the mid-sixties, the United States experienced a period of domestic unrest and protest unparalleled in this century. Violence erupted in the poverty-stricken urban ghettos, and opposition to American intervention in Vietnam produced massive demonstrations.

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[274] E.g., *Yates* v. *United States*, 354 U.S. 298 (1957).

[275] Deposition of Supervisor, Internal Security Section, FBI Intelligence Division, 10/16/75, pp. 10, 14.

[276] Memorandum from FBI Headquarters to New York field office, 3/31/60.

[277] Memorandum from FBI Headquarters to San Francisco field office, 4/16/64.

[278] Memorandum from FBI Headquarters to Cleveland field office, 11/6/64.

[279] Forty-five actions were approved by FBI Headquarters under the SWP COINTELPRO from 1961 until it was discontinued in 1969. The SWP program was then subsumed under the New Left COINTELPRO, see pp. 88–89.

[280] Memorandum from Director, FBI, to New York field office, 10/12/61.

[281] Memorandum from the Attorney General to Heads of Departments and Agencies, 4/29/53.

A small minority deliberately used violence as a method for achieving
small minority deliberately used violence as a method for achieving
political goals—ranging from the brutal murder and intimidation of black Americans in parts of the South to the terrorist bombing of office buildings and government-supported unversity facilities. But three Presidential commissions found that the larger outbreaks of violence in the ghettos and on the campuses were most often spontaneous reactions to events in a climate of social tension and upheaval.[282]

During this period, thousands of young Americans and members of racial minorities came to believe in civil disobedience as a vehicle for protest and dissent.

The government could have set an example for the nation's citizens and prevented spiraling lawlessness by respecting the law as it took steps to predict or prevent violence. But agencies of the United States, sometimes abetted by public opinion and government officials, all too often disregarded the Constitutional rights of American in their conduct of domestic intelligence operations.

The most significant developments in domestic intelligence activity during this period may be summarized as follows:

a. Scope of Domestic Intelligence

FBI intelligence reports on protest activity and domestic dissent accumulated massive information on lawful activity and law-abiding citizens for vaguely defined "pure intelligence" and "preventive intelligence" purposes related only remotely or not at all to law enforcement or the prevention of violence. The FBI exaggerated the extent of domestic Communist influence, and COMINFIL investigations improperly included groups with no significant connections to Communists.

The FBI expanded its use of informers for gathering intelligence about domestic political groups, sometimes upon the urging of the Attorney General. No significant limits were placed on the kind of political or personal information collected by informers, recorded in FBI files, and often disseminated outside the Bureau.

Army intelligence developed programs for the massive collection of information about, and surveillance of, civilian political activity in the United States and sometimes abroad.

In contrast to previous policies for centralizing domestic intelligence investigations, the Federal Government encouraged local police to establish intelligence programs both for their own use and to feed into the Federal intelligence-gathering process. This greatly expanded the domestic intelligence apparatus, making it harder to control.

The Justice Department established a unit for storing and evaluating intelligence about civil disorders which was designed to use non-intelligence agencies as regular sources of information, which, in fact, drew on military intelligence as well as the FBI, and which transmitted its computer list of citizens to the CIA and the IRS.

b. Domestic Intelligence Authority

Intelligence gathering related to protest activity was generally increased in response to vague requests by Attorneys General or other

[282] Report of the National Advisory Commission on Civil Disorders (1968), ch. 2; Report of the National Commission on the Causes and Prevention of Violence (1969); Report of the President's Commission on Campus Unrest (1970).

officials outside the intelligence agencies; such increases were sometimes ratified retroactively by such officials.

The FBI's exclusive control over civilian domestic intelligence at the Federal level was consolidated by formal agreements with the Secret Service regarding protective intelligence and with the Bureau of Alcohol, Tobacco, and Firearms regarding terrorist bombings.

c. Domestic Covert Action

The FBI developed new covert programs for disrupting and discrediting domestic political groups, using the techniques originally applied to Communists. The most intensive domestic intelligence investigations, and frequently COINTELPRO operations, were targeted against persons identified not as criminals or criminal suspects, but as "rabble rousers," "agitators," "key activists," or "key black extremists" because of their militant rhetoric and group leadership. The Security Index was revised to include such persons.

Without imposing adequate safeguards against misuse, the Internal Revenue Service passed tax information to the FBI and CIA, in some cases in violation of tax regulations. At the urging of the White House and a Congressional Committee, the IRS established a program for investigating politically active groups and individuals, which included auditing their tax returns.

d. Foreign Intelligence and Domestic Dissent

A 1966 agreement concerning "coordination" between the CIA and the FBI permitted CIA involvement in internal security functions. Under pressure from the Johnson and Nixon White Houses to determine whether there was "foreign influence" behind anti-war protests and black militant activity, the CIA began collecting intelligence about domestic political groups.

The CIA also conducted operations within the United States under overly broad interpretations of its responsibility to protect the physical security of its facilities and to protect intelligence "sources" and "methods." These operations included surreptitious entry, recruitment of informers in domestic political groups, and at least one instance of warrantless wiretapping approved by the Attorney General.

In the same period, the National Security Agency monitored international communications of Americans involved in domestic dissent despite the fact that its mission was supposed to be restricted to collecting foreign intelligence and monitoring only foreign communications.

e. Intrusive Techniques

As domestic intelligence operations broadened and focused upon dissenters, the Government increased the use of many of its most intrusive surveillance techniques. During the period from 1964 to 1972, the standards and procedures for warrantless electronic surveillance were tightened, but actual practice was sometimes at odds with the articulated policy. Also during these years, CIA mail opening expanded at the Bureau's request, and NSA monitoring expanded to target domestic dissenters. However, the FBI cut back use of certain techniques under the pressure of Congressional probes and changing public opinion.

f. Accountability and Control

During this period several sustained domestic intelligence efforts illustrated deficiencies in the system for controlling intelligence agencies and holding them accountable for their actions.

In 1970, presidential approval was temporarily granted for a plan for interagency coordination of domestic intelligence activities which included several illegal programs. Although the approval was subsequently revoked, some of the programs were implemented separately by various agencies.

Throughout the administrations of Presidents Johnson and Nixon, the investigative process was misused as a means of acquiring political intelligence for the White House. At the same time, the Justice Department's Internal Security Division, which should have been a check against the excesses of domestic intelligence, generally failed to restrain such activities. For example, as late as 1971–1973, the FBI continued to evade the will of Congress, partly with Justice Department approval, by maintaining a secret "Administrative Index" of suspects for round-up in case of national emergency.

g. Reconsideration of FBI Authority

Partly in reaction to congressional inquiries, the FBI in the early 1970s began to reconsider the extent of its authority to conduct domestic intelligence activities and requested clarification from the Attorney General and an executive mandate for intelligence investigations of "terrorists" and "revolutionaries".

In the absence of any new standards imposed by statute, or by the Attorney General, the FBI continued to collect domestic intelligence under sweeping authorizations issued by the Justice Department in 1974 for investigations of "subversives," potential civil disturbances, and "potential crimes". These authorizations were explicitly based on broad theories of inherent executive power. Attorney General Edward H. Levi recently promulgated guidelines which represent the first significant attempt by the Justice Department to set standards and limits for FBI domestic intelligence investigations.

2. Scope of Domestic Intelligence

During this period the FBI continued the same broad investigations of the lawful activities of Americans that were based on the Bureau's vague mandate to collect intelligence about "subversion."

In addition, the Bureau—joined by CIA, NSA, and military intelligence agencies—took on new and equally broad assignments to investigate "racial matters," the "New Left," "student agitation," and alleged "foreign influence" on the antiwar movement.

a. Domestic Protest and Dissent: FBI

"We are an intelligence agency," stated a policy directive to all FBI offices in 1966, "and as such are expected to know what is going on or is likely to happen." [283] Written in the context of demonstrations over the Vietnam war and civil rights, this order illustrates the general attitude among Bureau officials and high administration officials who established intelligence policy: in a country in ferment, the FBI could, and should, know everything that might someday be useful in some undefined manner.

[283] SAC letter 67-27, 5/3/66.

(1) *Racial Intelligence.*—During the 1960s, the FBI, partly on its own and partly in response to outside requests, developed sweeping programs for collecting domestic intelligence concerning racial matters. These programs had roots in the late 1950s.[284] By the early 1960s, they had grown to the point that the Bureau was gathering intelligence about proposed "civil demonstrations" and the related activities of "officials, committees, legislatures, organizations, etc.," in the "racial field." [285]

In 1965, FBI field offices were directed to supply "complete" information (including "postponement or cancellation"):

> regarding planned racial activity, such as demonstrations, rallies, marches, or threatened opposition to activity of this kind.

Field offices reported their full "coverage" of "meetings" and "any other pertinent information concerning racial activities." [286]

In late 1966, field offices were instructed to begin preparing semimonthly summaries of "existing racial conditions in major urban areas," relying upon "established sources," and "racial," "criminal," and "security informants." These reports were to describe the "general programs" of *all* "civil rights organizations" and "black nationalist organizations," as well as subversive or "hate-type" groups. The information to be gathered was to include: "readily available personal background data" on "leaders and individuals in the civil rights movement" and other "leaders and individuals involved," as well as any data in Bureau files on "subversive associations" they might have; the "objectives sought by the minority community;" the community reaction to "minority demands;" and "the number, character, and intensity of the techniques used by the minority community, such as picketing or sit-in demonstrations, to enforce their demands." [287]

Thus, the FBI was mobilized to used all its available resources to discover everything it could about "general racial conditions." While the stated objective was to arrive at an "evaluation" of potential for violence, the broad sweep of the directives issued to the field resulted in the collection and filing of vast amounts of information unrelated to violence.

Some programs concerning "general racial matters" were directed to concentrate on groups with a "propensity for violence and civil disorder." [288] But even these programs were so overboard in their application as to include Dr. Martin Luther King, Jr. and his non-violent Southern Christian Leadership Conference in the "radical and violence-prone" "hate group" category. The stated justification, unsupported by any facts, was that Dr. King might "abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism." [289]

Another leading civil rights group, the Congress of Racial Equality (CORE), was investigated under the "Racial Matters" Program because the Bureau concluded that it was moving "away from a legiti-

[284] See p. 50.
[285] 1964 FBI Manual Section 122, p. 1.
[286] 1965 FBI Manual Section 122, pp. 6–8.
[287] FBI Manual Section 122, revised 12/13/66, pp. 8–9.
[288] Memorandum from FBI Headquarters to all SACs, 8/25/67.
[289] Memorandum from FBI Headquarters to all SACs, 3/4/68.

mate civil rights organization" and "assuming a militant black nationalist posture." The FBI reached this conclusion on the grounds that "some leaders in their public statements" had condoned "violence as a means of attaining Negro rights." The investigation was intensified, even though it was recognized there was no information that its members "advocate violence" or "participate in actual violence." [290]

The same overbreadth characterized the FBI's collection of intelligence about "white militant groups." Among the groups investigated were those "known to sponsor demonstrations against integration and against the busing of Negro students to white schools." As soon as a new organization of this sort was formed, the Bureau used its informants and "established sources" to determine "the aims and purposes of the organization, its leaders, approximate membership," and other "background data" bearing upon "the militancy" of the group.[290a]

(2) *"New Left" Intelligence.*—The FBI collected intelligence under its VIDEM (Vietnam Demonstration) and STAG (Student Agitation) Programs on "anti-Government demonstrations and protest rallies" which the Bureau considered "disruptive." Field offices were warned against "incomplete and nonspecific reporting" which neglected such details as "number of protesters present, identities of organizations, and identities of speakers and leading activists." [291]

The FBI attempted to define the "New Left," but with little success. The Bureau agent who was in charge of New Left intelligence conceded that:

> It has never been strictly defined, as far as I know.... It's more or less an attitude, I would think.

He also stated that the definition was expanded continually.[292]

Field offices were told that the New Left was a "subversive force" dedicated to destroying our "traditional values." Although it had "no definable ideology," it was seen as having "strong Marxist, existentialist, nihilist and anarchist overtones." Field offices were instructed that "proper areas of inquiry" regarding the subjects of "New Left" investigations were "public statements, the writings and the leadership activities" which might establish their "rejection of law and order" and thus their "potential" threat to security. Such persons would also be placed on the Security Index (for detention in a time of emergency) because of these "anarchistic tendencies," even if the Bureau could not prove "membership in a subversive organization." [293]

A Bureau memorandum which recommended the use of disruptive techniques against the "New Left" paid particular attention to one of its "anarchistic tendencies":

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[290] SAC Letter 68–16, 3/12/68, Subject: Congress of Racial Equality.

[290a] SAC Letter 68–25, 4/30/68.

[291] SAC Memorandum 1–72; 5/23/72, Subject: Reporting of Protest Demonstrations.

[292] Supervisor, FBI Intelligence Division, deposition, 10/28/75, pp. 7–8.

[293] SAC Letter 68–21, 4/2/68. This directive did caution that "mere dissent and opposition to Governmental policies pursued in a legal constitutional manner" was "not sufficient to warrant inclusion in the Security Index." Moreover, "anti-Vietnam or peace group sentiments" were not, in themselves, supposed to "justify an investigation." The failure of this admonition to achieve its stated objective is discussed in the findings on "Overbreadth" and "Covert Action to Disrupt."

the New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigations and drive us off the college campuses. [294]

Later instructions to the field stated that the term "New Left" did not refer to "a definite organization," but to a "loosely-bound, free-wheeling, college-oriented movement" and to the "more extreme and militant anti-Vietnam war and antidraft protest organizations." These instructions directed a "comprehensive study of the whole movement" for the purpose of assessing its "dangerousness." Quarterly reports were to be prepared, and "subfiles" opened, under the following headings:

Organizations ("when organized, objectives, locality which active, whether part of a national organization")
Membership (and "sympathizers"—use "best available informants and sources")
Finances (including identity of "angels" and funds from "foreign sources")
Communist Influence
Publications ("describe publications, show circulation and principal members of editorial staff")
Violence
Religion ("support of movement by religious groups or individuals")
Race Relations
Political Activities ("details relating to position taken on political matters including efforts to influence public opinion, the electorate and Government bodies")
Ideology
Education ("courses given together with any educational outlines and assigned or suggested reading")
Social Reform ("demonstrations aimed at social reform")
Labor ("all activity in the labor field")
Public Appearances of Leaders ("on radio and television" and "before groups, such as labor, church and minority groups," including "summary of subject matter discussed")
Factionalism
Security Measures
International Relations ("travel in foreign countries," "attacks on United States foreign policy")
Mass Media ("indications of support of New Left by mass media")

Through these massive reports, the FBI hoped to discover "the true nature of the New Left movement." [295] Few Bureau programs better reflect "pure intelligence" objectives which extended far beyond even the most generous definition of "preventive intelligence." [296]

[294] Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.

[295] Memorandum from FBI Headquarters to all SACs, 10/28/68, and enclosure, Subject: New Left Movement—Report Outline.

[296] A further reason for collecting information on the New Left was put forward by Assistant Director Brennan, head of the FBI Intelligence Division in 1970–1971. Since New Left "leaders" had "publicly professed" their desire to overthrow the Government, the Bureau should file the names of anyone who "joined in membership" for "future reference" in case they ever "obtained a sensitive Government position." (Charles Brennan testimony, 9/25/75, Hearings, Vol. 2, pp. 116–117.)

Apart from the massive general reports required on the "New Left," examples of particular investigations included: a stockholders group planning to protest their corporation's war production at the annual stockholders meeting;[297] a university professor who was "an active participant in New Left demonstrations," publicly surrendered his draft card, and had been arrested in antiwar demonstrations, but not convicted;[298] and two university instructors who helped support a student "underground" newspaper whose editorial policy was described as "left-of-center, anti-establishment, and opposed [to] the University administration."[299]

The FBI also investigated emerging "New Left" groups, such as "Free Universities" attached to various college campuses, to determine whether they were connected "in any way" with "subversive groups." For example, when an article appeared in a newspaper stating that one "Free University" was being formed and that it was "anti-institutional," the FBI sought to determine its "origin," the persons responsible for its "formation," and whether they had "subversive backgrounds."[300] The resulting report described in detail the formation, curriculum content, and associates of the group. It was disseminated to military intelligence and Secret Service field offices and headquarters in Washington as well as to the State Department and the Justice Department.[301]

b. FBI Informants

The FBI Manual has never significantly limited informant reporting about the lawful political activities or personal lives of American citizens, except for prohibiting reports about legal defense "plans or strategy," "employer-employee relationships" connected with labor unions, and "legitimate campus activities."[302] In practice, FBI agents imposed no other limitations on the informants they handled and, on occasion, disregarded the prohibitions of the Manual.[303]

(1) *Infiltration of the Klan.*—In mid-1964, Justice Department officials became increasingly concerned about the spread of Ku Klux Klan activity and violence in the Deep South. Attorney General Kennedy advised President Johnson that, because of the "unique difficulty" presented by a situation where "lawless activities" had the "sanction of local law enforcement agencies," the FBI should apply to the Klan the same "techniques" used previously "in the infiltration of Communist groups."[304]

Former Attorney General Katzenbach, under whose tenure FBI activities against the Klan expanded, vigorously defended this deci-

[297] Memorandum from Minneapolis field office to FBI Headquarters, 4/1/70.
[298] Memorandum from FBI Headquarters to Pittsburgh field office, 5/1/70.
[299] Memorandum from Mobile field office to FBI Headquarters, 12/9/70.
[300] Memorandum from FBI Headquarters to Detroit field offices, 2/17/66.
[301] Memorandum from Detroit field office to FBI Headquarters, 4/15/66.
[302] FBI Manual, Section 107.
[303] See Findings on use of informants in "Intrusive Techniques," p. 192.
[304] Memorandum from Attorney General Kennedy to the President, June 1964, quoted in Victor Navasky, *Kennedy Justice* (New York: Atheneum, 1971), pp. 105–106. The President asked former CIA Director Allen Dulles to evaluate the situation in Mississippi. Upon his return from a survey of the state, Dulles endorsed the Attorney General's recommendation that the FBI be used to "control the terrorist activities." ("Dulles Requests More FBI Agents for Mississippi," New York Times, 6/27/64.)

sion as necessary to "deter violence" by sowing "deep mistrust among Klan members" and making them aware that they were "under constant observation." [305] The FBI Manual did, in fact, advise Bureau agents against "wholesale investigations" of persons who "mererly attend meetings on a regular basis." [306] But FBI intelligence officials chafed under this restriction and sought expanded informant coverage.[307] Subsequently, the Manual was revised in 1967 to require the field to furnish the "details" of Klan "rallies" and "demonstrations." [308] By 1971, the Special Agents in Charge of field offices had the discretion to investigate not only persons with "a potential for violence," but also anyone else who in the SAC's "judgment" was an "extremist." [309]

(2) *"Listening Posts" in the Black Community.*—Two special informant programs illustrates the breadth of the Bureau's infiltration of the black community. In 1970, the FBI used its "established informants" to determine the "background, aims and purposes, leaders and Key Activists" in every black student group in the country, "regardless of [the group's] past or present involvement in disorders." [310] Field offices were instructed to "target informants" against these groups and to "develop such coverage" where informants were not already available.[311]

In response to Attorney General Clark's instructions regarding civil disorders intelligence in 1967, the Bureau launched a "ghetto informant program" which lasted until 1973.[312] The number of ghetto informants expanded rapidly: 4,067 in 1969 and 7,402 by 1972.[313] The original concept was to establish a "listening post" [314] by recruiting a person "who lives or works in a ghetto area" to provide information regarding the "racial situation" and "racial activities." [315] Such informants could include "the proprietor of a candy store or barber shop." As the program developed, however, ghetto informants were:

> utilized to attend public meetings held by extremists, to identify extremists passing through or locating in the ghetto area, to identify purveyors of extremist literature as well as given specific assignments where appropriate.[316]

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[305] Testimony of Nicholas deB. Katzenbach 12/3/75. Hearings, Vol. 6, p. 207.

[306] 1965 FBI manual, Section 122, pp. 1–2.

[307] FBI Executives conference memorandum, 3/24/66, Subject: Establishment of a Special Squad Against the Ku Klux Klan.

[308] 1967 FBI manual, Section 122, p. 2.

[309] 1971 FBI manual, Section 122, p. 2.

[310] Memorandum from FBI Executive Conference to Mr. Tolson, 10/29/70.

[311] Memorandum from FBI Headquarters to all SACs, 11/4/70.

[312] Memorandum from G. C. Moore to William C. Sullivan, 10/11/67. For Attorney General Clark's order, see pp. 83–84.

[313] Memorandum from FBI to Select Committee, 8/20/75 and enclosures.)

[314] Memorandum from G. C. Moore to E. S. Miller, 9/8/72.

[315] Memorandum from G. C. Moore to C. D. Brennan, 10/27/70.

[316] Memorandum from Moore to Miller, 9/27/72. This program continued until 1973, when the FBI decided to rely on its regular extremist informants "for 'by-product' information on civil unrest." The most "productive" ghetto informants were "converted" into regular informants. (FBI Inspection Division Memorandum, 11/24/72; Memorandum from Director Clarence M. Kelley to all SACs, 7/31/73.)

Material to be furnished by ghetto informants included names of "Afro-American type book stores" and their "owners, operators and clientele." [317]

(3) *Infiltration of the "New Left"*.—The FBI used its "security" informant program to report extensively on all activities relating to opposition to the Vietnam war. Moreover, informants already in groups considered "subversive" by the FBI also reported on the activities of other organizations and their members, if the latter were being "infiltrated" by the former groups.[318]

The agent who handled one informant in an antiwar group believed to be infiltrated by "subversive groups and/or violent elements" testified that the informant told him "everything she knew" about the chapter she joined.[319] Summaries of her reports indicate that she reported extensively about personal matters and lawful political activity.[320] This informant estimated that her reports identified as many as 1,000 people to the FBI over an 18-month period. The vast majority of these persons were members of peaceful and law-abiding groups, including the United Church for Christ, which were engaged in joint social welfare projects with the antiwar group which the informant had infiltrated.[321]

Other FBI informants reported, for example, on the Women's Liberation Movement, identifying its members at several mid-western universities [322] and reporting statements made by women concerning their personal reasons for participating in the women's movement.[323]

Moreover, as in the case of informants in the black community, efforts were made to greatly increase the number of informants who could report on antiwar and related groups. In 1969, the Justice Department specifically asked the FBI to use not only "existing sources," but also "any other sources you may be able to develop" to collect information about "serious campus disorders." [324] The Bureau ordered its field offices in 1970 to "make every effort" to obtain "informant coverage" of every "New Left commune." [325] Later that year, after Director Hoover lifted restrictions against recruiting 18 to 21-year-old informants, field offices were urged to take advantage of this "tremendous opportunity" to expand coverage of New Left "collectives, communes, and staffs of their underground newspapers." [326]

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[317] Philadelphia Field Office memo 8/12/68, re Racial Informant.

[318] FBI Manual Section 87.

[319] Testimony of FBI Special Agent, 11/20/75, p. 55.

[320] Staff review of informant report summaries.

[321] Mary Jo Cook, testimony, 12/2/75, Hearings, Vol. 6, pp. 111, 119–120.

[322] Report of Kansas City Field Office, 10/20/70.

[323] Memorandum from New York Field Office to FBI Headquarters, 5/28/69.

[324] Memorandum from Assistant Attorney General J. Walter Yeagley to J. Edgar Hoover, 3/3/69. This memorandum stated that the Department was considering "conducting a grand jury investigation" under the antiriot act and other statutes.

[325] Memorandum from FBI Headquarters to all SACs, 4/17/70. This directive defined a "commune" as "a group of individuals residing in one location who practice communal living, i.e., they share income and adhere to the philosophy of a Marxist-Leninist-Maoist-oriented violent revolution."

[326] SAC Letter 70–48, 9/15/70. This directive implemented one provision of the "Huston Plan," which had been disapproved as a domestic intelligence package. See pp. 113, 116.

c. Army Surveillance of Civilian Political Activity

In the early 1960s, after several commitments of troops to control racial disturbances and enforce court orders in the South, Army intelligence began collecting information on civilian political activity in all areas where it believed civil disorders might occur. The growth of the Army's domestic intelligence program typifies, once again, the general tendency of information-gathering operations to continually broaden their coverage.

Shortly after the Army was called upon to quell civil disorders in Detroit and to cope with an antiwar demonstration at the Pentagon in 1967, the Army Chief of Staff approved a recommendation for "continuous counterintelligence investigations" to obtain information on "subversive personalities, groups or organizations" and their "influence on urban populations" in promoting civil disturbances.[327] The Army's "collection plan" for civil disturbances specifically targeted as "dissident elements" (without further definition) the "civil rights movement" and the "anti-Vietnam/anti-draft movements."[328] As revised later, Army intelligence-gathering extended beyond "subversion" and "dissident groups" to "prominent persons" who were "friendly" with the "leaders of the disturbance" or "sympathetic with their plans."[329]

d. Federal Encouragement of Local Police Intelligence

In reaction to civil disorders in 1965–1966, Attorney General Katzenbach turned for advice to the newly created President's Commission on Law Enforcement and Administration of Justice. After holding a conference with police and National Guard officials, the President's Commission urged police not to react with too much force to disorder "in the course of demonstrations," but to make advance plans for "a true riot situation." This meant that police should establish "procedures for the acquisition and channeling of intelligence" for the use of "those who need it."[330] Former Assistant Attorney General Vinson recalled the Justice Department's concern that local police did not have "any useful intelligence or knowledge about ghettos, about black communities in the big cities."[331]

During the winter of 1967–1968, the Justice Department and the National Advisory Commission on Civil Disorders reiterated the message that local police should establish "intelligence units" to gather and disseminate information on "potential" civil disorders. These units would use "undercover police personnel and informants" and draw on "community leaders, agencies, and organizations in the ghetto."[332] The Commission also urged that these local units be linked

[327] See Memorandum for the Record from Milton B. Hyman, Office of the General Counsel, to the Army General Counsel, 1/23/71, in *Military Surveillance*, Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 93rd Cong., 2nd Sess. (1974), p. 203.

[328] *Federal Data Banks, Computers and the Bill of Rights*, Hearings before the Senate Subcommittee on Constitutional Rights (1971), at pp. 1120–1121.

[329] *Federal Data Banks*, Hearings, at pp. 1123–1138.

[330] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), pp. 118–119.

[331] Fred M. Vinson testimony, 1/27/76, p. 32.

[332] Report of the National Advisory Commission on Civil Disorders (1968), p. 487 (Bantam Books ed.).

to "a national center and clearinghouse" in the Justice Department.[333] One consequence of these recommendations was that the FBI, because of regular liaison with local police, became a channel and repository for much of this intelligence data.

Local police intelligence provided a convenient manner for the FBI to acquire information it wanted while avoiding criticism for using covert techniques such as developing campus informants. For example, in 1969, Director Hoover decided "that additional student informants cannot be developed" by the Bureau.[334] Field offices were instructed, however, that one way to continue obtaining intelligence on "situations having a potential for violence" was to develop "in-depth liaison with local law enforcement agencies."[335] Instead of recruiting student informants itself, the FBI would rely on local police to do so.

These Federal policies contributed to the proliferation of local police intelligence activities, often without adequate controls. One result was that still more persons were subjected to investigation who neither engaged in unlawful activity, nor belonged to groups which might be violent. For example, a recent state grand jury report on the Chicago Police Department's "Security Section" described its "close working relationship" with Federal intelligence agencies, including Army intelligence and the FBI. The report found that the police intelligence system produced "inherently inaccurate and distortive data" which contaminated Federal intelligence. One police officer testified that he listed "any person" who attended two "public meetings" of a group as a "member." This conclusion was forwarded "as a *fact*" to the FBI. Subsequently, an agency seeking, "background information" on that person from the Bureau in an employment investigation or for other purposes would be told that the individual was "a member." The grand jury stated:

> Since federal agencies accepted data from the Security Section without questioning the procedures followed, or methods used to gain information, the federal government cannot escape responsibility for the harm done to untold numbers of innocent persons.[336]

e. The Justice Department's Interdivision Information Unit (IDIU)

Joseph Califano, President Johnson's assistant in 1967, testified that the Newark and Detroit riots were a "shattering experience" for Justice Department officials and "for us in the White House." They were concerned about the "lack of intelligence" about "black groups." Consequently, "there was a desire to have the Justice Department have better intelligence, for lack of a better term, about dissident groups." This desire "precipitated the intelligence unit" established by Attorney General Ramsey Clark in late 1967. According to Califano,

[333] Report of the National Advisory Commission, p. 490.

[334] SAC Letter 69–16, 3/11/69. This order "recognized that with the graduation of senior classes, you will lose a certain percentage of your existing student informant coverage." But this would "not be accepted as an excuse for not developing the necessary information."

[335] SAC Letter 69–44, 8/19/69.

[336] "Improper Police Intelligence Activities," A Report by the Extended March 1975 Cook County (Illinois) Grand Jury, 11/10/75.

the President and the White House staff were insisting: "There must be a way to predict violence. We've got to know more about this." [337]

In September 1967 Attorney General Clark asked Assistant Attorney General John Doar to review the Department's "facilities" for civil disorders intelligence.[338] Doar recommended creating a Departmental "intelligence unit" to analyze FBI information about "certain persons and groups" (without further definition) in the urban ghettos. He proposed that its "scope be very broad initially" so as to "measure the influence of particular groups." Doar recommended that, in addition to the FBI, agencies who should "funnel information" to the unit should include:

Community Relations Service
Poverty Programs
Neighborhood Legal Services Program
Labor Department Programs
Intelligence Unit of the Internal Revenue Service
Alcohol, Tobacco, and Firearms Division of the Treasury Department
Narcotics Bureau (then in the Treasury Department)
Post Office Department

Doar recognized that the Justice Department's Community Relations Service, designed to conciliate racial conflicts, risked losing its "credibility" and thereby its ability to help prevent riots, but he assured the Attorney General that the "confidentiality" of its information could be protected.[339]

A later study for Attorney General Clark added the following agencies to Doar's list:

President's Commission on Civil Disorders
New Jersey Blue Ribbon Commission (and similar state agencies)
State Department
Army Intelligence
Office of Economic Opportunity
Department of Housing and Urban Development (surveys and Model City applications)
Central Intelligence Agency
National Security Agency

This study recommended that FBI reports relating "to the civil disturbance problem" under the headings "black power, new left, pacifist, pro-Red Chinese, anti-Vietnam war, pro-Castro, etc." be used to de-

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[337] Joseph Califano testimony, 1/27/76, pp. 6–9. Califano states in retrospect that the attempt to "predict violence" was "not a successful undertaking," that "advance intelligence about dissident groups" would not "have been of much help," and that what is "important" is "physical intelligence about geography, hospitals, power stations, etc." (Califano, 1/27/76, pp. 8, 11–12.)

[338] In 1966, the Justice Department had started an informal "Summer Project," staffed by a handful of law students, to pull together data from the newspapers, the U.S. Attorneys, and "some Bureau material" for the purpose, according to former Assistant Attorney General Fred Vinson, Jr., of finding out "what's going on in the black community." (Vinson, 1/27/76 p. 33.)

[339] Memorandum from Assistant Attorney General John Doar to Attorney General Clark, 9/27/67.

velop "a master index on individuals, or organizations, and by cities." [340]

Attorney General Clark approved these recommendations and established the Interdivision Information Unit (IDIU) for:

> reviewing and reducing to quickly retrievable form all information that may come to this Department relating to organizations and individuals who may play a role, whether purposefully or not, either in instigating or spreading civil disorders, or in preventing or checking them.[341]

In early instructions, Clark had stated that the Department must "endeavor to increase" such intelligence from "external sources." [342]

In fact, according to its first head, the IDIU did use intelligence from the Army, the Internal Revenue Service, and "other investigative agencies." Sometimes IDIU information was used to "determine whether or not" the Community Relations Service should "mediate" a dispute.[343] The Unit developed a computer system which could generate lists of all "members or affiliates" of an organization, their location and travel, "all incidents" relating to "specific issues", and "all information" on a "planned specific demonstration" [344]

By 1970, the IDIU computer was receiving over 42,000 "intelligence reports" a year relating to "civil disorders and campus disturbances" from:

> the FBI, the U.S. Attorneys, Bureau of Narcotics, Alcohol, Tobacco, and Firearms Division of the Treasury Department and other intelligence gathering bodies within the Executive Branch.[345]

IDIU computer tapes, which included 10–12,000 entries on "numerous anti-war activists and other dissidents," were provided to the Central Intelligence Agency in 1970 by Assistant Attorney General Jerris Leonard, then the Attorney General's Chief of Staff for Civil Disturbance and head of the Civil Rights Division.[346] This list of persons was sent to the Internal Revenue Service where the Special Services staff opened intelligence files on all persons and organizations listed. Many of them were later investigated or audited, in some cases merely because they were on the list.

In 1971, the IDIU computer included data on such prominent persons as Rev. Ralph Abernathy, Caesar Chavez, Bosley Crowther

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[340] Memorandum from Messrs. Maroney, Nugent, McTiernan, and Turner to Attorney General Clark, 12/6/67.

[341] Memorandum from Attorney General Clark to Assistant Attorneys General John Doar, Fred Vinson, Jr., Roger W. Wilkins, and J. Walter Yeagley, 12/18/67.

[342] Memorandum from Attorney General Clark to Kevin T. Maroney, *et al.*, 11/9/67.

[343] Testimony of Kevin T. Maroney (Deputy Assistant Attorney General), 1/27/76, pp. 59–60.

[344] Memorandum from Assistant Attorney General Yeagley to Deputy Attorney General Richard Kleindienst, 2/6/69.

[345] Justice Department memorandum from James T. Devine, 9/10/70, Subject: Interdivisional Information Unit.

[346] Statement of Deputy Attorney General Laurence H. Silberman, Justice Department, 1/14/75. According to this statement, a Justice Department inquiry in 1975 concluded that Leonard "initiated the transaction by requesting the CIA to check against its own sources whether any of the individuals on the IDIU list were engaged in foreign travel, or received foreign assistance or funding."

(former New York Times film critic), Sammy Davis, Jr., Charles Evers, James Farmer, Seymour Hersh, and Coretta King. Organizations on which information had been collected included the NAACP, the Congress of Racial Equality, the Institute for Policy Studies, VISTA, United Farm Workers of California, and the Urban League. Ordinary private citizens who were not nationally prominent were also included. One was described as "a local civil rights worker," another as a "student at Merritt College and a member of the Peace and Freedom Party as of mid-68," and another as "a bearded militant who writes and recites poetry." [347]

Thus, beginning in 1967–1968, the IDIU was the focal point of a massive domestic intelligence apparatus established in response to ghetto riots, militant black rhetoric, antiwar protest, and campus disruptions. Through IDIU, the Attorney General received the benefits of information gathered by numerous agencies, without setting limits to intelligence reporting or providing clear policy guidance. Each component of the structure—FBI, Army, IDIU, local police, and many others—set its own generalized standards and priorities, resulting in excessive collection of information about law abiding citizens.

f. COMINFIL Investigations: Overbreadth

In the late 1960's the Communist infiltration or association concept continued to be used as a central basis for FBI intelligence investigations. In many cases it led to the collection of information on the same groups and persons who were swept into the investigative net by the vague missions to investigate such subjects as "racial matters" or the "New Left. As it had from its beginning, the COMINFIL concept produced investigations of individuals and groups who were not Communists. Dr. Martin Luther King, Jr. is the best known example.[348] But the lawful activities of many other persons were recorded in FBI files and reports because they associated in some wholly innocent way with Communists, a term which the Bureau required its agents to "interpret in its broad sense" to include "splinter" and "offshoot" groups.[349]

During this period, when millions of Americans demonstrated in favor of civil rights and against the Vietnam war, many law-abiding citizens and groups came under the scrutiny of intelligence agencies. Under the COMINFIL program, for example, the Bureau compiled extensive reports on moderate groups, like the NAACP.[350]

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[347] Staff Memorandum for the Subcommittee on Constitutional Rights, United States Senate, 9/14/71.

[348] See detailed report on Martin Luther King, Jr.

[349] FBI Manual, Section 87.

[350] The Bureau frequently disseminated reports on the NAACP to military intelligence because (as one report put it) of the latter's "interest in matters pertaining to infiltration of the NAACP." (Report from Los Angeles Field Office to FBI Headquarters, 11/5/65.) All the national officers and board members were listed, and any data in FBI files on their past "association" with "subversives" was included. Most of this information went back to the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/65.) When changes occurred in the NAACP's leadership and board, the Bureau once again went back to its files to dredge up "subversive" associations from the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/66.) Chapter membership information was sometimes obtained by "pretext telephone call . . . utilizing the pretext of being interested in joining that branch of the NAACP." (Memorandum from Los Angels field office to FBI Headquarters, 11/5/65.) As discussed previously, the Bureau never found that the NAACP had abandoned its consistent anti-Communist policy. (See p. 49).

The FBI significantly impaired the democratic decisionmaking process by its distorted intelligence reporting on Communist infiltration of and influence on domestic political activity. In private remarks to Presidents and in public statements, the Bureau seriously exaggerated the extent of Communist influence in both the civil rights and anti-Vietnam war movements.[351]

3. Domestic Intelligence Authority

During this period there were no formal executive directives outlining the scope of authority for domestic intelligence activity of the sort previously issued by Presidents Roosevelt, Truman, Eisenhower, and Kennedy.[352] However, there was a series of high-level requests for intelligence concerning racial and urban unrest directed to the FBI and military intelligence agencies. As with the earlier formal Presidential directives on subjects like "subversion," these instructions provided no significant guidelines or controls.

a. FBI Intelligence

Since the early 1960s, the Justice Department had been making sporadic requests for intelligence related to specific racial events. For example, the FBI was requested to provide a tape recording of a speech by Governor-elect George Wallace of Alabama in late 1962 [353] and for "photographic coverage" of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation.[354] On its own initiative, the FBI supplied the Civil Rights Division with information from a "confidential source" about plans for a demonstration in Virginia, including background data on its "sponsor" and the intention to make "a test case." [355] The Civil Rights Division prepared regular summaries of information from the Bureau on "demonstrations and other racial matters." [356]

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[351] See examples of the exaggeration of Communist influence set forth in Findings on Political Abuse. Such distortion continues today. An FBI Intelligence Division Section Chief told the Committee that he could not "think of very many" major demonstrations in this country in recent years "that were not caused by" the Communist Party or the Socialist Workers Party. In response to questioning, the Section Chief listed eleven specific demonstrations since 1965. Three of these turned out to be principally SDS demonstrations, although some individual Communists did participate in one of them. Six others were organized by the National (or New) Mobilization Committee, which the Section Chief stated was subject to Communist *and* Socialist Workers Party "influence." But the Section Chief admitted that the mobilization Committee "probably" included a wide spectrum of persons from all elements of American society. (R. L. Shackleford deposition, 2/13/76, pp. 3–8.) The FBI has not alleged that the Socialist Workers Party is dominated or controlled by any foreign government. (Shackelford testimony, 2/6/76, pp. 73–77, 114.)

[352] See Sections B–3 and C–2.

[353] Memorandum from Director, FBI, to Assistant Attorney General Burke Marshall (Civil Rights Division), 12/4/62.

[354] Memorandum from St. J. B. (St. John Barrett) to Burke Marshall, 6/18/63.

[355] Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 7/11/63.

[356] Memorandum from Carl W. Gabel to Burke Marshall, 7/19/63. This memorandum described twenty-one such "racial matters" in ten states, including states outside the South such as Ohio, New Jersey, Pennsylvania, Indiana, and Nevada. While some of the items in this and later summaries related to violent or potentially violent protest demonstrations, they went beyond those limits to include entirely peaceful protest activity and group activities (such as conferences, meetings, leadership changes) unrelated to demonstrations. (Memoranda from Gabel to Marshall, 7/22 and 7/25, 8/2 and 8/22/63.) The Justice Department's role in expanding FBI intelligence operations against the Klan is discussed at pp. ——.

A formal directive, for a similar purpose, was sent by Attorney General Kennedy to U.S. Attorneys throughout the South in May 1963. It instructed them to "make a survey" to ascertain "any places where racial demonstrations are expected within the next 30 days" and to make "assessments of situations" in their districts. The FBI was "asked to cooperate." [357]

President Johnson ordered the FBI to investigate and report on the origins and extent of the first small-scale Northern ghetto disturbances in the summer of 1964.[358] After the FBI submitted a report on the Watts riot in Los Angeles in 1965, however, Attorney General Katzenbach advised President Johnson that the FBI should investigate "directly" only the possible "subversive involvement." Katzenbach did not believe that the FBI should conduct a "general investigation" of "other aspects of the riot," since these were local law enforcement matters. The President approved this "limited investigation." [359] Nonetheless, internal Bureau instructions in 1965 and 1966 went far beyond this limitation.[360] By 1967 new Attorney General Ramsey Clark reversed the Department's position on such limitations.

After the riots in Newark and Detroit in the summer of 1967, President Johnson announced that the FBI had "standing instructions" for investigating riots "to search for evidence on conspiracy." [361] This announcement accompanied the creation of a National Advisory Commission on Civil Disorders to investigate the "basic factors and causes leading to" the riots, including the "influence" of groups or persons "dedicated to the incitement or encouragement of violence." The President ordered the FBI in particular to "provide investigative information and assistance" to the Commission.[362] Director Hoover also agreed to investigate "allegations of subversive influence, involvement of out-of-state influences, and the like." [363]

In September 1967, Attorney General Clark directed the FBI to:

> use the maximum resources, investigative and intelligence, to collect and report all facts bearing upon the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity.[364]

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[357] Telegram from Attorney General Kennedy to U.S. Attorneys, 5/27/63.

[358] The basis for the inquiry was explained in the most general terms: "Keeping the peace in this country is essentially the responsibility of the state government. Where lawless conditions arise, however, with similar characteristics from coast to coast, the matter is one of national concern even though there is no direct connection between the events and even though no Federal law is violated." (Text of FBI Report on Recent Racial Disturbances, New York Times, 9/27/64.)

[359] Memorandum from Attorney General Katzenbach to President Johnson, 8/17/65.

[360] See p. 71.

[361] Remarks of the President, 7/29/67, in *Report of the National Advisory Commission on Civil Disorders* (1968), p. 537 (Bantam Books ed.)

[362] Executive Order 11365, 7/29/67.

[363] Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67, Subject: Director's Testimony Before National Advisory Commission on Civil Disorders. This memorandum indicates that, following this testimony, Director Hoover ordered his subordinates to intensify their collection of intelligence about "vociferous rabble-rousers." The creation thereafter of a "Rabble Rouser Index" is discussed at pp. 89–90.

[364] Memorandum from Attorney General Ramsey Clark to J. Edgar Hoover, 9/14/67.

Justice Department executives were generally aware of, and in some cases sought to widen, the scope of FBI intelligence collection. In a lengthy review of Bureau reports, John Doar, Assistant Attorney General for the Civil Rights Division, expressed concern that the FBI had not "taken a broad spectrum approach" to intelligence collection, since it had "focused narrowly" on "traditional subversive groups" and on persons suspected of "specific statutory violations." [365]

Reiterating this viewpoint, Attorney General Clark told Director Hoover that "existing intelligence sources" may not have "regularly monitored" possible riot conspirators in "the urban ghetto." He added that it was necessary to conduct a "broad investigation" and that

> sources or informants in black nationalist organizations, SNCC (Student Nonviolent Coordinating Committee) and other less publicized groups should be developed and expanded to determine the size and purpose of these groups and their relationship to other groups . . .[366]

Clark described his directive as setting forth "a relatively new area of investigation and intelligence reporting for the FBI." [367]

In response to the Attorney General's instructions, the FBI advised its field offices of the immediate "need to develop additional penetrative coverage of the militant black nationalist groups and the ghetto areas." [368]

b. Army Intelligence

On January 10, 1968, a meeting took place at the White House for the purpose of "advance planning for summer riots." The White House memorandum of the meeting reported:

> The Army has undertaken its own intelligence study, and has rated various cities as to their riot potential. They are making contingency plans for troop movements, landing sites, facilities, etc.

It added that the Attorney General and the Deputy Secretary of Defense "had agreed to coordinate their efforts." [369] The Army General Counsel's memorandum of the meeting stated that Attorney General Clark had "stressed the difficulty of the intelligence effort," especially because there were "only 40 Negro FBI agents" out of the total of about 6,300. Clark added that "every resource" was needed in "the intelligence collection effort," although he asked the Defense Department to "screen" its "incoming intelligence" and send "only key items" to the Justice Department.[370]

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[365] Memorandum from Assistant Attorney General John Doar to Attorney General Clark, 9/27/67.

[366] Memorandum from Clark to Hoover, 9/14/67.

[367] Clark to Hoover, 9/14/67. The Department's establishment of a special unit for intelligence evaluation is discussed at pp. 115–116.

[368] SAC Letter 67–72, 10/17/67. The scope of the "ghetto informant program" is described at pp. 75–76.

[369] Memorandum from Joseph Califano to the President, 1/18/68. Those present were Attorney General Clark, Deputy Attorney General Warren Christopher, Deputy Secretary of Defense Paul Nitze, Acting Army General Counsel Robert Jordan, and Presidential assistants Matthew Nimetz and Califano.

[370] Memorandum from the Army General Counsel to the Under Secretary of the Army, 1/10/68. Former Army Chief of Staff Harold K. Johnson has said that there were several other meetings at the White House where the Army was urged to take a greater role in the civil disturbance collection effort. (Staff summary of Harold K. Johnson interview, 11/18/75.)

There is no record that at this or any other similar meeting in this period the Attorney General or White House aides explicitly ordered the Army to conduct intelligence investigations using infiltration or other covert surveillance techniques. However, even though Army collection plans which were circulated to the Justice Department and the FBI [371] did not mention techniques of collection, the information they described could only be obtained by covert surveillance. No objections were voiced by the Justice Department.

Not until 1969 was there a formal civilian decision specifically authorizing Army surveillance of civilian political activity. At that time, Attorney General John Mitchell and Secretary of Defense Melvin Laird considered the matter and over the objections of the Army General Counsel, decided that the Army would participate in intelligence collection concerning civil disturbances.[372] The Army's collection plan was not rescinded until June 1970, after public exposure and congressional criticism.[373]

c. FBI Interagency Agreements

After the assassination of President Kennedy, the FBI and the Secret Service negotiated an agreement which recognized that the Bureau had "general jurisdiction" over "subversion." The term was defined, more narrowly than it had been defined by practice in the past, as "knowingly or wilfully advocat[ing]" overthrow of the Government by "force or violence" or by "assassination." Except for "temporary" action to "neutralize" a threat to the President, the Secret Service agreed to "conduct no investigation" of "members of subversive groups" without notifying the FBI. The Bureau, on the other hand, would not investigate individuals "solely" to determine their "dangerousness to the President." [374]

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[371] *Federal Data Banks*, Hearings, at p. 1137. On at least one occasion, Deputy Attorney General Warren Christopher thanked an Army intelligence officer for spot reports and daily summaries. (Letter from Deputy Assistant General Christopher to Maj. Gen. William P. Yarborough, Assistant Chief of Staff for Intelligence, 5/15/68.) The Justice Department's intelligence analysis unit received "army intelligence reports" during 1968 on persons and groups involved in "racial agitation." (Memorandum from Assistant Attorney General J. Walter Yeagley to Deputy Attorney General Richard G. Kleindienst. 2/6/69.)

[372] Memorandum from Secretary of Defense Melvin Laird and Attorney General John N. Mitchell to the President, 4/1/69. Subject: Interdepartmental Action Plan for Civil Disturbances. This reflected a failure on the part of the Army General Counsel to persuade the Justice Department to relieve the Army of its domestic intelligence-gathering role. (Memorandum from Robert E. Jordan, Army General Counsel, to the Secretary of the Army, Subject: Review of Civil Disturbance Intelligence History, in *Military Surveillance*, Hearings, p. 296.)

[373] Letter from Robert E. Lynch, Acting Adjutant General of the Army, to subordinate commands, 6/9/70, Subject: Collection, Reporting, Processing, and Storage of Civil Disturbance Information.

See discussion of the termination of this program in Section III ["Terminations" Sub-finding under "Accountability and Control"].

[374] Agreement Between the Federal Bureau of Investigation and the Secret Service Concerning Presidential Protection, 2/3/65. The FBI was to report to Secret Service information about "subversives, ultra-rightists, racists and fascists" who expressed "strong or violent anti-U.S. sentiment" or made "statements indicating a propensity for violence and antipathy toward good order and government."

These reporting standards were modified in 1971 to require the FBI to refer to Secret Service: "Information concerning civil disturbances, anti-U.S. demonstrations or incidents or demonstrations against foreign diplomatic establish-

(Continued)

After Congress enacted antibombing legislation in 1970, the FBI was assigned primary responsibility for investigating "offenses perpetrated by terrorist/revolutionary groups." [375] When these guidelines were developed, the FBI shifted supervision of bombing cases from its General Investigative Division to the Intelligence Division because, as one official put it, the specific criminal investigations were "so interrelated with the gathering of intelligence in the racial and security fields that overlap constantly occurs." [376]

The agreement with Secret Service and the "guidelines" covering bombing investigations did not give the FBI any additional domestic intelligence-gathering authority. They simply provided for dissemination of information to Secret Service and allocated criminal investigative jurisdiction between the FBI and the Alcohol, Firearms, and Tobacco Division. Nevertheless, both presupposed that the FBI had broad authority to investigate "subversives" or "terrorist/revolutionary groups."

4. Domestic Covert Action

a. COINTELPRO

The FBI's initiation of COINTELPRO operations against the Ku Klux Klan, "Black Nationalists" and the "New Left" brought to bear upon a wide range of domestic groups the techniques previously developed to combat Communists and persons who happened to associate with them.

The start of each program coincided with significant national events. The Klan program followed the widely-publicized disappearance in 1964 of three civil rights workers in Mississippi. The "Black Nationalist" program was authorized in the aftermath of the Newark and Detroit riots in 1967. The "New Left" program developed shortly after student disruption of the Columbia University campus in the spring of 1968. While the initiating memoranda approved by Director Hoover do not refer to these specific events, it is clear that they shaped the context for the Bureau's decisions.

These programs were not directed at obtaining evidence for use in possible criminal prosecutions arising out of those events. Rather, they were secret programs—"under no circumstances" to be "made known outside the Bureau" [377]—which used unlawful or improper acts to "disrupt" or "neutralize" the activities of groups and individuals targeted on the basis of imprecise criteria.

(1) *Klan and "White Hate" COINTELPRO.*—The expansion of Klan investigations, in response to pressure from President Johnson and Attorney General Kennedy,[378] was accompanied by an internal

(Continued)
ments;" and "information concerning persons who may be considered potentially dangerous to individuals protected by the [Secret Service] because of their . . . participation in groups engaging in activities inimical to the United States." With respect to organizations, the FBI reported information on their "officers," "size," "goals," "source of financial support," and other "background data." (Agreement Between the Federal Bureau of Investigation and the United States Secret Service Concerning Protective Responsibilities, 11/26/71.)

[375] Investigative Guidelines: Title XI, Organized Crime Control Act of 1970, Regulation of Explosives.

[376] FBI Inspection Report, Domestic Intelligence Division, August 17–September 9, 1971, pp. 224–38.

[377] Memoranda from FBI headquarters to all SAC's, 9/2/64; 8/25/67; 5/9/68.

[378] See pp. 74–75.

Bureau decision to shift their supervision from the General Investigative Division to the Domestic Intelligence Division. One internal FBI argument for the transfer was that the Intelligence Division was "in a position to launch a disruptive counterintelligence program" against the Klan with the "same effectiveness" it had against the Communist Party.[379]

Accordingly, in September 1964 a directive was sent to seventeen field offices instituting a COINTELPRO against the Klan and what the FBI considered to be other "White Hate" organizations (*e.g.*, American Nazi Party, National States Rights Party) "to expose, disrupt, and otherwise neutralize" the activities of the groups, "their leaders, and adherents." [380]

During the 1964–1971 period, when the program was in operation, 287 proposals for COINTELPRO actions against Klan and "White Hate" groups were authorized by FBI headquarters.[381] Covert techniques used in this COINTELPRO included creating new Klan chapters to be controlled by Bureau informants and sending an anonymous letter designed to break up a marriage.[382]

(2) *"Black Nationalist" COINTELPRO.*—The stated strategy of the "Black Nationalist" COINTELPRO instituted in 1967 was "to expose, disrupt, misdirect, discredit, or otherwise neutralize" such groups and their "leadership, spokesmen, members, and supporters." The larger objectives were to "counter" their "propensity for violence" and to "frustrate" their efforts to "consolidate their forces" or to "recruit new or youthful adherents." Field offices were instructed to exploit conflicts within and between groups; to use news media contacts to ridicule and otherwise discredit groups; to prevent "rabble rousers" from spreading their "philosophy" publicly; and to gather information on the "unsavory backgrounds" of group leaders.[383]

In March 1968, the program was expanded from twenty-three to forty-one field offices and the following long-range goals were set forth:

> (1) prevent the "coalition of militant black nationalist groups;"
>
> (2) prevent the rise of a "messiah" who could "unify and electrify" the movement, naming specifically Dr. Martin Luther King, Jr., Stokely Carmichael, and Elijah Muhammed;
>
> (3) prevent violence by pinpointing "potential troublemakers" and "neutralizing" them before they "exercise their potential for violence;"
>
> (4) prevent groups and leaders from gaining "respectability" by discrediting them to the "responsible" Negro community, the "responsible" white community, "liberals" with

[379] Memorandum from J. H. Gale to Mr. Tolson, 7/30/64 (Gale was Assistant Director for the Inspection Division).

[380] Memorandum from FBI Headquarters to all SACs, 9/2/64.

[381] The average of 40 "White Hate" actions per year may be compared to an average of over 100 per year against the Communist Party from 1956–1971 (totalling 1636). Exhibit 11, Hearings, vol. 6, p. 371.

[382] These techniques and those used against the other target groups referred to below are discussed in greater detail in the COINTELPRO detailed report and in the Covert Action section of the Findings, Part III, p. 211.

[383] Memorandum from FBI Headquarters to all SACs, 8/25/67.

"vestiges of sympathy" for militant black nationalists, and "Negro radicals;" and

(5) "prevent these groups from recruiting young people." [384]

After the Black Panther Party emerged as a group of national stature, FBI field offices were instructed to develop "imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP." Particular attention was to be given to aggravating conflicts between the Black Panthers and rival groups in a number of cities where such conflict had already taken on the character of "gang warfare with attendant threats of murder and reprisals." [385]

During 1967–1971, FBI headquarters approved 379 proposals for COINTELPRO actions against "black nationalists." [386] These operations utilized dangerous and unsavory techniques which gave rise to the risk of death and often disregarded the personal rights and dignity of the victims.

(3) *"New Left" COINTELPRO.*—The most vaguely defined and haphazard of the COINTELPRO operations was that initiated against the "New Left" in May 1968. It was justified to the FBI Director by his subordinates on the basis of the following considerations:

> The nation was "undergoing an era of disruption and violence" which was "caused to a large extent" by individuals "generally connected with the New Left."
>
> Some of these "activists" were urging "revolution" and calling for "the defeat of the United States in Vietnam."
>
> The problem was not just that they committed "unlawful acts," but also that they "falsely" alleged police brutality, and that they "scurrilously attacked the Director and the Bureau" in an attempt to "hamper" FBI investigations and to "drive us off the college campuses." [387]

Consequently, the COINTELPRO was intended to "expose, disrupt, and otherwise neutralize" the activities of "this group" and "persons connected with it." [388] The lack of any clear definition of "New Left" meant, as an FBI supervisor testified, that "legitimate" and nonviolent antiwar groups were targeted because they were "lending aid and comfort" to more disruptive groups.[389]

Further directives issued soon after initiation of the program urged field offices to "vigorously and enthusiastically" explore "every avenue of possible embarrassment" of New Left adherents. Agents were instructed to gather information on the "immorality" and the "scurrilous and depraved" behavior, "habits, and living conditions" of the members of targeted groups.[390] This message was reiterated several months later, when the offices were taken to task for their failure to remain alert for and seek specific data depicting the "depraved nature and moral looseness of the New Left" and to "use this

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[384] Memorandum from FBI Headquarters to all SACs, 3/4/68.
[385] Memorandum from FBI Headquarters to SACs, 11/25/68.
[386] The average was over 90 per year. (Exhibit 11. Hearings, Vol. 6, p. 371.)
[387] Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.
[388] C. D. Brennan to W. C. Sullivan, 5/9/68.
[389] Supervisor, FBI Intelligence Division, 10/28/75, p. 39.
[390] Memorandum from FBI Headquarters to all SACs, 5/23/68.

material in a vigorous and enthusiastic approach to neutralizing them." [391]

In July 1968, the field offices were further prodded by FBI headquarters to:

(1) prepare leaflets using "the most obnoxious pictures" of New Left leaders at various universities;

(2) instigate "personal conflicts or animosities" between New Left leaders;

(3) create the impression that leaders are "informants for the Bureau or other law enforcement agencies" (the "snitch jacket" technique);

(4) send articles from student or "underground" newspapers which show "depravity" ("use of narcotics and free sex") of New Left leaders to university officials, donors, legislators, and parents;

(5) have members arrested on marijuana charges;

(6) send anonymous letters about a student's activities to parents, neighbors, and the parents' employers;

(7) send anonymous letters about New Left faculty members (signed "A Concerned Alumni" or "A Concerned Taxpayer") to university officials, legislators, Board of Regents, and the press;

(8) use "cooperative press contacts;"

(9) exploit the "hostility" between New Left and Old Left groups;

(10) disrupt New Left coffee houses near military bases which are attempting to "influence members of the Armed forces;"

(11) use cartoons, photographs, and anonymous letters to "ridicule" the New Left;

(12) use "misinformation" to "confuse and disrupt" New Left activities, such as by notifying members that events have been cancelled.[392]

During the period 1968–1971, 291 COINTELPRO actions against the "New Left" were approved by headquarters.[393] Particular emphasis was placed upon preventing the targeted individuals from public speaking or teaching and providing "misinformation" to confuse demonstrators.

b. FBI Target Lists

The FBI's most intensive domestic intelligence investigations and COINTELPRO operations were directed against persons identified, not as criminals or criminal suspects, but in vague terms such as "rabble rouser," "agitators," "key activists," or "key black extremists." The Secruity Index for detention in time of national emergency was revised to include such persons.

(1) *"Rabble Rouser/Agitator" Index.*—Following a meeting with the National Advisory Commission on Civil Disorders in August 1967, Director Hoover ordered his subordinates to intensify collection of

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[391] Memorandum from FBI Headquarters to all SACs, 10/9/68.
[392] Memorandum from FBI Headquarters to all SACs, 7/6/68.
[393] Approximately 100 per year (Exhibit 11, Hearings, Vol. 6, p. 371.).

intelligence about "vociferous rabble-rousers." [393a] He also directed "that an index be compiled of racial agitators and individuals who have demonstrated a potential for fomenting racial discord." [394]

The already vague standards for the Rabble Rouser Index were broadened in November 1967 to cover persons with a "propensity for fomenting" any disorders affecting the "internal security"—as opposed to only racial disorders—and to include persons of local as well as national interest. This included "black nationalists, white supremacists, Puerto Rican nationalists, anti-Vietnam demonstration leaders, and other extremists." A rabble rouser was defined as:

> a person who tries to arouse people to violent action by appealing to their emotions, prejudices, et cetera; a demagogue.[395]

In March 1968, the Rabble Rouser Index was renamed the Agitator Index and field offices were ordered to obtain a photograph of each person on the Index. [396] However, expanding the size of the Agitator Index lessened its value as an efficient target list for FBI intelligence operations. Consequently, the Bureau developed a more refined tool for this purpose—the Key Activist Program.

(2) *"Key Activist" Program.*—Instructions were issued to ten major field offices in January 1968 to designate certain persons as "Key Activists," who were defined as

> individuals in the Students for Democratic Society and the anti-Vietnam war groups [who] are extremely active and most vocal in their statements denouncing the United States and calling for civil disobedience and other forms of unlawful and disruptive acts.

There was to be an "intensive investigation" of each Key Activist, which might include "high-level informant coverage" and "technical surveillances and physical surveillances." [397]

The "New Left" COINTELPRO was designed in part to "neutralize" the Key Activists, who were "the moving forces behind the New Left." [398] One of the first techniques employed in this program was to obtain the Federal income tax returns of Key Activists for use in disrupting their activities.[399] In October 1968, the Key Activist Program was expanded to virtually all field offices. The field agents were instructed to recommend additional persons for the program and to "consider if the individual was rendered ineffective would it curtail [disruptive] activity in his area of influence." While the FBI considered Federal prosecution a "logical" result of these investigations and "the best deterrent," Key Activists were not selected because they were suspected of committing or planning to commit any specific Federal crime. [400]

[393a] Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67. (At the meeting, a Commission member had asked the Bureau to "identify the number of militant Negroes and whites.")

[394] Memorandum from C. D. Brennan to W. C. Sullivan, 8/3/67; SAC Letter 67-56, 9/12/67.

[395] SAC Letter No. 67-70. 11/28/67.

[396] Memorandum from FBI Headquarters to all SACs. 3/21/68.

[397] Memorandum from FBI Headquarters to all SACs, 1/30/68.

[398] Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.

[399] Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/68.

[400] Memorandum from FBI Headquarters to all SACs, 10/24/68.

(3) *"Key Black Extremist" Program.*—A "Key Black Extremist" target list for concentrated investigation and COINTELPRO actions was instituted in 1970. Key Black Extremists were defined as

> leaders or activists [who] are particularly extreme, agitative, anti-Government, and vocal in their calls for terrorism and violence.[401]

Field offices were instructed to place all Key Black Extremists in the top priority category of the Security Index and in the Black Nationalist Photograph Album, which concentrated on "militant black nationalists" who traveled extensively. In addition, the following steps were to be taken:

> (1) All aspects of the finances of a KBE must be determined. Bank accounts must be monitored. . . .
> (2) Continuing consideration must be given by each office to develop means to neutralize the effectiveness of each KBE. . . .
> (3) Obtain suitable handwriting specimens. . . .
> (4) Particular efforts should be made to obtain records of and/or reliable witnesses to, inflammatory statements. . . .
> (5) Where there appears to be a possible violation of a statute within the investigative jurisdiction of the Bureau, [it should be] vigorously investigated. . . .
> (6) Particular attention must be paid to travel by a KBE and every effort made to determine financial arrangements for such travel. . . .
> (7) The Federal income tax returns of all KBEs must be checked annually. . . .

Reports on all Key Black Extremists were to be submitted every ninety days, and the field was urged to use "initiative and imagination" to achieve "the desired results."[403] Once again, the "result" was not limited to prosecution of crimes and the targets were not chosen because they were suspected of committing crimes.

(4) *Security Index.*—The Agitator Index was abolished in 1971 because "extremist subjects" were "adequately followed" through the Security Index.[404] In contrast to the other indices, the Security Index was not reviewed by the FBI alone. It had, from the late 1940's, been largely a joint FBI-Justice Department program based on the Department's plans for emergency detention.[405] According to FBI memoranda, moreover, President Johnson was directly involved in the updating of emergency detention plans.[406]

After a large-scale March on the Pentagon against the Vietnam War in October 1967, President Johnson ordered a comprehensive review of the government's emergency plans. Attorney General Clark was appointed chairman of a committee to review the Presidential Emergency Action Documents (PEADs) prepared under the Emergency Detention Program. One result of this review, in which the FBI took part, was a decision to bring the Detention Program into line with the

[401] Memorandum from G. C. Moore to C. D. Brennan, 12/22/70.
[403] Memorandum from FBI Headquarters to all SACs, 12/23/70.
[404] Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.
[405] See pp. 54–55.
[406] C. D. Brennan to W. C. Sullivan, 4/30/68.

Emergency Detention Act of 1950, reversing the previous decision to "disregard" as "unworkable" the procedural requirements of the Act, which were tighter than the standards which had been applied by FBI and Justice.[407]

The Bureau also had to revise its criteria for inclusion of names on the Security Index, which since 1950 had disregarded the statutory standards. However, the definition chosen of a "dangerous individual" was so broad that it enabled the Bureau to *add* persons not previously eligible. A "dangerous individual" was defined as a

> person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage and sabotage, *including* acts of terrorism or assassination and *any interference with* or threat to the survival of and *effective operation* of the national, state, and *local governments* and of the national defense effort. [Emphasis added.] [408]

The emphasized language greatly broadened the Security Index standards. It gave FBI intelligence officials the opportunity to include on the Security Index "racial militants", "black nationalists", and individuals associated with the "New Left" who were not affiliated with the "basic revolutionary organizations" as the Bureau characterized the Communist Party, which had previously been the focus of the Security Index.[409] Once again, the limitations which a statute was intended to impose were effectively circumvented by the use of elastic language in a Presidential directive.

Moreover, the Bureau adopted a new "priority" ranking for apprehension in case of an emergency. Top priority was now given not only to leaders of "basic subversive organizations," but also to "leaders of anarchistic groups." [410] It was said to be the "anarchistic tendencies" of New Left and racial militants that made them a "threat to the internal security." [411]

Initially, the Justice Department approved informally these changes in the criteria for "the persons listed for apprehension." [412] After several months of "study," the Justice Department's Office of Legal Counsel formally approved the new Security Index criteria. This was the first time since 1955 that the Department had fully considered the matter, and the previous policy of disregarding the procedures of the Emergency Detention Act of 1950 was formally abandoned. If an emergency occurred, the Attorney General would abide by "the requirement that any person actually detained will be entitled to a hearing at which time the evidence will have to satisfy the standards of [the Act]." However, the Office of Legal Counsel declared that the Security Index criteria themselves could be—as they were—less precise than those of the Act because of the "needed flexibility and discretion at the operating level in order to carry on an effective surveillance

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[407] See pp. 54–55 and Report on FBI Investigations.

[408] Presidential Emergency Action Document 6, as quoted in Brennan to Sullivan, 4/30/68.

[409] Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

[410] C. D. Brennan to W. C. Sullivan, 4/30/68.

[411] C. D. Brennan to W. C. Sullivan, 4/30/68.

[412] Memorandum from J. Edgar Hoover to J. Walter Yeagley, 5/1/68; Yeagley to Hoover, 6/17/68.

program."[413] Thus, while the plan to ignore Congress' procedural limitations was abandoned, Congress' substantive standards were disregarded as insufficiently "flexible."

c. Internal Revenue Service Programs

(1) *Misuse by FBI and CIA.*—IRS information was used as an instrument of domestic intelligence mainly by the FBI. For example, in 1965, the Bureau obtained the tax returns of Ku Klux Klan members in order to develop "discrediting or embarrassing" information as part of the Bureau's COINTELPRO against the Klan.[414] The procedure by which FBI obtained access to tax returns and related information held by IRS was deemed "illegal" when it was discovered by the Chief of the IRS Disclosure Branch in 1968.[415] The FBI had not followed the procedures for obtaining returns which required written application to the IRS Disclosure Branch. Instead the Bureau had arranged to obtain the returns and information surreptitiously through contacts inside the IRS Intelligence Division. The procedure for FBI access was regularized by the IRS after 1968: a formal request on behalf of the Bureau was made to the IRS Disclosure Branch, by the Internal Security Division of the Justice Department.

During this same period, the CIA was obtaining tax returns in a manner similar to the FBI, although in much smaller numbers. Yet even after procedures were changed for the FBI's access to tax information in 1968, the IRS did not re-examine the CIA's practices.[416] Therefore, CIA continued to receive tax return information without filing requests as required by the regulations.

Between 1968 and 1974, either directly or through the Internal Security Division of the Justice Department, the FBI requested at least 130 tax returns for domestic intelligence purposes. This included the returns of 46 "New Left activists" and 74 "black extremists,"[417] as part of Bureau COINTELPRO operations to "neutralize" these individuals.[418] These requests were not predicated upon any specific information suggesting delinquency in fulfilling tax obligations.

Even after a formal request was required before supplying the FBI with tax returns, the IRS accepted the Justice Department's undocu-

[413] Among the criteria specifically approved by the Justice Department which went beyond the statutory standard of reasonable likelihood of espionage and sabotage were the expanded references to persons who have "anarchistic or revolutionary beliefs" and are "likely to seize upon the opportunity presented by a national emergency" to commit acts which constitute "interference with" the "effective operation of the national, state and local governments and of the defense effort." (Assistant Attorney General Frank M. Wozencraft, Office of Legal Counsel, to Assistant Attorney General J. Walter Yeagley, Internal Security Division, 9/9/68.) The standards as approved were transmitted to the FBI, and its Manual was revised accordingly. (Yeagley to Hoover, 9/19/68; Hoover to Yeagley, 9/26/68; FBI Manual, Section 87, p. 45, revised 10/14/68.) The FBI still maintained its Reserve Index, unbeknownst to the Department.

[414] One of the express purposes was to use tax information to "expose" the Klan members "within the Klan organization [or] publicly by showing income beyond their means." (Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/10/65.) Disclosure of tax information "publicly" or "within the Klan organization" is prohibited by statute.

[415] Memorandum from D. O. Virdin to H. E. Snyder, 5/2/68. Subject: Inspection of Returns by FBI.

[416] Donald O. Virdin testimony, 9/16/75, pp. 69–73.

[417] Staff Memorandum: Review of Materials in FBI Administrative File on "Income Tax Returns Requested."

[418] Memorandum from C. D. Brennan to W. C. Sullivan, 12/6/68.

mented assertions that tax information was "necessary" in connection with an "official matter" involving "internal security." [419] Yet in making such assertions, the Justice Department's Internal Security Division relied entirely on the Bureau's judgment. Thus, while the IRS is required by the statute to release tax information only where necessary, it in effect delegated its responsibility to the Internal Security Division which in turn delegated the decision to the FBI. Although most FBI requests for tax information were for targets of various COINTELPRO operations, the Justice Department official who made the requests on behalf of the Bureau said he was never informed of the existence of COINTELPRO.[420]

Even after 1968, the Bureau sometimes used tax information in improper or unlawful ways. For example, the Bureau attempted to use such information to cause IRS to audit a mid-western college professor associated with "new left" activities at the time he was planning to attend the 1968 Democratic Party National Convention in Chicago. The FBI agent in charge of the operation against the professor explained its purpose in a memorandum:

> if IRS contact with [the Professor] can be arranged within the next two weeks their demands upon him may be a source of distraction during the critical period when he is engaged in meetings and plans for disruption of the Democratic National Convention. Any drain upon the time and concentration which [the Professor], a leading figure in Demcon planning, can bring to bear upon this activity can only accrue to the benefit of the Government and general public.[421]

Among the tax returns which the CIA obtained informally from IRS in an informal and illegal manner were those of the author of a book, the publication of which the CIA sought to prevent,[422] and of *Ramparts* magazine which had exposed the CIA's covert use of the National Student Association.[423] In the latter case, CIA memoranda indicate that its officials were unwilling to risk a formal request for tax information without first learning through informal disclosure whether the tax returns contained any information that would be helpful in their effort to deter this "attack on the CIA" and on "the administration in general." [424]

(2) *The Special Service Staff: IRS Targeting of Ideological Groups.*—In 1969, the IRS established a Special Service Staff to gather intelligence on a category of taxpayers defined essentially by political criteria. The SSS attempted to develop tax cases against the targeted taxpayers and initiated tax fraud investigations against some who would otherwise never have been investigated.

The SSS originated as a result of pressure from the permanent Subcommittee on Investigations of the Senate Committee on Government Operations [425] and from President Nixon, acting through White House

[419] Leon Green deposition, 9/12/75, pp. 6–8.
[420] Statement of J. W. Yeagley to Senate Select Committee, September 1975.
[421] Memorandum from Midwest City Field Office to FBI Headquarters, 8/1/68.
[422] CIA memorandum, Subject: BUTANE—Victor Marchetti.
[423] CIA memorandum, Subject: IRS Briefing on Ramparts, 2/2/67.
[424] CIA memorandum, Subject: IRS Briefing on Ramparts, 2/2/67.
[425] Leon C. Green testimony, 9/12/75, p. 36.

assistants Tom Charles Huston and Dr. Arthur Burns.[426] According to the IRS Commissioner's memorandum, Dr. Burns expressed to him the President's concern

> over the fact that tax-exempt funds may be supporting activist groups engaged in stimulating riots both on the campus and within our inner cities.[427]

The administration did not supply any facts to support the assertion that such groups were violating tax laws.

After the SSS was established, the FBI and the Justice Department's Interdivisional Information Unit (IDIU) became its largest sources of names. An Assistant IRS Commissioner requested the FBI to provide information regarding "various organizations of predominantly dissident or extremist nature and/or people prominently identified within those organizations."[428] The FBI agreed, believing, as one intelligence official put it, that SSS would "deal a blow" to "dissident elements."[429]

Among the material received by SSS from the FBI was a list of 2,300 organizations categorized as "Old Left," "New Left," and "Right Wing."[430] The SSS also received about 10,000 names on IDIU computer printouts.[431] SSS opened files on all these taxpayers, many of whom were later subjected to tax audits and some to tax fraud investigations. There is no reason to believe that the names listed by the FBI or the IDIU were selected on the basis of any probable noncompliance with the tax laws. Rather, these groups and individuals were targeted because of their political and ideological beliefs and activities.[432]

The SSS, by the time it was disbanded in 1973, had gone over approximately half of the IDIU index and established files on those individuals on whom it had no file. Names on the SSS list included Nobel Prize winner Linus Pauling, Senators Charles Goodell and Ernest Gruening, Congressman Charles Diggs, journalists Joseph Alsop and Jimmy Breslin, and attorney Mitchell Rogovin. Organizations on the SSS list included: political groups ranging from the John Birch Society to Common Cause; religious organizations such as the B'nai Brith Antidefamation League and the Associated Catholic Charities; professional associations such as the American Law Institute and the Legal Aid Society; private foundations such as the Carnegie Foundation; publications ranging from "Playboy" to "Commonwealth;" and government institutions including the United States Civil Rights Commission.[433]

SSS officials have conceded that some cases referred to the field for tax investigations would not have qualified for referral but for the ideological category in which they fell. While IRS field offices closed out many cases because of the lack of tax grounds upon which legal

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[426] "Investigation of the Special Service Staff of the IRS" by the staff of the Joint Committee on Internal Revenue Taxation, 6/5/75, pp. 17–18.
[427] Memorandum of IRS Commissioner Thrower, 6/16/69.
[428] Memorandum from D. W. Bacon to Director, FBI, 8/8/69.
[429] Memorandum from D. J. Brennan, Jr., to W. C. Sullivan, 8/15/69.
[430] SSS Bi-weekly Report, 6/15/70.
[431] SSS Bi-weekly Report, 8/29/69.
[432] For a discussion of IDIU standards, see pp. 78–81, 122–123.
[433] Donald Alexander testimony, 10/2/25, Hearings, Vol. 3, pp. 29–30.

action could be taken, referral from the SSS probably resulted in the examination of some cases despite the lack of adequate grounds. Interviews wtih IRS field personnel confirm that this did occur in several instances.[433a]

Upon discovering that its functions were not tax-related, new IRS Commissioner Alexander ordered the Special Service Staff abolished. He testified:

> Mr. ALEXANDER. I ordered the Special Service staff abolished. That order was given on August the 9th, 1973. It was implemented by manual supplements issued on August the 13th, 1973. We held the files. I ordered the files be held intact—I'm not going to give any negative assurances to this Committee—in order that this Committee and other Committees could review these files to see what was in them, and see what sort of information was supplied to us on this more than 11,000 individuals and organizations as to whom and which files were maintained.
>
> I suggested, Mr. Chairman, that at the end of all of these inquiries, I would like to take those files to the Ellipse and have the biggest bonfire since 1814.
>
> The CHAIRMAN. Well, I concur in that judgment. I would only say this to you; in a way, it might be a more important bonfire than the Boston Tea Party when it comes to protecting individual rights of American citizens. I am glad you feel that way. I am glad you took that action.[434]

5. Foreign Intelligence and Domestic Dissent

In the late 1960's, CIA and NSA, acting in response to presidential pressure, turned their technological capacity and great resources toward spying on certain Americans. The initial impetus was to determine whether the antiwar movement—and to a lesser extent the "black power" movement—were controlled by foreigners. Despite evidence that there was no significant foreign influence, the intelligence gathering which culminated in CIA's "Operation CHAOS" followed the general pattern of broadening in scope and intensity. The procedure for one aspect of these programs was established by an informal agreement between the CIA and FBI in 1966, which permitted CIA to engage in "internal security" activities in the United States.

a. Origins of CIA Involvement in "Internal Security Functions"

The National Security Act of 1947 explicitly prohibited the CIA from exercising "police, subpoena, or law-enforcement powers, or internal security functions." But the Act did not address the question of the CIA's authority to conduct clandestine intelligence activity within the United States for what Secretary Forrestal called "purposes outside of this country."[435]

Under Director Hoover, the FBI interpreted the term "internal security functions" broadly to encompass almost "anything that CIA

[433a] Green, 9/12/75, pp. 65–66, 73–74; Statement of Auditor, San Francisco District, 7/30/75, p. 1; statement of Collector, Los Angeles District, 8/3/75.

[434] Donald Alexander testimony, 10/2/75, Hearings, Vol. 3, pp. 10–11.

[435] Hearings before the House Committee on Expenditures in the Executive Departments, on H.R. 2319, 80th Cong. (1947), p. 127.

might be doing in the United States."[436] Throughout the 1950's and into the early 1960's, Director Hoover's position led to jurisdictional conflicts between the CIA and the FBI.

The Bureau insisted on being informed of the CIA's activity in the United States so that it could be coordinated with the Bureau. As the FBI liaison with the CIA in that period recalled, "CIA would take action, it would come to our attention and we would have a flap."[437]

In 1966 the FBI and CIA negotiated an informal agreement to regularize their coordination. This agreement was said to have "led to a great improvement" and almost eliminated the "flaps."[438]

Under the agreement, the CIA would "seek concurrence and coordination of the FBI" before engaging in clandestine activity in the United States and the FBI would "concur and coordinate if the proposed action does not conflict with any operation, current or planned, including active investigation of the FBI."[439] When an operative recruited by the CIA abroad arrived in the United States, the FBI would "be advised" and the two agencies would "confer regarding the handling of the agent in the United States." The CIA would continue its "handling" of the agent for "foreign intelligence" purposes. The FBI would also become involved where there were "internal security factors," although it was recognized that the CIA might continue to "handle" the agent in the United States and provide the Bureau with "information" bearing on "internal security matters."[440]

As part of their handling of "internal security factors," CIA operatives were used after 1966 to report on domestic "dissidents" for the FBI. There were infrequent instances in which, according to the former FBI liaison with CIA:

> CIA had penetrations abroad in radical, revolutionary organizations and the individual was coming here to attend a conference, a meeting, and would be associating with leading dissidents, and the question came up, can he be of any use to us, can we have access to him during that period.
>
> In most instances, because he was here for a relatively short period, we would levy the requirement or the request upon the CIA to find out what was taking place at the meetings to get his assessment of the individuals that he was meeting, and any other general intelligence that he could collect from his associations with the people who were of interest to us.[441]

The policies embodied in the 1966 agreement and the practice under it clearly involved the CIA in the performance of "internal security

[436] Former FBI Liaison with CIA testimony, 9/22/75, p. 9.

[437] Former FBI liaison with CIA testimony, 9/22/75, pp. 9–11.

[438] Liaison, 9/22/75, p. 11. For a discussion of liaison problems between FBI and CIA in 1970. see pp. 112–113.

[439] Liaison, 9/22/75, p. 52. "Central Intelligence Agency Operations in the United States," FBI–CIA Memorandum of Understanding, 2/7/66.

[440] Liaison, 9/22/75, p. 55.

[441] Liaison, 9/22/75, pp. 57–58. These "internal security" aspects of the 1966 FBI–CIA agreement were not the only pre-CHAOS arrangements bringing the CIA into liaison with the FBI. For example, as early as 1963 the FBI Manual was revised to state that information concerning "proposed travel abroad" by domestic "subversives" was to be "furnished by the Bureau to the Department of State" and the "Central Intelligence Agency:" and field offices were advised to recommend the "extent of foreign investigation" which was required. (FBI Manual Section 87, p. 33a, revised 4/15/63.)

functions." At no time did the Executive branch ask Congress to amend the 1947 act to modify its ban against CIA exercising "internal security functions." Nor was Congress asked to clarify the ambiguity of the 1947 act about the CIA's authority to conduct clandestine foreign intelligence and counterintelligence activities within the United States, a matter dealt with even today by Executive Order.[442]

Moreover, National Security Council Intelligence Directive 5 provided authority within the Executive Branch for the Director of Central Intelligence to coordinate, and for the CIA to conduct, counterintelligence activities abroad to protect the United States against not only espionage and sabotage, but also "subversion."[443] However, NSCID 5 did not purport to give the CIA authority for counterintelligence activities in the United States, as provided in the FBI–CIA agreement of 1966.

b. CIA Intelligence About Domestic Political Groups

In the late 1960s, the CIA increasingly was drawn into collecting intelligence about domestic political groups, particularly the anti-war movement, in response to FBI requests and to pressure from Presidents Johnson and Nixon. A principal assistant to President Johnson testified that high governmental officials could not believe that

> a cause that is so clearly right for the country, as they perceive it, would be so widely attacked if there were not some [foreign] force behind it.[444]

The same pressures and beliefs led to CIA investigations of "militant black nationalists" and radical students.

(1) *CIA Response to FBI Requests.*—The FBI was the main channel for mobilizing foreign intelligence resources and techniques against domestic targets. The FBI regularly notified the CIA that it wished coverage of Americans overseas.[444a] Indeed, the CIA regarded the mention of a name in any of the thousands of reports sent to it by the FBI as a standing requirement from the FBI for information about those persons.[445] FBI reports flowed to the CIA at a rate of over 1,000 a month.[446] From 1967 to 1974, the CIA responded with over 5,000 reports to the FBI. These CIA disseminations included some reports of information acquired by the CIA in the course of its own operations, not sought in response to a specific FBI request.[447]

The FBI's broad approach to the investigations of foreign influence which it coordinated with the CIA is shown by a memorandum

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[442] President Ford's Executive Order 11905, 2/18/76. This order, discussed more fully in Part IV, Recommendations, in effect reinforces the 1966 FBI–CIA agreement and defines CIA counterintelligence duties abroad to include "foreign subversion" directed against the United States.

[443] The National Security Council Intelligence Directives, or NSCIDs, have been promulgated by the National Security Council to provide the basic organization and direction of the intelligence agencies.

[444] Joseph Califano testimony, 1/27/76, p. 70.

[444a] Richard Ober testimony, 10/30/75, p. 88.

[445] Ober, 10/28/75, p. 45.

[446] Memorandum from Richard Ober to James Angleton, 6/9/70, p. 9.

[447] Letter from Director W. Colby to Vice President Rockefeller, 8/8/75, p. 6 of attachment.

prepared in the Intelligence Division early in 1969 summarizing its "coverage of the New Left:"

> Foreign influence of the New Left movement offers us a fertile field to develop valuable intelligence data. To date there is no real cohesiveness between international New Left groups, but . . . despite the factionalism and confusion now so prevalent, *there is great potential* for the development of an international student revolutionary movement. [Emphasis added.]

The memorandum expressed concern that "old line" leftist groups were

> . . . making a determined effort to move into the New Left movement . . . [and were] influencing the thinking of the New Left . . . against the police in general and the FBI in particular, to drive us off the campuses; as well as attacks against the new administration to degrade President Nixon.[448]

There was no mention of, or apparent concern for, direct influence or control of the "New Left" by agents of hostile foreign powers. Instead, the stress was almost entirely upon ideological links and similarities, and the threat of ideas considered dangerous by the FBI.

The enlistment of both CIA and NSA resources in domestic intelligence is illustrated by the "Black Nationalist" investigations. In 1967, FBI Headquarters instructed field offices that:

> . . . penetrative investigations should be initiated at this time looking toward developing any information regarding contacts on the part of these individuals with foreign elements and looking toward developing any additional information having a bearing upon whether the individual involved is currently subjected to foreign influence or direction. . . .
>
> During your investigative coverage of all militant black nationalists, be most alert to any foreign travel. Advise the Bureau promptly of such in order that *appropirate overseas investigations* may be conducted to establish activities and contacts abroad. [Emphasis added.] [449]

The FBI passed such information to the CIA, which in turn began to place individual black nationalists on a "watch list" for the interception of international communications by the National Security Agency. After 1969, the FBI began submitting names of citizens engaged in domestic protest and violence to the CIA not only for investigation abroad, but also for placement on the "watch list" of the CIA's mail opening project. Similar lists of names went from the FBI to the National Security Agency, for use on a "watch list" for monitoring other channels of international communication.

(2) *Operation CHAOS.*—The CIA did not restrict itself to servicing the FBI's requests. Under White House pressure, the CIA developed its own program—Operation CHAOS—as an adjunct to the

[448] Memorandum from C. D. Brennan to W. C. Sullivan re New Left Movement, 2/3/69.

[449] SAC Letter No. 67-66, 11/7/67.

CIA's foreign counterintelligence activities, although CIA officials recognized from the outset that it had "definite domestic counterintelligence aspects." [450]

Former CIA Director Richard Helms testified that he established the program in response to President Johnson's persistent interest in the extent of foreign influence on domestic dissidents. According to Helms, the President would repeatedly ask, "How are you getting along with your examination?" and "Have you picked up any more information on this subject?" [451]

The first CHAOS instructions to CIA station chiefs in August 1967 described the need for "keeping tabs on radical students and U.S. Negro expatriates as well as travelers passing through certain select areas abroad." The originally stated objective was "to find out [the] extent to which Soviets, Chicoms (Chinese Communists) and Cubans are exploiting our domestic problems in terms of espionage and subversion." [452]

Following the consistent pattern of intelligence activities, those original instructions gradually broadened without any precision in the kind of foreign contacts which were to be targeted by CIA operations. For example:

—President Johnson asked the CIA to conduct a study of "International Connections of the U.S. Peace Movement" following the October 1967 demonstration at the Pentagon.[453] In response, CIA headquarters sent a directive to CIA stations seeking information on "illegal and subversive" connections between U.S. activists and "communist, communist front, or other anti-American and foreign elements abroad. Such connections might range from *casual contacts based merely on mutual interest* to closely controlled channels for party directives." [Emphasis added.] [454]

—In mid-1968, the DDP described CHAOS to CIA stations as a "high priority program" concerning foreign "contacts" with the "Radical Left," which was defined as: "radical students, antiwar activists, draft resisters and deserters, black nationalists, anarchists, and assorted 'New Leftists.'" [455]

—In 1969, President Nixon's White House required the CIA to study foreign communist support of American protest groups and stressed that "support" should be "liberally construed" to include "encouragement" by Communist countries. [456]

—In the fall of 1969, CIA stations were asked to report on any foreign support, guidance, or "inspiration" to protest activities in the United States.[457]

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[450] Memorandum from Thomas Karamessines to James Angleton, 8/15/67, p. 1.
[451] Helms, Rockefeller Commission, 4/28/75, pp. 2434–2435.
[452] CIA Headquarters cable to several field stations, August, 1967, p. 1.
[453] Memorandum from Richard Helms to President Johnson, 11/15/67.
[454] VIA Cable from Acting DDP to various field stations, November 1967, pp. 1–2.
[455] CIA Cable from Thomas Karamessines to various field stations, July 1968, p. 1.
[456] Memorandum from Tom Huston to the Deputy Director, CIA, 6/20/69, p. 1.
[457] Cable from CIA headquarters to stations, November 1969.

Thus, this attempt to ascertain and evaluate "foreign links" was so broadly defined that it required much more than background information or investigation of a few individuals suspected of being agents directed by a hostile power. Instead, at a time when there was considerable international communication and travel by Americans engaged in protest and dissent, a substantial segment by American protest groups was encompassed by CIA collection requirements to investigate foreign "encouragement," "inspiration," "casual contacts" or "mutual interest." Once again, the use of elastic words in mandates for intelligence activity resulted in overbroad coverage and collection.

In addition to their intelligence activity directed at Americans abroad, CHAOS undercover agents, while in the United States in preparation for overseas assignment or between assignments, provided substantial information about lawful domestic activities of dissident American groups, as well as providing leads about possible foreign ties.[458] In a few instances, the CIA agents appear to have been encouraged to participate in specific protest activity or to obtain particular domestic information.[459] The CHAOS program also involved obtaining information about Americans from the CIA mail opening project and other domestic CIA components [460] and from a National Security Agency international communications intercept program.[461]

CIA officials recognized that the CIA's examination of domestic groups violated the Agency's mandate and thus accorded it a high degree of sensitivity. As CIA Director Richard Helms wrote in 1969, when he transmitted to the White House the CIA's study of "Restless Youth:"

> In an effort to round out our discussion of this subject, we have included a section on American students. This is an area not within the charter of this Agency, so I need not emphasize how extremely sensitive this makes the paper. Should anyone learn of its existence, it would prove most embarrassing for all concerned.[462]

The reaction to such admissions of illegality was neither an instruction to stop the program or an attempt to change the law. Rather, the White House continued to ask for more information and continued to urge the CIA to confirm the theory that American dissidents were under foreign control.[463]

Director Richard Helms testified that the only manner in which the CIA could support its conclusion that there was no significant foreign influence on the domestic dissent, in the face of incredulity at the White House, was to continually expand the coverage of CHAOS. Only by being able to demonstrate that it had investigated *all* anti-war persons and *all* contacts between them and any foreign

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[458] Charles Marcules testimony, Rockefeller Commission, 3/10/75, pp. 1538–1547, 1566–1567: Ober, 9/24/75, p. 46. (For security reasons, the CHAOS agent case officer testified as "Charles Marcules".)

[459] Marcules Contact Report, 4/17/71; Marcules, Rockefeller Commission, 3/10/75, pp. 1556–1558.

[460] Memorandum from Richard Ober to Chief, CI Project, 2/15/72.

[461] Ober, 10/30,75, pp. 16–17.

[462] Letter from Richard Helms to Henry Kissinger, 2/18/69.

[463] Richard Helms deposition, Rockefeller Commission, 4/24/75, p. 223.

person could CIA "prove the negative" that none were under foreign domination.[464]

In 1972, the CIA Inspector General found "general concern" among the overseas stations "over what appeared to constitute a monitoring of the political views and activities of Americans not known to be, or suspected of, being involved in espionage." Several stations had "doubts as to the nature and legitimacy of the program" because requests for reports on "prominent persons" were based on "nebulous" allegations of "subversion." [465] This led to "a reduction in the intensity of attention to political dissidents," [466] although the program was not terminated until March 1974.[467]

By the end of the CHAOS program, 13,000 different files were accumulated, including more than 7,200 on American citizens. Documents in these files included the names of more than 300,000 persons and groups, indexed by computer.[468] In addition to collecting information on an excessive number of persons, some of the kinds of information were wholly irrelevant to the legitimate interests of the CIA or any other government agency. For example, one CIA agent supplying information on domestic activities to Operation CHAOS submitted detailed accounts of the activities of women who were interested in "women's liberation." [469]

c. CIA Security Operations Within the United States: Protecting "Sources" and "Methods"

The National Security Act of 1947 granted the Director of Central Intelligence a vaguely-worded responsibility for "protecting intelligence sources and methods from unauthorized disclosure." [470] The legislative history of this provision suggests that it was initially intended to allay concerns of the military services that the new CIA would not operate with adequate safeguards to protect the military intelligence secrets which would be shared with the CIA.[471] However, this authority was later read by the CIA to authorize infiltration of domestic groups in order to protect CIA personnel and facilities from possibly violent public demonstrations. It was also read to permit electronic surveillance and surreptitious entry to protect sensitive information.

The CIA undertook a series of specific security investigations within the United States, in some cases to find the source of news leaks and in others to determine whether government employees were involved in espionage or otherwise constituted "security risks." These investigations were directed at former CIA employees, employees of other government agencies, newsmen and other private citizens in this country.[472] Among the techniques used were physical surveillance,

[464] Helms deposition, Rockefeller Commission, 4/24/75, p. 234; Ober deposition, Rockefeller Commission, 3/28/75, pp. 137–138.

[465] Memorandum from Inspector General to Executive Director-Comptroller, 11/9/72, p. 1.

[466] Memorandum from Executive Director-Comptroller to DDP, 12/20/72.

[467] Cable from CIA Director William Colby to Field Stations, March 1974.

[468] Rockefeller Commission Report, p. 23.

[469] Agent 1. Contact Report, Volume II, Agent 1 file.

[470] 50 U.S.C. 403(d)(3).

[471] Lawrence Houston testimony, Rockefeller Commission, 3/17/75, pp. 1654–1655.

[472] Rockefeller Commission Report, pp. 162–166.

mail and tax information coverage, electronic surveillance, and surreptitious entry. Attorney General Robert Kennedy appears to have authorized CIA wiretapping in one of these investigations. With this exception, however, there is no suggestion that the CIA's security investigations were specifically approved by the Attorney General.[473]

The CIA Office of Security established two programs directed at protest demonstrations which involved the CIA in domestic affairs on the theory that doing so was necessary to safeguard CIA facilities in the United States.[474] Project MERRIMACK (1967 to 1973) involved the infiltration by CIA agents of Washington-based peace groups and Black activist groups. The stated purpose of the program was to obtain early warning of demonstrations and other physical threats to the CIA. However, the collection requirements were broadened to include general information about the leadership, funding, activities, and policies of the targeted groups.

Project RESISTANCE (1967 to 1973) was a broad effort to obtain general background information about radical groups across the country, particularly on campuses. The CIA justified this program as a means of predicting violence which might threaten CIA installations, recruiters, or contractors, and gathering information with which to evaluate applicants for CIA employment. Much of the reporting by CIA field offices to headquarters was from open sources such as newspapers. But additional information was obtained from cooperating police departments, campus officials, and other local authorities, some of whom in turn were using collection techniques such as informants.

These programs illustrated fundamental weaknesses and contradictions in the statutory definition of CIA authority in the 1947 Act. While the Director of Central Intelligence is charged with responsibility to protect intelligence "sources and methods," the CIA is forbidden from exercising law enforcement and police powers and "internal security functions." The CIA never went to Congress for a clarification of this ambiguity, nor did it seek interpretation from the chief legal officer of the United States—the Attorney General—except on the rarest of occasions.[477]

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[473] According to a "memorandum for the record" sent by CIA General Counsel Lawrence R. Houston to Deputy Attorney General William P. Rogers in 1954, an agreement was reached at that time allowing the CIA to investigate on its own any "actual or probable violation of criminal statutes" involving the CIA's "covert operations" and to determine for itself, without consulting the Justice Department, whether there were "possibilities for prosecution." The Justice Department would not be informed if the CIA decided that there should be no prosecution on the ground that it might lead to "revelation of highly classified information." (Memorandum from Houston to Rogers, 3/1/54, and enclosed memorandum from Houston to the Director of Central Intelligence, 2/23/54.)

This practice was reviewed and re-confirmed internally within the CIA on at least two subsequent occasions. (Memorandum from Houston to the Assistant to the Director, CIA, 1/6/60; memorandum from Houston to the Deputy Director of Central Intelligence. 6/10/64.) It was not terminated until 1975. (Memorandum from John S. Warner, CIA General Counsel, for the record, 1/31/75.)

[474] These CIA activities, Projects MERRIMACK and RESISTANCE, were described in great detail by the Rockefeller Commission. (Rockefeller Commission Report. Chs. 12 and 13.)

[477] The Rockefeller Commission Report describes ". . . two cases in which telephones of three newsmen were tapped . . . [One] occurred in 1962, apparently with the knowledge and consent of Attorney General Kennedy." (Rockefeller Commission Report, p. 164.)

d. NSA Monitoring

The National Security Agency was created by Executive Order in 1952 to conduct "signals intelligence," including the interception and analysis of messages transmitted by electronic means, such as telephone calls and telegrams.[478] In contrast to the CIA, there has never been a statutory "charter" for NSA.

The executive directives which authorize NSA's activities prohibit the agency from monitoring communication between persons within the United States and communication concerning purely domestic affairs. The current NSA Director testified:

> [The] mission of NSA is directed to foreign intelligence obtained from foreign electrical communications. . . .[479]

However, NSA has interpreted "foreign communications" to include communication where one terminal is outside the United States. Under this interpretation, NSA has, for many years, intercepted communications between the United States and a foreign country even though the sender or receiver was an American. During the past decade, NSA increasingly broadened its interpretation of "foreign intelligence" to include economic and financial matters and "international terrorism." [480]

The overall consequence, as in the case of CIA activities such as Project CHAOS, was to break down the distinction between "foreign" and "domestic" intelligence. For example, in the 1960s, NSA began adding to its "watch lists," at the request of various intelligence agencies, the names of Americans suspected of involvement in civil disturbance or drug activity which had some foreign aspects. Second, Operation Shamrock, which began as an effort to acquire the telegrams of certain foreign targets, expanded so that NSA obtained from at least two cable companies essentially all cables to or from the United States, including millions of the private communications of Americans.

6. Intrusive Techniques

As domestic intelligence activity increasingly broadened to cover domestic dissenters under many different programs, the government intensified the use of covert techniques which intruded upon individual privacy.

Informants were used to gather more information about more Americans, often targeting an individual because of his political views and "regardless of past or present involvement in disorders." [483] The CIA's mail opening program increasingly focused upon domestic groups, including "protest and peace organizations" which were covered at the FBI's request.[484] Similarly, NSA—largely in response to Army, CIA, and FBI pressures—expanded its international interception program to include "information on U.S. organizations or individuals who are engaged in activities which may result in civil

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[478] Memorandum from President Truman to Secretary of Defense, 10/24/52.

[479] General Lew Allen testimony, 10/29/75, Hearings, Vol. 2, p. 6.

[480] Allen, 10/29/75, Hearings, vol. 2, p. 11. The programs of NSA are discussed further in the succeeding section, "Intrusive Techniques," p. 183.

[483] Memorandum from FBI Executive Conference to Mr. Tolson, 10/29/70. See pp. 74–76.

[484] Memorandum from Hoover to Angleton, 3/10/72.

disturbances or otherwise subvert the national security of the United States." [485]

During this period, Director Hoover ordered cutbacks on the FBI's use of a number of intrusive techniques. Frustration with Hoover's cutbacks was a substantial contributing factor to the effort in 1970—coordinated by White House Aide Tom Charles Huston and strongly supported by CIA Director Helms, NSA Director Gaylor and Hoover's Intelligence Division subordinates—to obtain Presidential authorization for numerous illegal or questionable intelligence techniques.

a. Warrantless Electronic Surveillance

(1) *Executive Branch Restrictions on Electronic Surveillance: 1965–1968.*—In March 1965, Attorney General Nicholas deB. Katzenbach established a new requirement for the FBI's intelligence operations: the Bureau had to obtain the written approval of the Attorney General prior to the implementation of any microphone surveillance. He also imposed a six month limitation on both wiretaps and microphone surveillances, after which time new requests had to be submitted for the Attorney General's re-authorization.[486]

Upon Katzenbach's recommendation, President Johnson issued a directive in June 1965 forbidding all federal government wiretapping "except in conjunction with investigations related to national security." [487] This standard was reiterated by Attorney General Katzenbach, for both wiretapping and microphone surveillances three months later, and again in July 1966.[487a]

While the procedures were tightened, the broad "national security" standard still allowed for questionable authorizations of electronic surveillance. In fact, Katzenbach told Director Hoover that he would "continue to approve all such requests in the future as I have in the past." He saw "no need to curtail any such activities in the national security field." [488]

In line with that policy, Katzenbach approved FBI requests for wiretaps on the Student Non-Violent Coordinating Committee,[489] Students for a Democratic Society,[490] the editor of an anti-communist newsletter,[491] a Washington attorney with whom the editor was in frequent contact,[492] a Klan official,[493] and a leader of the black Revolutionary Action Movement.[494] According to FBI records, Katzenbach also initialed three memoranda informing him of microphone surveillances of Dr. Martin Luther King, Jr.[495]

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[485] Memorandum from NSA MINARET Charter, 7/1/69.

[486] Memorandum from Hoover to Katzenbach, 3/30/65.

[487] Memorandum from President Johnson to Heads of Departments, 6/30/65.

[487a] Memorandum from Katzenbach to Hoover, 9/27/65; Supplemental Memorandum to the Supreme Court in *Black* v. *United States*, July 13, 1966.

Katzenbach also stated to Hoover that while he believed such techniques could be properly used in cases involving organized crime, he would not approve any such requests in the immediate future "in light of the present atmosphere."

[488] Memorandum from Katzenbach to Hoover, 9/27/65.

[489] Memorandum from Hoover to Katzenbach, 6/15/65.

[490] Memorandum from Hoover to Katzenbach, 5/25/65.

[491] Memorandum from Hoover to Katzenbach, 4/19/65, see footnote 266.

[492] Memorandum from Hoover to Katzenbach, 6/7/65, see footnote 266.

[493] Memorandum from Hoover to Katzenbach, 9/28/64.

[494] Memorandum from Hoover to Katzenbach, 3/3/65.

[495] Memoranda from Hoover to Katzenbach, 5/17/65, 10/19/65, 12/1/65.

There were no similar electronic surveillance authorizations by Attorney General Ramsey Clark in cases involving purely domestic "national security" considerations.[496] Clark has stated that his policy was "to confine the area of approval to international activities directly related to the military security of the United States.[497]

(2) *Omnibus Crime Control Act of 1968.*—In response to a 1967 Supreme Court decision that required judicial warrants for the use of electronic surveillance in criminal cases,[498] Congress enacted the Omnibus Crime Control Act of 1968. This Act established warrant procedures for wiretapping and microphone surveillances, but it included a provision that neither it nor the Federal Communications Act of 1934 "shall limit the constitutional power of the President." [499] Although Congress did not purport to define the President's power,[500] the Act suggested five broad categories in which warrantless electronic surveillance might be permitted. The first three categories related to foreign intelligence and counterintelligence matters:

> (1) to protect the nation against actual or potential attack or other hostile acts of a foreign power;
> (2) to obtain foreign intelligence information deemed essential to the security of the United States; and
> (3) to protect national security information against foreign intelligence activities.

The last two categories dealt with domestic intelligence interests:

> (4) to protect the United States against overthrow of the government by force or other unlawful means, or
> (5) against any other clear and present danger to the structure or existence of the government.

Thus, although Congress suggested criteria for warrantless electronic surveillance for intelligence purposes, it left to the courts the task of defining the scope of the national security exception, if any, to the warrant requirement.

Between 1969 and 1972, the Nixon administration used these criteria to justify a number of questionable wiretaps. One New Left organization was tapped because, among other factors, its members desired to "take the radical politics they learned on campus and spread them among factory workers." [501] Four newsmen were wiretapped or bugged during this period, as were sixteen executive branch officials, one

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[496] For example, Clark turned down FBI requests to wiretap the National Mobilization Committee Office for Demonstrations at the Democratic National Convention in Chicago in 1968. (Memoranda from Hoover to Clark 3/11/68, 3/22/68, 6/11/68). Clark decided that there was not "an adequate demonstration of a direct threat to the national security." (Clark to Hoover, 3/12/68) (These memoranda appear at Hearings, Vol. 6, pp. 740–755.

[497] Clark has stated that he denied requests "to tap Abba Eban when he was on a visit to this country, an employee of the United Nations Secretariat, the Organization of Arab Students in the U.S., the Tanzanian Mission to the U.N., the office of the Agricultural Counselor at the Soviet Embassy and a correspondent of TASS." [Statement of Former Attorney General Ramsey Clark, Hearings before the Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, United States Senate (1974).]

[498] *Katz* v. *United States*, 397 U.S. 347 (1967). This case explicitly left open the question of warrantless electronic surveillance in "situation(s) involving the national security." (397 U.S., at 358 n. 23.)

[499] 18 U.S.C. 2511(3).

[500] See *United States* v. *United States District Court*. 407 U.S. 297 (1972).

[501] Memorandum from Hoover to Attorney General Mitchell, 3/16/70.

former executive official, and a relative of an executive official."[502] There were numerous wiretaps and some microphones used against the Black Panther Party and similar domestic groups.[503] Attorney General John Mitchell approved FBI requests for wiretaps on organizations involved in planning the November 1969 antiwar "March on Washington," including the moderate Vietnam Moratorium Committee.[503a]

(3) *Supreme Court Restrictions on National Security Electronic Surveillance: 1972.*—The issue of national security electronic surveillance was not addressed by the Supreme Court until 1972, when it held in the so-called Keith case that the President did not have the "constitutional power" to authorize warrantless electronic surveillance to protect the security of the nation from "domestic" threats.[504] The Court still remained silent, however, on the legality of warrantless electronic surveillance where there was a "significant connection with a foreign power, its agents or agencies."[505] As a result of this decision, the Justice Department eliminated as criteria for the use of warrantless electronic surveillance the two categories, described by Congress in the 1968 Act, dealing with domestic intelligence interests.[506]

b. CIA Mail Opening

Although Director Hoover terminated the FBI's own mail opening programs in 1966, the Bureau's use of the CIA program continued. In 1969, upon the recommendation of the official in charge of the CIA's CHAOS program, the FBI began submitting names of domestic political radicals and black militants to the CIA for inclusion on its mail opening "Watch List."[507] By 1972, the FBI's list of targets for CIA mail opening included:

> New Left activists, extremists, and other subversives.
>
> Extremist and New Left organizations.
>
> Protest and peace organizations, such as People's Coalition for Peace and Justice, National Peace Action Committee, and Women's Strike for Peace.
>
> Subversive and extremist groups, such as the Black Panthers, White Panthers, Black Nationalists and Liberation Groups, Students for a Democratic Society, Resist, Revolutionary Union, and other New Left Groups.

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[502] See Findings C and E, pp. 183 and 225.

[503] For example, at one time in March 1971 the FBI was conducting one microphone surveillance of Black Panther Party leader Huey Newton, seven wiretaps of Black Panther Party offices including Newton's residence, one wiretap on another black extremist group, one wiretap on Jewish Defense League headquarters, one wiretap on a "New Left extremist group", and two wiretaps on "New Left extremist activities." (Memorandum from W. R. Wannall to C. D. Brennan, 3/29/71, printed in Hearings, Vol. II, pp. 270–271.)

[503a] Memoranda from Hoover to Attorney General Mitchell, 11/5/69 and 11/7/69. This and other aspects of electronic surveillance in this period are discussed in Findings C and E in greater detail, pp. 183 and 225.

[504] *United States* v. *United States District Court*, 407 U.S. 297 (1972).

[505] *United States* v. *United States District Court*, 407 U.S., at 309 (1972).

[506] Memorandum from William Olson to Elliott Richardson, June 1973. Until 1975, however, the Justice Department stretched the term "connection with a foreign power" to include domestic groups, such as the Jewish Defense League, whose protest actions against a foreign nation were believed to threaten the United States' relations with that nation. [*Zweibon* v. *Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975).]

[507] Memorandum from FBI/CIA Liaison Agent to D. J. Brennan, 1/16/69.

> Traffic to and from Puerto Rico and the Virgin Islands showing anti-U.S. or subversive sympathies.[508]

Thus, the mail opening program that began fourteen years earlier as a means of discovering hostile intelligence efforts in the United States had expanded to encompass communications of domestic dissidents of all types.

c. Expansion of NSA Monitoring

Although NSA began to intercept and disseminate the communications of selected Americans in the early 1960s, the systematic inclusion of a wide range of American names on the "Watch List" did not occur until 1967.

The Army Chief of Staff for Intelligence requested "any information on a continuing basis" that NSA might intercept concerning:

> A. Indications that foreign governments or individuals or organizations acting as agents of foreign governments are controlling or attempting to control or influence the activities of U.S. "peace" groups and "Black Power" organizations.
>
> B. Identities of foreign agencies exerting control or influence on U.S. organizations.
>
> C. Identities of individuals and organizations in U.S. in contact with agents of foreign governments.
>
> D. Instructions or advice being given to U.S. groups by agents of foreign governments.[509]

Two years later, NSA issued an internal instruction intended to ensure the secrecy of the fact that it was monitoring and disseminating communications to and from Americans.[510] This memorandum described the "Watch List" program in terms which indicated that it had widened beyond its originally broad mandate. In addition to describing the program as covering foreigners who "are attempting" to "influence, coordinate or control" U.S. groups or individuals who "may foment civil disturbance or otherwise undermine the national security of the U.S.," the memorandum indicated that the program intercepted communications dealing with:

> Information on U.S. organizations or individuals who are engaged in activities which may result in civil disturbances or otherwise subvert the national security of the U.S.[511]

This standard, which was clearly outside the foreign intelligence mandate of NSA, resulted in sweeping coverage. Communications such as the following were intercepted, disseminated, and stored in Government files: discussion of a peace concert; the interest of the wife of a U.S. Senator in peace causes; a correspondent's report from Southeast Asia to his magazine in New York; an anti-war activist's request for a speaker in New York.

According to testimony before the Committee, the material which resulted from the "Watch List" was of little intelligence value; most

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[508] Routing Slip from J. Edgar Hoover to James Angleton (attachment), 3/10/72.

[509] DOD Cable, Yarborough to Carter, 10/20/67.

[510] NSA's name, for example, was to be kept off any of the disseminated "product."

[511] MINARET Charter, 7/1/69.

intercepted communications were of a private or personal nature or involved rallies and demonstrations that were public knowledge.[512]

d. FBI Cutbacks

The reasons for J. Edgar Hoover's cutback in 1966 on FBI use of several covert techniques are not clear. Hoover's former assistants have cited widely divergent factors.

Certainly by the mid-1960s, Hoover was highly sensitive to the possibility of damage to the FBI from public exposure of its most intrusive intelligence techniques. This sensitivity was reflected in a memorandum to Attorney General Katzenbach in September 1965, where Hoover referred to "the present atmosphere" of "Congressional and public alarm and opposition to any activity which could in any way be termed an invasion of privacy." [513] The FBI Director was particularly concerned about an inquiry by the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee chaired by Senator Edward Long.

(1) *The Long Subcommittee Investigation.*—The Senate Subcommittee was primarily investigating electronic surveillance and mail cover. The Bureau was seen as a major subject of the inquiry, although the Internal Revenue Service and other Executive agencies were also included.

In February 1965, President Johnson asked Attorney General Katzenbach to coordinate all matters relating to the investigation, and Katzenbach then met with senior FBI officials to discuss the problems it raised.[515] According to a memorandum by A. H. Belmont, one of the FBI Director's principal assistants, Katzenbach stated that he planned to see Senator Edward Long, the Subcommittee chairman, for the purpose of "impressing on him that the committee would not want to stumble by mistake into an area of extreme interest to the national security." According to Belmont, the Attorney General added that he "might have to resort to pressure from the President" and that he did not want the Subcommittee to "undermine the restricted and tightly controlled operations of the Bureau." FBI officials had assured Katzenbach that their activities were, indeed, "tightly controlled" and restricted to "important security matters." [516]

The following note on the memorandum of this meeting provides a sign of Director Hoover's attitude at that time:

> I don't see what all the excitement is about. I would have no hesitancy in discontinuing all techniques—technical coverage, microphones, trash covers, mail covers, etc. While it might handicap us I doubt they are as valuable as some

[512] W. R. Wannall (FBI Assistant Director for Intelligence), 10/3/75, p. 13. "The feeling is that there was very little in the way of good product as a result of our having supplied names to NSA."

[513] Memorandum from Hoover to Katzenbach, 9/14/65. This memorandum dealt specifically with electronic surveillance and did not mention mail openings or "Black Bag Jobs." Hoover said the FBI had "discontinued" microphone surveillances (bugs), a restriction which Attorney General Katzenbach said went too far. (Katzenbach to Hoover, 9/27/65.)

[515] Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65. Katzenbach testimony, 12/3/75. Hearings, Vol. 6, p. 204.

[516] Memorandum from A. H. Belmont to C. Tolson, 2/27/65.

believe and none warrant the FBI being used to justify them.[517]

Several days later, according to a memorandum of the FBI Director, the Attorney General "advised that he had talked to Senator Long," and that the Senator "said he did not want to get into any national security area." [518] Katzenbach has confirmed that he "would have been concerned" in these circumstances about the Subcommittee's demands for information about "matters of a national security nature" and that he was "declining to provide such information" to Long.[519]

Again in 1966, the FBI took steps to, in the words of Bureau official Cartha DeLoach, "neutralize" the "threat of being embarrassed by the Long Subcommittee." [520] This time the issue involved warrantless electronic surveillance by the FBI, particularly in organized crime matters. DeLoach and another ranking Bureau official visited Senator Long to urge that he issue a statement that "the FBI had never participated in uncontrolled usage of wiretaps or microphones and that FBI usage of such devices had been completely justified in all instances." [521] The Bureau prepared such a statement for Senator Long to release as his own, which apparently was not used.[522] At another meeting with DeLoach, Senator Long agreed to make "a commitment that he would in no way embarrass the FBI." When the Subcommittee's Chief Counsel asked if a Bureau spokesman could appear and "make a simple statement," DeLoach replied that this would "open a Pandora's box, in so far as our enemies in the press were concerned." Senator Long then stated that he would call no FBI witnesses.[523]

(2) *Director Hoover's Restrictions.*—The Director subsequently issued instructions that the number of warrantless wiretaps installed at any one time be cut in half. One of his subordinates speculated that this was done out of a concern that the Subcommittee's "inquiry might get into the use of that technique by the FBI." [524]

In July 1966, after hundreds of FBI "black bag job" operations had been approved over many years, Director Hoover decided to eliminate warrantless surreptitious entries for purposes other than microphone installations.[525] In response to an Intelligence Division analysis that such break-ins were an "invaluable technique," although "clearly illegal," Hoover stated that "no more such techniques must be used." [526] Bureau subordinates took Hoover's "no more such tech-

[517] Hoover Note on Belmont Memorandum to Tolson, 2/27/65.

[518] Memorandum from Hoover to Tolson, *et al.*, 3/2/65.

[519] Katzenbach testimony, 12/3/75, Hearings, Vol. 6, pp. 205–206.

[520] Memorandum from DeLoach to Tolson, 1/21/66.

[521] Memorandum from DeLoach to Tolson, 1/10/66.

[522] Memorandum from M. A. Jones to Robert Wick, 1/11/66.

[523] Memorandum from DeLoach to Tolson, 1/21/66.

[524] C. D. Brennan deposition, 9/23/75, p. 42.

[525] According to FBI records and the recollections of Bureau agents, the following number of microphone surveillances involving "surreptitious entry" were installed in "internal security, intelligence, and counterintelligence" investigations: 1964: 80; 1965: 59; 1966: 4; 1967: 0; 1968: 9; 1969: 8; 1970: 15; 1971: 6; 1972: 22; 1973: 18; 1974: 9; 1975: 13. The similar figures for "criminal investigations" (including installations authorized by judicial warrant after 1968) are: 1964: 83; 1965: 41; 1966: 0; 1967: 0; 1968: 0; 1969: 3: 1970: 8; 1971: 7; 1972: 19: 1973: 27; 1974: 22; 1975: 11. (Memorandum from FBI to Select Committee, 10/17/75.)

[526] Hoover note on memorandum from Sullivan to DeLoach, 7/19/66. This memorandum cited as a "prime example" of the utility of a "black bag jobs" a break-in to steal records of three high-ranking Klan officials relating to finances

niques" language as an injunction against the Bureau's mail opening program as well.[527] Apparently, a termination order was issued to field offices by telephone. FBI mail-opening was suspended, although the Bureau continued to seek information from CIA's illegal mail-opening program until its suspension in 1973.

A year and a half before Hoover's cutbacks on wire-tapping, "black bag jobs," and mail-opening, he prohibited the FBI's use of other covert techniques such as mail covers and trash covers.[528]

FBI intelligence officials persisted in requesting authority for "black bag" techniques. In 1967 Director Hoover ordered that "no such recommendations should be submitted." [529] At about this time, Attorney General Ramsey Clark was asked to approve a "breaking and entering" operation and declined to do so.[530] There was an apparently unauthorized surreptitious entry directed at a "domestic subversive target" as late as April, 1968.[531] A proposal from the field to resume mail opening for foreign counterintelligence purposes was turned down by FBI officials in 1970.[532]

7. *Accountability and Control*

a. The Huston Plan: A Domestic Intelligence Network

In 1970, pressures from the White House and from within the intelligence community led to the formulation of a plan for coordination and expansion of domestic intelligence activity. The so-called "Huston Plan" called for Presidential authorization of illegal intelligence techniques, expanded domestic intelligence collection, and centralized evaluation of domestic intelligence. President Nixon approved the plan and then, five days later, revoked his approval. Despite the revocation of official approval, many major aspects of the plan were implemented, and some techniques which the intelligence community asked for permission to implement had already been underway.

In 1970, there was an intensification of the social tension in America that had provided the impetus in the 1960s for ever-widening domestic intelligence operations. The spring invasion of Cambodia by United States forces triggered the most extensive campus demonstrations and student "strikes" in the history of the war in Southeast Asia. Domestic strife heightened even further when four students were killed by Na-

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and membership which "we have been using most effectively to disrupt the organization."

[527] Wannall, 10/13/75, pp. 45–46. There is to this day no formal order prohibiting FBI mail-opening, although Assistant Director Wannall contended that general FBI Manual instructions now applicable forbid any unlawful technique.

[528] These techniques were not prohibited by law. Their use was banned in all cases, including serious criminal investigations and foreign counterintelligence matters. (Memorandum from W. C. Sullivan to A. H. Belmont, 9/30/64.) Mail covers, which may be used to identify from their exteriors certain letters which can then be opened with a judicial warrant, were reinstituted with Justice Department approval in 1971. (Memorandum from Hoover to Mitchell, 7/27/71; Memorandum from Assistant Attorney General Will Wilson to Hoover, 9/31/71.)

[529] Memorandum from Hoover to Tolson and DeLoach, 1/6/67.

[530] "Once Mr. Hoover, apparently at the request of the National Security Agency, sought approval to break and enter into a foreign mission at the United Nations to procure cryptographic materials to facilitate decoding of intercepted transmissions. The request was presented with some urgency, rejected and presented again on perhaps several occasions. It was never approved and constituted the only request of that kind." [Statement of former Attorney General Ramsey Clark, Hearings before the Senate Judiciary Subcommittee on Administrative Practice and Procedure, (1974).]

[531] Memorandum from FBI to Senate Select Committee, 2/23/75.

[532] Memorandum from W. A. Branigan to W. C. Sullivan, 3/31/70.

tional Guardsmen at Kent State University. Within one twenty-four hour period, there were 400 bomb threats in New York City alone. To respond, White House Chief of Staff, H. R. Haldeman, assigned principal responsibility for domestic intelligence planning to staff assistant Tom Charles Huston.[533]

Since June 1969, Huston had been in touch with the head of the FBI Domestic Intelligence Division, Assistant Director William C. Sullivan. Huston initially contacted Sullivan on President Nixon's behalf to request "all information possibly relating to foreign influences and financing of the New Left."[534] Huston also made similar requests to CIA, NSA, and the Defense Intelligence Agency. The quality of the data provided by these agencies, especially the FBI, had failed to satisfy Huston and Presidential assistant John Ehrlichman.[535] Thereafter, Huston's continued discussions with Assistant Director Sullivan convinced him that the restraints imposed upon domestic intelligence techniques by Director Hoover impeded the collection of important information about dissident activity.[536]

(1) *Intelligence Community Pressures.*—The interest of the White House in better intelligence about domestic protest activity coincided with growing dissatisfaction among the foreign intelligence agencies with the FBI Director's restrictions on their performance of foreign intelligence functions in America.[537]

The CIA's concerns crystallized in March 1970 when—as a result of a "flap" over the CIA's refusal to disclose information to the FBI—Hoover issued an order that "direct liaison" at FBI headquarters with CIA "be terminated" and that "any contact with CIA in the future" was to take place "by letter only."[538] This order did not bar interagency communication; secure telephones were installed and working-level contacts continued. But the position of FBI "liaison agent" with CIA was eliminated.[539]

CIA Director Helms subsequently attempted to reopen the question of FBI cooperation with CIA requests for installing electronic surveillances and covering mail.[540] Hoover replied that he agreed with Helms that there should be expanded "exchange of information between our agencies concerning New Left and racial extremist matters." However, he refused the request for aid with electronic surveillance and mail coverage. Hoover cited the "widespread concern

[533] Memorandum from John R. Brown to H. R. Haldeman, 4/30/70.

[534] Memorandum from Sullivan to DeLoach, 6/20/69; Memorandum from Huston to Hoover, 6/20/69.

[535] Tom Charles Huston testimony, 5/23/75, p. 19.

[536] Huston, 5/23/75, pp. 23, 28.

[537] Helms deposition, 9/10/75, p. 3; Bennett deposition, 8/5/75, p. 12; Gayler deposition, 6/19/75, pp. 6–7. As early as 1963, the FBI Director had successfully opposed a proposal to the President's Foreign Intelligence Advisory Board by CIA Director John McCone for expanded domestic wiretapping for foreign intelligence purposes. (Memorandum from W. C. Sullivan to C. D. DeLoach, 3/7/70). In 1969, CIA Director Richard Helms was told by the Bureau, when he asked it to institute electronic surveillance on behalf of the CIA, that he should "refer such requests directly to Attorney General for approval." (Memorandum from Sullivan to DeLoach, 3/30/70.) The administrators of NSA also failed to persuade Director Hoover to lift his restraints on foreign intelligence electronic surveillance. (Staff summary of Louis Tordella interview, 6/16/75.)

[538] Note by Hoover on letter from Helms to Hoover, 2/26/70.

[539] Former FBI Liaison with CIA testimony, 9/22/75, p. 3.

[540] Memorandum from Sullivan to DeLoach, 3/30/70, pp. 1–2, 4.

by the American public regarding the possible misuse of this type of coverage." Their use in "domestic investigations" posed legal problems not encountered "in similar operations abroad." Hoover added, "The FBI's effectiveness has always depended in large measure on our capacity to retain the full confidence of the American people." [541]

(2) *The Interagency Committee Report.*—In the following months, Tom Charles Huston arranged a meeting between President Nixon and the directors of the FBI, CIA, NSA, and DIA on June 5, 1970.[542] The President's emphasis was upon improved coordination among the agencies to strengthen their capabilities to collect intelligence about "revolutionary activism" and "the support—ideological and otherwise—of foreign powers" for these activities. The talking paper prepared by Huston for the President to read at the meeting declared, "We are now confronted with a new and grave crisis in our country—one which we know too little about.[543]

From this meeting emanated the Special Report of the Interagency Committee on Intelligence (Ad Hoc), prepared jointly by representatives of the FBI, CIA, NSA, and DIA, and submitted to the President a month later.[544] The report presented the President a series of options, and Huston recommended that the President approve the following:

> (1) "coverage by NSA of the communications of U.S. citizens using international facilities;"
>
> (2) "intensification" of "electronic surveillances and penetrations" directed at individuals and groups "who pose a major threat to the internal security" and at "foreign nationals" in the United States "of interest to the intelligence community;"
>
> (3) removal of restrictions on "legal" mail coverage and relaxation of "restrictions on covert coverage" [mail opening] on "selected targets of priority foreign intelligence and internal security interest;"
>
> (4) modification of "present restrictions" on "surreptitious entry" to allow "procurement of vitally needed foreign cryptographic material" and "to permit selective use" against "high priority internal security targets;"
>
> (5) relaxation of "present restrictions" on the "development of campus sources" to permit "expanded coverage of violence-prone and student-related groups;'
>
> (6) "increased" coverage by CIA "of American students (and others) traveling or living abroad;"
>
> (7) appointment of a "permanent committee consisting of the FBI, CIA, NSA, DIA, and the military counterintelligence agencies" to evaluate "domestic intelligence" and to "carry out the other objectives specified in the report." [545]

Huston also raised and dismissed questions about the legality of two collection techniques in particular. "Covert [mail opening] cov-

[541] Memorandum from Hoover to Helms, 3/31/70.

[542] Huston deposition, 5/23/75, p. 32.

[543] Presidential Talking Paper, 6/5/70, from the Nixon Papers.

[544] The report was written by the Research Section of the FBI Domestic Intelligence Division on the basis of committee decisions and FBI Director Hoover's revisions (Staff Summary of Richard Cotter interview, 9/15/75.)

[545] The seven recommendations were made in an attachment to a memorandum from Huston to Haldeman, 7/70.

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erage is illegal, and there are serious risks involved," he wrote. "However, the advantages to be derived from its use outweigh the risks." [546] As for surreptitious entry, Huston advised:

> Use of this technique is clearly illegal: it amounts to burglary. It is also highly risky and could result in great embarrassment if exposed. However, it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion." [547]

Huston testified that his recommendations "reflected what I understood to be the consensus of the working group" of intelligence officials on the interagency committee.[548]

Just over a week later, the FBI, CIA, NSA, and DIA were advised by Huston that "the President has . . . made the following decisions"—to adopt all of Huston's recommendations.[549] Henceforth, with Presidential authority, the intelligence community could intercept the international communications of Americans; eavesdrop electronically on anyone deemed a "threat to the internal security;" read the mail of American citizens; break into the homes of anyone regarded as a security threat; and monitor the activities of student political groups at home and abroad.

There is no indication that the President was informed at this time that NSA was already covering the international communications of Americans and had been doing so for domestic intelligence purposes since at least 1967. Nor is there any indication that he was told that the CIA was opening the mail of Americans and sharing the contents with the FBI and the military for domestic intelligence purposes. In effect, the "Huston plan" supplied Presidential authority for operations previously undertaken in secret without such authorization. For instance, the plan gave FBI Assistant Director Sullivan the "support" from "responsible quarters" which he had believed necessary to resume the "black bag jobs'" and mail-opening programs Director Hoover had terminated in 1966.[550]

Nevertheless, the FBI Director was not satisfied with Huston's memorandum concerning the authorization of the plan.[551] Hoover went immediately to Attorney General Mitchell, who had not known of the prior deliberations or the President's "decisions." [552] In a memorandum, Director Hoover said he would implement the plan, but only with the explicit approval of the Attorney General or the President:

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[546] Memorandum from Huston to Haldeman, 7/70.

[547] Memorandum from Huston to Haldeman, 7/70. In using the word "burglary," Huston said he sought to "escalate the rhetoric . . . to make it as bold as possible." He thought that, as a staff man, he should give the President "the worst possible interpretation of what the recommendation would result in." (Huston deposition. 5/22/75, p. 69.)

[548] Huston deposition. 5/22/75, p. 8.

[549] Memorandum from Tom Charles Huston to Intelligence Directors, 7/23/70.

[550] Memorandum from Sullivan to DeLoach, 4/14/70.

[551] An assistant to the head of the Defense Intelligence Agency recalls agreeing with his superior that the memorandum from Huston to the intelligence directors showed that the White House had "passed that one down about as low as they could go" and that the absence of signatures by the President or his top aides indicated "what a hot potato it was." (Staff summary of James Stillwell interview, 5/21/75.)

[552] Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 122.

> Despite my clear-cut and specific opposition to the lifting of the various investigative restraints referred to above and to the creation of a permanent interagency committee on domestic intelligence, the FBI is prepared to implement the instructions of the White House at your direction. Of course, we would continue to seek your specific authorization, where appropriate, to utilize the various sensitive investigative techniques involved in individual cases.[553]

CIA Director Helms shortly thereafter indicated his support for the plan to the Attorney General, telling him "we had put our backs into this exercise." [554] Nonetheless, Mitchell advised the President to withdraw his approval.[555] Huston was told to rescind his memorandum, and the White House Situation Room dispatched a message requesting its return.[556]

(3) *Implementation.*—The President's withdrawal of approval for the "Huston plan" did not, in fact, result in the termination of either the NSA program for covering the communications of Americans or the CIA mail-opening program. These programs continued without the formal authorization which had been hoped for.[557] The directors of the CIA and NSA also continued to explore means of expanding their involvement in, and access to, domestic intelligence.[558] A new group, the Intelligence Evaluation Committee (IEC), was created by Attorney General Mitchell within the Justice Department to consider such expansion.[559] NSA, CIA, Army counterintelligence, and the FBI

[553] Memorandum from Hoover to Mitchell, 7/25/70.

[554] Helms memorandum for the record, 7/28/70.

[555] Mitchell, 10/24/75, Hearings, Vol. 4, p. 123.

[556] Huston deposition, 5/23/75, p. 56; staff summary of David McManus interview, 7/1/75.

[557] Director Helms thinks he told Attorney General Mitchell about the CIA mail program. Helms also believes President Nixon may have known about the program although Helms did not personally inform him. (Helms, 10/22/75, Hearings, Vol. 4, pp. 88–89.) Mitchell denied that Helms told him of a CIA mail-opening program and testified that the President had no knowledge of the program, "at least not as of the time we discussed the Huston Plan." (Mitchell, 9/24/75, Hearings, Vol. 4, pp. 120, 138.)

[558] In March 1971, NSA Director Noel Gayler and CIA Director Helms met with Attorney General Mitchell and Director Hoover. According to Hoover's memorandum of the meeting, it had been arranged by Helms to discuss "a broadening of operations, particularly of the very confidential type in covering intelligence both domestic and foreign." Hoover was again "not enthusiastic" because of "the hazards involved." Mitchell asked Helms and Gayler to prepare "an in-depth examination" of the collection methods they desired. (Memorandum for the files by J. Edgar Hoover, 4/12/71.) It was less than two months after this meeting that, according to a CIA memorandum, Director Helms briefed Mitchell on the mail program. (CIA memorandum for the record, 6/3/71.) Even before this meeting, NSA Director Gayler sent a memorandum to Attorney General Mitchell and Defense Secretary Melvin Laird describing "NSA's Contribution to Domestic Intelligence." This memorandum refers to a discussion with both Mitchell and Laird on how NSA could assist with "intelligence bearing on domestic problems." The memorandum mentioned the monitoring of foreign support for subversive activities, as well as for drug trafficking, although it did not discuss specifically the NSA "Watch List" of Americans. (Memorandum from NSA Director Noel Gayler to the Secretary of Defense and the Attorney General, January 26, 1971.) NSA official Benson Buffham recorded that he personally showed this memorandum to Mitchell and had been told by the Military Assistant to Secretary Laird that the Secretary had read and agreed with it. (Memorandum for the record by Benson K. Buffham, 2/3/71.)

[559] Memorandum from Assistant Attorney General Robert Mardian to Attorney General Mitchell, 12/4/70.

each sent representatives to the IEC. NSA Director Gayler provided the IEC with a statement of NSA's capabilities and procedures for supplying domestic intelligence.[560] Although the IEC merely evaluated raw intelligence data, over 90 percent of which came to it through the FBI, it had access to domestic intelligence from NSA coverage and the CIA's mail-opening and CHAOS programs, which was channeled to the FBI.[561]

Two of the specific recommendations in the "Huston Plan" were thereafter implemented by the FBI—the lowering of the age limit for campus informants from 21 to 18 and the resumption of "legal mail covers." [562] Two men who had participated in developing the "Huston Plan" were promoted to positions of greater influence within the Bureau.[563] More important the Bureau greatly intensified its domestic intelligence investigations in the fall of 1970 without using "clearly illegal" techniques. The Key Black Extremist Program was inaugurated and field offices were instructed to open approximately 10,500 new investigations, including investigations of all black student groups "regardless of their present or past involvement in disorders." All members of "militant New Left campus organizations" were also to be investigated even if they were not "known to be violence prone." The objective of these investigations was "to identify potential" as well as "actual extremists." [564]

The chief of the Domestic Intelligence Division in 1970 said the "Huston Plan" had "nothing to do" with the FBI's expanded intelligence activities. Rather, both the "Huston Plan" and the Bureau intensification represented the same effort by FBI intelligence officials "to recommend the types of action and programs which they thought necessary to cope with the problem." [565] Brennan admits that "the FBI was getting a tremendous amount of pressure from the White House," although he attributes this pressure to demands from "a vast majority of the American people" who wanted to know "why something wasn't being done" about violence and disruption in the country.[566]

b. Political Intelligence

The FBI practice of supplying political information to the White House and, on occasion, responding to White House requests for such information was established before 1964. However, under the administrations of President Lyndon Johnson and Richard Nixon, this practice grew to unprecedented dimensions.[567]

(1) *Name Check Requests.*—White House aides serving under Presidents Johnson and Nixon made numerous requests for "name checks"

[560] Memorandum from Gayler to Laird and Mitchell, 1/26/71.

[561] For a discussion of the FBI as "consumer," see pp. 107–109.

[562] The resumption of mail covers is discussed above at footnote 528. FBI field offices were instructed that they could recruit 18–21 year-old informers in September 1970. (SAC Letter No. 70–48, 9/15/70.) See. p. 76.

[563] The head of the FBI Domestic Intelligence Division, William C. Sullivan, was promoted to be Assistant to the Director for all investigative and intelligence activities. His successor in charge of the Domestic Intelligence Division was Charles D. Brennan.

[564] Executives Conference to Tolson, 10/29/70; Memorandum from FBI Headquarters to all SACs, 11/4/70.

[565] Brennan deposition, 9/23/75, pp. 29–31.

[566] Brennan testimony, 9/25/75, Hearings. Vol. 2, p. 108.

[567] The involvement of the Central Intelligence Agency in improper activities for the White House is described in the Rockefeller Commission Report, Ch. 14.

of FBI files to elicit all Bureau information on particular critics of each administration. Johnson aides requested such reports on critics of the escalating war in Vietnam.[568] President Johnson's assistants also requested name checks on members of the Senate staff of Presidential candidate Barry Goldwater in 1964,[569] on Justice and Treasury Department officials responsible for a phase of the criminal investigation of Johnson's former aide Bobby Baker,[569a] on the authors of books critical of the Warren Commission report,[570] and on prominent newsmen.[571] President Nixon's aides asked for similar name checks on another newsman, the Chairman of Americans for Democratic Action, and the producer of a film critical of the President.[572]

According to a memorandum by Director Hoover, Vice President Spiro Agnew received ammunition from Bureau files that could be used in "destroying [the] credibility" of Southern Christian Leadership Conference leader Reverend Ralph Abernathy.[573]

(2) *Democratic National Convention, Atlantic City, 1964.*—On August 22, 1964, at the request of the White House, the FBI sent a "special squad" to the Democratic National Convention site in Atlantic City, New Jersey. The squad was assigned to assist the Secret Service in protecting President Lyndon Johnson and to ensure that the convention itself would not be marred by civil disruption.

But it went beyond these functions to report political intelligence to the White House. Approximately 30 Special Agents, headed by Assistant Director Cartha DeLoach, "were able to keep the White House fully apprised of all major developments during the Convention's course" by means of "informant coverage, by use of various confidential techniques, by infiltration of key groups through use of undercover agents, and through utilization of agents using appropriate cover as reporters." [574] Among these "confidential techniques" were: a wiretap on the hotel room occupied by Dr. Martin Luther King, Jr., and microphone surveillance of a storefront serving as headquarters for the Student Nonviolent Coordinating Committee and another civil rights organization.[575]

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[568] Letter from J. Edgar Hoover to Marvin Watson, 6/4/65.

[569] Memorandum from Hoover to Moyers, 10/27/64, cited in FBI summary memorandum, subject: Senator Barry Goldwater, 1/31/75.

[569a] Memorandum from DeLoach to Tolson, 1/17/67.

[570] Memorandum from Hoover to Marvin Watson, 11/8/66.

[571] See Finding on Political Abuse, p. 225.

[572] Letter from J. Edgar Hoover to John D. Ehrlichman, 10/6/69; House Judiciary Committee Hearings, Statement of Information (1974), Book VII, p. 1111; Book VIII, p. 183. Director Hoover volunteered information from Bureau files to the Johnson White House on the author of a play satirizing the President. (Memorandum from Hoover to Watson, 1/9/67.)

[573] Memorandum from Hoover to Tolson, *et al.*, 5/18/70. Agnew admits having received such information, but denies having asked for it. (Staff summary of Spiro Agnew interview, 10/15/75.)

[574] Memorandum from C. D. DeLoach to Mr. Mohr, 8/29/64.

[575] DeLoach memorandum, 8/29/64; Cartha DeLoach testimony, 12/3/75, Hearings, Vol. 6, p. 177. A 1975 FBI Inspection Report has speculated that the SNCC bug may have been planted because the Bureau had information in 1964 that "an apparent member of the Communist Party, USA, was engaging in considerable activity, much in a leadership capacity in the Student Nonviolent Coordinating Committee." (FBI summary memorandum, 1/30/75.) It is unclear, however, whether this bug was even approved internally by FBI Headquarters, as ordinarily required by Bureau procedures. DeLoach stated in a contemporaneous memorandum that the microphone surveillance of SNCC was instituted

(Continued)

Neither of the electronic surveillances at Atlantic City were specifically authorized by the Attorney General. At that time, Justice Department procedures did not require the written approval of the Attorney General for bugs such as the one directed against SNCC in Atlantic City. Bureau officials apparently believed that the wiretap on King was justified as an extension of Robert Kennedy's October 10, 1963, approval for surveillance of King at his then-current address in Atlanta, Georgia, or at any future address to which he might move.[576] The only recorded reason for instituting the wiretap on Dr. King in Atlantic City, however, was set forth in an internal memorandum prepared shortly before the Convention:

> Martin Luther King, Jr., head of the Southern Christian Leadership Conference (SCLC), an organization set up to promote integration which we are investigating to determine the extent of Communist Party (CP) influence on King and the SCLC, plans to attend and possibly may indulge in a hunger fast as a means of protest.[577]

Walter Jenkins, an Administrative Assistant to President Johnson who was the recipient of information developed by the Bureau, stated that he was unaware that any of the intelligence was obtained by wiretapping or bugging.[578] DeLoach, moreover, has testified that he is uncertain whether he ever informed Jenkins of these sources.[579]

Walter Jenkins, and presumably President Johnson, received a significant volume of information from the electronic surveillance at Atlantic City, much of it purely political and only tangentially related to possible civil disturbances. The most important single issue for President Johnson at the Atlantic City Convention was the seating challenge of the Mississippi Freedom Democratic Party to the regular Mississippi delegation.[580] From the electronic surveillances of King and SNCC, the White House was able to obtain the most intimate details of the plans of individuals supporting the MFDP's challenge unrelated to the possibility of violent demonstrations.

Jenkins received a steady stream of reports on political strategy in the struggle to seat the MFDP delegation and other political plans and discussions by the civil rights groups under surveillance.[581] Moreover, the 1975 Inspection Report stated that "several Congressmen,

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(Continued)
"with Bureau approval." (Memorandum from DeLoach to Mohr, 8/29/64.) But the Inspection Report concluded that "a thorough review of Bureau records fails to locate any memorandum containing [internal] authorization for same." (FBI summary memorandum, 1/30/75.)

[576] Mr. DeLoach cited the fact that in the summer of 1964 "there was an ongoing electronic surveillance on Dr. Martin Luther King . . . as authorized by Attorney General Kennedy." (Cartha DeLoach testimony, 11/26/75, p. 110) The Inspection Report noted that the Special Agent in Charge of the Newark office was instructed to institute the wiretap on the ground that "the Bureau had authority from the Attorney General to cover any residences which King may use with a technical installation." (FBI summary memorandum 1/30/75, Subject: "Special Squad at Democratic National Convention, Atlantic City, New Jersey, August 22–28, 1964.")

[577] Memorandum from W. C. Sullivan to A. H. Belmont, 8/21/64.

[578] Staff summary of Walter Jenkins interview, 12/1/75.

[579] DeLoach, 11/26/75, p. 114.

[580] Theodore White, *Making of the President 1964* (New York: Athenium, 1965), pp. 277–280. Walter Jenkins also confirmed this characterization. (Staff summary of Jenkins interview, 12/1/75).

[581] Memorandum from DeLoach to Mohr, 8/29/64.

Senators, and Governors of States" were overheard on the King tap.[582]

According to both Cartha DeLoach and Walter Jenkins, the Bureau's coverage in Atlantic City was not designed to serve political ends. DeLoach testified:

> I was sent there to provide information . . . which could reflect on the orderly progress of the convention and the danger to distinguished individuals, and particularly the danger to the President of the United States, as exemplified by the many, many references [to possible civil disturbances] in the memoranda furnished Mr. Jenkins. . . .[583]

Jenkins has stated that the mandate of the FBI's special unit did not encompass the gathering of political intelligence and speculated that the dissemination of any such intelligence was due to the inability of Bureau agents to distinguish dissident activities which represented a genuine potential for violence.[584] Jenkins did not believe the White House ever used the incidental political intelligence that was received. However, a document located at the Lyndon B. Johnson Presidential Library suggests that at least one political use was made of Mr. DeLoach's reports.[585]

Thus, although it may have been implemented to prevent violence at the Convention site, the Bureau's coverage in Atlantic City—which included two electronic surveillances—undeniably provided useful political intelligence to the President as well.[586]

(3) *By-Product of Foreign Intelligence Coverage.*—Through the FBI's coverage of certain foreign officials in Washington, D.C., the Bureau was able to comply with President Johnson's request for reports of the contacts between members of Congress and foreign officials opposed to his Vietnam policy. According to a summary memorandum prepared by the FBI:

> On March 14, 1966, then President Lyndon B. Johnson informed Mr. DeLoach [Cartha DeLoach, Assistant Director of the FBI] . . . that the FBI should constantly keep abreast of the actions of [certain foreign officials] in making contact with Senators and Congressmen and any citizen of a prominent nature. The President stated he strongly felt that much of the protest concerning his Vietnam policy, particularly the hearings in the Senate, had been generated by [certain foreign officials].[587]

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[582] Memorandum from H. N. Bassett to Mr. Callahan, 1/29/75.

[583] DeLoach, 11/26/75, p. 139.

[584] Staff summary of Jenkins interview, 1/21/75.

[585] Exhibit 68–2, Hearings, Vol. VI, p. 713.

[586] FBI memoranda indicate that in 1968 Vice President Hubert Humphrey's Executive Assistant, Bill Connell, asked the Bureau to send a "special team" to the forthcoming Democratic National Convention, since President Johnson "allegedly told the Vice President that the FBI had been of great service to him and he had been given considerable information on a timely basis throughout the entire convention." (Memorandum from DeLoach to Tolson, 8/7/68). After talking with Connell, Director Hoover advised the SAC in Chicago that the Bureau was "not going to get into anything political but anything of extreme action or violence contemplated we want to let Connell know." (Memorandum from Hoover to Tolson, et al., 8/15/68.) Democratic Party Treasurer John Criswell made a similar request, stating that Postmaster General Marvin Watson "had informed him of the great service performed by the FBI during the last Democratic Convention." (Memorandum from DeLoach to Tolson, 8/22/68.)

[587] FBI summary memorandum, 2/3/75.

As a result of the President's request, the FBI prepared a chronological summary—apparently based in part on existing electronic surveillances—of the contacts of each Senator, Representative, or legislative staff member who communicated with selected foreign officials during the period July 1, 1964, to March 17, 1966. This 67-page summary was transmitted to the White House on March 21, 1966, with a note that certain foreign officials were "making more contacts" with four named Senators "than with other United States legislators." [588] A second summary, prepared on further contacts between Congressmen and foreign officials, was transmitted to the White House on May 13, 1966. From then until the end of the Johnson Administration in January 1969, biweekly additions to the second summary were regularly disseminated to the White House.[589]

This practice was reinstituted during the Nixon Administration. On July 27, 1970, Larry Higby, Assistant to H. R. Haldeman, informed the Bureau that Haldeman "wanted any information possessed by the FBI relating to contacts between [certain foreign officials] and Members of Congress and its staff." Two days later, the Bureau provided the White House with a statistical compilation of such contacts from January 1, 1967, to the present. Unlike the case of the information provided to the Johnson White House, however, there is no indication in related Bureau records that President Nixon or his aides were concerned about critics of the President's policy. The Bureau's reports did not identify individual Senators; they provided overall statistics and two examples of foreign recruitment attempts (with names removed).[590]

In at least one instance the FBI, at the request of the President and with the approval of the Attorney General, instituted an electronic surveillance of a foreign target for the express purpose of intercepting telephone conversations of an American citizen. An FBI memorandum states that shortly before the 1968 Presidential election, President Johnson became suspicious that the South Vietnamese were trying to sabotage his peace negotiations in the hope that Presidential candidate Nixon would win the election and then take a harder line toward North Vietnam. To determine the validity of this suspicion, the White House instructed the FBI to institute physical surveillance of Mrs. Anna Chennault, a prominent Republican, as well as electronic surveillance directed against a South Vietnamese target.[591]

The electronic surveillance was authorized by Attorney General Ramsey Clark on October 29, 1968, installed the same day, and continued until January 6, 1969.[592] Thus, a "foreign" electronic surveillance was instituted to target indirectly an American citizen who could not be legitimately surveilled directly. Also as part of this investigation, President Johnson personally ordered a check of the long distance toll call records of Vice Presidential candidate Spiro Agnew.[593]

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[588] FBI summary memorandum, 2/3/75.

[589] FBI summary memorandum, 2/3/75.

[590] FBI summary memorandum, 2/3/75. See Findings on Political Abuse.

[591] FBI summary memorandum, 2/1/75.

[592] Memorandum from Director, FBI to Attorney General, 10/29/68; memorandum from Director, FBI to Attorney General, 10/30/68; memorandum from Director, FBI to Attorney General, 3/27/69.

Attorney General Clark testified that he was unaware of any surveillance of Mrs. Chennault, (Clark, 12/3/75. Hearings, Vol. 6, pp. 251–252.)

[593] See Findings on Political Abuse, p. 225.

(4) *The Surveillance of Joseph Kraft (1969)*.—There is no substantial indication of any genuine national security rationale for the electronic surveillance overseas of columnist Joseph Kraft in 1969. John Erlichman testified before the Senate Watergate Committee that the national security was involved, but did not elaborate further.[594]

Beyond this general claim, however, there is little evidence that any national security issue was involved in the case. Former Deputy Attorney General and Acting FBI Director William Ruckelshaus testified that after reviewing the matter he "could never see any national security justification" for the surveillance of Kraft. Ruckelshaus stated that the Administration's "justification" for bugging Kraft's hotel room was that he was "asking questions of some members of the North Vietnamese Government." Ruckelshaus believed that this was not an adequate national security justification for placing "any kind of surveillance on an American citizen or newsman." [595] Mr. Kraft agreed that he was in contact with North Vietnamese officials while he was abroad in 1969, but noted that this was a common practice among journalists and that "at the time" he never knowingly published any classified information.[596]

The documentary record also reveals no national security justification for the FBI's electronic surveillance of Mr. Kraft overseas. The one memorandum which referred to "Possible Leaks of Information" by Kraft does not indicate that there clearly was a leak of national security significance or that Mr. Kraft was responsible for such a leak if it occurred.[597] Furthermore, the hotel room bug did not produce any evidence that Kraft received or published any classified information.[598]

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[594] John Ehrlichman testimony, Senate Watergate Committee, 7/24/73, p. 2535. According to the transcript of the White House tapes, President Nixon stated to John Dean on April 16, 1973:

"What I mean is I think in the case of the Kraft stuff what the FBI did, they were both fine. I have checked the facts. There were some done through private sources. Most of it was done through the Bureau after we got—Hoover didn't want to do Kraft. What it involved apparently, John, was this: the leaks from the NSC [National Security Council]. They were in Kraft and others columns and we were trying to plug the leaks and we had to get it done and finally we turned it over to Hoover. And then when the hullabaloo developed we just knocked it off altogether. . . ." (Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, 4/30/74.) The President's statement was made in the context of 'coaching' John Dean on what to say to the Watergate Grand Jury.

[595] William Ruckleshaus testimony before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.

[596] Kraft testified that Henry Kissinger, then the President's Special Adviser for National Security, informed him that he had no knowledge of either the wiretap or the hotel room bug. Kraft also stated that former Attorney General Elliot Richardson indicated to him that "there was no justification for these activities." (Joseph Kraft testimony, Senate Subcommittee on Administrative Practice and Procedure, 5/10/74, p. 381.)

[597] Letter from W. C. Sullivan to Mr. Hoover, 7/12/69.

[598] While the summaries sent to Hoover by Sullivan did show that Kraft contacted North Vietnamese officials (Letter from Sullivan to Hoover, 7/12/69), the Bureau did not discover any improprieties or indiscretions on his part. When Ruckelshaus was asked if his review of these summaries revealed to him that Kraft engaged in any conduct while abroad that posed a danger to the national security, he replied: "Absolutely not." (Ruckelshaus testimony before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.)

Similarly, there is no evidence of a national security justification for the physical surveillance and proposed electronic surveillance of Kraft in the fall of 1969. A Bureau memorandum suggests that the Attorney General requested some type of coverage of Kraft,[599] but the record reveals no purpose for this coverage. The physical surveillance was discontinued after five weeks because it had "not been productive." Apparently, the Attorney General himself was unconvinced that a genuine national security justification supported the Kraft surveillance: he refused to authorize the requested wiretap, and it was consequently never implemented.[600]

(5) *The "17" Wiretaps.*—The relative ease with which high administration officials could select improper intelligence targets was demonstrated by the "17" wiretaps on Executive officials and newsmen installed between 1969–1971 under the rationale of determining the source of leaks of sensitive information.[600a] In three cases no national security claim was even advanced. While national security issues were at least arguably involved in the initiation of the other taps, the program continued in two instances against persons who left the government and took positions as advisors to Senator Edmund Muskie, then the leading Democratic Presidential prospect.[601]

The records of these wiretaps were kept separate from the FBI's regular electronic surveillance files;[602] their duration in many cases went beyond the period then required for re-authorization by the Attorney General; and in some cases the Attorney General did not authorize the tap until after it had begun.[603] In 1971, the records were removed from the FBI's possession and sent to the White House.

Thus, misuse of the FBI had progressed by 1971 from the regular receipt by the White House of political "tid-bits" and occasional requests for name checks of Bureau files to the use of a full array of intelligence operations to serve the political interests of the administration. The final irony was that the Nixon administration came to distrust Director Hoover's reliability and, consequently, to develop a White House-based covert intelligence operation.[604]

c. The Justice Department's Internal Security Division

FBI intelligence reports flowed consistently to the Justice Department, especially to the IDIU established by Attorney General Clark in 1967 and to the Internal Security Division. Before 1971, the Justice Department provided little guidance to the FBI on the proper scope of domestic intelligence investigations.[605] For example, in response to a Bureau inquiry in 1964 about whether a group's activities came "within the criteria" of the employee security program or were "in

[599] Memorandum from W. C. Sullivan to Mr. DeLoach, 11/4/69.

[600] Memorandum from Sullivan to DeLoach, 12/11/69.

[600a] For discussion of dissemination of political intelligence from the "17" wiretaps, see Finding on Political Abuse, p. 225.

[601] Sen. Edmund Muskie testimony, Senate Foreign Relations Committee, 9/10/73 Executive Session, pp. 50–51.

[602] Memorandum from W. C. Sullivan to C. D. DeLoach, 5/11/69.

[603] Report of the House Judiciary Committee, 8/20/74, pp. 146–154.

[604] The creation of the "plumbers" unit in the White House led inexorably to Watergate. See Report of the House Judiciary Committee, 8/20/74, pp. 157–162, 166–170.

[605] An example of a generalized Departmental instruction is Attorney General Clark's order of September 1967 (see p. 79) regarding civil disorders.

violation of any other federal statute,"[606] the Internal Security Division replied that there was "insufficient evidence" for prosecution and that the group's leaders were "becoming more cautious in their utterances."[607] Nevertheless, the FBI continued for years to investigate the group with the knowledge and approval of the Division.

(1) *The "New" Internal Security Division.*—When Robert Mardian was appointed Assistant Attorney General in late 1970, the Internal Security Division assumed a more active posture. In fact, one of the alternatives to implementation of the "Huston Plan" suggested to Attorney General John Mitchell by White House aide John Dean was the invigoration of the Division.[608] This included Mardian's establishment of the IEC to prepare domestic intelligence estimates. Equally significant, however, was Mardian's preparation of a new Executive Order on federal employee security. The new order assigned to the moribund Subversive Activities Control Board the function of designating groups for what had been the "Attorney General's list."[609] This attempt to assign broad new functions by Executive fiat to a Board with limited statutory responsibilities clearly disregarded the desires of the Congress.[610]

According to Mardian, there was a "problem" because the list had "not been updated for 17 years." He expected that the revitalized SACB would "deal specifically with the revolutionary/terrorist organizations which have recently become a part of our history."[611]

Assistant Attorney General Mardian's views coincided with those of FBI Assistant Director Brennan, who had seen a need to compile massive data on the "New Left" for future employee security purposes.[612] Since FBI intelligence investigations were based in part on the standards for the "Attorney General's list," the new Executive Order substantially redefined and expanded FBI authority. The new order included groups who advocated the use of force to deny individual rights under the "laws of any State" or to overthrow the government of "any State or subdivision thereof."[613] The new order also continued to use the term "subversive," although it was theoretically more restrictive than the previous standard for the Attorney General's list because it required "unlawful" advocacy.

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[606] Memorandum from FBI Director to Yeagley, 1/31/64.

[607] Memorandum from Yeagley to FBI Director, 3/3/64. There was no reauthorization of the continuing investigation between 1966 and 1974.

[608] Memorandum from Dean to Mitchell, 9/18/70.

[609] Executive Order 11605, 7/71.

[610] By 1971, the SACB had the limited function of making findings that specific individuals and groups were Communist. Its registration of Communist had been declared unconstitutional. [*Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70 (1965).]

[611] Robert C. Mardian, address before the Atomic Energy Commission Security Conference, Washington, D.C. 10/27/71. Mardian added that the "problem" was that, without an updated, formal list of subversive organizations, federal agencies were required "to individually evaluate information regarding membership in allegedly subversive organizations based on raw data furnished by the Federal Bureau of Investigation or other governmental sources."

[612] Brennan testimony, 9/25/75, Hearings, Vol. 2, 116–117.

[613] Executive Order 11605, 7/71. By contrast, the prior order had been limited to groups seeking forcible violation of rights "under the Constitution of the United States" or seeking "to alter the form of government of the United States by unconstitutional means." Executive Order 10450 (1953).

Mardian made it clear that, under the order, the FBI was to provide intelligence to the Subversive Activities Control Board:

> We have a new brand of radical in this country and we are trying to address ourselves to the new situation. With the investigative effort of the FBI, we hope to present petitions to the Board in accordance with requirement of the Executive Order.[614]

FBI intelligence officials learned that the Internal Security Division intended to "initiate proceedings against the Black Panther Party, Progressive Labor Party, Young Socialist Alliance, and Ku Klux Klan." They also noted: "The language of Executive Order 11605 is very broad and generally coincides with the basis for our investigation of extremist groups."[615] Mardian had, in effect, provided a new and wider "charter" for FBI domestic intelligence.[616]

(2) *The Sullivan-Mardian Relationship.*—In 1971, Director Hoover expressed growing concern over the close relationship developing between his FBI subordinates in the Domestic Intelligence Division and the Internal Security Division under Mardian. For example, when FBI intelligence officials met with Mardian's principal deputy, A. William Olsen, to discuss "proposed changes in procedure" for the Attorney General's authorization of electronic surveillance, Hoover reiterated instructions that Bureau officials be "very careful in our dealings" with Mardian. Moreover, to have a source of legal advice independent of the Justice Department, the FBI Director created a new position of Assistant Director for Legal Counsel and required that he attend "at any time officials of the Department are being contacted on any policy consideration which affects the Bureau."[617]

In the summer of 1971, William C. Sullivan openly challenged FBI Director Hoover, possibly counting on Mardian and Attorney General Mitchell to back him up and oust Hoover.[618] Sullivan charged in one memorandum to Hoover that other Bureau officials lacked "objectivity" and "independent thinking" and that "they said what they did because they thought this was what the Director wanted them to say."[619]

Shortly thereafter, Director Hoover appointed W. Mark Felt, formerly Assistant Director for the Inspection Division, to a newly created position as Sullivan's superior. Apparently realizing that he was on his way out, Sullivan gave Assistant Attorney General Mardian the FBI's documents recording the authorization for, and dissemination

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[614] Hearings on the appropriation for the Department of Justice before the House Subcommittee on Appropriations, 92nd Cong., 2nd Sess., (1972), p. 673.

[615] Inspection Report, FBI Domestic Intelligence Division, August 17–September 9, 1971.

[616] The hostile Congressional reaction to this Order, which shifted duties by Executive fiat to a Board created by statute for other purposes, led to the death of the SACB when no appropriation was granted in 1972.

[617] FBI Executives Conference Memorandum, 6/2/71. The first Assistant Director for Legal Counsel was Dwight Dalbey, who had for years been in charge of the legal training of Bureau agents. Dalbey's elevation early in 1971, and Hoover's requirement that he review all legal aspects of FBI policy, including intelligence matters, was a major change in Bureau procedure. (Memorandum from Hoover to All Bureau Officials and Supervisors, 3/8/71.)

[618] FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 1–3.

[619] Memorandum from Sullivan to Hoover, 6/16/71.

of, information from the "17" wiretaps placed on Executive officials and newsmen in 1969–1971. The absence of these materials was not discovered by other FBI officials until after Sullivan was forced to resign in September 1971.[620] Mardian eventually took part in the transfer of these records to the White House.[621]

Thus, the Attorney General's principal assistant for internal security collaborated with a ranking FBI official to conceal vital records, ultimately to be secreted away in the White House. This provides a striking example of the manner in which channels of legitimate authority within the Executive Branch can be abused.

d. The FBI's Secret "Administrative Index"

In the fall of 1971, the FBI confronted the prospect of the first serious Congressional curtailment of domestic intelligence investigations—repeal of the Emergency Detention Act of 1950—and set a course of evasion of the will of Congress which continued, partly with Justice Department approval, until 1973.

An FBI Inspection Report viewed the prospect of the repeal without great alarm. In the event the Act was repealed, the FBI intended to continue as before under "the Government's inherent right to protect itself internally."[622] After the repeal took place, Bureau officials elaborated the following rationale for keeping the Security Index of "potentially dangerous subversives:"

> Should this country come under attack from hostile forces, foreign *or domestic*, there is nothing to preclude the President from going before a joint session of Congress and requesting necessary authority to apprehend and detain those who would constitute a menace to national defense. At this point, it would be absolutely essential to have an immediate list, such as the SI, for use in making such apprehensions.[623] [Emphasis added.]

Thus, FBI officials hoped there would be a way to circumvent the repeal "in which the essence of the Security Index and emergency detention of dangerous individuals could be utilized under Presidential powers."[624]

Assistant Director Dwight Dalbey, the FBI's Legal Counsel, recommended writing to the Attorney General for "a reassessment" in order to "protect" the Bureau in case "some spokesman of the extreme left" claimed that repeal of the Detention Act eliminated FBI authority for domestic intelligence activity. Dalbey agreed that, since the Act "could easily be put back in force should an emergency convince Con-

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[620] Memorandum from T. J. Smith to E. S. Miller, 5/13/73, pp. 1, 8.

[621] FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 2–3. The Watergate Special Prosecutor investigated these events, and did not find sufficient evidence of criminal conduct to bring an indictment. However, they occurred at the time of intense White House pressure to develop a criminal prosecution against Daniel Ellsberg over the Pentagon Papers matter. The dismissal of charges against Ellsberg in 1973 was largely due to the belated discovery of the fact that Ellsberg had been overheard on a wiretap indicated in these records, which were withheld from the court, preventing its determination of the pertinency of the material to the Ellsberg case.

[622] Inspection Report, Domestic Intelligence Division, 8/17–9/9/71, p. 98.

[623] Memorandum from R. D. Cotter to E. S. Miller, 9/21/71.

[624] Memorandum from Cotter to Miller, 9/17/71.

gress of its need," the Bureau should "have on hand the necessary action information pertaining to individuals." [625] Thereupon, a letter was sent to Attorney General Mitchell proposing that the Bureau be allowed to "maintain an administrative index" of individuals who "pose a threat to the internal security of the country." Such an index would be an aid to the Bureau in discharging its "investigative responsibility." However, the letter made no reference to the theory prevailing within the FBI that the new "administrative index" would serve as the basis for a revived detention program in some future emergency.[625a]

Thus, when the Attorney General replied that the repeal of the Act did not prohibit the FBI from compiling an "administrative index" to make "readily retrievable" the "results of its investigations," he did not deal with the question of whether the index would also serve as a round-up list for a future emergency. The Attorney General also stated that the Department did not "desire a copy" of the new index, abdicating even the minimal supervisory role performed previously by the Internal Security Division in its review of the names on the Security Index.[626] FBI officials realized that they were "now in a position to make a sole determination as to which individuals should be included in an index of subversive individuals." [627]

There were two major consequences of the new system. First, the new "administrative index" (ADEX) was expanded to include an elastic category: "the new breed of subversive." [628] Second, the previous Reserve Index, which had never been disclosed to the Justice Department, was incorporated into the ADEX. It included "teachers, writers, lawyers, etc." who did not actively participate in subversive activity "but who were nevertheless influential in espousing their respective philosophies." It was estimated that the total case load under the ADEX would be "in excess of 23,000." [629]

One of the FBI standards for placing someone on the ADEX list demonstrates the vast breadth of the list and the assumption that it could be used as the basis for detention in an emergency:

> An individual who, although *not* a member of or participant in activities of revolutionary organizations or considered an activist in affiliated fronts, has exhibited a revolutionary *ideology* and is likely to seize upon the opportunity presented

[625] Memorandum from D. J. Dalbey to C. Tolson, 9/24/71.

[625a] Memorandum from Hoover to Mitchell, 9/30/71.

[626] Memorandum from Mitchell to Hoover, 10/22/71.

[627] Memorandum from T. J. Smith to E. S. Miller, 11/11/71. It was noted that in the past the Department had "frequently removed individuals" from the Security Index because of its strict "legal interpretation."

[628] This new breed was described as follows:

"He may adhere to the old-line revolutionary concepts but he is unaffiliated with any organization. He may belong to or follow one New Left-type group today and another tomorrow. He may simply belong to the loosely knit group of revolutionaries who have no particular political philosophy but who continuously plot the overthrow of our Government. He is the nihilist who seeks only to destroy America."

"On the other hand, he may be one of the revolutionary black extremists who, while perhaps influenced by groups such as the Black Panther Party, is also unaffiliated either permanently or temporarily with any black organization but with a seething hatred of the white establishment will assassinate, explode, or otherwise destroy white America." (T. J. Smith to E. S. Miller, 11/11/71.)

[629] Memorandum from T. J. Smith to E. S. Miller, 11/11/71.

> by *national emergency* to commit acts of espionage or sabotage, including acts of terrorism, assassination or *any interference* with or threat to the survival and *effective operation* of the national, state, and local governments and of the defense efforts. [Emphasis added.][630]

These criteria were supplied to the Justice Department in 1972, and the Attorney General did not question the fact that the ADEX was more than an administrative aid for conducting investigations, as he had previously been told.[631]

A Bureau memorandum indicates that "representatives of the Department" in fact agreed with the view that there might be "circumstances" where it would be necessary "to quickly identify persons who were a threat to the national security" and that the President could then go to Congress "for emergency legislation permitting apprehension and detention." [632]

Thus, although the Attorney General did not formally authorize the ADEX as a continuation of the previous detention list, there was informal Departmental knowledge that the FBI would proceed on that basis. One FBI official later recognized that the ADEX could be "interpreted as a means to circumvent repeal of the Emergency Detention Act." [633]

8. Reconsideration of FBI Authority

In February 1971, the Subcommittee on Constitutional Rights of the Senate Judiciary Committee began a series of hearings on federal data banks and the Bill of Rights which marked a crucial turning point in the development of domestic intelligence policy. The Subcommittee, chaired by Senator Sam J. Ervin of North Carolina, reflected growing concern among Americans for the protection of "the privacy of the individual against the 'information power' of government." [634]

Largely in response to this first serious Congressional inquiry into domestic intelligence policy, the Army curtailed its extensive surveillance of civilian political activity. The Senate inquiry also led, after Director Hoover's death in 1972, to reconsideration by the FBI of the legal basis for its domestic intelligence activities and eventually to a request to the Attorney General for clarification of its authority.[635]

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[630] Memorandum from FBI Headquarters to all SACs, 11/15/71.

[631] Memorandum from Hoover to Mitchell, 2/10/72; *cf.* memorandum from Hoover to Mitchell, 9/30/71 for the previous statement.

[632] Memorandum from T. J. Smith to E. S. Miller, 8/29/72.

[633] Memorandum from Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

[634] *Federal Data Banks*, Hearings, Opening Statement of Senator Ervin, February 23, 1971, p. 1. Senator Ervin declared that a major objective of the inquiry was to look into "programs for taking official note of law-abiding people who are active politically or who participate in community activities on social and political issues." The problem, as Senator Ervin saw it, was that there were citizens who felt "intimidated" by these programs and were "fearful about exercising their rights under the First Amendment to sign petitions, or to speak and write freely on current issues of Government policy." The ranking minority member of the Subcommittee, Senator Roman Hruska, endorsed the need for a "penetrating and searching" inquiry. (Hearings, pp. 4, 7.)

[635] Also during March 1971, an FBI office in Media, Pennsylvania was broken into; a substantial number of documents were removed and soon began to appear in the press. One of these was captioned COINTELPRO. The Bureau reacted by ordering its field offices to "discontinue" COINTELPRO operations "for

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a. Developments in 1972–1974

There is no indication that FBI "guidelines" material or the FBI Manual provisions themselves were submitted to, or requested by, the Justice Department prior to 1972.[636] Indeed, when Deputy Attorney General Richard Kleindienst testified in February 1972 at the hearings on his nomination to be Attorney General, he stated that he was "not sure" what guidelines were used by the FBI. Kleindienst also stated that he believed FBI investigations were "restricted to criminal conduct or the likelihood of criminal conduct."[637] Director Hoover noted on a newspaper report of the testimony, "Prepare succinst memo to him on our guidelines."[638]

After Hoover's death in 1972, a sharp split developed within the Domestic Intelligence Division over whether or not the Bureau should continue to rely on the various Executive Orders as a basis for its authority.[639]

Acting Director Gray postponed making any formal decisions on this matter; he did not formally request advice from the Attorney General.[640] Meanwhile, the Domestic Intelligence Division proceeded

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security reasons because of their sensitivity." It was suggested, however, that "counter-intelligence action" would be considered "in exceptional instances" so long as there were "tight procedures to insure absolute secrecy." (Memorandum from Brennan to Sullivan, 4/27/71; Memorandum from FBI Headquarters to all SAC's, 4/28/71.) For actions taken thereafter, see COINTELPRO report.

[636] After repeal of the Emergency Detention Act in the fall of 1971, the FBI's Assistant Director for Legal Counsel recommended that the Bureau's request for approval of its new ADEX also include a more general request for re-affirmation of FBI domestic intelligence authority to investigate "subversive activity." (Memorandum from D. J. Dalbey to Mr. Tolson, 9/24/71.) The letter to the Attorney General reviewed the line of "Presidential directives" from 1939 to 1953. (Memorandum from Hoover to Mitchell, 9/30/71.) The Attorney General replied with a general endorsement of FBI authority to investigate "subversive activities." (Memorandum from Mitchell to Hoover, 10/22/71.)

[637] Richard Kleindienst testimony, Senate Judiciary Committee, 2/24/72, p. 64

[638] FBI routing slip attached to *Washington Post* article, 2/24/72. The FBI's summary of its "guidelines," submitted to the Attorney General stated that its investigations were partly based on criminal statutes, but that "subversive activity . . . often does not clearly involve a specific section of a specific statute." Thus. investigations were also based on the 1939 Roosevelt directives which were said to have been "reiterated *and broadened* by subsequent Directives." (Attachment to Hoover memorandum to Kleindienst, 2/25/72.) (Emphasis added.)

[639] The background for this development may be summarized as follows: In May 1972, FBI intelligence officials prepared a "position paper" for Acting Director L. Patrick Gray. This paper merely recited the various Presidential directives, Executive Orders, delimitation agreements, and general authorizations from the Attorney General, with no attempt at analysis. (FBI Domestic Intelligence Division, Position Paper: Investigations of Subversion, 5/19/72.) Assistant Director E. S. Miller, head of the Domestic Intelligence Division, withdrew this paper at a conference with Gray and other top Bureau officials; Miller then initiated work on a more extensive position paper, which was completed in July. It concluded that domestic intelligence investigations could practicably be based on the "concept" that their purpose was "to prevent a violation of a statute." The paper also indicated that the ADEX would be revised so that it could not be "interpreted as a means to circumvent repeal of the Emergency Detention Act." (FBI Domestic Intelligence Division: Position Paper: Scope of FBI Authority, 7/31/72; T. J. Smith to E. S. Miller, 8/1/72.)

[640] Gray did order that the Bureau should indicate its "jurisdictional authority" to investigate in every case, "by citing the pertinent provision of the U.S. Code, or other authority," and also that the Bureau should "indicate whether or not an investigation was directed by DJ (Department of Justice), or we opened it without any request from DJ." In the latter case, the Bureau was to "cite our reasons." (FBI routing slip, 8/27/72.)

on its own to revise the pertinent Manual sections and the ADEX standards.[641] The list was to be trimmed to those who were "an actual danger now," reducing the number of persons on the ADEX by two-thirds.[642]

A revision of the FBI Manual was completed by May 1973. It was described as "a major step" away from "heavy reliance upon Presidential Directives" to an approach "based on existing Federal statutes.[643] Although field offices were instructed to "close" investigations not meeting the new criteria, headquarters did not want "a massive review on crash basis" of all existing cases.[644]

After a series of regional conferences with field office supervisors, the standards were revised to allow greater flexibility.[645] For the first time in FBI history, a copy of the Manual section for "domestic subversive investigations" was sent to the Attorney General.[646]

After Clarence M. Kelley was confirmed as FBI Director, he authorized a request for guidance from Attorney General Elliot Richardson.[647] Kelley advised that it "would be folly" to limit the Bureau

[641] One official observed that there were "some individuals now included in ADEX even though they do not realistically pose a threat to the national security." He added that this would leave the Bureau "in a vulnerable position if our guidelines were to be scrutinized by interested Congressional Committees." (Memorandum from T. J. Smith to E. S. Miller, 8/29/72.)

[642] Memorandum from Smith to Miller, 8/29/72. The anticipated reduction was from 15,259 (the current figure) to 4,786 (the top two priority categories). The Justice Department was advised of this change. (Memorandum from Gray to Kleindienst, 9/18/72.)

[643] Draft copies were distributed to the field for suggestions. (E. S. Miller to Mr. Felt, 5/22/73.)

[644] Memorandum from FBI Headquarters to all SAC's, 6/7/73. The memorandum to the field stated, looking back on past Bureau policy, that since the FBI's authority to investigate "subversive elements" had never been "seriously challenged until recently," Bureau personnel (and "the general public") had accepted "the FBI's right to handle internal security matters and investigate subversive activities without reference to specific statutes." But the "rationale" based on "Presidential Directives" was no longer "adequate."

The field was advised that the "chief statutes" upon which the new criteria were based were those dealing with rebellion or insurrection (18 U.S.C. 2583), seditious conspiracy (18 U.S.C. 2584) and advocating overthrow of the government (18 U.S.C. 2528). The ADEX was to be "strictly an administrative device" and should play no part "in investigative decisions or policies." The revision also eliminated "overemphasis" on the Communist Party.

[645] For example, the field offices saw the need to undertake "preliminary inquiries" before it was known "whether a statutory basis for investigation exists." This specifically applied where a person had "contact with known subversive groups or subjects," but the Bureau did not know "the purpose of the contact." These preliminary investigations could go on for at least 90 days, to determine whether "a statutory basis for a full investigation exists." Moreover, at the urging of the field supervisors, the period for a preliminary investigation of an allegedly "subversive organization" was expanded from 45 to 90 days. (Memorandum from FBI Headquarters to all SACs, 8/8/73.)

[646] This was apparently "in connection with" a request made earlier by Senator Edward M. Kennedy, who had requested to see this section at the time of the confirmation hearings for Attorney General Kleindienst in 1972. (Kleindienst, Senate Judiciary Committee, 2/24/72, p. 64; memorandum from Kelley to Richardson, 8/7/73.)

[647] In a memorandum to the Attorney General, Director Kelley cited Senator Sam J. Ervin's view that the FBI should be prohibited by statute "from investigating any person without the individual's consent, unless the Government has reason to believe that the person has committed a crime or is about to commit a crime." Kelley then summarized the position paper prepared by the Domestic

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to investigations only when a crime "has been committed," since the government had to "defend itself against revolutionary and terrorist efforts to destroy it." Consequently, he urged that the President exercise his "inherent Executive power to *expand* by further *defining* the FBI's investigative authority to enable it to develop advance information" about the plans of "terrorists and revolutionaries who seek to overthrow or destroy the Government." [648] [Emphasis added.]

Director Kelley's request initiated a process of reconsideration of FBI intelligence authority by the Attorney General.[649]

The general study of FBI authority was superceded in December 1973 when Acting Attorney General Robert Bork, in consultation with Attorney General-designate William Saxbe, gave higher priority to a Departmental inquiry into the FBI's COINTELPRO practices. Responsibility for this inquiry was assigned to a committee headed by Assistant Attorney General Henry Peterson.[650]

Even at this stage, the Bureau resisted efforts by the Department to look too deeply into its operations. Director Kelley advised the Acting Attorney General that the Department should exclude from its review the FBI's "extremely sensitive foreign intelligence collection techniques." [651]

(Continued)
Intelligence Division and the Bureau's current policy of attempting to rely on statutory authority. However, he observed that the statutes upon which the FBI was relying were either "designed for the Civil War era, not the Twentieth Century" (the rebellion and insurrection laws) or had been "reduced to a fragile shell by the Supreme Court" (the Smith Act dealing with advocacy of overthrow). Moreover, it was difficult to fit into the statutory framework groups "such as the Ku Klux Klan, which do not seek to overthrow the Government, but nevertheless are totalitarian in nature and seek to deprive constitutionally guaranteed rights."

Kelley stated that, while the FBI had "statutory authority," it still needed "a definite requirement from the President as to the nature and type of intelligence data *he* requires in the pursuit of *his* responsibilities based on *our* statutory authority." (Emphasis added.) While the statutes gave "authority," an Executive Order "would define our national security objectives." The FBI Director added:

"It would appear that the President would rather spell out his own requirements in an Executive Order instead of having Congress tell him what the FBI might do to help him fulfill his obligations and responsibilities as President."

[648] Memorandum from Kelley to Richardson, 8/7/73.

[649] Even before Kelley's request, Deputy Attorney General-Designate William Ruckelshaus (who had served for two months as Acting FBI Director between Gray and Kelley), sent a list of questions to the Bureau to begin "an in-depth examination of some of the problems facing the Bureau in the future." (Memorandum from Ruckelshaus to Kelley, 7/20/73.) The Ruckelshaus study was interrupted by his departure in the "Saturday Night Massacre" of October 1973.

[650] Memorandum from Bork to Kelley, 12/5/73.

[651] These techniques were handled within the Bureau "on a strictly need-to-know basis" and Kelley believed that they should not be included in a study "which will be beyond the control of the FBI." (Memorandum from Kelley to Bork, 12/11/73.)

One Bureau memorandum to the Petersen committee even suggested that the Attorney General did not have authority over the FBI's foreign counterintelligence operations, since the Bureau was accountable in this area directly to the United States Intelligence Board and the National Security Council. (Petersen Committee Report, pp. 34–35.) The Petersen Committee sharply rejected this view, especially because the *ad hoc* equivalent of the U.S. Intelligence Board had approved the discredited "Huston plan" in 1970. The Committee declared: "There can be no doubt that in the area of foreign counterintelligence, as in all its other functions, the FBI is subject to the power and authority of the Attorney General." (Petersen Committee Report, p. 35.)

As a result, the Petersen committee's review of COINTELPRO did not consider anything more than a brief FBI-prepared summary of foreign counterintelligence operations.[652] Moreover, the inquiry into domestic COINTELPRO cases was based mainly on short summaries of each incident compiled by FBI agents, with Department attorneys making only spot-checks of the underlying files to assure the accuracy of the summaries. Thus, the inquiry was unable to consider the complete story of COINTELPRO as reflected in the actual memoranda discussing the reasons for adopting particular tactics and the means by which they were implemented.[653]

Thus, at the same time that the Bureau was seeking guidance and clarification of its authority, vestiges remained of its past resistance to outside scrutiny and its desire to rely on Executive authority, rather than statute, for the definition of its intelligence activities.

b. Recent Domestic Intelligence Authority

In the absence of any new standards imposed by statute, or by the Attorney General, the FBI continued to collect domestic intelligence under sweeping authorizations issued by the Justice Department in 1974 for investigations of "subversives," potential civil disturbances, and "potential crimes." These authorizations were explicitly based on conceptions of inherent Executive power, broader in theory than the FBI's own claim in 1973 that its authority could be found in the criminal statues. Attorney General Levi has recently promulgated guidelines which stand as the first significant attempt by the Justice Department to set standards and limits for FBI domestic intelligence investigations.[655]

(1) *Executive Order 10450, As Amended.*—The Federal employee security program continued to serve as a basis for FBI domestic intelligence investigations. An internal Bureau memorandum stated that the Justice Department's instruction regarding the program:

> specifically requires the FBI to check the names of all civil applicants and incumbents of the Executive Branch against our records. In order to meet this responsibility FBIHQ records must contain identities of all persons connected with subversive or extremist activities, together with necessary identifying information.[656]

FBI field offices were instructed in mid-1974 to report to Bureau headquarters such data as the following:

> Identities of subversive and/or extremist groups or movements (including front groups) with which subject has been identified, period of membership, positions held, and a summary of the type and extent of subversive or extremist activities engaged in by subject (e.g., attendance at meetings or

[652] FBI Memorandum, "Overall Recommendations—Counterintelligence Activity," Appendix to Petersen Committee Report.

[653] Henry Petersen Testimony, 12/8/75, Hearings, Vol. 6, pp. 270–71.

[655] Attorney General's Guidelines: "Domestic Security Investigations," "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest," and "White House Personnel Security and Background Investigations."

[656] Memorandum from A. B. Fulton to Mr. Wannall, 7/10/74. See pp. 42–44 for discussion of the initiation of the program.

other functions, fundraising or recruiting activities on behalf of the organization, contributions, etc.).[657]

In June 1974, President Nixon formally abolished the "Attorney General's list," upon the recommendation of Attorney General Saxbe. However, the President's order retained a revised definition of the types of organizations, association which would still be considered in evaluating prospective federal employees.[658] The Justice Department instructed the FBI that it should "detect organizations with a potential" for falling within the terms of the order and investigate "individuals who are active either as members of or as affiliates of" such organizations. The Department instructions added:

> It is not necessary that a crime occur before the investigation is initiated, but only that a reasonable evaluation of the available information suggests that the activities of the organization may fall within the prescription of the Order. . . .
>
> It is *not possible to set definite parameters covering the initiation* of investigations of potential organizations falling within the Order but once the investigation reaches a stage that offers a basis for determining that the activities are legal in nature, then the investigation should cease, but if the investigation suggests a determination that the organization is engaged in illegal activities or *potentially* illegal activities it should continue. [Emphasis added.]

The Department applied "the same yardstick" to investigations of individuals "when information is received suggesting their involvement."[659]

(2) *Civil Disorders Intelligence.*—The Justice Department also instructed the FBI in 1974 that it should not, as the Bureau had suggested, limit its civil disturbance reporting "to those particular situations which are of such a serious nature that Federal military personnel may be called upon for assistance." The Department advised that this suggested "guideline" was "not practical" since it "would place the burden on the Bureau" to make an initial decision as to "whether military personnel may ultimately be needed," and this responsibility rested "legally" with the President. Instead, the FBI was ordered to "continue" to report on

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[657] Memorandum from FBI Headquarters to all SACs, 8/16/74.

[658] Executive Order 11785, 6/4/74. The new standard: "Knowing membership with the specific intent of furthering the aims of, or *adherence to* and active participation in, any foreign *or domestic* organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully *advocates* or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or *of any state*, or which seeks to overthrow the Government of the United States or *any State or subdivisions thereof* by unlawful means." [Emphasis added.]

[659] Memorandum from Glen E. Pommerening, Assistant Attorney General for Administration, to Kelley, 11/17/74.

With respect to one organization, the Department advised the Bureau that "despite the abolition" of the Attorney General's list, the group "would still come within the criteria" of the employee security program if it "may have engaged in activities" of the sort proscribed by the revised executive order. (Memorandum from Henry E. Petersen to Clarence Kelley, 11/13/74.)

> all significant incidents of civil unrest and should not be restricted to situations where, in the judgment of the Bureau, military personnel eventually may be used.[660]

Moreover, under this authority the Bureau was also ordered to "continue" reporting on

> all disturbances where there are indications that extremist organizations such as the Communist Party, Ku Klux Klan, or Black Panther Party are believed to be involved in efforts to instigate or exploit them.

The instructions specifically declared that the Bureau "should make timely reports of significant disturbances, even when no specific violation of Federal law is indicated." This was to be done, at least in part, through "liaison" with local law enforcement agencies.[661]

Even after the Justice Department's IDIU dismantled its computerized data bank, its basic functions continued to be performed by a Civil Disturbance Unit in the office of the Deputy Attorney General, and the FBI was under instructions to disseminate its civil disturbance reports to that Unit.[662]

FBI officials considered these instructions "significant" because they gave it "an official, written mandate from the Department." The Department's desires were viewed as "consistent with what we have already been doing for the past several years," although the Bureau Manual was rewritten to "incorporate into it excerpts from the Department's letter." [663]

(3) *"Potential" Crimes.*—The FBI recently abolished completely the administrative index (ADEX) of persons considered "dangerous now." However, the Justice Department has advanced a theory to support broad power for the Executive Branch in investigating groups which represent a "potential threat to the public safety" or which have a "potential" for violating specific statutes. For example, the Department advised the FBI that the General Crimes Section of the Criminal Division had "recommended continued investigation" of one group on the basis of "potential violations" of the antiriot statutes.[665] These same

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[660] "On the other hand," the instructions stated ambiguously, "the FBI should not report every minor local disturbance where there is no apparent interest to the President, the Attorney General or other Government officials and agencies." (Memorandum from Petersen to Kelley, 10/22/74.)

[661] Memorandum from Petersen to Kelley, 10/22/74. The FBI was expected to "be aware of disturbances and patterns of disorder," although it is not to report "each and every relatively insignificant incident of a strictly local nature."

[662] Memorandum from Petersen to Kelley, 10/22/74. Frank Nyland testimony, 1/27/76, pp. 46–58.

[663] Memorandum from J. G. Deegan to W. R. Wannall, 10/30/74. From a legal viewpoint, the Justice Department's instructors dealing with the collection of intelligence on potential civil disturbances were significant because they relied for authority on: (1) the President's powers under Article IV, section 4 of the Constitution to protect the states, upon application of the legislature or the executive, against "domestic violence;" (2) the statute (10 U.S.C. 331, et seq.) authorizing the use of troops; and (3) the Presidential directive of 1969 designating the Attorney General as chief civilian officer to coordinate the Government's response to civil disturbances. (Memorandum from Petersen to Kelley, 10/22/74; Memorandum from Melvin Laird and John Mitchell to the President, 4/1/69.)

[665] 18 U.S.C. 2101–2102.

instructions added that there need not be a "potential" for violation of any specific statute.[666]

(4) *Claim of Inherent Executive Power.*—The Department's theory of executive power was set forth in 1974 testimony before the House Internal Security Committee. According to Deputy Assistant Attorney General Kevin Maroney, "the primary basis" for FBI domestic intelligence authority rests in "the constitutional powers and responsibilities vested in the President under Article II of the Constitution." These powers were specified as: the President's duty undertaken in his oath of office to "preserve, protect, and defend the Constitution of the United States;"[667] the Chief Executive's duty to "take Care that the Laws be faithfully executed:"[668] the President's responsibilities as Commander-in-Chief of the military; and his "power to conduct our foreign relations."[669]

The chairman of the Internal Security Committee, Rep. Richard H. Ichord, stated at that time that, except in limited areas, the Congress "has not directly imposed upon the FBI clearly defined duties in the acquisition, use, or dissemination of domestic or internal security intelligence."[670]

Subsequently, the FBI Intelligence Division revised its 1972–1973 position on its legal authority, and in a paper completed in 1975 it returned to the view "that the intelligence-gathering activities of the FBI have had as their basis the intention of the President to delegate

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[666] Memorandum from Petersen to Kelley, 11/13/74. This memorandum added:

"[W]ithout a broad range of intelligence information, the President and the departments and agencies of the Executive Branch could not properly and adequately protect our nation's security and enforce *the numerous statutes* pertaining thereto . . . [T]he Department, and in particular the Attorney General, must continue to be informed of those organizations that engage in violence which represent *a potential threat to the public safety.*" [Emphasis added.]

[667] The opinion of the Supreme Court in *the United States* v. *United States District Court*, 407 U.S. 297 (1972)—the domestic security wiretapping case—stated, "Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means."

[668] A 19th century Supreme Court opinion was cited as having interpreted the word "laws" broadly to encompass not only statutes enacted by Congress, but also "the rights, duties, and obligations growing out of the Constitution itself, our international relations and all the protection implied by the nature of Government under the Constitution." [*In Re Neagle*, 135 U.S. 1 (1890).]

[669] The latter power was said to relate "more particularly to the Executive's power to conduct foreign intelligence activities here and abroad." (Kevin Maroney testimony, "Domestic Intelligence Operations for Internal Security Purposes," Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3332–3335.) Mr. Maroney added:

"We recognize the complexity and difficulty of adequately spelling out the FBI's authority and responsibility to conduct domestic intelligence-type investigations. The concept national security is admittedly a broad one, while the term subversive activities is even more difficult to define."

Mr. Maroney also cited the following from the Supreme Court's opinion in the domestic security wiretapping case: "The gathering of security intelligence is often long-range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify . . . Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime." [*United States* v. *United States District Court*, 407 U.S. 297, 322 (1972).]

[670] House Committee on Internal Security Hearings, 1974, pp. 3330–3331.

his Constitutional authority," as well as the statutes "pertaining to the national security." [671]

The Attorney General has continued to assert the claim of inherent executive power to conduct warrantless electronic surveillance of American citizens, although this power has been exercised sparingly.[672] The Justice Department has also claimed that this inherent executive power permits warrantless surreptitious entries.[673] However, the Executive Branch has recently joined a bipartisan group of Senators and Representatives in sponsoring a legislative proposal requiring judicial warrants for all electronic surveillance by the FBI.

(5) *Attorney General Levi's Guidelines.*—During 1975, the Congress and the Executive Branch began major efforts to review the field of domestic intelligence. A Presidential commission headed by Vice President Rockefeller inquired into the CIA's improper surveillance of Americans.[674] Attorney General Edward H. Levi established a committee in the Justice Department to develop "guidelines" for the FBI,[675] and the Justice Department began to work on draft legislation to require warrants for national security electronic surveillance.[676]

These efforts have begun to bear fruit in recent months. President Ford has issued an Exceutive Order regulating foreign intelligence activities; [677] Attorney General Levi has promulgated several sets of "guidelines" for the FBI.[678] And the administration has endorsed a specific bill to establish a warrant procedure for all national security wiretaps and bugs in the United States.[679]

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[671] W. Raymond Wannall, Assistant Director for the Intelligence Division, Memorandum on the "Basis for FBI National Security Intelligence Investigations," 2/13/75.

[672] After several recent transformations, the policy of the Attorney General was established as authorizing warrantless surveillance "only when it is shown that its subjects are the active, conscious agents of foreign powers;" and this standard "is applied with particular stringency where the subjects are American citizens or permanent resident aliens." (Justice Department memorandum from Ron Carr, Special Assistant to the Attorney General, to Mike Shaheen, Counsel on Professional Responsibility, 2/26/76.)

[673] In May 1975, for the first time in American history, the Department of Justice publicly asserted the power of the Executive Branch to conduct warrantless surreptitious entries unconnected with the use of electronic surveillance. This occurred in a letter to the United States Court of Appeals for the District of Columbia concerning an appeal by John Ehrlichman. Ehrlichman was appealing a conviction arising from the break-in at the office of Daniel Ellsberg's psychiatrist after publication of the "Pentagon Papers" in 1971.

The Justice Department's position was that "warrantless searches involving physical entries into private premises" can be "lawful under the Fourth Amendment," if they are "very carefully controlled:"

"There must be solid reason to believe that foreign espionage or intelligence is involved. In addition, the intrusion into any zone of expected privacy must be kept to the minimum and there must be personal authorization by the President or the Attorney General." (Letter from John C. Kenney, Acting Assistant Attorney General, to Hugh E. Cline, Clerk of the United States Court of Appeals for the District of Columbia, 5/9/75.)

[674] Rockefeller Commission Report.

[675] Levi, 12/11/75, Hearings, Vol. 6, pp. 316–317.

[676] Levi, 11/6/75, Hearings, Vol. 5, p. 90.

[677] Executive Order 11509, 2/18/76.

[678] Attorney General's Guidelines, "Domestic Security Investigations", "Whitehouse Personnel Security and Background Investigations", and "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest", 3/10/76.

[679] S. 3197, introduced 3/23/76.

These Executive initiatives are a major step forward in creating safeguards and establishing standards, but they are incomplete without legislation.[680] Among the issues left open by the President's Executive Order, for example, are: (1) the definition of the term "foreign subversion" used to characterize the counter-intelligence responsibilities of the CIA and the FBI; and (2) clarification of the vague provisions in the National Security Act of 1947 relating to the authority of the Director of Central Intelligence to protect "sources" and "methods;" and (3) amplification of the 1947 Act's prohibition against the CIA's exercise of "law enforcement powers" or "internal security functions."

Although they represent only a partial answer to the need for permanent restraints, the initiatives of the Executive Branch demonstrate a willingness to seriously consider the need for legislative action. The Attorney General has recognized that Executive "guidelines" are not enough to regulate and authorize FBI intelligence activities.[681] The Committee's conclusions and recommendations in Part IV of this report indicate the areas most in need of legislative attention.

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[680] The major questions posed by the President's Executive Order and the Attorney General's guidelines for the FBI are discussed in the recommendation section of this report, as are the problems with the national security electronic surveillance bill.

[681] Levi Testimony, 12/11/75, Hearings, Vol. 6, p. 345.

III. FINDINGS

The Committee makes seven major findings. Each finding is accompanied by subfindings and by an elaboration which draws upon the evidentiary record set forth in our historical narrative (Part II herein) and in the thirteen detailed reports which will be published as supplements to this volume. We have sought to analyze in our findings characteristics shared by intelligence programs, practices which involved abuses, and general problems in the system which led to those abuses.

The findings treat the following themes that run through the facts revealed by our investigation of domestic intelligence activity: (A) Violating and Ignoring the Law; (B) Overbreadth of Domestic Intelligence Activity; (C) Excessive Use of Intrusive Techniques; (D) Using Covert Action to Disrupt and Discredit Domestic Groups; (E) Political Abuse of Intelligence Information; (F) Inadequate Controls on Dissemination and Retention; (G) Deficiencies in Control and Accountability.

Viewed separately, each finding demonstrates a serious problem in the conduct and control of domestic intelligence operations. Taken together, they make a compelling case for the necessity of change. Our recommendations (in Part IV) flow from this analysis and propose changes which the Committee believes to be appropriate in light of the record.

A. VIOLATING AND IGNORING THE LAW

Major Finding

The Committee finds that the domestic activities of the intelligence community at times violated specific statutory prohibitions and infringed the constitutional rights of American citizens.[1] The legal questions involved in intelligence programs were often not considered. On other occasions, they were intentionally disregarded in the belief that because the programs served the "national security" the law did not apply. While intelligence officers on occasion failed to disclose to their superiors programs which were illegal or of questionable legality, the Committee finds that the most serious breaches of duty were those of senior officials, who were responsible for controlling intelligence activities and generally failed to assure compliance with the law.

Subfindings

(a) In its attempt to implement instructions to protect the security of the United States, the intelligence community engaged in some ac-

[1] This section discusses the legal issues raised by particular programs and activities only; a discussion of the aggregate effect upon constitutional rights of all domestic surveillance practices is at p. 290 of the Conclusions section.

tivities which violated statutory law and the constitutional rights of American citizens.

(b) Legal issues were often overlooked by many of the intelligence officers who directed these operations. Some held a pragmatic view of intelligence activities that did not regularly attach sufficient significance to questions of legality. The question raised was usually not whether a particular program was legal or ethical, but whether it worked.

(c) On some occasions when agency officials did assume, or were told, that a program was illegal, they still permitted it to continue. They justified their conduct in some cases on the ground that the failure of "the enemy" to play by the rules granted them the right to do likewise, and in other cases on the ground that the "national security" permitted programs that would otherwise be illegal.

(d) Internal recognition of the illegality or the questionable legality of many of these activities frequently led to a tightening of security rather than to their termination. Partly to avoid exposure and a public "flap," knowledge of these programs was tightly held within the agencies, special filing procedures were used, and "cover stories" were devised.

(e) On occasion, intelligence agencies failed to disclose candidly their programs and practices to their own General Counsels, and to Attorneys General, Presidents, and Congress.

(f) The internal inspection mechanisms of the CIA and the FBI did not keep—and, in the case of the FBI, were not designed to keep—the activities of those agencies within legal bounds. Their primary concern was efficiency, not legality or propriety.

(g) When senior administration officials with a duty to control domestic intelligence activities knew, or had a basis for suspecting, that questionable activities had occurred, they often responded with silence or approval. In certain cases, they were presented with a partial description of a program but did not ask for details, thereby abdicating their responsibility. In other cases, they were fully aware of the nature of the practice and implicitly or explicitly approved it.

Elaboration of findings

The elaboration which follows details the general finding of the Committee that inattention to—and disregard of—legal issues was an all too common occurrence in the intelligence community. While this section focuses on the actions and attitudes of intelligence officials and certain high policy officials, the Committee recognizes that a pattern of lawless activity does not result from the deeds of a single stratum of the government or of a few individuals alone. The implementation and continuation of illegal and questionable programs would not have been possible without the cooperation or tacit approval of people at all levels within and above the intelligence community, through many successive administrations.

The agents in the field, for their part, rarely questioned the orders they received. Their often uncertain knowledge of the law, coupled with the natural desire to please one's superiors and with simple bureaucratic momentum, clearly contributed to their willingness to participate in illegal and questionable programs. The absence of any prosecutions for law violations by intelligence agents inevitably af-

fected their attitudes as well. Under pressure from above to accomplish their assigned tasks, and without the realistic threat of prosecution to remind them of their legal obligations, it is understandable that these agents frequently acted without concern for issues of law and at times assumed that normal legal restraints and prohibitions did not apply to their activities.

Significantly, those officials at the highest levels of government, who had a duty to control the activities of the intelligence community, sometimes set in motion the very forces that permitted lawlessness to occur—even if every act committed by intelligence agencies was not known to them. By demanding results without carefully limiting the means by which the results were achieved; by over-emphasizing the threats to national security without ensuring sensitivity to the rights of American citizens; and by propounding concepts such as the right of the "sovereign" to break the law, ultimate responsibility for the consequent climate of permissiveness should be placed at their door.[2]

Subfinding (a)

In its attempt to implement instructions to protect the security of the United States, the intelligence community engaged in some activities which violated statutory law and the constitutional rights of American citizens.

From 1940 to 1973, the CIA and the FBI engaged in twelve covert mail opening programs in violation of Sections 1701–1703 of Title 18 of the United States Code which prohibit the obstruction, interception, or opening of mail. Both of these agencies also engaged in warrantless "surreptitious entries"—break-ins—against American citizens within the United States in apparent violation of state laws prohibiting trespass and burglary. Section 605 of the Federal Communications Act of 1934 was violated by NSA's program for obtaining millions of telegrams of Americans unrelated to foreign targets and by the Army Security Agency's interception of domestic radio communications.

All of these activities, as well as the FBI's use of electronic surveillance without a substantial national security predicate, also infringed the rights of countless Americans under the Fourth Amendment protection "against unreasonable searches and seizures."

The abusive techniques used by the FBI in COINTELPRO from 1956 to 1971 included violations of both federal and state statutes prohibiting mail fraud, wire fraud, incitement to violence, sending obscene material through the mail, and extortion. More fundamentally, the harassment of innocent citizens engaged in lawful forms of political expression did serious injury to the First Amendment guarantee of freedom of speech and the right of the people to assemble peaceably and to petition the government for a redress of grievances. The Bureau's maintenance of the Security Index, which targeted thousands of American citizens for detention in the event of national emergency, clearly overstepped the permissible bounds established by Congress in the Emergency Detention Act of 1950 and represented, in contravention of the Act, a potential general suspension of the privilege

[2] The accountability of senior administration officials is noted here to place the details which follow in their proper context, and is developed at greater length in Finding G, p. 265.

of the writ of habeas corpus secured by Article I, Section 9, of the Constitution.

A distressing number of the programs and techniques developed by the intelligence community involved transgressions against human decency that were no less serious than any technical violations of law. Some of the most fundamental values of this society were threatened by activities such as the smear campaign against Dr. Martin Luther King, Jr., the testing of dangerous drugs on unsuspecting American citizens, the dissemination of information about the sex lives, drinking habits, and marital problems of electronic surveillance targets, and the COINTELPRO attempts to turn dissident organizations against one another and to destroy marriages.

Subfinding (b)

Legal issues were often overlooked by many of the intelligence officers who directed these operations. Some held a pragmatic view of intelligence activities that did not regularly attach sufficient significance to questions of legality. The question raised was usually not whether a particular program was legal or ethical, but whether it worked.

Legal issues were clearly not a primary consideration—if they were a consideration at all—in many of the programs and techniques of the intelligence community. When the former head of the FBI's Racial Intelligence Section was asked whether anybody in the FBI at any time during the 15-year course of COINTELPRO discussed its constitutionality or legal authority, for example, he replied: "No, we never gave it a thought." [3] This attitude is echoed by other Bureau officials in connection with other programs. The former Section Chief of one of the FBI's Counterintelligence sections, and the former Assistant Director of the Bureau's Domestic Intelligence Division both testified that legal considerations were simply not raised in policy decisions concerning the FBI's mail opening programs.[4] Similarly, when the FBI was presented with the opportunity to assume responsibility for the CIA's New York mail opening operation, legal factors played no role in the Bureau's refusal; rather, the opportunity was declined simply because of the attendant expense, manpower requirements, and security problems.[5]

One of the most abusive of all FBI programs was its attempt to discredit Dr. Martin Luther King, Jr. Yet former FBI Assistant Director William C. Sullivan testified that he "never heard anyone raise the question of legality or constitutionality, never." [6]

Former Director of Central Intelligence Richard Helms testified publicly that he never seriously questioned the legal status of the twenty-year CIA New York mail opening project because he assumed his predecessor, Allen Dulles, had "made his legal peace with [it]." [7]

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[3] George C. Moore testimony, 11/3/75, p. 83.

[4] Branigan testimony, 10/9/75, pp. 13, 139, 140; Wannall testimony, 10/24/75, Hearings, Vol. 4, p. 149.

[5] Branigan, 10/9/75, p. 89.

[6] William C. Sullivan testimony, 11/1/75, pp. 49, 50.

[7] Richard Helms, 10/22/75, Hearings, Vol. 4, p. 94. This testimony is partially contradicted, however, by the fact that in 1970 Helms signed the Huston Report, in which "covert mail coverage"—defined as mail opening—was specifically described as illegal. (Special Report, June 1970, p. 30.)

". . . [F]rom time to time," he said, "the Agency got useful information out of it,"[8] so he permitted it to continue throughout his seven-year tenure as Director.

The Huston Plan that was prepared for President Richard Nixon in June 1970 constituted a virtual charter for the use of intrusive and illegal techniques against American dissidents as well as foreign agents. Its principal author has testified, however, that during the drafting sessions with representatives of the FBI, CIA, NSA, and Defense Intelligence Agency, no one ever objected to any of the recommendations on the grounds that they involved illegal acts, nor was the legality or constitutionality of any of the recommendations ever discussed.[9]

William C. Sullivan, who participated in the drafting of the Huston Plan and served on the United States Intelligence Board and as FBI Assistant Director for Intelligence for 10 years, stated that in his entire experience in the intelligence community he never heard legal issues raised at all:

> We never gave any thought to this realm of reasoning, because we were just naturally pragmatists. The one thing we were concerned about was this: Will this course of action work, will it get us what we want, will we reach the objective that we desire to reach? As far as legality is concerned, morals, or ethics, [it] was never raised by myself or anybody else . . . I think this suggests really in government that we are amoral. In government—I am not speaking for everybody—the general atmosphere is one of amorality.[10]

Subfinding (c)

On some occasions when agency officials did assume, or were told, that a program was illegal, they still permitted it to continue. They justified their conduct in some cases on the ground that the failure of "the enemy" to play by the rules granted them the right to do likewise, and in other cases on the ground that the "national security" permitted programs that would otherwise be illegal.

Even when agency officials recognized certain programs or techniques to be illegal, they sometimes advocated their implementation or permitted them to continue nonetheless.

This point is illustrated by a passage in a 1954 memorandum from an FBI Assistant Director to J. Edgar Hoover, which recommended that an electronic listening device be planted in the hotel room of a suspected Communist sympathizer: "Although such an installation will not be legal, it is believed that the intelligence information to be obtained will make such an installation necessary and desirable."[11] Hoover approved the installation.[12]

More than a decade later, a memorandum was sent to Director Hoover which described the current FBI policy and procedures for "black bag jobs" (warrantless break-ins for purposes other than microphone installation). This memorandum read in part:

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[8] Helms, 10/22/75, Hearings, Vol. 4, p. 103.
[9] Huston, 9/23/75, Hearings, Vol. 2, p. 21.
[10] Sullivan, 11/1/75, pp. 92, 93.
[11] Memorandum from Mr. Boardman to the Director, FBI, 4/30/54.
[12] Ibid.

> Such a technique involves trespass and is clearly illegal; therefore, it would be impossible to obtain any legal sanction for it. Despite this, "black bag" jobs have been used because they represent an invaluable technique in combatting subversive activities . . . aimed directly at undermining and destroying our nation.[13]

In other words, breaking the law, was seen as useful in combating those who threatened the legal fabric of society. Although Hoover terminated the general use of "black bag jobs" in July 1966, they were employed on a large scale before that time and have been used in isolated instances since then.

Another example of disregard for the law is found in a 1969 memorandum from William C. Sullivan to Director Hoover. In June of that year, Sullivan was requested by the Director, apparently at the urging of White House officials to travel to France for the purpose of electronically monitoring the conversations of journalist Joseph Kraft.[14] With the cooperation of local authorities, Sullivan was able to have a microphone installed in Kraft's hotel room, and informed Hoover of his success. "Parenthetically," he wrote in his letter to the Director, "I might add that such a cover is regarded as illegal." [15]

The attitude that legal standards and issues of privacy can be overridden by other factors is further reflected in a memorandum written by Richard Helms in connection with the testing of dangerous drugs on unsuspecting American citizens in 1963. Mr. Helms wrote the Deputy Director of Central Intelligence:

> While I share your uneasiness and distaste for any program which tends to intrude on an individual's private and legal prerogatives, I believe it is necessary that the Agency maintain a central role in this activity, keep current on enemy capabilities in the manipulation of human behavior, and maintain an offensive capability. I, therefore, recommend your approval for continuation of this testimony program . . .[15a]

The history of the CIA's New York mail opening program is replete with examples of conscious contravention of the law. The original proposal for large-scale mail opening in 1955, for instance, explicitly recognized that "[t]here is no overt, authorized or legal censorship or monitoring of first class mails which enter, depart or transit the United States at the present time." [16] A 1962 memorandum on the project noted that its exposure could "give rise to grave charges of criminal misuse of the mails by Government agencies" and that "existing Federal statutes preclude the concoction of any legal excuse for the violation . . ." [17] And again in 1963, a CIA officer wrote: "There is no legal basis for monitoring postal communications in the United States except during time of war or national emergency . . ." [18]

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[13] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66.

[14] Report of the House Judiciary Committee, 8/20/74, p. 150.

[15] Memorandum from William C. Sullivan to J. Edgar Hoover, 6/30/69.

[15a] Memorandum from Richard Helms to the Deputy Director of Central Intelligence, 12/17/63.

[16] Blind memorandum, 11/7/55.

[17] Memorandum from Deputy Chief, Counterintelligence Staff, to Director, Office of Security, 2/1/62.

[18] Memorandum from Chief, CI/Project to Chief, Division, 9/26/63.

Both the former Chief of the Counterintelligence Staff and the former Director of Security—who were in charge of the New York project—testified that they believed it to be illegal.[19] One Inspector General who reviewed the project in 1969 also flatly stated: "[O]f course, we knew that this was illegal. . . . [E]verybody knew that it was [illegal]. . . ."[20]

In spite of the general recognition of its illegality, the New York mail opening project continued for a total of 20 years and was not terminated until 1973, when the Watergate-created political climate had increased the risks of exposure.[21]

With the full knowledge of J. Edgar Hoover, moreover, the FBI continued to receive the fruits of this project for three years after the FBI Director informed the President of the United States that "the FBI is opposed to implementing any covert mail coverage because it is clearly illegal . . ."[22] The Bureau's own mail opening programs had been terminated in 1966, but it continued intentionally and knowingly to benefit from the illegal acts of the CIA until 1973.

The Huston Plan is another disturbing reminder of the fact that intelligence programs and techniques may be advocated and authorized with the knowledge that they are illegal. At least two of the options that were presented to President Nixon were described as unlawful on the face of the Report. Of "covert mail coverage" (mail opening) it was written that "[t]his coverage, not having the sanction of law, runs the risk of any illicit act magnified by the involvement of a Government agency."[23] The Report also noted that surreptitious entry "involves illegal entry and trespass."[24] Thus, the intelligence community presented the nation's highest executive official with the option of approving courses of action described as illegal. The fact that President Nixon did authorize them, even if only for five days, is more disquieting still.[25]

When President Nixon eventually revoked his approval of the Huston Plan, the intelligence community nevertheless proceded to initiate some programs suggested in the Plan. Intelligence agencies also continued to employ techniques recommended in the Plan, such as mail opening which had been used previously without presidential approval.[26]

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[19] Angleton, 9/24/75, Hearings, Vol. 2, p. 61; Howard Osborn, deposition, 8/28/75, p. 90.

[20] Gordon Stewart, 9/30/75, p. 28.

[21] See e.g., Howard Osborn deposition, 8/28/75. p. 89.

[22] Special Report, June 1970, p. 31.

[23] Special Report, June 1970, p. 30.

[24] Special Report, June 1970, p. 32.

[25] President Nixon stated that he approved these activities in part because they "had been found to be effective." (Response of Richard M. Nixon to Senate Select Committee Interrogatory 19, 3/9/76, p. 13.)

[26] For a description of the techniques which continued or were subsequently instituted, see pp. 115–116.

A memorandum from John Dean to John Mitchell suggests that, after President Nixon's revocation of approval for the Huston Plan, the White House itself supported the continued pursuit of some of the objectives of the Huston Plan. Through an interagency unit known as the Intelligence Evaluation Committee. (Memorandum from John Dean to the Attorney General, 9/18/70.) In this memorandum, Dean suggested the creation of such a unit for "both operational and evaluation purposes." He wrote in part:

"[T]he unit can serve to make appropriate recommendations for the type of intelligence that should be immediately pursued by the various agencies. In

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The recent history of Army intelligence provides an additional example of continuing an activity described as illegal. Beginning in 1967, the Army Security Agency monitored the radio communications of amateur radio operators in this country to determine if dissident elements planned disruptive activity at particular demonstrations and events. Because Army officials questioned whether such monitoring was legal under Section 605 of the Federal Communications Act of 1934, they requested a legal opinion from the Federal Communications Commission. At a meeting held in August 1968, the FCC advised the Army that such monitoring was illegal under the Act. FCC representatives also stated that the matter had been raised with Attorney General Ramsey Clark and that he had disapproved the program.[27] The FCC agreed, however, to submit a written reply to the Army, stating only that it could not "provide a positive answer to the Army's proposal." [28]

Despite having been told that their monitoring activity was illegal, and that the Attorney General himself disapproved it, the Army Security Agency continued to monitor the radio communications of American citizens for another two years.[29]

Several factors may explain the intelligence community's frequent disregard of legal issues.

Some intelligence officials expressed the view that the legal and ethical restraints that applied to the rest of society simply did not apply to intelligence activities. This concept is reflected in a 1959 memorandum on the Army's covert drug testing program: "In intelligence, the stakes involved and the interest of national security may permit a more tolerant interpretation of moral-ethical values . . ." [30]

As William C. Sullivan also pointed out, many intelligence officers had been imbued with a "war psychology." "Legality was not questioned," he said, "it was not an issue." [31] In war, one simply did what

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regard to this . . . point, I believe we agreed that it would be inappropriate to have any blanket removal of restrictions; rather, the most appropriate procedure would be to decide on the type of intelligence we need, based on an assessment of the recommendations of this unit, and then to proceed to remove the restraints as necessary to obtain such intelligence." (Dean memorandum, 9/18/70.)

[27] Memorandum for the record by Army Assistant Chief of Staff for Intelligence, 8/16/68; Staff summary of Sol Lindenbaum (former Executive Assistant to the Attorney General) interview, 5/8/75.

[28] Memorandum for the record by Army Assistant Chief of Staff for Intelligence, 8/16/68.

[29] The Army's general domestic surveillance program provides an example of evasion of a departmental order which had been issued out of concern with legal issues. The practice of collecting vast amounts of information on American citizens was terminated in 1971, when new Department of Defense restrictions came into effect calling for the destruction of all files on "unaffiliated" persons and organizations. Rather than destroying the files, however, several Army intelligence units simply turned their intelligence files on dissident individual and groups over to local police authorities; and one Air Force counterintelligence unit in San Diego began to create new files the next year. (Hearings before Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, 92nd Congress, 1st session, 1971, p. 1297; "Ex-FBI Aid Accused in Police Spy Hearings," *Chicago Tribune*, 6/21/75, p. 3.)

[30] USAINTC Staff Study: Material Testing Program EA 1729, 10/15/59.

[31] Sullivan attributes much of this attitude to the molding influence of World War II upon young intelligence agents who later rose to positions of influence in

one was "expected to do as a soldier." [32] "It was my assumption," said one FBI official connected with the Bureau's mail opening programs, "that what we were doing was justified by what we had to do." [33] Since the "enemy" did not play by the rules, moreover, intelligence officials often believed they could not afford to do so either.[34]

One FBI intelligence officer appeared to attribute the disregard of the law in the Bureau's COINTELPRO operations to simple restlessness on the part of "action-oriented" FBI agents. George C. Moore, the Racial Intelligence Section Chief, testified that:

> . . . the FBI's counterintelligence program came up because if you have anything in the FBI, you have an action-oriented group of people who see something happening and want to do something to take its place.[36]

Others in the intelligence community have contended that questionable and illegal acts were justified by a law higher than the United States Code or the Constitution. An FBI Counterintelligence Section Chief, for example, stated the following reason for believing in the necessity of techniques such as mail opening:

> The greater good, the national security, this is correct. This is what I believed in. Why I thought these programs were good, it was that the national security required this, this is correct.[37]

Similarly, when intelligence officials secured the cooperation of telegraph company executives for Project SHAMROCK, in which NSA received millions of copies of international telegraph messages without the sender's knowledge, they assured the executives that they would not be subjected to criminal liability because the project was "in the highest interests of the nation." [38]

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the intelligence community. (Sullivan, 11/1/75, pp. 94–95.) Disregard of the "niceties of law," he stated, continued after the war had ended:

"Along came the Cold War. We pursued the same course in the Korean War, and the Cold War continued, then the Vietnam War. We never freed ourselves from that psychology that we were indoctrinated with, right after Pearl Harbor, you see. I think this accounts for the fact that nobody seemed to be concerned about raising the question is this lawful, is this legal, is this ethical? It was just like a soldier in the battlefield. When he shot down an enemy he did not ask himself is this legal or lawful, is it ethical? It is what he was expected to do as a soldier."

"We did what we were expected to do. It became part of our thinking, a part of our personality." (Sullivan, 11/1/75. pp. 95, 96.)

Unfortunately, it made too little difference whether the "enemy" was a foreign spy, a civil rights leader, or a Vietnam protester.

[32] Sullivan, 11/1/75, p. 96.

[33] Branigan, 10/9/75, p. 41.

[34] Staff summary of William C. Sullivan interview, 6/10/75.

[36] Moore deposition, 11/3/75, p. 79.

[37] Branigan deposition, 1/9/75, p. 41. Richard Helms referred to another kind of "greater good" when asked to speculate about the possible motivation of a CIA scientist who did not heed President Nixon's directive to destroy all biological and chemical toxins. Noting that the scientist might have "had thoughts about immunization . . . or treatment of disease where [the toxin he had developed] might be useful," Helms said that the retention of this biological agent could be explained as "yielding to that human impulse of the greater good." (Richard Helms testimony, 9/15/75, p. 96.)

[38] Robert Andrews testimony 9/23/75, p. 34; See NSA Report: "SHAMROCK." By cooperating with the Government in SHAMROCK, executives of three companies chose to ignore the advice of their respective legal counsels who had recom-

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Perhaps the most novel reason for advocating illegal action was proffered by Tom Charles Huston. Huston explained that he believed the real threat to internal security was potential repression by right-wing forces within the United States. He argued that the "New Left" was capable of producing a climate of fear that would bring forth every repressive demagogue in the country. Huston believed that the intelligence professionals, if given the chance, could protect the people from the latent forces of repression by monitoring the New Left, including by illegal means.[39] Illegal action directed against the New Left, in other words, should be used by the Government to forestall potential repression by the Right.

In attempting to explain why illegal activities were advocated and defended, the impact of the attitudes and actions of government officials in supervisory positions—Presidents, Cabinet officers, and Congressmen—should not be discounted. Their occasional endorsement of such activities, as well as the atmosphere of permissiveness created by their emphasis on national security and their demands for results, clearly contributed to the notion that strict adherence to the law was unimportant. So, too, did the concept, propounded by some senior officials, that a "sovereign" president may authorize violations of the law.

Whatever the reasons, however, it is clear that a number of intelligence officers acted in knowing contravention of the law.

Subfinding (d)

Internal recognition of the illegality or questionable legality of many of these activities frequently led to a tightening of security rather than to their termination. Partly to avoid exposure and a public "flap," knowledge of these programs was tightly held within the agencies, special filing procedures were used, and "cover stories" were devised.

When intelligence agencies realized that certain programs and techniques were of questionable legality, they frequently took special security precautions to avoid public exposure, criticism, and embarrassment. The CIA's study of student unrest throughout the world in the late 1960s, for example, included a section on student dissent in the United States, an area that was clearly outside the Agency's statutory charter. DCI's Hichard Helms urged the President's national security advisor, Henry Kissinger, to treat it with extreme sensivity in light of the acknowledged jurisdictional violation:

> "Herewith is a survey of student dissidence world-wide as requested by the President. In an effort to round out our discussion of this subject, we have included a section on American students. This is an area not within the charter of this Agency, so I need not emphasize how extremely sensitive this makes the paper. Should anyone learn of its existence, it would prove most embarrassing for all concerned."[40]

Concern for the FBI's public image prompted security measures which protected numerous questionable activities. For example, in

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mended against participation because they considered the program to be in violation of the law and FCC regulations. (Memorandum for the record, Armed Forces Security Agency, Subject: SHAMROCK Operation, 8/25/50.)

[39] Tom Charles Huston deposition, 5/22/75, p. 43; Staff Summary of Tom Charles Huston interview, 5/22/75.

[40] Letter from Richard Helms to Henry Kissinger, 2/18/69.

approving or denying COINTELPRO proposals, many of which were clearly illegal, a main consideration was preventing "embarrassment to the Bureau."[41] A characteristic caution to FBI agents appears in the letter which initiated the COINTELPRO against "Black Nationalists":

> You are also cautioned that the nature of this new endeavor is such that under no circumstances should the existence of the program be made known outside the Bureau and appropriate within-office security should be afforded to sensitive operations and techniques considered under the program.

Examples of attention to such security are that anonymous letters had to be written on commercially purchased stationery; newsmen had to be so completely trustworthy that they were guaranteed not to reveal the Bureau's interest; and inquiries of law enforcement officials had to be made under the pretext of a criminal investigation.

A similar preoccupation with security measures for improper activities affected both the NSA and the Army Security Agency.

NSA's guidelines for its watch list activity provided that NSA's name should not be on any of the disseminated watch list material involving Americans. The aim was to "restrict the knowledge that such information is being collected and processed" by NSA.[43]

The Army Security Agency's radio monitoring activity, which continued even after the Army was told that the FCC and the Attorney General regarded it as illegal, also had to be conducted in secrecy if a public outcry was to be avoided. When Army officials decided to permit radio monitoring in connection with the military's Civil Disturbance Collection Plan, their instruction provided that all ASA personnel had to be "disguised" either in civilian clothes or as members of regular military units.[44]

The perceived illegality—and consequent "flap potential"—of the CIA's New York mail opening project led Agency officials to formulate a drastic strategy to follow in the event of public exposure. A review of the project by the Inspector General's Office in the early 1960s concluded that it would be desirable to fabricate a "cover story." A formal recommendation was therefore made that "[a]n emergency plan and cover story be prepared for the possibility that the operation might be blown."[45] In response to this recommendation, the Deputy Chief of the Counterintelligence Staff agreed that "a 'flap' will put us 'out of business' immediately and may give rise to grave charges of criminal misuse of the mails by government agencies," but he argued:

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[41] See COINTELPRO Report: Sec. V, "Outside the Bureau" memorandum; from FBI Headquarters to all SAC's, 8/25/67.

[43] Buffham, 9/12/75, p. 20; MINARET Charter, 7/1/69.

At other times, however, NSA's special security measures were applied to protect documents which concerned far more than NSA. Thus, at Richard Helms suggestion, Huston Plan working papers and documents were all stamped with legends designed to protect NSA's lawful communications activity, although only a small portion of the documents actually concerned NSA. (Unaddressed memorandum, Subject: "Interagency Committee on Intelligence, Working Subcommittee, Minutes of the First Meeting," 6/10/70.)

[44] Department of Army Message to Subordinate Commands, 3/31/68.

[45] CIA memorandum, Subject: Inspector General's Survey of the Office of Security, Annex II, undated.

> Since no good purpose can be served by an official admission of the violation, and existing Federal statutes preclude the concoction of any legal excuse for the violation, it must be recognized that no cover story is available to any Government Agency. Therefore, it is important that all Federal law enforcement and US Intelligence Agencies vigorously deny any association, direct or indirect, with any such activity as charged. . . . Unless the charge is supported by the presentation of interior items from the Project, it should be relatively easy to "hush up" the entire affair, or to explain that it consists of legal mail cover activities conducted by the Post Office at the request of authorized Federal agencies. Under the most unfavorable circumstances . . . it might be necessary after the matter has cooled off during an extended period of investigation, to find a scapegoat to blame for unauthorized tampering with the mails. Such cases by their very nature do not have much appeal to the imagination of the public, and this would be an effective way to resolve the initial charge of censorship of the mails.[46]

This strategy of complete denial and transferring blame to a scapegoat was approved by the Director of Security in February 1962.[47]

Another extreme example of a security measure that was adopted because of the threat that illegal activity might be exposed was the outright destruction of files.

The FBI developed a special filing system—or, more accurately, a destruction system—for memoranda written about illegal techniques, such as break-ins,[48] and highly questionable operations, such as the microphone surveillance of Joseph Kraft.[49] Under this system—which was referred to as the "DO NOT FILE" procedure—authorizing documents and other memoranda were filed in special safes at headquarters and field offices until the next annual inspection by the Inspection Division, at which time they were to be systematically destroyed.[50]

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[46] Memorandum from Deputy Chief, CI Staff, to Director Office of Security, 2/1/62.

[47] Memorandum from Sheffield Edwards, Director of Security, to Deputy Director for Support, 2/21/62.

[48] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66. The same document that describes the application of the "DO NOT FILE" procedure to "black bag jobs" also notes that before a break-in could be approved within the FBI, the Special Agent in Charge of the field office had to assure headquarters that it could be accomplished without "embarrassment to the Bureau." (Sullivan memorandum, 7/19/66.)

An isolated instance of file destruction apparently occurred in the Los Angeles office of the Internal Revenue Service in December 1974, at a time when Congressional investigation of the intelligence agencies was imminent. This office had collected large amounts of essentially political information regarding black militants and political activists. In violation of internal document destruction procedures the files were destroyed prior to their proposed review by IRS authorities. See IRS Report; Sec. IV. "The Information Gathering and Retrieval System"; Staff Summary of interview with Chief, IRS Division, Los Angeles, 8/1/75.

[49] For example, letters from W. C. Sullivan to J. Edgar Hoover, 6/30/69, 7/2/69, 7/3/69, 7/7/69. These letters were sent to Hoover from Paris, where Sullivan coordinated the Kraft surveillance. All of them bear the notation "DO NOT FILE."

[50] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66.

Subfinding (e)

On occasion, intelligence agencies failed to disclose candidly programs and practices to their own General Counsels, and to Attorney Generals, Presidents, and Congress.

(i) Concealment from Executive Branch Officials

Intelligence officers frequently concealed or misrepresented illegal activities to their own General Counsel and superiors within and outside the agencies in order to protect these activities from exposure.

For example, during the entire 20-year history of the CIA's mail opening project, the Agency's General Counsel was never informed of its existence. According to one Agency official, this knowledge was purposefully kept from him. Former Inspector General Gordon Stewart testified:

> Well, I am sure that it was held back from [the General Counsel] on purpose. An operation of this sort in the CIA is run—if it is closely held, it is run by those people immediately concerned, and to the extent that it is really possible, according to the practices that we had in the fifties and sixties, those persons not immediately concerned were supposed to be ignorant of it.[51]

The evidence also indicates that two Directors of Central Intelligence under whom the New York mail operations continued—John McCone and Admiral Raborn—were never informed of its existence.[52] In 1954, Postmaster General Arthur Summerfield was informed that the CIA operated a mail cover project in New York, but he was not told that the Agency opened or intended to open any mail.[53] In 1965, the CIA briefly considered informing Postmaster General John A. Gronouski about the project when its existence was felt to be jeopardized by a congressional subcommittee that was investigating the use of mail covers and other investigative techniques by federal agencies. According to an internal memorandum, however, the idea was quickly rejected "in view of various statements by Gronouski before this subcommittee." [54] Since Gronouski had agreed with the subcommittee that tighter administrative controls on mail covers were necessary and generally supported the principle of the sanctity of the mail, it is reasonable to infer that CIA officials assumed he would not be sympathetic to the technique of mail opening.[55]

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[51] Gordon Stewart, 9/30/75, p. 29.

[52] McCone, 10/9/75, pp. 3–4; Angleton, 9/17/75, p. 20; Osborn, 10/21/75; Hearings, Vol. 4, p. 38.

[53] Memorandum from Richard Helms to Director of Security, 5/17/74; Helms, 10/22/75, Hearings, Vol. 4, p. 84. By the CIA's own account, moreover, at most only three Cabinet-level officials may have been told about the mail opening aspects of this project. Each of these three—Postmasters General J. Edward Day and Winton M. Blount, and Attorney General John Mitchell—dispute the Agency's claim. (Day, 10/22/75, Hearings, Vol. 4, p. 45; Blount, 10/22/75, Hearings, Vol. 4, p. 47; Mitchell, 10/2/75, pp. 13–14.)

[54] Blind memorandum from "CIA Officer," 4/23/65.

[55] *Ibid.* Mr. Gronouski testified as follows about the CIA's successful attempt to keep knowledge of the New York project from him:

"When this news [about CIA mail opening] broke [in 1975], I thought it was incredible that a person in a top position of responsibility in Government in an agency should have something of this sort that is very illegal going on within his own agency and did not know about it. It is not that I did not try to know about these things. I think it is incumbent upon anybody at the top office to try to know everything that goes on in his organization." (Gronouski, 10/22/75, Hearings, Vol. 4 p. 44.)

The only claim that any President may have known about the project was made by Richard Helms, who testified that "there was a possibility" that he "mentioned" it to President Lyndon Johnson in 1967 or 1968.[56] No documentary evidence is available that either supports or refutes this statement. During the preparation of the Huston Plan, neither CIA nor FBI representatives informed Tom Charles Huston, President Nixon's representative, that the mail opening project existed. The final interagency report on the Huston Plan signed by Richard Helms and J. Edgar Hoover, was sent to the President with the statement, contrary to fact, that all mail opening programs by federal agencies had been discontinued.[57]

In connection with another CIA mail opening project, middle-level Agency officials apparently did not even tell their own superiors within the CIA that they intended to open mail, as opposed to merely inspecting envelope exteriors. The ranking officials testified that they approved the project believing it to be a mail cover program only.[58] No Cabinet officials or President knew of this project and the approval of the Deputy Chief Postal Inspector (for what he also believed to be a mail cover operation) was secured through conscious deception.[59]

A pattern of concealment was repeated by the FBI in their mail opening programs. There is no claim by the Bureau that any Postmaster General, Attorney General, or President was ever advised of the true nature and scope of its mail projects. One FBI official testified that it was an unofficial Bureau policy not to inform postal officials with whom they dealt of the actual intention of FBI agents in receiving the mail, and there is no indication that this policy was ever violated.[60] At one point in 1965, Assistant Director Alan Belmont and Inspector Donald Moore apparently informed Attorney General Nicholas deB. Katzenbach that FBI agents received custody of the mail in connection with espionage cases on some occasions.[61] But Moore testified that the Attorney General was not told that mail was actually opened. When asked if he felt any need to hold back from Katzenbach the fact of mail openings as opposed to the fact that Bureau agents received direct access to the mail, Moore replied:

> It is perhaps difficult to answer. Perhaps I could liken it to . . . a defector in place in the KGB. You don't want to tell anybody his name, the location, the title, or anything like that. Not that you don't trust them completely, but the fact

[56] Helms, 10/23/75, pp. 28, 30–31.

[57] Special Report, p. 29. Richard Helms testified as follows about this inaccurate statement:

". . . the only explanation I have for it was that this applied entirely to the FBI and had nothing to do with the CIA, that we never advertised to this Committee or told this Committee that this mail operation was going on, and there was no intention of attesting to a lie. . . ."

"And if I signed this thing, then maybe I didn't read it carefully enough."

"There was no intention to mislead or lie to the President." (Helms, 10/22/75, Hearings Vol. 4, p. 95).

[58] Howard Osborn, 8/28/75, pp. 58, 59; Thomas Karamessines, 10/8/75, p. 12; Richard Helms, 9/10/75, p. 127.

[59] For example, Chief, Security Support Division memorandum, 12/24/74; Memorandum from C/TSD/CCG/CRB to the file, 3/26/69; memorandum from C/TSD/CCG/CRB to the file, 9/15/69.

[60] Donald E. Moore, 10/1/75, p. 79.

[61] Moore, 10/1/75, p. 31; Katzenbach, 12/3/75, Hearings, vol. 6, pp. 204, 205.

> is that any time one additional person becomes aware of it, there is a potential for the information to . . . go further.[62]

Another Bureau agent speculated that the Attorney General was not told because mail opening "was not legal, as far as I knew." [63]

Similarly, there is no indication that the FBI ever informed any Attorney General about its use of "black bag jobs" (illegal break-ins for purposes other than microphone installations); the full scope of its activities in COINTELPRO; or its submission of names for inclusion on either the CIA's "Watch List" for mail opening or, before 1973, on the NSA's "Watch List" for electronic monitoring of international communications.[64]

After J. Edgar Hoover disregarded Attorney General Biddle's 1943 order to terminate the Custodial Detention List by merely changing its name to the Security Index moreover, Bureau headquarters instructed the field officers that the new list should be kept "strictly confidential" and that it should never be mentioned in FBI reports or "discussed with agencies or individuals outside the Bureau" except for military intelligence agencies. For several years thereafter, the Attorney General and the Justice Department were not informed of the FBI's decision.[65]

An incident which occurred in 1967 in connection with the Bureau's COINTELPRO operations is particularly illustrative of the lengths to which intelligence agencies would go to protect illegal programs from scrutiny by executive branch officers outside the intelligence community. As one phase of its disruption of the United Klans of America, the Bureau sent a letter to Klan officers purportedly prepared by the highly secret "National Intelligence Committee" (NIC) of the Klan.[66] The fake letter purported to fire the North Carolina Grand Dragon for personal misconduct and misfeasance in office, and to suspend Imperial Wizard Robert Shelton for his failure to remove the Grand Dragon. Shelton complained to the FBI and the Post Office about this apparent violation of the mail fraud statutes—without realizing that the Bureau had in fact sent the letter.[67] The Bureau, after solemnly assuring Shelton that his complaint was not within the FBI's jurisdiction, approached the Chief Postal Inspector's office in Washington to determine what action the Post Office planned to take regarding Shelton's allegation. The FBI was advised that the matter had been referred to the Justice Department's Criminal Division.[68] At no time did the Bureau inform either the Post Office or the Justice Department that FBI agents had authored the letter. When no investigation was deemed to be warranted by the Criminal Division, FBI Headquarters directed the Bureau's Charlotte, North Carolina office to prepare a second phony NIC letter to send to Klan officials.[69] This

[62] Moore 10/1/75, p. 48. See Mail Report: Sec. IV, "Nature and Value of the Product Received."

[63] FBI agent testimony, 10/10/75, p. 30.

[64] See NSA Report: Sec. II, "Summary of NSA Watch List Activity."

[65] Memorandum from J. Edgar Hoover to FBI Field Offices, 8/14/43.

[66] Memorandum from Atlanta Field Office to FBI Headquarters, 6/7/67.

[67] Memorandum from Birmingham Field Office to FBI Headquarters, 6/14/67.

[68] Postal officials told Bureau liaison that since Shelton's allegations "appear to involve an internal struggle for control of Ku Klux Klan activities in North Carolina and since the evidence of mail fraud was somewhat tenuous in nature, the Post Office did not contemplate any investigation." (Memorandum from Special Agent to D. J. Brennan, 7/11/67.). Had the FBI informed the Post Office that Bureau agents had written the letter, it would have been apparent that Shelton's allegations were not based on an "internal struggle" within the KKK.

[69] Memorandum from FBI Headquarters to Charlotte Field Office, 8/21/67.

letter was not mailed, however, because the Charlotte office proposed and implemented a different idea—the formation of an FBI-controlled alternative Klan organization, which eventually attracted 250 members.[70]

The Huston Plan itself was prepared without the knowledge of the Attorney General. Neither the Attorney General nor anyone in his office was invited to the drafting sessions at Langley or consulted during the proceedings. Huston testified that it never occurred to him to confer with the Attorney General before making the recommendations in the Report, in part because the plan was seen as an intelligence matter to be handled by the intelligence agency directors.[71]

Similarly, the CIA's General Counsel was not included or consulted in the formulation of the Huston Plan. As James Angleton testified, "the custom and usage was not to deal with the General Counsel, as a rule, until there were some troubles. He was not a part of the process of project approval." [73]

(*ii*) *Concealment from Congress*

At times, knowledge of illegal programs and techniques has been concealed from Congress as well as executive branch officials. On two occasions, for example, officials of the Army Security Agency ordered its units—in apparent violation of that Agency's jurisdiction—to conduct general searches of the radio spectrum without regard to the source or subject matter of the transmissions. ASA did not report these incidents to ranking Army officials, even when specifically asked to do so as part of the Army's preparation for the hearings of the Senate Subcommittee on Constitutional Rights in 1971.[74]

Events surrounding the 1965 and 1966 investigation by Senator Edward Long of Missouri into federal agencies' use of mail covers and other investigative techniques clearly showed the desire on the part of CIA and FBI officials to protect their programs from congressional review.[75] Fearing that the New York mail opening program might be discovered by this subcommittee, the CIA considered suspending the operation until the investigation had been completed. An internal CIA memorandum dated April 23, 1965, reads in part:

> Mr. Karamessines [Assistant Deputy Director for Plans] felt that the dangers inherent in Long's subcommittee activi-

[70] Memorandum from Charlotte Field Office to FBI Headquarters 8/22/67.

[71] Huston, 9/23/75, Hearings, Vol. 2, p. 24.

When J. Edgar Hoover informed Attorney General John Mitchell about the Report on July 27, 1970, Mitchell objected to its proposals and influenced the President to withdraw his original approval.

According to John Mitchell, he believed that the proposals "were inimical to the best interests of the country and certainly should not be something that the President of the United States should be approving." (John Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 23.)

[73] James Angleton, 9/24/75, Hearings, Vol. 2, p. 77.

[74] See Military Surveillance Report: Sec. I, "Improper Surveillance of Private Citizens by the Military"; Inspector General Report, Department of the Army, 1/3/72.

[75] The Johnson Administration itself attempted to restrict the Long Subcommittee's investigation into national security matters, although there is no indication that this attempt was motivated by a desire to protect illegal activities. (E.g., Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65; memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/2/65.)

> ties to the security of the Project's operations in New York should be thoroughly studied in order that a determination can be made as to whether these operations should be partially or fully suspended until the subcommittee's investigations are completed.[76]

When it was learned that Chief Postal Inspector Henry Montague had been contacted about the Long investigation and believed that it would "soon cool off", however, it was decided to continue the operation without suspension.[77]

The FBI was also concerned that the subcommittee might expose its mail opening programs. Bureau memoranda indicate that the FBI intended to "warn the Long Committee away from those areas which would be injurious to the national defense." [78] J. Edgar Hoover personally contacted the Chairman of the Senate Judiciary Committee,[79] and urged him "to see Long not later than Wednesday morning to caution him that [the Chief Counsel] must not go into the kind of question he made of Chief Inspector Montague of the Post Office Department" [80]—questioning that had threatened to reveal the FBI's mail project the previous week.[81]

When the Long subcommittee began to investigate electronic surveillance practices several months later, Bureau officials convinced Senator Edward Long that there was no need to pursue such an investigation since, they said, the FBI's operations were tightly controlled and properly implemented.[82] According to Bureau documents, FBI agents wrote a press release for the Senator from Missouri, with his approval, that stated his subcommittee had

> conducted exhaustive research into the activities, procedures, and techniques of this agency [and] based upon careful study . . . we are fully satisfied that the FBI has not participated in highhanded or uncontrolled usage of wiretaps, microphones, or other electronic equipment.[83]

Not only was this release written by the FBI itself, it was misleading. The "exhaustive research" apparently consisted of a ninety-minute briefing by FBI officials describing their electronic surveillance practices; neither the Senator nor the public learned of the instances of improper electronic surveillances that had been conducted by the FBI.[84] When Senator Edward Long later asked certain FBI officials to testify about the Bureau's electronic surveillance policy before the Subcommittee, they refused, arguing: ". . . to put an FBI witness on the

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[76] Blind memorandum from "CIA Officer," 4/23/65.

[77] Ibid.

[78] Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65.

[79] Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/1/65.

[80] Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach 3/1/65.

[81] Mail Report Part IV, Sec. VII, "Concern with Exposure." At the time of his testimony before the Long Subcommittee, Chief Postal Inspector Montague knew of ongoing FBI projects in which Bureau agents received custody of the mail, but he was apparently unaware that these projects involved mail openings.

[82] For example, Memorandum from C. D. DeLoach to Mr. Tolson, 1/10/66.

[83] Memorandum from M. A. Jones to Mr. Wick, Attachment, 1/11/66.

[84] See pp. 62–65, 105, 205–206 for a description of some of these improper surveillances.

stand would be an attempt to open a Pandora's box, insofar as our enemies in the press were concerned. . . ." [85]

After the press release had been delivered to Senator Long and the refusal to testify had been accepted, one FBI official wrote to the Associate Director that while some problems still existed, "we have neutralized the threat of being embarrassed by the Long Subcommittee . . ." [86]

Subfinding (f)

The internal inspection mechanisms of the CIA and the FBI did not keep—and, in the case of the FBI, were not designed to keep—the activities of those agencies within legal bounds. Their primary concern was efficiency, not legality or propriety.

The internal inspection mechanisms of the CIA and the FBI were ineffective in ensuring that the activities of these agencies were kept within legal bounds. This failure was sometimes due to structural deficiencies which kept knowledge of questionable programs tightly compartmented and shielded from those who could evaluate their legality.

As noted above, for example, the CIA's General Counsel was not informed about either the New York mail opening project or CIA's participation in the Huston Plan deliberations. The role of the CIA's General Counsel was essentially a passive one; he did not initiate inquiries but responded to requests from other Agency components. As James Angleton stated, the General Counsel was not a part of the normal project approval process and generally was not consulted until "something was going wrong." [87]

When the General Counsel was consulted, he often exerted a positive influence on the conduct of CIA activities. For example, the CIA stopped monitoring telephone calls to and from Latin America after the General Counsel issued an opinion describing the telephone intercepts as illegal.[88] But internal CIA regulations have never required employees who know of illegal, improper, or questionable activities to report them to the General Counsel; rather, employes with such knowledge are instructed to inform either the Director of Central Intelligence or the Inspector General. The Director and the Inspector General may refer the matter to the General Counsel but until recently they were not obligated to do so.[88a] As Richard Helms stated, "Sometimes we did [consult the General Counsel]; sometimes we did not. I think the record on that is rather spotty, quite frankly." [89]

Indeed, the record suggests that those programs that were most questionable—such as the New York mail opening project and Project CHAOS—were not referred to the General Counsel because they were

[85] Memorandum from C. D. DeLoach to Mr. Tolson, 1/21/66.

[86] DeLoach memorandum, 1/21/66. This incident also illustrates that Congress has at times permitted itself to be "neutralized." The general reluctance of Congress to discharge its responsibilities toward intelligence agencies is discussed at pp. 277–281.

[87] James Angleton, 9/17/75, p. 48.

[88] Memorandum from Lawrence Houston to Acting Chief, Division D, 1/29/73.

[88a] Proposed regulations drafted in response to Executive Order 11905 (March 1976) require the Inspector General to refer "all legal matters" to the Office of General Counsel. (Draft Reg. HR 1–3.)

[89] Helms deposition, 9/10/75, p. 59.

considered extremely sensitive.[90] Even when questionable activities were called to the attention of the General Counsel, moreover, the internal Agency regulations did not guarantee him unrestricted access to all relevant information. Thus, the General Counsel was not in a position to conduct a complete evaluation of the propriety of particular programs.

Part of the failure of internal inspection to terminate improper programs and practices may be attributed to the fact that the primary focus of the CIA's Office of the Inspector General and the FBI's Inspection Division has been on efficiency and effectiveness rather than on propriety.

The CIA's Inspector General is charged with the responsibility, among other matters, of investigating activities which might be construed as "illegal, improper, and outside the CIA's legislative charter."[91] In at least one case, the Inspector General did force the suspension of a suspect activity: the surreptitious administration of LSD to unwitting, non-volunteer, human subjects which was suspended in 1963.[92] An earlier Inspector General's review of the larger, more general program for the testing of behavorial control agents, however, had labeled that program "unethical and illegal" and it nonetheless continued for another seven years.[93] In general, as the Rockefeller Commission pointed out, "the focus of the Inspector General component reviews was on operational effectiveness. Examination of the legality or propriety of CIA activities was not normally a primary concern."[94] Two separate reviews of the New York mail opening projects by the Inspector General's office, for example, considered issues of administration and security at length but did not even mention legal considerations.[95]

Internal inspection at the FBI has traditionally not encompassed legal or ethical questions at all. According to W. Mark Felt, the Assistant FBI Director in charge of the Inspection Division from 1964 to 1971, his job was to ensure that Bureau programs were being operated efficiently, not constitutionally: "There was no instruction to me," he stated, "nor do I believe there is any instruction in the Inspector's manuals, that inspectors should be on the alert to see that constitutional values are being protected."[96] He could not recall any program which was terminated because it might have been violating someone's civil rights.[97]

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[90] Gordon Stewart deposition, 4/30/75, p. 29; Rockeller Commission Report, p. 146; Report on the Offices of the General Counsel and Inspector General: The General Counsel's Responsibilities, 9/30/75, p. 29.

[91] Regulation HR 7-1a (6).

[92] Memorandum for the Record by J. S. Earman, Inspector General, 11/29/63; Memorandum from Helms to DCI, 11/9/64.

[93] 1957 I.G. Inspection of the Technical Services Division.

[94] Rockefeller Commission Report, 6/6/75, p. 89.

[95] Memorandum from L. K. White, Deputy Director for Support, to Acting Inspector General, Attachment, 3/9/62; blind memorandum, undated (1969). The Inspector General under whose auspices the second review was conducted stated "[O]f course we knew that this was illegal," but he believed that it was "unnecessary" to raise the matter of its illegality with Director Helms "since everybody knew that it was [illegal] and it didn't seem . . . that I would be telling Mr. Helms anything that he didn't know." (Gordon Stewart, 9/30/75, p. 32.) p. 32.)

[96] W. Mark Felt testimony, 2/3/75, p. 65.

[97] Felt, 2/3/75, p. 57.

A number of questionable FBI programs were apparently never inspected. Felt could recall no inspection, for instance, of either the FBI mail opening programs or the Bureau's participation in the CIA's New York mail opening project.[98] Even when improper programs were inspected, the Inspection Division did not attempt to exercise oversight in the sense of looking for wrongdoing. Its responsibility was simply to ensure that FBI policy, as defined by J. Edgar Hoover was effectively implemented and not to question the propriety of the policy.[99] Thus, Felt testified that if, in the course of an inspection of a field office, he discovered a microphone surveillance on Martin Luther King, Jr., the only questions he would ask were whether it had been approved by the Director and whether the procedures had been properly followed.[100]

When Felt was asked whether the Inspection Division conducted any investigation into the propriety of COINTELPRO, the following exchange ensued:

> Mr. FELT. Not into the propriety.
>
> Q. So in the case of COINTELPRO, as in the case of NSA interceptions, your job as Inspector was to determine whether the program was being pursued effectively as opposed to whether it was proper?
>
> Mr. FELT. Right, with this exception, that in any of these situations, Counterintelligence Program or whatever, it very frequently happened that the inspectors, in reviewing the files, would direct that a certain investigation be discontinued, that it was not productive, or that there was some reason that it be discontinued.
>
> But I don't recall any cases being discontinued in the Counterintelligence program.[101]

As a result of this role definition, the Inspection Division became an active participant in some of the most questionable FBI programs For example, it was responsible for reviewing on an annual basis all memoranda relating to illegal break-ins prior to their destruction under the "DO NOT FILE" procedure.

Improper programs and techniques in the FBI were protected not only by the Inspection Division's perception of its function, but also by the maxim that FBI agents should never "embarrass the Bureau." This standard, which served as a shield to outside scrutiny, was explicitly reflected in the FBI Manual:

> Any investigation necessary to develop complete essential facts regarding any allegation against Bureau employees must be instituted promptly, and every logical lead which will establish the true facts should be completely run out *unless such action would embarrass the Bureau* . . . in which event the Bureau will weigh the facts, along with the recommendations of the division head. [Emphasis added.][102]

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[98] Felt, 2/3/75, pp. 54, 55.
[99] Felt, 2/3/75, pp. 59–60.
[100] Felt, 2/3/75, p. 60.
[101] Felt, 2/3/75, pp. 56, 57.
[102] When asked about this *Manual* provision, Attorney General Edward Levi stated:

"I do believe . . . some further explanation is in order. First, the Bureau informs me that the provision has not been interpreted to mean that an investiga-

Such an instruction, coupled with the Inspection Division's inattention to the law, could only inhibit or prevent the termination and exposure of illegal practices.

Subfinding (g)

When senior administration officials with a duty to control domestic intelligence activities knew, or had a basis for suspecting, that questionable activities had occurred, they often responded with silence or approval. In certain cases, they were presented with a partial description of a program but did not ask for details, thereby abdicating their responsibility. In other cases, they were fully aware of the nature of the practice and implicitly or explicitly approved it.

On several occasions, senior administration officials with a duty to control domestic intelligence activities were supplied with partial details about questionable or illegal programs but they did not ask for additional information and the programs continued.

Sometimes the failure to probe further stemmed from the administration official's assumption that an intelligence agency would not engage in lawless conduct. Former Chief Postal Inspector Henry Montague, for example, was aware that the FBI received custody of the mail in connection with several of its mail opening programs—indeed, he had approved such custody in one case—but he testified that he believed these were mail cover operations only.[103] Montague stated that he did not ask FBI officials if the Bureau opened mail because he:

> never thought that would be necessary. . . . I trusted them the same as I would another [Postal] Inspector. I would never feel that I would have to tell a Postal person that you cannot open mail. By the same token, I would not consider it necessary to emphasize it to any great degree with the FBI.[104]

A former FBI official has also testified, as noted above, that he informed Attorney General Katzenbach about selected aspects of the FBI mail opening programs. This official did not tell Katzenbach that mail was actually opened, but he testified that he "pointed out [to the Attorney General] that we do receive mail from the Post Office in certain sensitive areas."[105] While Katzenbach stated that he never knew mail was opened or that the FBI gained access to mail on a regular basis in large-scale operations,[106] the former Attorney

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tion should not take place and that 'any interpretation that an investigation would not be instituted because of the possibility of embarrassment to the Bureau was never intended and, in fact, has never been the policy of this Bureau.' I am told that 'what was intended to be conveyed was that in such eventuality FBI Headquarters desired to be advised of the matter before investigation is instituted so that Headquarters would be on notice and could direct the inquiry, if necessary.' "

"Second, the manual provision dates back to March 30, 1955."

"Third, I am informed by the Bureau that 'immediate steps are being taken to remove that phraseology from our Manual of Rules and Regulations.' "

(Letter from Attorney General Levi to Senator Richard Schweiker, 11/10/75.)

[103] Henry Montague testimony, 10/2/75, pp. 55, 71.

[104] Henry Montague, 10/2/75, pp. 15–16.

[105] Donald Moore, 10/1/75, p. 31.

[106] Nicholas Katzenbach, 10/11/75, p. 35.

General acknowledged that he did learn that "in some cases the outside of mail might have been examined or even photographed by persons other than Post Office employees".[107] However, neither at this time nor at any other time did the Justice Department make any inquiry to determine the full scope of the FBI mail operations.

Similarly, former Attorneys General Nicholas Katzenbach and Ramsey Clark testified that they were familiar with the FBI's efforts to disrupt the Ku Klux Klan through regular investigative techniques but said they were unaware of the offensive tactics that occurred in COINTELPRO. Katzenbach said he did not believe it necessary to explore possible irregularities since "[i]t never occurred to me that the Bureau would engage in the sort of sustained improper activity which it apparently did."[108]

Both Robert Kennedy and Nicholas Katzenbach were also aware of some aspects of the FBI's investigation of Dr. Martin Luther King, Jr., yet neither ascertained the full details of the Bureau's campaign to discredit the civil rights leader. Kennedy intensified the original "communist influence" investigation in October 1963 by authorizing wiretaps on King's home and office telephones.[109] Kennedy requested that an evaluation of the results be submitted to him in thirty days in order to determine whether or not to maintain the taps, but the evaluation was never delivered to him and he did not insist on it.[110] Since he never ordered the termination of the wiretap, the Bureau could, and did, install additional wiretaps on King by invoking the original authorization.[111] According to Bureau memoranda apparently initialled by Attorney General Katzenbach, Katzenbach received after the fact notification in 1965 that three bugs had been planted in Dr. King's hotel rooms.[112] A transmittal memorandum written by

[107] Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 205.

[108] Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 207; Ramsey Clark, 12/3/75; Hearings, Vol. 6 p. 235; Katzenbach's and Clark's knowledge of disruptive operations is discussed at greater length in Finding G: "Deficiences in Control and Accountability" p. 265.

[109] Memorandum from J. Edgar Hoover to the Attorney General, 10/7/63; memorandum from J. Edgar Hoover to the Attorney General, 10/18/63.

[110] Memorandum from C. A. Evans to Mr. Belmont 10/21/63.

In May 1961, Robert Kennedy also became aware of the CIA's use of organized crime figures in connection with "clandestine efforts" against the Cuban government. (Memorandum from J. Edgar Hoover to the Attorney General, 5/22/61.) But he did not instruct the CIA to terminate its involvement with underworld figures either at that time or in May 1962, when he learned at a briefing by CIA officials that an assassination attempt had occurred. According to the CIA's General Counsel, who participated in the 1962 briefing, Kennedy only said, ". . . if we were going to get involved with Mafia personnel again he wanted to be informed first." (Lawrence Houston deposition, 6/2/75, p. 14.)

The CIA's use of underworld figures clearly posed problems for the FBI's ongoing investigation of organized crime in the United States, which had in large part been initiated by Attorney General Kennedy himself. (Senate Select Committee, "Alleged Assassination Plots Involving Foreign Leaders," pp. 125–129.)

[111] The FBI instituted additional wiretaps on King on four separate occasions between 1964 and 1965. Since Justice Department policy before March 1965 imposed no limit on the duration of wiretaps and they were approved by the Attorney General, the Bureau claimed that the King taps were justified as a continuation of the tap originally authorized by Kennedy in October 1963. (For example, memorandum from FBI Headquarters to Atlanta Field Office, 4/19/65; Martin Luther King Report: Sec. IC, "Wiretap Surveillance of Dr. King and the SCLC."

[112] Katzenbach's initials appear on memoranda addressed to the Attorney General advising him of these bugs, but he cannot recall seeing or initialing them.

Katzenbach also indicates that he may have instructed the FBI to be "very cautious" in conducting these surveillances.[113] There is no indication, however, that he requested further details about any of them or prohibited the FBI from future use of this technique against Dr. King.

While there is no evidence that the full extent of the FBI's campaign to discredit Dr. King was authorized by or known to anyone outside of the Bureau, there is evidence that officials responsible for supervising the FBI received indications that some such efforts were being undertaken. For example, former Attorney General Katzenbach and former Assistant Attorney General Burke Marshall both testified that in late 1964 they learned that the Bureau had offered tape recordings of Dr. King to certain newsmen in Washington, D.C. They further stated that they informed President Johnson of the FBI's offers.[114] The Committee has discovered no evidence, however, that the President or Justice Department officials made any further effort to halt the discrediting campaign at this time or at any other time; indeed, the Bureau's campaign continued for several years after this incident.

On some occasions, administration officials did not request further details about intelligence programs because they simply did not want to know. Former Postmaster General J. Edward Day testified that when Allen Dulles and Richard Helms spoke to him about a CIA project in 1961, he interrupted them before they could tell him the purpose of their visit (which Helms said was to say mail was being opened). Day stated:

> . . . Mr. Dulles, after some preliminary visiting and so on, said that he wanted to tell me something very secret, and I said, "Do I have to know about it?" And he said, "No."
>
> I said, "My experience is that where there is something that is very secret, it is likely to leak out, and anybody that knew about it is likely to be suspected of having been part of leaking it out, so I would rather not know anything about it."
>
> What additional things were said in connection with him building up to that, I don't know. But I am sure . . . that I was not told anything about opening mail." [115]

By his own account, therefore, Mr. Day did not learn the true nature of this project because he "would rather not know anything about it." Although rarely expressed in such unequivocal terms, this attitude appears to have been all too common among senior government officials.

(Memoranda from J. Edgar Hoover to the Attorney General, 5/17/65, 10/19/65, 12/1/65; Katzenbach, 12/1/75. Hearings, Vol. 6, p. 211, p. 46.) He stated, however, that if he had read these documents, he would have "done something about it." (Katzenbach, Hearings, Vol. 6, p. 230.)

[113] A transmittal slip, which the FBI claims had been attached to the 12/1/65 memorandum, notes that "these are particularly delicate surveillances" and that "we should be very cautious in terms of the non-FBI people who may from time to time necessarily be involved in some aspect of installation." (Memorandum from Nicholas Katzenbach to J. Edgar Hoover, 12/10/65.) This message is signed by Katzenbach, but he testified that he is unsure it related to the King surveillances. (Katzenbach, 12/3/75, Hearings, Vol. 6, p. 229.)

[114] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210; Burke Marshall testimony, 3/3/76, pp. 39–43.

[115] J. Edward Day testimony, 10/22/75, Hearings, Vol. 4. p. 45.

Even when administration officials were fully apprised of the illegal or questionable nature of certain programs and techniques, they sometimes permitted them to continue. An example of acquiescence is presented in the case of William Cotter, a former Chief Postal Inspector who knew that the CIA opened mail in connection with its New York project but took no direct action to terminate the project for a period of four years.[116] Cotter had learned of this project in his capacity as a CIA official in the mid-1950's and he knew that it was continuing when he was sworn in as Chief Postal Inspector in April 1969.[117] Because the primary responsibility of his position was to insure the sanctity of the mails, he was understandably "very, very uncomfortable with [knowledge of the New York] project,"[118] but he felt constrained by the letter and spirit of the secrecy oath which he had signed when he left the CIA in 1969 "attesting to the fact that I would not divulge secret information that came into my possession during the time that I was with the CIA."[119] Cotter stated: "After coming from eighteen years in the CIA, I was hypersensitive, perhaps, to the protection of what I believed to be a most sensitive project . . ."[120] For several years, he placed the dictate of the secrecy oath above that of the law he was charged with enforcing.

Former White House adviser John Ehrlichman also stated that he learned of a program of intercepting mail between the United States and Communist countries "because I had seen reports that cited those kinds of sources in connection with this, the bombings, the dissident activities."[121] Yet he cannot recall any White House inquiry that was made into such a program nor can he recall raising the matter with the President.[122]

When President Nixon learned of the illegal techniques that were recommended in the Huston Plan, he initially endorsed, rather than disavowed them. The former President stated that "[t]o the extent that I reviewed the Special Report of Interagency Committee on Intelligence, I would have been informed that certain recommendations or decisions set forth in that report were, or might be construed to be, illegal."[123] He nonetheless approved them, in part because they represented an efficient method of intelligence collection. As President Nixon explained, "[M]y approval was based largely on the fact that the procedures were consistent with those employed by prior administrations and had been found to be effective by the intelligence agencies."[124]

Mr. Nixon also apparently relied on the theory that a "sovereign" President can authorize the violation of criminal laws in the name of "national security" when the President, in his sole discretion, deems it appropriate. He recently stated:

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[116] In 1973, however, Mr. Cotter was instrumental in effecting the termination of the CIA's New York project. (Cotter, 8/7/75, p. 45.)

[117] Cotter, 8/7/75, p. 45.

[118] Ibid.

[119] Cotter 10/22/75, Hearings, Vol. 4, p. 74.

[120] Ibid.

[121] John Erlichman testimony, President's Commission on CIA Activities Within the United States, 4/17/75, p. 98.

[122] Erlichman testimony, President's Commission on CIA Activities Within the United States, 4/17/75, p. 98.

[123] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 23, 3/9/76, p. 13.

[124] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 19, 3/9/76, p. 13.

> It is quite obvious that there are certain inherently governmental actions which if undertaken by the sovereign in protection of the interest of the nation's security are lawful but which if undertaken by private persons are not. . . .
>
> . . . [I]t is naive to attempt to categorize activities a President might authorize as "legal" or "illegal" without reference to the circumstances under which he concludes that the activity is necessary. . . .
>
> In short, there have been—and will be in the future—circumstances in which Presidents may lawfully authorize actions in the interests of the security of this country, which if undertaken by other persons, or even by the President under different circumstances, would be illegal.[125]

As the former President described this doctrine, it could apply not only to actions taken openly, which are subject to later challenge by Congress and the courts, but also to actions such as those recommended in the Huston Plan, which are covertly endorsed and implemented. The dangers inherent in this theory are clear, for it permits a President to create exceptions to normal legal restraints and prohibitions, without review by a neutral authority and without objective standards to guide him.[126] The Huston Plan itself serves as a reminder of these dangers.

Significantly, President Nixon's revocation of approval for the Huston Plan was based on the possibility of "media criticism" if the use of these techniques was revealed. The former President stated:

> Mr. Mitchell informed me that it was Director Hoover's opinion that initiating a program which would permit several government intelligence agencies to utilize the investigative techniques outlined in the Committee's report would significantly increase the possibility of their public disclosure. Mr. Mitchell explained to me that Mr. Hoover believed that although each of the intelligence gathering methods outlined in the Committee's recommendations had been utilized by one or more previous Administrations, their sensitivity would likely generate media criticism if they were employed. Mr. Mitchell further informed me that it was his opinion that the risk of disclosure of the possible illegal actions, such as unauthorized entry into foreign embassies to install a microphone transmitter, was greater than the possible benefit to be derived. Based upon this conversation with Attorney General Mitchell, I decided to revoke the approval originally extended to the Committee's recommendations.[127]

In more than one instance, administration officials outside the intelligence community have specifically requested intelligence agencies to undertake questionable actions. NSA's program of monitoring telephonic communications between New York City and a city in South America, for example, was undertaken at the specific request of the Bureau of Narcotics and Dangerous Drugs, a law enforcement agency.

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[125] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 34, 3/9/76, pp. 16–17.

[126] President Ford has recently rejected this doctrine of Presidential power.

[127] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 17, 3/9/76, pp. 11–12.

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BNDD officials had been concerned about drug deals that were apparently arranged in calls from public telephones in New York to South America, but they felt that they could not legally wiretap these telephone booths.[128] In order to avoid tapping a limited number of phones in New York, BNDD submitted the names of 450 American citizens for inclusion in NSA's Watch List, and requested NSA to monitor a communications link between New York and South America which necessitated the interception of thousands of international telephone calls.[129]

The legal limitations on domestic wiretapping apparently did not concern certain officials in the White House or Attorneys General who requested the FBI to do their bidding. In some instances, they specifically requested the FBI to institute wiretaps on American citizens with no substantial national security predicate for doing so.[130]

On occasion, Attorneys General have also encouraged the FBI to circumvent the will of both Congress and the Supreme Court. As noted above, after Congress passed the Emergency Detention Act of 1950 to regulate the FBI program for listing people to be detained in case of war or other emergency, Justice Department officials concluded that its procedural safeguards and substantive standards were "unworkable". Attorney General J. Howard McGrath instructed the FBI to disregard the statute and "proceed with the [Security Index] program as previously outlined." [131] Two subsequent Attorneys General—James McGranery and Herbert Brownell—endorsed the decision to ignore the Emergency Detention Act.[132]

In 1954, the Supreme Court denounced the use of microphone surveillances by local police in criminal cases; [133] the fact that a microphone had been installed in a defendant's bedroom particularly outraged the court. Within weeks of this decision, however, Attorney General Herbert Brownell reversed the existing Justice Department policy prohibiting trespassory microphone installations by the FBI, and gave the Bureau sweeping new authority to engage in bugging for intelligence purposes—even when it meant planting microphones in bedrooms.[134] Brownell wrote J. Edgar Hoover:

> Obviously, the installation of a microphone in a bedroom or in some comparably intimate location should be avoided whenever possible. It may appear, however, that important intelligence or evidence relating to matters connected with the national security can only be obtained by the installation of a microphone in such a location. . . .
>
> . . . I recognize that for the FBI to fulfill its important intelligence function, considerations of internal security and the national safety are paramount and, therefore, may compel the unrestricted use of this technique in the national interest.[135]

[128] Milton Iredell, 9/18/75, p. 99.
[129] Memorandum from Ingersoll to Gayler, 4/10/70.
[130] See Findings, "Political Abuse" and "Intrusive Techniques" for examples.
[131] Memorandum from A. H. Belmont to D. M. Ladd, 10/15/52.
[132] Memorandum from Attorney General James McGranery to J. Edgar Hoover, 11/25/52; memorandum from Attorney General Herbert Brownell to J. Edgar Hoover, 4/27/53.
[133] *Irvine* v. *California*, 347 U.S. 128 (1954).
[134] Memorandum from the Attorney General to the Director, FBI, 5/20/54.
[135] Memorandum from the Attorney General to the Director, FBI, 5/20/54.

Brownell did not even require the Bureau to seek the Attorney General's prior approval for microphone installations in particular cases.[136] In the face of the *Irvine* decision, therefore, he gave the FBI authority to bug whomever it wished wherever it wished in cases that the Bureau—and not the Attorney General—determined were "in the national interest."

In short, disregard of the law by intelligence officers was seldom corrected, and sometimes encouraged or facilitated, by officials outside the agencies. Whether by inaction or direct participation, these administration officials contributed to the perception that legal restraints did not apply to intelligence activities.

[136] Ibid.

B. THE OVERBREADTH OF DOMESTIC INTELLIGENCE ACTIVITY

Major Finding

The Committee finds that domestic intelligence activity has been overbroad in that (1) many Americans and domestic groups have been subjected to investigation who were not suspected of criminal activity and (2) the intelligence agencies have regularly collected information about personal and political activities irrelevant to any legitimate governmental interest.

Subfindings

(a) Large numbers of law-abiding Americans and lawful domestic groups have been subjected to extensive intelligence investigation and surveillance.

(b) The absence of precise standards for intelligence investigations of Americans contributed to overbreadth. Congress did not enact statutes precisely delineating the authority of the intelligence agencies or defining the purpose and scope of domestic intelligence activity. The executive branch abandoned the standard set by Attorney General Stone—that the government's concern was not with political opinions but with "such conduct as is forbidden by the laws of the United States." Intelligence agencies' superiors issued over-inclusive directives to investigate "subversion" (a term that was never defined in presidential directives) and "potential" rather than actual or likely criminal conduct, as well as to collect general intelligence on lawful political and social dissent.

(c) The intelligence agencies themselves used imprecise and over-inclusive criteria in their conduct of intelligence investigations. Intelligence investigations extended beyond "subversive" or violent targets to additional groups and individuals subject to minimal "subversive influence" or having little or no "potential" for violence.

(d) Intelligence agencies pursued a "vacuum cleaner" approach to intelligence collection—drawing in all available information about groups and individuals, including their lawful political activity and details of their personal lives.

(e) Intelligence investigations in many cases continued for excessively long periods of time, resulting in sustained governmental monitoring of political activity in the absence of any indication of criminal conduct or "subversion."

Elaboration of Findings

The central problem posed by domestic intelligence activity has been its departure from the standards of the law. This departure from law has meant not only the violation of constitutional prohibitions and explicit statutes, but also the adoption of criteria unrelated to the law as the basis for extensive investigations of Americans.

In 1917–1924, the federal government, often assisted by the private vigilante American Protective League, conducted sweeping investigations of dissenters, war protesters, labor organizers, and alleged "anarchists" and "revolutionaries." These investigations led to mass arrests of thousands of persons in the 1920 "Palmer raids." Reacting to these and other abuses of investigative power, Attorney General Harlan Fiske Stone in 1924 confined the Bureau of Investigation in the Justice Department to the investigation of federal crimes. Attorney General Stone articulated a clear and workable standard:

> The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their conduct and then only such conduct as is forbidden by the laws of the United States.[1]

Nevertheless, his restriction lasted for little more than a decade.

In the mid-1930s the FBI resumed domestic intelligence functions, carrying out President Roosevelt's vague order to investigate "subversive activities." The President and the Attorney General authorized FBI and military intelligence investigations of conduct explicitly recognized as "not within the specific provisions of prevailing statutes." As a result, ideas and associations, rather than suspicion of criminal offenses, once again became the focus of federal investigations.

The scope of domestic intelligence investigations consistently widened in the decades after the 1930s, reaching its greatest extent in the late 1960s and early 1970s.

Domestic intelligence investigations were permitted under criteria which more nearly resembled political or social labels than standards for governmental action. Rather than Attorney General Stone's standard of investigating "only such conduct as is forbidden by the laws of the United States," domestic intelligence used such labels as the following to target intelligence investigations:

—"rightist" or "extremist" groups in the "anticommunist field

—persons with "anarchistic or revolutionary beliefs" or who were "espousing the line of revolutionary movements"

—"general racial matters"

—"hate organizations"

—"rabble rousers"

—"key activists"

—"black nationalists"

—"white supremacists"

—"agitators"

—"key black extremists"

These broad and imprecise labels reflect the ill-defined mission of domestic intelligence, which resulted from recurring demands for progressively wider investigations of Americans. Without the firm

[1] *New York Times*, 5/10/24. Attorney General Stone implemented this policy by issuing a directive to Acting Director J. Edgar Hoover of the Bureau of Investigation: "The activities of the Bureau are to be limited strictly to investigations of violations of law, under my direction or under the direction of an Assistant Attorney General regularly conducting the work of the Department of Justice." (Memorandum from Attorney General Stone to J. Edgar Hoover, 5/13/24, cited in Alpheus Thomas Mason, *Harlan Fiske Stone: Pillar of the Law* [New York: Viking Press, 1956), p. 151.]

guidance provided by law, intelligence activities intruded into areas of American life which are protected from governmental inquiry by the constitutional guarantees of personal privacy and free speech and assembly.

Subfinding (a)

Large numbers of law-abiding Americans and lawful domestic groups have been subjected to extensive intelligence investigation and surveillance.

Some domestic intelligence activity has focused on specific illegal conduct or on instances where there was tangible evidence that illegal conduct was likely to occur. But domestic intelligence has gone far beyond such matters in collecting massive amounts of data on Americans. For example:

FBI Domestic Intelligence.—The FBI has compiled at its headquarters over 480,000 files on its "subversion" investigations and over 33,000 files on its "extremism" investigations.[2] During the twenty years from 1955 to 1975, the FBI conducted 740,000 investigations of "subversive matters" and 190,000 investigations of "extremist matters."[3] The targets for FBI intelligence collection have included:

—the Women's Liberation Movement;
—the conservative Christian Front and Christian Mobilizers of Father Coughlin;
—the conservative American Christian Action Council of Rev. Carl McIntyre;
—a wide variety of university, church and political groups opposed to the Vietnam war;
—those in the non-violent civil rights movement, such as Martin Luther King's Southern Christian Leadership Council, the National Association for the Advancement of Colored People (NAACP), and the Council on Racial Equality (CORE).

Army Surveillance of Civilians.—The Army's nationwide intelligence surveillance program created files on some 100,000 Americans and an equally large number of domestic organizations, encompassing virtually every group seeking peaceful change in the United States including:

—the John Birch Society;
—Young Americans for Freedom;
—the National Organization of Women;
—the NAACP;
—the Urban League;
—the Anti-Defamation League of B'nai B'irth; and
Business Executives to End the War in Vietnam.[4]

CIA's CHAOS Program.—The CIA's extensive CHAOS program—which compiled intelligence on domestic groups and individuals protesting the Vietnam war and racial conditions—amassed some

[2] Memorandum from FBI to Select Committee, 10/6/75.

[3] Memorandum from FBI to Select Committee, Re: Investigative Matters, received 11/12/75. These statistics include as separate "matters" investigative leads pursued by different FBI offices in the same case.

[4] Senate Judiciary Subcommittee on Constitutional Rights, "Federal Data Banks, Computers, and Bill of Rights," 1971, p. 264.

10,000 intelligence files on American citizens and groups and indexed 300,000 names of Americans in CIA computer records.[5]

IRS Selective Tax Investigations of Dissenters.—Between 1969 and 1973, the Internal Revenue Service, through a secret "Special Service Staff" (SSS), targeted more than 10,000 individuals and groups for tax examinations because of their political activity.[6] The FBI and the Internal Security Division of the Justice Department gave SSS lists of taxpayers deemed to be "activists" or "ideological organizations;" the FBI, in providing SSS with a list of over 2,000 groups and individuals classified as "Right Wing," "New Left," and "Old Left," expressed its hope that SSS tax examinations would "deal a blow to dissident elements." [7] A smaller though more intensive selective enforcement program, the "Ideological Organization Project," was established in November 1961 in response to White House criticism of "right-wing extremist" groups.[8] On the basis of such political criteria, 18 organizations were selected for special audit although there was no evidence of tax violation.[9] In 1964, the IRS proposed to expand its program to make "10,000 examinations of [tax] exempt organizations of all types including the extremist groups." [10] Although this program never fully materialized, the "Ideological Organizations Project" can be viewed as a precursor to SSS.

CIA and FBI Mail Opening.—The 12 mail opening programs conducted by the CIA and FBI between 1940 and 1973 resulted in the illegal opening of hundreds of thousands of first-class letters. In the 1960s and early 1970s, the international correspondence of large numbers of Americans who challenged the condition of racial minorities or who opposed the war in Vietnam was specifically targeted for mail opening by both the CIA and FBI.

The overbreadth of the longest CIA mail opening program—the 20 year (1953–1973) program in New York City—is shown by the fact that of the more than 28 million letters screened by the CIA, the exteriors of 2.7 million were photographed and 214,820 letters were opened. [11] This is further shown by the fact that American groups and individuals placed on the Watch List for the project included:

—The Federation of American Scientists;
—authors such as John Steinbeck and Edward Albee;
—numerous American peace groups such as the American Friends Service Committee and Women's Strike for Peace; and
—businesses, such as Praeger Publishers. [12]

By one CIA estimate, random selection accounted for 75 percent of the 200,000 letters opened, including letters to or from American political figures, such as Richard Nixon, while a presidential candidate in 1968, and Senators Frank Church and Edward Kennedy.[13]

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[5] See CHAOS Report: Sec. II D, "Operation of the CHAOS Program and Related CIA Projects."
[6] See IRS Report: Part II, Sec. II, "Special Service Staff."
[7] Memorandum from D. J. Brennan to W. C. Sullivan, 8/15/69.
[8] Memorandum from William Loeb to Dean Barron, 11/30/61.
[9] Memorandum from Mitchell Rogovin to Dean Barron, 12/20/61.
[10] Memorandum from Commissioner, IRS to Myer Feldman, 7/11/63.
[11] See Mail Report: Part I, "Domestic CIA and FBI Mail Opening Programs."
[12] See Mail Report: Part II, Sec. II B(1), "Selection Criteria."
[13] See Mail Report: Part II, Sec. II B(1), "Selection Criteria."

NSA's Watch List and SHAMROCK Programs.—The National Security Agency's SHAMROCK program, by which copies of millions of telegrams sent to, from, or through the United States were obtained between 1947 and 1973, involved the use of a Watch List from 1967–1973. The watch list included groups and individuals selected by the FBI for its domestic intelligence investigations and by the CIA for its Operation CHAOS program. In addition, the SHAMROCK Program resulted in NSA's obtaining not only telegrams to and from certain foreign targets, but countless telegrams between Americans in the United States and American or foreign parties abroad.[14]

In short, virtually every element of our society has been subjected to excessive government-ordered intelligence inquiries. Opposition to government policy or the expression of controversial views was frequently considered sufficient for collecting data on Americans.

The committee finds that this extreme breadth of intelligence activity is inconsistent with the principles of our Constitution which protect the rights of speech, political activity, and privacy against unjustified governmental intrusion.

Subfinding (b)

The absence of precise standards for intelligence investigations of Americans contributed to overbreadth. Congress did not enact statutes precisely delineating the authority of the intelligence agencies or defining the purpose and scope of domestic intelligence activity. The Executive branch abandoned the standard set by Attorney General Stone—that the government's concern was not with political opinions but with "such conduct as is forbidden by the laws of the United States." Intelligence agencies' superiors issued overinclusive directives to investigate "subversion" (a term that was never defined in presidential directives) and "potential" rather than actual or likely criminal conduct, as well as to collect general intelligence on lawful political and social dissent.

Congress has never set out a specific statutory charter for FBI domestic intelligence activity delineating the standards for opening intelligence investigations or defining the purpose and scope of domestic intelligence activity.[15]

Nor have the charters for foreign intelligence agencies—the Central Intelligence Agency and the National Security Agency—articulated adequate standards to insure that those agencies did not become involved in domestic intelligence activity. While the 1947 National Security Act provided that the CIA shall have no "police, subpoena, law enforcement powers or internal security functions,"[16]

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[14] See "National Security Agency Surveillance Affecting Americans", NSA Report: Sec. II A, "Summary of NSA Watch List Activity".

[15] The FBI's statutory authority provides that the Attorney General may appoint officials: "(1) to detect and prosecute crimes against the United States; (2) to assist in the protection of the President; and (3) to conduct such investigations regarding official matters under the control of the Department of Justice and the Department of State as may be directed by the Attorney General." (28 U.S.C. 533.)

Attorney General Edward H. Levi told the Select Committee "that the statutory basis for the operations of the Bureau cannot be said to be fully satisfactory." (Edward H. Levi testimony, 12/11/75, Hearings, Vol. 6, p. 313.)

[16] 50 U.S.C. 403 (d) (3).

the Act was silent concerning whether the CIA was authorized to target Americans abroad or to gather intelligence in the United States on Americans or foreign nationals in connection with its foreign intelligence responsibilities. By classified presidential directive, the CIA was authorized to conduct counterintelligence operations abroad and to maintain central counterintelligence files for the intelligence community.[17] Counterintelligence activity was defined in the directive to include protection of the nation against "subversion," a term which, as in the directives authorizing FBI domestic intelligence activity, was not defined.

In the absence of specific standards for CIA activity and given the susceptibility of the term "subversion" to broad interpretation, the CIA conducted Operation CHAOS—a large scale intelligence program involving the gathering of data on thousands of Americans and domestic groups to determine if they had "subversive connections"—and illegally opened the mail of hundreds of thousands of Americans.

Moreover, the Act does not define the scope of the authority granted to CIA's Director to protect intelligence "sources and methods."[18] This authority has been broadly interpreted to permit surveillance of present and former CIA employees in the United States as well as domestic groups thought to be a threat to CIA installations in the United States.

No statute at all deals with the National Security Agency. That Agency—one of the largest of the intelligence agencies—was created by Executive Order in 1952. Although NSA's mission is to obtain foreign intelligence from "foreign" communications, this has been interpreted to permit NSA to intercept communications where one terminal—the sender or receiver—was in the United States. Consequently when an American has used telephone or telegraph facilities between this country and overseas, his message has been subject to interception by NSA. NSA obtained copies of millions of private telegrams sent from, to or through the United States in its SHAMROCK program and complied with requests to target the international communications of specific Americans through the use of a watch list.

In addition to the failure of Congress to enact precise statutory standards, members of Congress have put pressure on the intelligence agencies for the collection of domestic intelligence without adequate regard to constitutional interests.[19] Moreover, Congress has passed statutes, such as the Smith Act, which, although not directly authorizing domestic intelligence collection, had the effect of contributing to the excessive collection of intelligence about Americans.

Three functional policies, established by the Executive branch and acquiesced in by Congress, were the basis for the overbreadth of intelligence investigations directed at Americans. These policies centered on (1) so-called "subversion investigations" of attempts by hostile foreign governments and their agents in this country to influence the course of American life; (2) the investigation of persons and groups thought to have a "potential" for violating the law or committing violence; and (3) the collection of general intelligence on political and social movements in the interest of predicting and controlling civil disturbances.

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[17] National Security Intelligence Directive No. 5.

[18] 50 U.S.C. 403 (d) (3).

[19] See Finding on Deficiencies in Control and Accountability, pp. 277–279.

Each of these policies grew out of a legitimate concern. Nazi Germany, Japan and the Soviet Union mounted intelligence efforts in this country before World War II; and Soviet operations continued after the war. In the 1960s and early 1970s, racist groups used force to deprive Americans of their civil rights, some American dissidents engaged in violence as a form of political protest, and there were large-scale protest demonstrations and major civil disorders in cities stemming from minority frustrations.

The Committee recognizes that the government had a responsibility to act in the face of the very real dangers presented by these developments. But appropriate restraints, controls, and prohibitions on intelligence collection were not devised; distinctions between legitimate targets of investigations and innocent citizens were forgotten; and the Government's actions were never examined for their effects on the constitutional rights of Americans, either when programs originated or as they continued over the years.

The policies of investigating Americans thought to have a "potential" for violence and the collection of general intelligence on political and social movements inevitably resulted in the surveillance of American citizens and domestic groups engaged in lawful political activity. "Subversive" was never defined in the presidential directives from Presidents Roosevelt to Kennedy authorizing FBI domestic intelligence activity. Consequently, "subversive" investigations did not focus solely on the activities of hostile foreign governments in this country. Rather, they targeted Americans who dissented from administration positions or whose political positions were thought to resemble those of "subversive" groups. An example of the ultimate result of accepting the concept of "subversive" investigations is the Johnson White House instruction to the FBI to monitor public hearings on Vietnam policy and compare the extent to which Senators' views "followed the Communist Party line." [20]

Similarly, investigations of those thought to have the "potential" for violating laws or committing violence and the collection of general intelligence to prepare for civil disturbances resulted in the surveillance of Americans where there was not reasonable suspicion to believe crime or violence were likely to occur. Broad categories of American society—conservatives, liberals, blacks, women, young people and churches—were targeted for intelligence collection.

Domestic intelligence expanded to cover widespread political protest movements in the late 1960s and early 1970s. For example, in September 1967, Attorney General Ramsey Clark called for a "new area of investigation and intelligence reporting" by the FBI regarding the possibility of "an organized pattern of violence" by groups in the "urban ghetto." He instructed FBI Director Hoover:

> . . . we must make certain that every attempt is being made to get all information bearing upon these problems; to take every step possible to determine whether the rioting is preplanned or organized. . . . As a part of the broad investigation which must be conducted . . . sources or informants in black nationalist organizations, SNCC and other less publicized groups should be developed and expanded to determine the

[20] FBI summary memorandum, 1/31/75.

size and purpose of these groups and their relationship to other groups.[21]

Such instructions did not limit investigation to facts pointing to particular criminal or violent activity but called for intensive intelligence surveillance of a broad category of black groups (and their connections with other groups) to determine their "size and purpose."

Similarly, the Army's broad domestic surveillance program reflected administration pressure on the Army for information on groups and individuals involved in domestic dissent.[22] As a former Assistant Secretary of Defense testified, the Army's sweeping collection plan "reflected the all-encompassing and uninhibited demand for information directed at the Department of the Army." [23]

Presidents Johnson and Nixon subjected the CIA to intensive pressure to find foreign influence on the domestic peace movements, resulting in the establishment of Operation CHAOS.[24] When the Nixon Administration called for an intensification of CIA's effort, the CIA was instructed to broaden its targeting criteria and strengthen its collection efforts. CIA was told that "foreign Communist support" should be "liberally construed." [25] The White House stated further that "it appears our present intelligence collection capabilities in this area may be inadequate" and implied that any gaps in CIA's collection program resulting from "inadequate resources or a low priority of attention" should be corrected.[26]

In short, having abandoned Attorney General Stone's standard that restricted Government investigations to "conduct and then only such conduct as is forbidden by the laws of the United States," the Government's far-reaching domestic intelligence policies inevitably produced investigations and surveillance of large numbers of law-abiding Americans.

Subfinding (c)

The intelligence agencies themselves used imprecise and over-inclusive criteria in their conduct of intelligence investigations. Intelligence investigations extended beyond "subversive" or violent targets to additional groups and individuals subject to minimal "subversive influence" or having little or no "potential" for violence.

Having been given vague directions by their superiors and subjected to substantial pressure to report on a broad range of matters, the intelligence agencies themselves often established overinclusive targeting criteria. The criteria followed in the major domestic intelligence programs conducted in the 1960s and 1970s illustrate the breadth of intelligence targeting:

"*General Racial Matters*".—The FBI gathered intelligence about proposed "civil demonstrations" and related activities of "officials, committees, legislatures, organizations, etc." in the "racial field." [27]

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[21] Memorandum from Ramsey Clark to J. Edgar Hoover, 9/14/67.

[22] See Military Surveillance Report: Sec. II C.

[23] Robert F. Froehkle testimony, Senate Judiciary Subcommittee on Constitutional Rights, 1971, cited hereinafter as *1971 Hearings*.

[24] See pp. 99–101.

[25] Memorandum from Tom Charles Huston to Deputy Director of CIA, 6/20/69. p. 1.

[26] Memorandum from Tom Charles Huston to Deputy Director of CIA, 6/20/69, p. 1.

[27] 1964 FBI Manual Section 122, p. 1.

FBI Field Offices were directed to report the "general programs" of *all* "civil rights organizations" and "readily available personal background data" on leaders and individuals "in the civil rights movement," as well as any "subversive association" that might be recorded in Field Office files.[28] In addition, the FBI reported "the objectives sought by the minority community."[29]

These broad criteria were also reflected in the FBI's targeting of "white militant groups" in the reporting of racial matters. Those who were "known to sponsor demonstrations against integration and against the busing of Negro students to white schools" were to be investigated.[30]

"New Left" Intelligence.—In conducting a "comprehensive study of the whole New Left movement" (rather than investigating particular violations of law), the FBI defined its intelligence target as a "loosely-bound, free-wheeling, college-oriented movement."[31] Organizations to be investigated were those who fit criteria phrased as the "more extreme and militant anti-Vietnam war and antidraft organizations."[32]

The use of such imprecise criteria resulted in investigations of such matters as (1) two university instructors who helped support a student newspaper whose editorial policy was described by the FBI as "left-of-center, antiestablishment, and opposed to the University Administration";[33] (2) a dissident stockholder's group planning to protest a large corporation's war production at the annual stockholder's meeting;[34] and (3) "Free Universities" attached to college campuses, whether or not there were facts indicating any actual or potential violation of law.[35]

"Rabble Rouser" Index.—Beginning in August 1967, the FBI conducted intensive intelligence investigations of individuals identified as "rabble rousers." The program was begun after a member of the National Advisory Commission on Civil Disorders asked the FBI at a meeting of the Commission "to identify the number of militant Negroes and Whites."[36] This vague reference was subsequently used by the FBI as the basis for instructions implementing a broad new program: persons were to be investigated and placed on the "rabble rouser" index who were "racial agitators who have demonstrated a potential for fomenting racial discord."[37]

Ultimately, a "rabble rouser" was defined as:

> A person who tries to arouse people to violent action by appealing to their emotions, prejudices, et cetera; a demagogue.[38]

Thus, rather than collecting information on those who had or were likely to commit criminal or violent acts, a major intelligence program was launched to identify "demagogues."

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[28] FBI Manual, Section 122, revised 12/13/66, p. 8–9.
[29] FBI Manual, Section 122, revised 12/13/66, p. 8–9.
[30] SAC Letter, 68–25, 4/30/68.
[31] Memorandum from FBI Headquarters to all SAC's, 10/28/68.
[32] Memorandum from FBI Headquarters to all SAC's 10/28/68.
[33] Memorandum from Mobile Field Office to FBI Headquarters, 12/9/70.
[34] Memorandum from FBI Headquarters to Minneapolis Field Office, 4/23/70.
[35] Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.
[36] Memorandum from Cartha DeLoach to Clyde Tolson, 8/1/67.
[37] Memorandum from Charles Brennan to William Sullivan, 8/3/67; SAC Letter 67–56, 9/12/67.
[38] SAC Letter No. 67–70, 11/28/67.

Army Domestic Surveillance of "Dissidents."—Extremely broad criteria were used in the Army's nationwide surveillance program conducted in the late 1960s. Such general terms as "the civil rights movement" and the "anti-Vietnam/anti-draft movements" were used to indicate targets for investigation.[39] In collecting information on these "movements" and on the "cause of civil disturbances," Army intelligence was to investigate "instigators," "group participants," and "subversive elements"—all undefined.

Under later revisions, the Army collection plan extended even beyond "subversion" and "dissident groups" to "prominent persons" who were "friendly" with the "leaders of the disturbance" or "sympathetic with their plans."[40]

These imprecise crtieria led to the creation of intelligence files on nearly 100,000 Americans, including Dr. Martin Luther King, Major General Edwin Walker, Julian Bond, Joan Baez, Dr. Benjamin Spock, Rev. William Sloane Coffin, Congressman Abner Mikva, Senator Adlai Stevenson III,[41] as well as clergymen, teachers, journalists, editors, attorneys, industrialists, a laborer, a construction worker, railroad engineers, a postal clerk, a taxi driver, a chiropractor, a doctor, a chemist, an economist, a historian, a playwright, an accountant, an entertainer, professors, a radio announcer, athletes, business executives and authors—all of whom became subjects of Army files simply because of their participation in political protests or their association with those who were engaged in such political activity.[42]

The IRS Computerized Intelligence Index.—In 1973, IRS established a central computer index—the "Intelligence Gathering and Retrieval System"—for general intelligence data, much of it unrelated to tax law enforcement. More than 465,000 Americans were indexed in the IRS computer system, including J. Edgar Hoover and the IRS Commissioner, as well as thousands of others also not suspected of tax violation. Names in newspaper articles and other published sources were indexed wholesale into the IRS computer. Under the system, intelligence gathering preceded any specific allegation of a violation, and possible "future value" was the sole criterion for inclusion of information into the Intelligence Gathering and Retrieval System.

CIA's Operation CHAOS.—In seeking to fulfill White House requests for evidence of foreign influence on domestic dissent, the CIA gave broad instructions to its overseas stations. These directives called for reporting on the "Radical Left" which included, according to the CIA, "radical students, antiwar activitists, draft resisters and deserters, black nationalists, anarchists, and assorted 'New Leftists'."[43] CIA built its huge CHAOS data base on the assumption that to know whether there was significant foreign involvement in a domestic group "one has to know whether each and every one of these persons has any connection to foreigners."[44] CIA instructed its stations that even "casual contacts based merely on mutual interest" between Americans opposed to the Vietnam war and "foreign elements" were deemed to

[39] *1971 Hearings*, pp. 1120–1121.
[40] *1971 Hearings*, pp. 1123–1138.
[41] Stein testimony, *1971 Hearings*, p. 266.
[42] "Military Surveillance of Civilian Politics," Senate Judiciary Subcommittee on Constitutional Rights Report, 1973, p. 57, cited hereafter as *1973 Report*.
[43] Book Cable from Thomas Karamessines to various European Stations, June 1968.
[44] Richard Ober testimony, Rockefeller Commission, 3/28/75, pp. 88–89.

"casual contacts based merely on mutual interest" between Americans opposed to the Vietnam war and "foreign elements" were deemed to constitute "subversive connections." [45] Similarly, CIA's request to NSA for materials on persons targeted by the NSA Watch List called for all information regardless of how innocuous it may seem." [46]

The Committee's investigation has shown that the absence of precise statutory standards and the use of overbroad criteria for domestic intelligence activity resulted in the extension of intelligence investigations beyond their original "subversive" or violent targets. Intelligence investigations extended to those thought to be subject to "subversive influence." Moreover, those thought to have a "potential" for violence were also targeted and, in some cases, investigations extended even to those engaged in wholly non-violent lawful political expression.

FBI "COMINFIL" Investigations.—Under the FBI's COMINFIL ("communist infiltration") program, large numbers of groups and individuals engaged in lawful political activity have been subjected to informant coverage and intelligence scrutiny. Although COMIN FIL investigations were supposed to focus on the Communist Party's alleged efforts to penetrate domestic groups, in practice the target often became the domestic groups themselves.

FBI COMINFIL investigations reached into domestic groups in virtually every area of American political life. The FBI conducted COMINFIL investigations in such areas as "religion," "education," "veterans' matters," "women's matters," "Negro question," and "cultural activities." [47] The "entire spectrum of the social and labor movement" was covered.[48]

The overbreadth that results from the practice of investigating groups for indications of communist influence or infiltration is illustrated by the following FBI COMINFIL intelligence investigations:

NAACP.—An intensive 25 year long surveillance of the NAACP was conducted, ostensibly to determine whether there was Communist infiltration of the NAACP. This surveillance, however, produced detailed intelligence reports on NAACP activities wholly unrelated to any alleged communist "attempts" to infiltrate the NAACP, and despite the fact that no evidence was ever found to contradict the FBI's initial finding that the NAACP was opposed to communism.[48a]

Northern Virginia Citizens Concerned About the ABM.—In 1969, the FBI conducted an intelligence investigation and used informants to report on a meeting held in a public high school auditorium at which the merits of the Anti-Ballistic Missile System were debated by, among others, Department of Defense officials. The investigation was apparently opened because a communist newspaper had commented on the fact that the meeting was to be held.[49]

National Conference on Amnesty for Vietnam Veterans.—In 1974, FBI informants reported on a national conference sponsored by

[45] Cable from CIA Headquarters to field stations, November 1967, pp. 1–2.
[46] Memorandum from Richard Ober to NSA, 9/14/71.
[47] 1960 FBI Manual, Section 87, pp. 5–11.
[48] Annual Report of the Attorney General for Fiscal Year 1955, p. 195.
[48a] See History of Domestic Intelligence, Report, Part II at note 139.
[49] James Adams testimony, 11/19/75, Hearings, Vol. 6, pp. 137–138. FBI documents indicate that another factor in the opening of the investigation was the role of the wife of a Communist in assisting in publicity work for the meeting. (Memorandum from Washington Field Office to FBI Headquarters, 5/28/69; memorandum from Alexandria Field Office to FBI Headquarters, 6/3/69) See Findings 6(a), p. 10, for the broad dissemination of reports that resulted from this inquiry.

church and civil liberties groups to support amnesty for Vietnam veterans. The investigation was based on a two-step "infiltration" theory. Other informants had reported that the Vietnam Veterans Against the War (which was itself the subject of an intelligence investigation because it was thought to be subject to communist or foreign influence) mighty try to "control" the conference.[50] Although the conference was thus twice removed from the original target, it was nevertheless subjected to informant surveillance.

FBI intelligence investigations to find whether groups are subject to communist or "subversive" influence result in the collection of information on groups and individuals engaged in wholly legitimate activity. Reports on the NAACP were not limited to alleged communist infiltration. Similarly, the investigation of the National Amnesty Conference produced reports describing the topics discussed at the conference and the organization of a steering committee which would include families of men killed in Vietnam and congressional staff aides.[51] The reports on the meeting concerning the ABM system covered the past and present residence of the person who applied to rent the high school auditorium, and plans for a future meeting, including the names of prominent political figures who planned to attend.[52]

The trigger for COMINFIL-type investigations—that subversive "attempts" to infiltrate groups were a substantial threat—was greatly exaggerated. According to the testimony of FBI officials, the mention in a communist newspaper of the citizens' meeting to debate the ABM was sufficient to produce intelligence coverage of that meeting.[53] A large public teach-in on Vietnam, including representatives of Catholic, Episcopal, Methodist and Unitarian churches, as well as a number of spokesmen for antiwar groups, was investigated because a Communist Party official had "urged" party members to attend and one speaker representing the W. E. B. DuBois Club was identified as a communist.[54] The FBI surveillance of the teach-in resulted in a 41-page intelligence report based on coverage by 13 informants and sources.[55] And the FBI's investigation of *all* Free Universities near colleges and universities was undertaken because "several" allegedly had been formed by the Communist Party "and other subversive groups." [56]

Similarly, the FBI's broad COMINFIL investigations of the civil rights movement in the South were based on the FBI's conclusion that the Communist Party had "*attempted*" to take advantage of racial unrest and had "*endeavored*" to pressure U.S. Government officials "through the press, labor unions and student groups." [57] [Emphasis

[50] Raymond W. Wannall testimony, 12/2/75, Hearings, Vol. 6, p. 139.
[51] Memorandum from Louisville Field Office to FBI Headquarters, 11/21/74.
[52] Memoranda from Alexandria Field Office to FBI Headquarters, 6/5/69.
[53] Adams, 11/19/75, Hearings, Vol. 6, p. 138.
[54] Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.
[55] Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.
[56] Memorandum from FBI Headquarters to Detroit Field Office, 2/17/66.
[57] Memorandum from J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, to McGeorge Bundy, Special Assistant to the President for National Security, 7/25/61, enclosing IIC Report, Status of U.S. Internal Security Programs. See Findings on Political Abuse, p. 225 for discussion on the larger impact of such FBI terminology.

supplied.] No mention was made of the general failure of these "attempts."

The Committee finds that COMINFIL investigations have been based on an exaggerated notion of the threat posed by "subversives" and foreign influence on American political expression. There has been an unjustified belief that Americans need informants and government surveillance to protect them from "subversive" influence in their unions, churches, schools, parties and political efforts.

Investigations of Wholly Non-Violent Political Expression.—Domestic intelligence investigations have extended from those who commit or are likely to commit violent acts to those thought to have a "potential" for violence, and then to those engaged in purely peaceful political expression. This characteristic was graphically described by the White House official who coordinated the intelligence agencies' recommendations for "expanded" (and illegal) coverage in 1970. He testified that intelligence investigations risked moving

> from the kid with a bomb to the kid with a picket sign, and from the kid with the picket sign to the kid with the bumper sticker of the opposing candidate. And you just keep going down the line.[58]

Without precise standards to restrict their scope, intelligence investigations did move beyond those who committed or were likely to commit criminal or violent acts. For example:

—Dr. Martin Luther King, Jr., was targeted for the FBI's COINTELPRO operations against "Black Nationalist-Hate Groups" on the theory, without factual justification, that Dr. King *might* "abandon" his adherence to nonviolence.[59]

—The intensive FBI investigation of the Women's Liberation Movement was similarly predicated on the theory that the activities of women in that Movement *might* lead to demonstrations and violence.[60]

—The FBI investigations of Black Student Unions proceeded from the concern of the FBI and its superiors over violence in the cities. Yet the FBI opened intelligence investigations on "every Black Student Union and similar group *regardless of their past or present involvement in disorders.*"[61] [Emphasis added.]

—The nationwide Army Intelligence surveillance of civilians was conducted in connection with civil disorders. However, the Army collection plan focused not merely on those likely to commit violence but was "so comprehensive . . . that any category of information related even remotely to people or organizations active in a community in which the potential for violence was present would fall within their scope."[62]

The Committee finds that such intelligence surveillance of groups and individuals has greatly exceeded the legitimate interest of the government in law enforcement and the prevention of violence. Where unsupported determinations as to "potential" behavior are the basis for

[58] Tom Charles Huston testimony, 9/23/75, Hearings, Vol. 2, p. 45.

[59] Memorandum from FBI Headquarters to all SAC's, 3/4/68.

[60] Memorandum from New York Field Office to FBI Headquarters, 5/28/69. (Hearings, Vol. 6, Exhibit 54.)

[61] Memorandum from Executives Conference to Tolson, 10/29/70.

[62] Froehlke, *1971 Hearings*, p. 384.

surveillance of groups and individuals, no one is safe from the inquisitive eye of the intelligence agency.

Subfindings (d)

Intelligence agencies pursued a "vacuum cleaner" approach to intelligence collection—drawing in all available information about groups and individuals, including their lawful political activity and details of their personal lives.

Intelligence agencies collect an excessive amount of information by pursuing a "vacuum cleaner" approach that draws in all available information, including lawful political activity, personal matters, and trivia. Even where the theory of the investigation is that the subject is likely to be engaged in criminal or violent activity, the overbroad approach to intelligence collection intrudes into personal matters unrelated to such criminal or violent activity.

FBI officials conceded to the Committee that in conducting broad intelligence investigations to determine the "real purpose" of an organization, they sometimes gathered "too much information." [63]

The FBI's intelligence investigation of the "New Left," for example, was directed towards a "comprehensive study of the whole movement" and produced intensive monitoring of such subjects as "support of movement by religious groups or individuals," "demonstrations aimed at social reform," "indications of support by mass media," "all activity in the labor field," and "efforts to influence public opinion, the electorate and Government bodies." [64]

Similar overbreadth characterized the FBI's collection of intelligence on "white militant groups." In 1968 FBI field offices were instructed not to gather information solely on actual or potential violations of law or violence, but to use informants to determine the "aims and purposes of the organization, its leaders, approximate membership" and other "background data" relating to the group's "militancy." [65] In 1971 the criteria for investigating individuals were widened. Special Agents in Charge of FBI field offices were instructed to investigate not only persons with "a potential for violence," but also anyone else "who in judgment of SAC should be subject of investigation due to extremist activities." [66]

Even in searching for indications of potential violence in black urban areas or in collecting information about violence-prone Ku Klux Klan chapters, there was marked overbreadth. In black urban areas, for example, FBI agents were instructed to have their informants obtain the names of "Afro-American type bookstores" and their "owners, operators and clientele." [67] The activities of civil rights and black groups as well as details of the personal lives of Klan members, were reported on by an FBI intelligence informant in the Ku Klux Klan.[67a] Under this approach, the average citizen who merely attends a meeting, signs a petition, is placed on a mailing list, or visits a book store, is subject to being recorded in intelligence files.

A striking example of informant reporting on all they touch was provided by an FBI informant in an antiwar group with only 55

[63] Adams, 12/2/75, Hearings, Vol. 6, p. 135.
[64] Memorandum from FBI Headquarters to all SACs, 10/28/68.
[65] SAC Letter 68-25, 4/30/68.
[66] 1971 Manual, Section 122.
[67] Memorandum from Philadelphia Field Office to FBI Headquarters, 8/12/68.
[67a] Rowe, 12/2/75, Hearings, Vol. 6, p. 116.

regular members and some 250 persons who gave occasional support. The informant estimated she reported nearly 1,000 names to the FBI in an 18-month period—60–70 percent of whom were members of other groups (such as the United Church of Christ and the American Civil Liberties Union) which were engaging in peaceful, lawful political activity together with the antiwar group or who were on the group's mailing list.[68] Similarly in the intelligence investigation of the Women's Liberation Movement, informants reported the identities of individual women attending meetings (as well as reporting such matters as the fact that women at meetings had stated "how they felt oppressed, sexually or otherwise.").[69]

Such collection of "intelligence" unrelated to specific criminal or violent activity constitutes a serious misuse of governmental power. In reaching into the private lives of individuals and monitoring their lawful political activity—matters irrelevant to any proper governmental interest—domestic intelligence collection has been unreasonably broad.

Subfinding (e)

Intelligence investigations in many cases continued for excessively long periods of time, resulting in sustained governmental monitoring of political activity in the absence of any indication of criminal conduct or "subversion."

One of the most disturbing aspects of domestic intelligence investigations found by the Committee was their excessive length. Intelligence investigations often continued, despite the absence of facts indicating an individual or group is violating or is likely to violate the law, resulting in long-term government monitoring of lawful political activity. The following are examples:

(i) *The FBI Intelligence Investigation of the NAACP (1941–1966)*.—The investigation of the NAACP began in 1941 and continued for at least 25 years. Initiated according to one FBI report as an investigation of protests by 15 black mess attendants about racial discrimination in the Navy,[70] the investigation expanded to encompass NAACP chapters in cities across the nation. Although the ostensible purpose of this investigation was to determine if there was "Communist infiltration" of the NAACP, the investigation constituted a long-term monitoring of the NAACP's wholly lawful political activity by FBI informants. Thus:

—The FBI New York Field Office submitted a 137-page report to FBI headquarters describing the national office of the NAACP, its national convention, its growth and membership, its officers and directors, and its stand against Communism.[71]

—An FBI informant in Seattle obtained a list of NAACP branch officers and reported on a meeting where signatures were gathered on a "petition directed to President Eisenhower" and plans for two members to go to Washington, D.C., for a "Prayer Pilgrimage."[72]

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[68] Mary Jo Cook testimony, 12/2/75, Hearings, Vol. 6, pp. 112, 120.

[69] Memorandum from Kansas City Field Office, 10/20/70; memorandum New York Field Office, 5/28/69; memorandum from Baltimore Field Office, 5/11/70 to FBI Headquarters. CIA agents in the United States also reported on Women's Liberation activities in the course of their preparation for overseas duty in Operation CHAOS. (Agent 1, Contact Report, Vol. II, Agent 1 file.)

[70] Memorandum from Washington Field Office to FBI headquarters, 3/11/41.

[71] Memorandum from New York Field Office to FBI Headquarters, 2/12/57.

[72] Memorandum from Seattle Field Office to FBI Headquarters, 6/1/57.

—In 1966, the New York Field Office reported the names of all NAACP national officers and board members, and summarized their political associations as far back as the 1940s.[73]

—As late as 1966, the FBI was obtaining NAACP chapter membership figures by "pretext telephone call . . . utilizing the pretext of being interested in joining that branch of the NAACP."[74]

—Based on the reports of FBI informants, the FBI submitted a detailed report of a 1956 NAACP-sponsored Leadership Conference on Civil Rights and described plans for a Conference delegation to visit Senators Paul Douglas, Herbert Lehman, Wayne Morse, Hubert Humphrey, and John Bricker.[75] Later reports covered what transpired at several of these meetings with Senators.[76] Most significantly, all these reports were sent to the White House.[77]

(ii) *The FBI Intelligence Investigation of the Socialist Workers Party (1940 to date)*.—The FBI has investigated the Socialist Workers Party (SWP) from 1940 to the present day on the basis of that Party's revolutionary rhetoric and alleged international links. Nevertheless, FBI officials testified that the SWP has not been responsible for any violent acts nor has it urged actions constituting an indictable incitement to violence.[77a]

FBI informants have been reporting the political positions taken by the SWP with respect to such issues as the "Vietnam War," "racial matters," "U.S. involvement in Angola," "food prices," and any SWP efforts to support a non-SWP candidate for political office.[78]

Moreover, to enable the FBI to develop "background information" on SWP leaders, informants have been reporting certain personal aspects of their lives, such as marital status.[79] The informants also have been reporting on SWP cooperation with other groups who are not the subject of separate intelligence investigations.[80]

(iii) *The Effort to Prove Negatives*.—Intelligence investigations and programs have also continued for excessively long periods in efforts to prove negatives. CIA's Operation CHAOS began in 1967. From that year until the program's termination in 1974,[81] the CIA repeatedly reached formal conclusions that there was negligible foreign influence on domestic protest activity. In 1967, the CIA concluded that Communist front groups did not control student organizations and that there were no significant links with foreign radicals;[82] in 1968, the CIA concluded that U.S. student protest was essentially homegrown and not stimulated by an international conspiracy;[83] and in 1971 the CIA found "there is no evidence that foreign governments, organizations, or intelligence services now control U.S. New Left

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[73] Memorandum from New York Field Office to FBI Headquarters, 4/15/65.
[74] Memorandum from Los Angeles Field Office to FBI Headquarters, 4/15/66.
[75] Memorandum from Hoover to Anderson, 3/5/56.
[76] Memorandum from Hoover to Anderson, 3/6/56.
[77] See Findings on "Political Abuse."
[77a] Robert Shackelford testimony, 2/2/76; pp. 89–90.
[78] Shackelford, 2/2/76, p. 89.
[79] Shackelford, 2/2/76; p. 90.
[80] Shackleford, 2/2/76, p. 92.
[81] See Findings, "Deficiencies in Control and Accountability", p. 265.
[82] CIA memorandum, "Student Dissent and Its Techniques in the U.S.", 1/5/68.
[83] CIA Report, "Restless Youth," Conclusions, p. 1, 9/4/68.

Movements . . . the U.S. New Left is basically self-sufficient and moves under its own impetus." [84]

The result of these repeated findings was not the termination of CHAOS's surveillance of Americans, but its redoubling. Presidents Johnson and Nixon pressured the CIA to intensify its intelligence effort to find evidence of foreign direction of the U.S. peace movement. As Director Helms testified:

> When a President keeps asking if there is any information, "how are you getting along with your examination," "have you picked up any more information on this subject," it isn't a direct order to do something, but it seems to me it behooves the Director of Central Intelligence to find some way to improve his performance, or improve his Agency's performance.[85]

In an effort to prove its negative finding to a skeptical White House—and to test its validity each succeeding year—CIA expanded its program, increasing its coverage of Americans overseas and building an ever larger "data base" on domestic political activity. Intelligence was exchanged with the FBI, NSA, and other agencies, and eventually CIA agents who had infiltrated domestic organizations for other purposes supplied general information on the groups' activities.[86] Thus, the intelligence mission became one of continued surveillance to prove a negative, with no thought to terminating the program in the face of the negative findings.

As in the CHAOS operation, FBI intelligence investigations have often continued even in the absence of any evidence of "subversive" activities merely because the subjects of the investigation have not demonstrated their innocence to the FBI's satisfaction. The long-term investigations of the NAACP and the Socialist Workers Party described above are typical examples.

A striking illustration of FBI practice is provided by the intelligence investigation of an advisor of Dr. Martin Luther King, Jr. The advisor was investigated on the theory that he might be a communist "sympathizer." The Bureau's New York office concluded he was not.[87] Using a theory of "guilty until proven innocent," FBI headquarters directed that the investigation continue:

> The Bureau does not agree with the expressed belief of the New York office that [ ][88] is not sympathetic to the Party cause. While there may not be any evidence that [ ] is a Communist neither is there any substantial evidence that he is anti-Communist.[89]

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[84] CIA Report, "Definition and Assessment of Existing Internal Security Threat—Foreign," 1/5/71, pp. 1–3.

[85] Richard Helms testimony, Rockfeller Commission, 4/28/75, pp. 2434–2435. Helms further testified: "President Johnson was after this all the time . . . this was something that came up almost daily and weekly." Helms, Rockefeller Commission, 1/13/75, pp. 163–164.

[86] See CHAOS Report: Section II D, "Operations of the CHAOS Program and Related CIA Projects," and II E, "1969 Expansion of CHAOS."

[87] Memorandum from New York Field Office to FBI Headquarters, 4/14/64.

[88] Name deleted by Committee to protect privacy.

[89] Memorandum from FBI Headquarters to New York Field Office, 4/24/64.

Where citizens must demonstrate not simply that they have no connection with an intelligence target, but must exhibit "substantial evidence" that they are in opposition to the target, intelligence investigations are indeed open-ended.

C. EXCESSIVE USE OF INTRUSIVE TECHNIQUES

Major Finding

The intelligence community has employed surreptitious collection techniques—mail opening, surreptitious entries, informants, and "traditional" and highly sophisticated forms of electronic surveillance—to achieve its overly broad intelligence targeting and collection objectives. Although there are circumstances where these techniques, if properly controlled, are legal and appropriate, the Committee finds that their very nature makes them a threat to the personal privacy and Constitutionally protected activities of both the targets and of persons who communicate with or associate with the targets. The dangers inherent in the use of these techniques have been compounded by the lack of adequate standards limiting their use and by the absence of review by neutral authorities outside the intelligence agencies. As a consequence, these techniques have collected enormous amounts of personal and political information serving no legitimate governmental interest.

Subfindings

(a) Given the highly intrusive nature of these techniques,[1] the legal standards and procedures regulating their use have been insufficient. There have been no statutory controls on the use of informants; there have been gaps and exceptions in the law of electronic surveillance; and the legal prohibitions against warrantless mail opening and surreptitious entries have been ignored.

(b) In addition to providing the means by which the Government can collect too much information about too many people, certain techniques have their own peculiar dangers:

(i) Informants have provoked and participated in violence and other illegal activities in order to maintain their cover, and they have obtained membership lists and other private documents.

(ii) Scientific and technological advances have rendered traditional controls on electronic surveillance obsolete and have made it more difficult to limit intrusions. Because of the nature of wiretaps, microphones and other sophisticated electronic techniques, it has not always been possible to restrict the monitoring of communications to the persons being investigated.

(c) The imprecision and manipulation of labels such as "national

[1] The techniques noted here do not constitute an exhaustive list of the surreptitious means by which intelligence agencies have collected information. The FBI, for example, has obtained a great deal of financial information about American ciitzens from tax returns filed with the Internal Revenue Service. (See IRS Report: Sec. I, "IRS Disclosures to FBI and CIA.") This section, however, is limited to problems raised by electronic surveillance, mail opening, surreptitious entries informants and electronic surveillances.

security," "domestic security," "subversive activities," and "foreign intelligence" have led to unjustified use of these techniques.

Elaboration of Findings

The preceding section described how the absence of rigorous standards for opening, controlling, and terminating investigations subjected many diverse elements of this society to scrutiny by intelligence agencies, without their being suspected of violating any law. Once an investigation was opened, almost any item of information about a target's personal behavior or political views was considered worth collecting.

Extremely intrusive techniques—such as those listed above—have often been used to accomplish those overly broad targeting and collection objectives.

The paid and directed informant has been the most extensively used technique in FBI domestic intelligence investigations. Informants were used in 83% of the domestic intelligence investigations analyzed in a recent study by the General Accounting Office.[1a] As of June 30, 1975, the FBI was using a total of 1,500 domestic intelligence informants.[2] In 1972 there were over 7,000 informants in the ghetto informant program alone. In fiscal year 1976, the Bureau has budgeted more than $7.4 million for its domestic intelligence informant program, more than twice the amount allocated for its organized crime informant program.[3]

Wiretaps and microphones have also been a significant means of gathering intelligence. Until 1972, the FBI directed these electronic techniques against scores of American citizens and domestic organizations during investigations of such matters as domestic "subversive" activities and leaks of classified information. The Bureau continues to use these techniques against foreign targets in the United States.

The most extensive use of electronic surveillance has been by the National Security Agency. NSA has electronically monitored (without wiretapping in the traditional sense) international communication links since its inception in 1952; because of its sophisticated technology, it is capable of intercepting and recording an enormous number of communications between the United States and foreign countries.[4]

All mail opening programs have now been terminated, but a total of twelve such operations were conducted by the CIA and the FBI in ten American cities between 1940 and 1973.[5] Four of these were operated by the CIA, whose most massive project involved the opening of more than 215,000 letters between the United States and the Soviet Union over a twenty-year period. The FBI conducted eight mail opening programs, three of which included opening mail sent between two points in the United States. The longest FBI mail opening program

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[1a] Report to the House Committee on the Judiciary, by the Comptroller General of the United States, "FBI Domestic Intelligence Operations—Their purpose and scope: Issues that Need to be Resolved," 2/24/76, p. 96.

[2] FBI memorandum to the Select Committee, 11/28/75.

[3] Memorandum, *FBI Overall Intelligence Program FY 1977 Compared to FY 1976* undated. The cost of the intelligence informant program comprises payments to informants for services and expense as well as the costs of FBI personnel, support and overhead.

[4] See NSA Report: Sec. I, "Introduction and Summary."

[5] See Mail Opening Reports: Sec. I, "Summary and Principal Conclusions."

lasted, with one period of suspension, for approximately twenty-six years.

The FBI has also conducted hundreds of warrantless surreptitious entries—break-ins—during the past twenty-five years. Often these entries were conducted to install electronic listening devices; at other times they involved physical searches for information. The widespread use of warrantless surreptitious entries against both foreign and domestic targets was terminated by the Bureau in 1966 but the FBI has occasionally made such entries against foreign targets in more recent years.

All of these techniques have been turned against American citizens as well as against certain foreign targets. On the theory that the executive's responsibility in the area of "national security" and "foreign intelligence" justified their use without the need of judicial supervision, the intelligence community believed it was free to direct these techniques against individuals and organizations whom it believed threatened the country's security. The standards governing the use of these techniques have been imprecise and susceptible to expansive interpretation and in the absence of any judicial check on the application of these vague standards to particular cases, it was relatively easy for intelligence agencies and their superiors to extend them to many cases where they were clearly inappropriate. Lax internal controls on the use of some of these techniques compounded the problem.

These intrusive techniques by their very nature invaded the private communications and activities both of the individuals they were directed against and of the persons with whom the targets communicated or associated. Consequently, they provided the means by which all types of information—including personal and political information totally unrelated to any legitimate governmental objective—were collected and in some cases disseminated to the highest levels of the government.

Subfinding (a)

Given the highly intrusive nature of these techniques, the legal standards and procedures regulating their use have been insufficient. There have been no statutory controls on the use of informants; there have been gaps and exceptions in the law of electronic surveillance; and the legal prohibitions against warrantless mail opening and surreptitious entries have been ignored.

1. The Absence of Statutory Restraints on the Use of Informants

There are no statutes or published regulations governing the use of informants.[6] Consequently, the FBI is free to use informants, guided only by its own internal directives which can be changed at any time by FBI officials without approval from outside the Bureau.[7]

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[6] Title 28 of the United States Code provides only that appropriations for the Department of Justice are available for payment of informants. 28 U.S.C. § 524.

[7] The Attorney General has announced that he will issue guidelines on the use of informants in the near future, and our recommendations provide standards for informant control and prohibitions on informant activity. (See pp. 328.) In addition, the Attorney General's recently promulgated guidelines on "Domestic Security Investigations" limit the use of informants at the early stages of such inquiries and provide for review by the Justice Department of the initiation of "full investigations" in which new informants may be recruited.

Apart from court decisions precluding the use of informants to entrap persons into criminal activity, there are few judicial opinions dealing with informants and most of those concern criminal rather than intelligence informants.[8] The United States Supreme Court has never ruled on whether the use of intelligence informants in the contexts revealed by the Committee's investigation offend First Amendment rights of freedom of expression and association.[9]

In the absence of regulation through statute, published regulation, or court decision, the FBI has used informants to report on virtually every aspect of a targeted group or individual's activity, including lawful political expression, political meetings, the identities of group members and their associates, the "thoughts and feelings, intentions and ambitions," of members,[10] and personal matters irrelevant to any legitimate governmental interest. Informants have also been used by the FBI to obtain the confidential records and documents of a group.[11]

Informants could be used in any intelligence investigation. FBI directives have not limited informant reporting to actual or likely violence or other violations of law.[12] Nor has any determination been made concerning whether the substantial intrusion represented by informant coverage is justified by the government's interest in obtaining information, or whether less intrusive means would adequately serve the government's interest. There has also been no requirement that the decisions of FBI officials to use informants be reviewed by anyone outside the FBI. In short, intelligence informant coverage has not been subject to the standards which govern the use of other intrusive techniques such as electronic surveillance, even though informants can produce a far broader range of information.

2. Gaps and Exceptions in the Law of Electronic Surveillance

Congress and the Supreme Court have both addressed the legal issues raised by electronic surveillance, but the law has been riddled with gaps and exceptions. The Executive branch has been able to apply vague standards for the use of this technique to particular cases

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[8] In a criminal case involving charges of jury bribery, *United States* v. *Hoffa*, 385 U.S. 293 (1966), the Supreme Court ruled that an informant's testimony concerning conversations of a defendant could not be considered the product of a warrantless search in violation of the Fourth Amendment on the ground the defendant had consented to the presence of the informant. In another criminal case, *Lewis* v. *United States*, 385 U.S. 206 (1966), the Court stated that "in the detection of many types of crimes, the Government is entitled to use decoys and to conceal the identity of its agents."

[9] In a more recent case, the California Supreme Court held that secret surveillance of classes and group meetings at a university through the use of undercover agents was "likely to pose a substantial restraint upon the exercise of First Amendment rights." *White* v. *Davis*, 533 Pac. Rep. 2d, 223 (1975) Citing a number of U.S. Supreme Court opinions, the California Supreme Court stated in its unanimous decision:

"In view of this significant potential chilling effect, the challenged surveillance activities can only be sustained if [the Government] can demonstrate a 'compelling' state interest which justifies the resultant deterrence of First Amendment rights and which cannot be served by alternative means less instrusive on fundamental rights." 533 Pac. Rep. 2d, at 232

[10] Gary Rowe testimony, 12/2/75 Hearings, Vol. 6, pp. 111, 118.

[11] Cook, 12/2/75, Hearings, Vol. 6, p. 111.

[12] The FBI Manual of Instructions proscribes only reporting of privileged communications between an attorney and client, legal "defense plans or strategy," "employer-employee relationships" (where an informant is connected with a labor union), and "legitimate institution or campus activities" at schools. (FBI Manual Section 107.)

as it has seen fit, and, in the case of NSA monitoring, the standards and procedures for the use of electronic surveillance were not applied at all.

When the Supreme Court first considered wiretapping, it held that the warrantless use of this technique was constitutional because the Fourth Amendment's warrant requirement applied only to physical trespass and did not extend to the seizure of conversation. This decision, the 1928 case of *Olmstead* v. *United States*, involved a criminal prosecution, and left federal agencies free to engage in the unrestricted use of wiretaps in both criminal and intelligence investigations.[13]

Six years later, Congress enacted the Federal Communications Act of 1934, which made it a crime for "any person," without authorization, to intercept and divulge or publish the contents of wire and radio communications. The Supreme Court subsequently construed this section to apply to federal agents as well as to ordinary citizens, and held that evidence obtained directly or indirectly from the interception of wire and radio communications was not admissible in court.[14] But Congress acquiesed in the Justice Department's position that these cases prohibited only the divulgence of contents of wire communications outside the executive branch,[15] and Government wiretapping for intelligence purposes other than prosecution continued.

On the ground that neither the 1934 Act nor the Supreme Court decisions on wiretapping were meant to apply to "grave matters involving the defense of the nation," President Franklin Roosevelt authorized Attorney General Jackson in 1940 to approve wiretaps on "persons suspected of subversive activities against the Government of the United States, including suspected spies."[16] In the absence of any guidance from Congress or the Court for another quarter century, the executive branch first broadened this standard in 1946 to permit wiretapping in "cases vitally affecting the domestic security or where human life is in jeopardy,"[17] and then modified it in 1965 to allow wiretapping in "investigations related to the national security."[18] Internal Justice Department policy required the prior approval of the Attorney General before the FBI could institute wiretaps in particular cases,[19] but until the mid-1960's there was no require-

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[13] *Olmstead* v. *United States*, 277 U.S. 438 (1928).

[14] *Nardone* v. *United States*, 302 U.S. 397 (1937); 308 U.S. 338 (1939).

[15] For example, letter from Attorney General Jackson to Rep. Hatton Summers, 3/19/41; See Electronic Surveillance Report: Sec. II.

[16] Memorandum from President Roosevelt to the Attorney General 5/21/40.

[17] Letter from Attorney General Tom C. Clark to President Truman, 7/17/46.

[18] Directive from President Johnson to Heads of Agencies, 6/30/65.

[19] President Roosevelt's 1940 order directed the Attorney General to approve wiretaps "after investigation of the need in each case." (Memorandum from President Roosevelt to Attorney General Jackson, 5/21/40.) However, Attorney General Francis Biddle recalled that Attorney General Jackson "turned it over to Edgar Hoover without himself passing on each case" in 1940 and 1941, Biddle's practice beginning in 1941 conformed to the President's order. (Francis Biddle, *In Brief Authority* (Garden City: Doubleday, 1962), p. 167.)

Since 1965, explicit written authorization has been required. (Directive of President Johnson 6/30/65.) This requirement however, has often been disregarded. In violation of this requirement, for example, no written authorizations were obtained from the Attorney General—or from any one else—for a series of four wiretaps implemented in 1971 and 1972 on Yeoman Charles Radford, two of his friends, and his father-in-law. See Electronics Surveillance Report; Sec. VI.

(Continued)

ment of periodic reapproval by the Attorney General.[20] In the absence of any instruction to terminate them, some wiretaps remained in effect for years.[21]

In 1967, the Supreme Court reversed its holding in the *Olmstead* case and decided that the Fourth Amendment's warrant requirement did apply to electronic surveillances.[22] It expressly declined, however, to extend this holding to cases involving the "national security." [22a] Congress followed suit the next year in the Omnibus Crime Control Act of 1968, which established a warrant procedure for electronic surveillance in criminal cases but included a provision that neither it nor the Federal Communications Act of 1934 "shall limit the constitutional power of the President." [23] Although Congress did not purport to define the President's power, the Act referred to five broad categories which thereafter served as the Justice Department's criteria for warrantless electronic surveillance. The first three categories related to foreign intelligence and counterintelligence matters:

(1) to protect the Nation against actual or potential attack or other hostile acts of a foreign power;

(2) to obtain foreign intelligence information deemed essential to the security of the United States; and

(3) to protect the national security information against foreign intelligence activities.

The last two categories dealt with domestic intelligence interests:

(4) to protect the United States against overthrow of the government by force or other unlawful means, or

(5) against any other clear and present danger to the structure or existence of the government.

In 1972, the Supreme Court held in *United States* v. *United States District Court*,[23a] that the President did not have the constitutional power to authorize warrantless electronic surveillances to protect the

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(Continued)
The first and third of these taps were implemented at the oral instruction of Attorney General John Mitchell. (Memorandum from T. J. Smith E. S. Miller, 2/26/73.) The remaining taps were implemented at the oral request of David Young, and assistant to John Ehrlichman at the White House, who merely informed the Bureau that the requests originated with Ehrlichman and had the Attorney General's concurrence. (Memorandum from T. J. Smith to E. S. Miller, 6/14/73.

[20] Attorney General Nicholas Katzenbach instituted this requirement in March 1965. (Memorandum from J. Edgar Hoover to the Attorney General, 3/3/65.)

[21] The FBI maintained one wiretap on an official of the Nation of Islam that had originally been authorized by Attorney General Brownell in 1957 for seven years until 1964 without any subsequent re-authorization. (Memorandum from J. Edgar Hoover to the Attorney General, 12/31/65, initialed "Approved: HB, 1/2/57.")

As Nicholas Katzenbach testified: "The custom was not to put a time limit on a tap, or any wiretap authorization. Indeed, I think the Bureau would have felt free in 1965 to put a tap on a phone authorized by Attorney General Jackson before World War II." (Nicholas Katzenbach testimony, 11/12/75, p. 87.)

[22] *Katz* v. *United States*, 389 U.S. 347 (1967).

[22a] The Court wrote: "Whether safeguards other than prior authorization by a magistrate would satisfy the Fourth Amendment in a situation involving the national security is a question not presented by this case." 389 U.S. at 358 n. 23.

[23] 18 U.S.C. 2511 (3).

[23a] 407 U.S. 297 (1972)

nation from domestic threats.[24] The Court pointedly refrained, however, from any "judgment on the scope of the Presidents' surveillance power with respect to the activities of foreign powers, within or without this country." [25] Only "the domestic aspects of national security" came within the ambit of the Court's decision.[26]

To conform with the holding in this case, the Justice Department thereafter limited warrantless wire tapping to cases involving a "significant connection with a foreign power, its agents or agencies.[27]

At no time, however, were the Justice Department's standards and procedures ever applied to NSA's electronic monitoring system and its "watch listing" of American citizens.[28] From the early 1960's until 1973, NSA compiled a list of individuals and organizations, including 1200 American citizens and domestic groups, whose communications were segregated from the mass of communications intercepted by the Agency, transcribed, and frequently disseminated to other agencies for intelligence purposes.[29]

The Americans on this list, many of whom were active in the antiwar and civil rights movements, were placed there by the FBI, CIA, Secret Service, Defense Department, and NSA itself without prior judicial warrant or even the prior approval of the Attorney General. In 1970, NSA began to monitor telephone communications links between the United States and South America at the request of the Bureau of Narcotics and Dangerous Drugs (BNDD) to obtain information about international drug trafficking. BNDD subsequently submitted the names of 450 American citizens for inclusion on the

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[24] At the same time, the Court recognized that "domestic security surveillance" may involve different policy and practical considerations apart from the surveillance of 'ordinary crime,' 407 U.S. at 321, and thus did not hold that "the same type of standards and procedures prescribed by Title III [of the 1968 Act] are necessarily applicable to this case." (407 U.S. at 321.) The Court noted:

"Given the potential distinctions between Title III criminal surveillances and those involving the domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified crime in Title III. Different standards may be compatible with the Fourt Amendment." (407 U.S. at 321.)

[25] 407 U.S. at 307.

[26] 407 U.S. at 320. *United States* v. *United States District Court* remains the only Supreme Court case dealing with the issue of warrantless electronic surveillance for intelligence purposes. Three federal circuit courts have considered this issue since 1972, however. The Third Circuit and the Fifth Circuit both held that the President may constitutionally authorize warrantless electronic surveillance for foreign counterespionage and foreign intelligence purposes. [*United States* v. *Butenko*, 494 F.2d 593 (3d Cir. 1974), *cert. denied sub nom. Ivanov* v. *United States*, 419 U.S. 881 (1974); and *United States* v. *Brown*, 484 F.2d 418 (5th Cir., 1973), *cert. denied* 415 U.S. 960 (1974).] The District of Columbia Circuit held unconstitutional the warrantless electronic surveillance of the Jewish Defense League, a domestic organization whose activities allegedly affected U.S. Soviet relations but which was neither the agent of nor in collaboration with a foreign power. [*Zweibon* v. *Mitchell*, 516 F.2d 594 (D.C. Cir., 1975) (*en banc*).]

[27] Testimony of Deputy Assistant Attorney General Kevin Maroney, Hearings before the Senate Subcommittee on Administrative Practice and Procedures, 6/29/72, p. 10. This language paralled that of the Court in *United States* v. *United States District Court*, 407 U.S. at 309 n. 8.

[28] Although Attorney General John Mitchell and Justice Department officials on the Intelligence Evaluation Committee apparently learned that NSA was making a contribution to domestic intelligence in 1971, there is no indication that the FBI told them of its submission of names of Americans for inclusion on a NSA "watch list." When Assistant Attorney General Henry Petersen learned of these practices in 1973, Attorney General Elliott Richardson ordered that they be terminated. (See Report on NSA: Sec. I, "Introduction and Summary.")

[29] See NSA Report: Sec. I, "Introduction and Summary."

Watch List, again without warrant or the approval of the Attorney General.[30]

The legal standards and procedures regulating the use of microphone surveillance have traditionally been even more lax than those regulating the use of wiretapping. The first major Supreme Court decision on microphone surveillance was *Goldman* v. *United States*, 316 U.S. 129 (1942), which held that such surveillance in a criminal case was constitutional when the installation did not involve a trespass. Citing this case, Attorney General McGrath prohibited the trespassory use of this technique by the FBI in 1952.[31] But two years later—a few weeks after the Supreme Court denounced the use of a microphone installation in a criminal defendant's bedroom [32]—Attorney General Brownell gave the FBI sweeping authority to engage in bugging for intelligence purposes. ". . . (C)onsiderations of internal security and the national safety are paramount," he wrote, "and, therefore, may compel the unrestricted use of this technique in the national interest." [33]

Since Brownell did not require the prior approval of the Attorney General for bugging specific targets, he largely undercut the policy that had developed for wiretapping. The FBI in many cases could obtain equivalent coverage by utilizing bugs rather than taps and would not be burdened with the necessity of a formal request to the Attorney General.

The vague "national interest" standards established by Brownell, and the policy of not requiring the Attorney General's prior approval for microphone installations, continued until 1965, when the Justice Department began to apply the same criteria and procedures to both microphone and telephone surveillance.

3. Ignoring the Prohibitions Against Warrantless Mail Opening and Surreptitious Entries

Warrantless mail opening and surreptious entries, unlike the use of informants and electronic surveillance, have been clearly prohibited by both statutory and constitutional law. In violation of these prohibitions, the FBI and the CIA decided on their own when and how these techniques should be used.[35]

Sections 1701 through 1973 of Title 18 of the United States Code forbid persons other than employees of the Postal Service "dead letter" office from tampering with or opening mail that is not addressed to them. Violations of these statutes may result in fines of up to $2000

[30] Memorandum from Iredell to Gayler, 4/10/70; See NSA Report: Sec. I, Introduction and Summary. BNDD originally requested NSA to monitor the South American link because it did not believe it had authority to wiretap a few public telephones in New York City from which drug deals were apparently being arranged. (Iredell testimony, 9/18/75, p. 99.)

[31] Memorandum from the Attorney General to Mr. Hoover, 2/26/52.

[32] *Irvine* v. *California*, 347 U.S. 128 (1954).

[33] Memorandum from the Attorney General to the Director, FBI, 5/20/54.

[35] While such techniques might have been authorized by Attorneys General under expansive "internal security" or "national interest" theories similar to Brownell's authorization for installing microphones by trespass, the issue was never presented to them for decision before 1967, when Attorney General Ramsey Clark turned down a surreptitious entry request. There is no indication that the legal questions were considered in any depth in 1970 or 1971 at the time of the "Huston Plan" and its aftermath. See Huston Plan Report: Sec. III, Who, What, When and Where.

and imprisonment for not more than five years. The Supreme Court has also held that both First Amendment and Fourth Amendment restrictions apply to mail opening.

The Fourth Amendment concerns were articulated as early as 1878, when the Court wrote:

> The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant . . : as is required when papers are subjected to search in one's own household.[36]

This principle was reaffirmed as recently as 1970 in *United States* v. *Van Leeuwen*, 396 U.S. 249 (1970). The infringement of citizens' First Amendment rights resulting from warrantless mail opening was first recognized by Justice Holmes in 1921. "The use of the mails," he wrote in a dissent now embraced by prevailing legal opinion, "is almost as much a part of free speech as the right to use our tongues." [37] This principle, too, has been affirmed in recent years.[38]

Breaking and entering is a common law felony as well as a violation of state and federal statutes. When committed by Government agents, it has long been recognized as "the chief evil against which the wording of the Fourth Amendment is directed." [39]

In the one judicial decision concerning the legality of warrantless "national security" break-ins for physical search purposes, United States District Court Judge Gerhard Gesell held such entries unconstitutional. This case, *United States* v. *Ehrlichman*,[40] involved an entry into the office of a Los Angeles psychiatrist, Dr. Lewis Fielding, to obtain the medical records of his client Daniel Ellsberg, who was then under federal indictment for revealing classified documents. The entry was approved by two Presidential assistants, John Ehrlichman and Charles Colson, who argued that it had been justified "in the national interest." Ruling on the defendants' discovery motions, Judge Gesell found that because no search warrant was obtained:

> The search of Dr. Fielding's office was clearly illegal under the unambiguous mandate of the Fourth Amendment. . . [T]he Government must comply with the strict constitutional and statutory limitations on trespassory searches and arrests even when known foreign agents are involved.... To hold otherwise, except under the most exigent circumstances, would be to abandon the Fourth Amendment to the whim of the Executive in total disregard of the Amendment's history and purpose.[41]

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[36] *Ex Parte Jackson*, 96, U.S. 727, 733 (1878).

[37] *Milwaukee Pub. Co.* v. *Burleson*, 255 U.S. 407, 437 (1921) (dissent).

[38] See *Lamont* v. *Postmaster General*, 381 U.S. 301 (1965); *Procunier* v. *Martinez*, 416 U.S. 396 (1975).

[39] *United States* v. *United States District Court*, 407 US 297, 313 (1972).

[40] 376 F. Supp. 29, (D.D.C. 1974).

[41] 376 F. Supp. at 33.

In the appeal of this decision, the Justice Department has taken the position that a physical search may be authorized by the Attorney General without a warrant for "foreign intelligence" proposes.[42] The warrantless mail opening programs and surreptitious entries by the FBI and CIA did not even conform to the "foreign intelligence" standard, however, now were they specifically approved in each case by the Attorney General. Domestic "subversives" and "extremists" were targeted for mail opening; and domestic "subversives" and "White Hate groups" were among those targeted for surreptitious entries.[43] Until the Justice Department's recent statement in the Ehrlichman case, moreover, no legal justification had ever been advanced publicly for violating the statutory or constitutional prohibitions against physical searches or opening mail without a judicial warrant, and none has ever been officially advanced by any Administration to justify warrantless mail openings.

Subfinding (b)

In addition to providing the means by which the Government can collect too much information about too many people, certain techniques have their own peculiar dangers:

(i) Informants have provoked and participated in violence and other illegal activities in order to maintain their cover, and they have obtained membership lists and other private documents.

(ii) Scientific and technological advances have rendered obsolete traditional controls on electronic surveillance obsolete and have made it more difficult to limit intrusions. Because of the nature of wiretaps, microphones, and other sophisticated electronic techniques, it has not always been possible to restrict the monitoring of communications to the persons being investigated.

a. The Intrusive Nature of the Intelligence Informant Technique

The FBI employs two types of informants: (1) "intelligence informants" who are used to report on groups and individuals in the course of intelligence investigations, and (2) "criminal informants," who are used in connection with investigations of specific criminal activity. FBI intelligence informants are administered by the FBI Intelligence Division at Bureau headquarters through a centralized system that is separate from the administrative system for FBI criminal informants. For example, the FBI's large-scale Ghetto Informant Program was administered by the FBI Intelligence Division. The Committee's investigation centered on the use of FBI intelligence informants. The FBI's criminal informant program fell outside the scope of the Committee's mandate, and accordingly it was not examined.

The Committee recognizes that FBI intelligence informants in violent groups have sometimes played a key role in the enforcement of

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[42] Letter from Acting Assistant Attorney General John C. Keeny to Hugh E. Kline, Clerk of the U.S. Court of Appeals for the District of Columbia, 5/9/75.

[43] The Supreme Court's decision in *United States* v. *United States District Court*, 407 U.S. 297 (1972), clearly established the principle that such warrantless invasions of the privacy of Americans are unconstitutional.

the criminal law. The Committee examined a number of such cases,[44] and in public hearings on the use of FBI intelligence informants included the testimony of a former informant in the Ku Klux Klan whose reporting and court room testimony was essential to the arrest and conviction of the murderers of Mrs. Viola Liuzzo, a civil rights worker killed in 1965.[45] Former Attorney General Katzenbach testified that informants were vital to the solution of the murders of three civil rights workers killed in Mississippi in 1964.[46]

FBI informant coverage of the Women's Liberation Movement resulted in intensive reporting on the identities and opinions of women who attended WLM meetings. For example, the FBI's New York Field Office summarized one informant's report in a memorandum to FBI Headquarters:

> Informant advised that a WLM meeting was held on ----------.[47] Each woman at this meeting stated why she had come to the meeting and how she felt oppressed, sexually or otherwise.
>
> According to this informant, these women are mostly concerned with liberating women from this "oppressive society." They are mostly against marriage, children, and other states of oppression caused by men. Few of them, according to the informant, have had political backgrounds.[48]

Individual women who attended WLM meetings at midwestern universities were identified by FBI intelligence informants. A report by the Kansas City FBI Field Office stated:

> Informant indicates members of Women's Liberation campus group who are now enrolled as students at University of Missouri, Kansas City, are --------, --------, --------, --------, --------.[49] Informant noted that --------, and --------,[50] not currently students on the UMKC campus are reportedly roommates at ----------.[51]

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[44] In one case, an FBI informant involved in an intelligence investigation of the Detroit Black Panther Party furnished advance information regarding a planned ambush of Detroit police officers which enabled the Detroit Police Department to take necessary action to prevent injury or death to the officers and resulted in the arrest of eight persons and the seizure of a cache of weapons. The informant also furnished information resulting in the location and confiscation by Bureau agents of approximately fifty sticks of dynamite available to the Black Panther Party which likely resulted in the saving of lives and the prevention of property damage. (Joseph Deegan testimony, 2/13/76, p. 54)

[45] Rowe, 12/2/75, Hearings, Vol. 6, p. 115.

[46] Katzenbach testified that the case "could not have been solved without acquiring informants who were highly placed members of the Klan." (Katzenbach, 12/3/75, Hearings, Vol. 6, p. 215.)

[47] Date and address deleted at FBI request so as not to reveal informant's identity.

[48] Memorandum, from New York Field Office to FBI Headquarters, re: Women's Liberation Movement, 5/28/69, p. 2.

[49] Names deleted for security reasons.

[50] Names deleted for security reasons.

[51] Names and addresses deleted for security reasons.

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Informants were instructed to report "everything" they knew about a group to the FBI.

> . . . to go to meetings, write up reports . . . on what happened, who was there . . . to try to totally identify the background of every person there, what their relationships were, who they were living with, who they were sleeping with, to try to get some sense of the local structure and the local relationships among the people in the organization.[52]

Another intelligence informant described his mission as "total reporting." Rowe testified that he reported "anything and everything I observed or heard" pertaining to any member of the group he infiltrated.[53]

Even where intelligence informants are used to infiltrate groups where some members are suspected of violent activity, the nature of the intelligence mission results in governmental intrusion into matters irrelevant to that inquiry. The FBI Special Agents who directed an intelligence informant in the Ku Klux Klan testified that the informant

> . . . furnished us information on the meetings and the thoughts and feelings, intentions and ambitions, as best he knew them, of other members of the Klan, both the rank and file and the leadership.[54]

Intelligence informants also report on other groups—not the subject of intelligence investigations—which merely associate with, or are even opposed to, the targeted group. For example, an FBI informant in the VVAW had the following exchange with a member of the Committee:

> Senator HART (Mich.). . . . did you report also on groups and individuals outside the [VVAW], such as other peace groups or individuals who were opposed to the war whom you came in contact with because they were cooperating with the [VVAW] in connection with protest demonstrations and petitions?
>
> Ms. COOK. . . . I ended up reporting on groups like the United Church of Christ, American Civil Liberties Union, the National Lawyers Guild, liberal church organizations [which] quite often went into coalition with the VVAW.[55]

This informant reported the identities of an estimated 1,000 individuals to the FBI, although the local chapter to which she was assigned had only 55 regular members.[56] Similarly, an FBI informant in the Ku Klux Klan reported on the activities of civil rights and black groups that he observed in the course of his work in the Klan.[57]

In short, the intelligence informant technique is not a precise instrument. By its nature, it extends far beyond the sphere of proper govern-

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[52] Cook, 12/2/75, Hearings, Vol. 6, p. 111.
[53] Rowe, 12/2/75, Hearings, Vol. 6, p. 116.
[54] Special Agent, 11/21/75, p. 7.
[55] Cook, 12/2/75, Hearings, Vol. 6, pp. 119, 120.
[56] Cook, 12/2/75, Hearings, Vol. 6, p. 120.
[57] Rowe, 12/2/75, Hearings, Vol. 6, p. 116.

mental interest and risks governmental monitoring of the private lives and the constitutionally-protected activity of Americans. Nor is the intelligence informant technique used infrequently. As reflected in the statistics described above, FBI intelligence investigations are in large part conducted through the use of informants; and FBI agents are instructed to "develop reliable informants at all levels and in all segments" of groups under investigation.[58]

b. Other Dangers in the Intelligence Informant Technique

In the absence of clear guidelines for informant conduct, FBI paid and directed intelligence informants have participated in violence and other illegal activities and have taken membership lists and other private documents.

1. Participation in Violence and Other Illegal Activity

The Committee's investigation has revealed that there is often a fundamental dilemma in the use of intelligence informants in violent organizations. The Committee recognizes that intelligence informants in such groups have sometimes played essential roles in the enforcement of the criminal law. At the same time, however, the Committee has found that the intelligence informant technique carries with it the substantial danger that informants will participate in, or provoke, violence or illegal activity. Intelligence informants are frequently infiltrated into groups for long-term reporting rather than to collect evidence for use in prosecutions. Consequently, intelligence informants must participate in the activity of the group they penetrate to preserve their cover for extended periods. Where the group is involved in violence or illegal activity, there is a substantial risk that the informant must also become involved in this activity. As an FBI Special Agent who handled an intelligence informant in the Ku Klux Klan testified: "[you] couldn't be an angel and be a good informant."[59]

FBI officials testified that it is Bureau practice to instruct informants that they are not to engage in violence or unlawful activity and, if they do so, they may be prosecuted. FBI Deputy Associate Director Adams testified:

> . . . we have informants who have gotten involved in the violation of the law, and we have immediately converted their status from an informant to the subject, and have prosecuted, I would say, offhand . . . around 20 informants.[60]

The Committee finds, however, that the existing guidelines dealing with informant conduct do not adequately ensure that intelligence informants stay within the law in carrying out their assignments. The FBI Manual of Instructions contain no provisions governing informant conduct. While FBI employee conduct regulations prohibit an FBI agent from directing informants to engage in violent or other illegal activity, informants themselves are not governed by these regulations since the FBI does not consider them as FBI employees.

[58] FBI Manual, Section 107 c(3).
[59] Special Agent, 11/21/75, p. 12.
[60] Adams, 12/2/75, Hearings, Vol. 6, p. 150.

In the absence of clear and precise written provisions directly applicable to informants, FBI intelligence informants have engaged in violent and other illegal activity. For example, an FBI intelligence informant who penetrated the Ku Klux Klan and reported on its activities for over five years testified that on a number of occassions he and other Klansmen had "beaten people severely, had boarded buses and kicked people off; had went in restaurants and beaten them with blackjacks, chains, pistols." [61] This informant described how he had taken part in Klan attacks on Freedom Riders at the Birmingham, Alabama, bus depot, where "baseball bats, clubs, chains and pistols" were used in beatings.[62]

Although the FBI Special Agents who directed this informant instructed him that he was not to engage in violence, it was recognized that there was a substantial risk that he would become a participant in violent activity.

As one of the Agents testified:

> ... it is kind of difficult to tell him that we would like you to be there on deck, observing, be able to give us information and still keep yourself detached and uninvolved and clean, and that was the problem that we constantly had.[63]

In another example, an FBI intelligence informant penetrated "right wing" groups operating in California under the names "The Minutemen" and "The Secret Army Oroganization." The informant reported on the activities of these "right wing" paramilitary groups for a period of five years but was also involved in acts of violence or destruction. In addition, the informant actually rose to a position of leadership in the SAO and became an innovator of various harassment actions. For example, he admittedly participated in firebombing of an automobile and was present, conducting a "surveillance" of a professor at San Diego State University, when his associate and subordinate in the SAO took out a gun and fired into the home of the professor, wounding a young woman.[64]

An FBI intelligence informant in a group of antiwar protesters planning to break into a draft board claimed to have provided technical instruction and materials that were essential to the illegal break-testified to the committee:

> Everything they learned about breaking into a building or climbing a wall or cutting glass or destroying lockers, I taught them. I got sample equipment, the type of windows that we would go through, I picked up off the job and taught them how to cut the glass, how to drill holes in the glass so you cannot hear it and stuff like that, and the FBI supplied me with the equipment needed. The stuff I did not have, the [the FBI] got off their own agents.[65]

The Committee finds that where informants are paid and directed by a government agency, the government has a responsibility to

[61] Rowe deposition, 10/17/75, p. 12.
[62] Rowe, 12/2/75, Hearings, Vol. 6, p. 118.
[63] Special Agent, 11/21/75, pp. 16–17.
[64] Memorandum from the FBI to Senate Select Committee, 2/26/76, with enclosures.
[65] Hardy, 9/29/75, pp. 16–17.

impose clear restrictions on their conduct. Unwritten practice or general provisions aimed at persons other than the informants themselves are not sufficient. In the investigation of violence or illegal activity, it is essential that the government not be implicated in such activity.

2. Membership Lists and Other Private Documents Obtained by the Government Through Intelligence Informants

The Committee finds that there are inadequate guidelines to regulate the conduct of intelligence informants with respect to private and confidential documents, such as membership lists, mailing lists and papers relating to legal matters. The Fourth Amendment provides that citizens shall be "secure in their . . . papers and effects, against unreasonable searches and seizures" and requires probable cause to believe there has been a violation of law before a search warrant may issue. Moreover the Supreme Court, in *NAACP* v. *Alabama*,[66] held that the First Amendment's protections of speech, assembly and group association did not permit a state to compel the production of the membership list of a group engaged in lawful activity. The Court distinguished the case where a state was able to demonstrate a "controlling justification" for such lists by showing a group's activities involved "acts of unlawful intimidation and violence." [66a]

There are no provisions in the FBI Manual which preclude the FBI from obtaining private and confidential documents through intelligence informants. The Manual does prohibit informant reporting of "any information pertaining to defense plans or strategy," but the FBI interprets this as applying only to privileged communications between an attorney and client in connection with a specific court proceeding.[67]

The Committee's investigation has shown that, the FBI, through its intelligence informants and sources, has sought to obtain membership lists and other confidential documents of groups and individuals.[68] For example, one FBI Special Agent testified:

> I remember one evening . . . [an informant] called my home and said I will meet you in a half an hour . . . I have a complete list of everybody that I have just taken out of the files, but I have to have it back within such a length of time.
>
> Well, naturally I left home and met him and had the list duplicated forthwith, and back in his possession and back in the files with nobody suspecting." [69]

Similarly, the FBI Special Agent who handled an intelligence informant in an antiwar group testified that he obtained confidential papers of the group which related to legal defense matters:

> "She brought back several things . . . various position papers taken by various legal defense groups, general statements of . . . the VVAW, legal thoughts on various trials, the

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[66] 357 U.S. 449 (1958). Similarly, in *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960), the Supreme Court held compulsory disclosure of group membership lists was an unjustified interference with members' freedom of association.

[66a] 361 U.S. at 465.

[67] FBI Manual of Instructions, Section 107.

[68] Surreptitious entry has also provided a means for the obtaining of such lists and other confidential documents.

[69] Special Agent, 11/19/75, pp. 10–11.

Gainesville (Florida) 8 . . . the Camden (New Jersey) 9 . . . various documents from all of these groups." [70]

This informant also testified that she took the confidential mailing list of the group she had penetrated and gave it to the FBI.[71]

She also gave the FBI a legal manual prepared by the group's attorneys to guide lawyers in defending the group's members should they be arrested in connection with antiwar demonstrations or other political activity.[72] Since this document was prepared as a general legal reference manual rather than in connection with a specific trial the FBI considered it outside the attorney-client privilege and not barred by the FBI Manual provision with respect to legal defense and strategy matters.

For the government to obtain membership lists and other private documents pertaining to lawful and protected activities covertly through intelligence informants risks infringing rights guaranteed by the Constitution. The Committee finds that there is a need for new guidelines for informant conduct with respect to the private papers of groups and individuals.

c. Electronic Surveillance

In the absence of judicial warrant, both the "traditional" forms of electronic surveillance practiced by the FBI—wiretapping and bugging—and the highly sophisticated form of electronic monitoring practiced by NSA have been used to collect too much information about too many people.

1. Wiretapping and Bugging

Wiretaps and bugs are considered by FBI officials to be one of the most valuable techniques for the collection of information relevant to the Bureau's legitimate foreign counterintelligence mandate. W. Raymond Wannall, the former Assistant Director in charge of the FBI's Intelligence Division, stated that electronic surveillance assisted Bureau officials in making "decisions" as to operations against foreigners engaged in espionage. "It gives us leads as to persons . . . hostile intelligence services are trying to subvert or utilize in the United States, so certainly it is a valuable technique." [73]

Despite its stated value in foreign counterintelligence cases, however, the dangers inherent in its use imply a clear need for rigorous controls. By their nature, wiretaps and bugs are incapable of a surgical precision that would permit intelligence agencies to overhear only the target's conversations. Since wiretaps are placed on particular telephones, anyone who uses a tapped phone—including members of the target's family—can be overheard. So, too, can everyone with whom the target (or anyone else using the target's telephone) communicates.[74] Microphones planted in the target's room or office inevitably intercept all conversations in a particular area: anyone conferring in the room or office, not just the target, is overheard.

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[70] Special Agent, 11/20/75, pp. 15–16.

[71] Cook, 12/2/75, Hearings, Vol. 6, p. 112.

[72] Cook deposition, 10/14/75, p. 36.

[73] W. Raymond Wannall testimony, 10/2[illegible], 75, p. 21.

[74] Under the Justice Department's procedures for Title III (court-ordered) wiretaps, however, the monitoring agent is obligated to turn off the recording equipment when certain privileged communications begin. Manual for conduct of Electronic Surveillance under Title III of Public Law 90–351, Sec. 8.1.

The intrusiveness of these techniques has a second aspect as well. It is extremely difficult, if not impossible, to limit the interception to conversations that are relevant to the purposes for which the surveillance is placed. Virtually all conversations are overheard, no matter how trivial, personal, or political they might be. When the electronic surveillance target is a political figure who is likely to discuss political affairs, or a lawyer, who confers with his clients, the possibilities for abuse are obviously heightened.

The dangers of indiscriminate interception are perhaps most acute in the case of microphones planted in locations such as bedrooms. When Attorney General Herbert Brownell gave the FBI sweeping authority to engage in microphone surveillances for intelligence purposes in 1954, he expressly permitted the Bureau to plant microphones in such locations if, in the sole discretion of the FBI, the facts warranted the installation.[75] Acting under this general authority, for example, the Bureau installed no fewer than twelve bugs in hotel rooms occupied by Dr. Martin Luther King, Jr.[76]

The King surveillances which occurred between January 1964 and October 1965, were ostensibly approved within the FBI for internal security reasons, but they produced vast amounts of personal information that were totally unrelated to any legitimate governmental interest; indeed, a single hotel room bug alone yielded twenty reels of tape that subsequently provided the basis for the dissemination of personal information about Dr. King throughout the Federal establishment.[76a] Significantly, FBI internal memoranda with respect to some of the installations make clear that they were planted in Dr. King's hotel rooms for the express purpose of obtaining personal information about him.[77]

Extremely personal information about the target, his family, and his friends, is easily obtained from wiretaps as well as microphones. This fact is clearly illustrated by the warrantless electronic surveillance of an American citizen who was suspected of leaking classified data to the press. A wiretap on this individual produced no evidence that he had in fact leaked any stories or documents, but among the items of information that the FBI did obtain from the tap (and delivered in utmost secrecy to the White House) were the following: that "meat was ordered [by the target's family] from a grocer;" that the target's daughter had a toothache; that the target needed grass clippings for a compost heap he was building; and that during a telephone conversation between the target's wife and a friend the "matters discussed were milk bills, hair, soap operas, and church." [78]

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[75] Memorandum from the Attorney General to the Director, FBI, 5/20/54.

[76] Three additional bugs were planted in Dr. King's hotel rooms in 1965 after the standards for wiretapping and microphone surveillance became identical. According to FBI memoranda, apparently initiated by Katzenbach, Attorney General Nicholas Katzenbach was given after the fact notification that these three surveillances of Dr. King had occurred. See p. 273, and the King Report, Sec. IV, for further details.

[76a] Memorandum from F. J. Baumgardener to W. C. Sullivan, 3/26/64.

[77] For example, memorandum from Baumgardner to W. C. Sullivan, 2/4/64.

[78] FBI memoranda. Identifying details are being withheld by the Select Committee because of privacy considerations. Even the FBI realized that this type of information was unrelated to criminal activity or national security: for the last four months of this surveillance, most of the summaries that were disseminated to the White House began, "The following is a summary of nonpertinent information concerning captioned individual as of . . ."

The so-called "seventeen" wiretaps on journalists and government employees, which collectively lasted from May 1969 to February 1971, also illustrate the intrusiveness of electronic surveillance. According to former President Nixon, these taps produced "just gobs of material: gossip and bull." [79] FBI summaries of information obtained from the wiretaps and disseminated to the White House, suggest that the former President's private evaluation of them was correct. This wiretapping program did not reveal the source of any leaks of classified data, which was its ostensible purpose, but it did generate a wealth of information about the personal lives of the targets—their social contacts, their vacation plans, their employment satisfactions and dissatisfaction, their marital problems, their drinking habits, and even their sex lives.[80]

Among those who were incidentally overheard on one of these wiretaps was a currently sitting Associate Justice of the Supreme Court of the United States, who made plans to review a manuscript written by one of the targets.[81] Vast amounts of political information were also obtained from these wiretaps.[82]

The "seventeen" wiretaps also exemplify the particularly acute problems of wiretapping when the targeted individuals are involved in the domestic political process. These wiretaps produced vast amounts of purely political information,[82] much of which was obtained from the home telephones of two consultants to Senator Edmund Muskie and other Democratic politicians.

The incidental collection of political information from electronic surveillance is also shown by a series of telephone and microphone surveillances conducted during the Kennedy administration. In an investigation of the possibly unlawful attempts of representatives of a foreign country to influence congressional deliberations about sugar quota legislation in the early 1960s, Attorney General Robert Kennedy authorized a total of twelve warrantless wiretaps on foreign and domestic targets. Among the wiretaps of American citizens were two on American lobbyists, three on executive branch officials, and two on a staff member of a House of Representatives' Committee.[83] A bug was also planted in the hotel room of a United States Congressman, the Chairman of the House Agriculture Committee, Harold D. Cooley.[84]

Although this investigation was apparently initiated because of the Government's concern about future relations with the foreign country involved and the possibility of bribery,[85] it is clear that the Ken-

[79] Transcript of Presidential Tapes, 2/28/73 (House Judiciary Committee Statement of Information, Book VII, Part 4, p. 1754).

[80] For example, letters from Hoover to the Attorney General, 7/25/69, and 7/31/69; letters from Hoover to H. R. Haldeman, 6/25/70.

[81] Letter from Hoover to Haldeman, 6/25/70.

[82] Examples of such information are listed in the finding on Political Abuse, "The '17' wiretaps."

[83] Memorandum from J. Edgar Hoover to the Attorney General, 2/14/61; Memorandum from J. Edgar Hoover to the Attorney General, 2/16/61; Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62; Memorandum from Wannall to W. C. Sullivan, 12/22/66.

[84] Memorandum from D. E. Moore to A. H. Belmont, 2/16/61.

[85] Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/66; Memorandum from A. H. Belmont to Mr. Parsons, 2/14/61. This investigation did discover that representatives of a foreign nation were attempting to influence Congressional deliberations, but it did not reveal that money was being passed to any member of Congress or Congressional staff aide.

nedy administration was politically interested in the outcome of the sugar quota legislation as well.[86] Given the nature of the techniques used and of the targets they were directed against, it is not surprising that a great deal of potentially useful political information was generated from these "Sugar Lobby" surveillances.[87]

The highly intrusive nature of electronic surveillance also raises special problems when the targets are lawyers and journalists. Over the past two decades there have been a number of wiretaps placed on the office telephones of lawyers.[88] In the Sugar Lobby investigation, for example, Robert Kennedy authorized wiretaps on ten telephone lines of a single law firm.[90] All of these lines were apparently used by the one lawyer who was a target and presumably by other attorneys in the firm as well. Such wiretaps represent a serious threat to the attorney-client privilege, because once they are instituted they are capable of detecting all conversations between a lawyer and his clients, even those relating to pending criminal cases.

Since 1960, at least six American journalists and newsmen have also been the targets of warrantless wiretaps or bugs.[91] These surveillances were all rationalized as necessary to discover the source of leaks of classified information, but, since wiretaps and bugs are indiscriminate in the types of information collected, some of these taps revealed the attitudes of various newsmen toward certain politicians and supplied advance notice of forthcoming newspaper and magazine articles dealing with administration policies. The collection of information such as this, and the precedent set by wiretapping of newsmen, generally, inevitably tends to undermine the constitutional guarantee of a free and independent press.

2. NSA Monitoring

The National Security Agency (NSA) has the capability to monitor almost any electronic communication which travels through the air. This means that NSA is capable of intercepting a telephone call or even a telegram, if such call or telegram is transmitted at least partially through the air. Radio transmissions, *a fortiori*, are also within NSA's reach.

Since most communications today—to an increasing extent even domestic communications—are, at some point, transmitted through the air, NSA's potential to violate the privacy of American citizens is unmatched by any other intelligence agency. Furthermore, since the interception of electronic signals entails neither the installation of electronic surveillance devices nor the cooperation of private communications companies, the possibility that such interceptions will be undetected is enhanced.

NSA has never turned its monitoring apparatus upon entirely domestic communications, but from the early 1960s until 1973, it did inter-

[86] Memorandum from Wannall to W. C. Sullivan, 12/22/66.

[87] See Finding on Political Abuse, p. 233.

[88] Electronic Surveillance Report: Sec. II, "Presidential and Attorney General Authorization."

[90] Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62.

[91] Memorandum from J. Edgar Hoover to the Attorney General 6/29/61; memorandum from J. Edgar Hoover to the Attorney General 7/31/62; memorandum from J. Edgar Hoover to the Attorney General 4/19/65; memorandum from J. Edgar Hoover to the Attorney General 6/4/69; memorandum from J. Edgar Hoover to the Attorney General 9/10/69; letter from W. C. Sullivan to J. Edgar Hoover 7/2/69.

cept the international communications of American citizens, without a warrant, at the request of other federal agencies.

Under current practice, NSA does not target any American citizen or firm for the purpose of intercepting their foreign communications. As a result of monitoring international links of communication, however, it does acquire an enormous number of communications to, from, or about American citizens and firms.[93]

As a practical matter, most of the communications of American citizens or firms acquired by NSA as incidental to its foreign intelligence-gathering process are destroyed upon recognition as a communication to or from an American citizen. But other such communications, which bear upon NSA's foreign intelligence requirements, are processed, and information obtained from them are used in NSA's reports to other intelligence agencies. Current practice precludes NSA from identifying American citizens and firms by name in such reports. Nonetheless, the practice does result in NSA's disseminating information derived from the international communications of American citizens and firms to the intelligence agencies and policymakers in the federal government.

In his dissent in *Olmstead* v. *United States*,[94] which held that the Fourth Amendment warrant requirement did not apply to the seizure of conversations by means of wiretapping, Justice Louis D. Brandeis expressed grave concern that new technologies might outstrip the ability of the Constitution to protect American citizens. He wrote:

> Subtler and more far-reaching means of invading privacy have become available to the government . . . (and) the progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may some day be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home . . . . Can it be that the Constitution affords no protection against such invasions of individual security?

The question posed by Justice Brandeis applies with obvious force to the technological developments that allow NSA to monitor an enormous number of communications each year. His fears were firmly based, for in fact no warrant was ever obtained for the inclusion of 1200 American citizens on NSA's "Watch List" between the early 1960s and 1973, and none is obtained today for the dissemination within the intelligence community of information derived from the international communications of American citizens and firms. In the face of this new technology, it is well to remember the answer Justice Brandeis gave to his own question. Quoting from *Boyd* v. *United States*, 116 U.S. 616, he wrote:

> It is not the breaking of his doors, and the rummaging of his drawers that constitutes the essense of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty, and private property . . .[94a]

[93] NSA has long asserted that it had the authority to do this so long as one of the parties to such communication was located in a foreign country.

[94] 277 U.S. 438, 473–474 (1928).

[94a] 277 U.S. at 474–475.

D. Mail Opening

By ignoring the legal prohibitions against warrantless mail opening, the CIA and the FBI were able to obtain access to the written communications of hundreds of thousands of individuals, a large proportion of whom were American citizens. The intercepted letters were presumably sealed with the expectation that they would only be opened by the party to whom they were addressed, but intelligence agents in ten cities throughout the United States surreptitiously opened the seal and photographed the entire contents for inclusion in their intelligence files.

Mail opening is an imprecise technique. In addition to relying on a "Watch List" of names, the CIA opened vast numbers of letters on an entirely random basis; as one agent who opened mail in the CIA's New York project testified, "You never knew what you would hit." [95] Given the imprecision of the technique and the large quantity of correspondence that was opened, it is perhaps not surprising that during the twenty year course of the Agency's New York project, the mail that was randomly opened included that of at least three United States Senators and a Congressman, one Presidential Candidate, and numerous educational, business, and civil rights leaders.[96]

Several of the FBI programs utilized as selection criteria certain "indicators" on the outside of envelopes that suggested that the communication might be to or from a foreign espionage agent. These "indicators" were more refined than the "shotgun approach" [97] which characterized the CIA's New York project, and they did lead to the identification of three foreign spies.[98] But even by the Bureau's own accounting, it is clear that the mail of hundreds of innocent American citizens was opened and read for every successful counterintelligence lead that was obtained by means of "indicators." [99]

Large volumes of mail were also intercepted and opened in other FBI mail programs that were based not on indicators but on far less precise criteria. Two programs that involved the opening of mail to and from an Asian country, for example, used "letters to or from a university, scientific, or technical facility" as one selection criterion.[100] According to FBI memoranda, an average of 50 to 100 letters per day was opened and photographed during the ten years in which one of these two programs operated.[101]

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[95] "CIA Officer" testimony, 9/30/75, p. 15.

[96] Staff summary of "Master Index." review, 9/5/75.

[97] James Angelton testimony, 9/17/75, p. 28.

[98] Wannall, 10/21/75, p. 5.

[99] In one of the programs based on "indicators" a participating agent testified that he opened 30 to 60 letters each day. (FBI agent statement, 9/10/75, p. 23.) In a second such program, a total of 1,011 letters were opened in one of the six cities in which it operated; statistics on the number of letters opened in the other five cities cannot be reconstructed. (W. Raymond Wannall testimony, 10/21/75, p. 5.) In a third such project, 2,350 letters were opened in one city and statistics for the other two cities in which it operated are unavailable. (Memorandum from W. A. Branigan to W. C. Sullivan, 8/31/61; Memorandum from Mr. Branigan to Mr. Sullivan, 12/21/61; memorandum from New York Field Office to FBI Headquarters, 3/5/62.)

[100] Letter from the FBI to the Senate Select Committee, 10/29/75. Six other criteria were used in these programs. See Mail Opening Report, Sec. IV.

[101] Memorandum from S. B. Donohoe to A. H. Belmont, 2/23/61: Memorandum from San Francisco Field Office to FBI Headquarters, 3/11/60. Statistics relating to the number of letters opened in the other program which used this criterion cannot be reconstructed.

E. Surreptitious Entries

Surreptitious entries, conducted in violation of the law, have also permitted intelligence agencies to gather a wide range of information about American citizens and domestic organization as well as foreign targets.[102] By definition this technique involves a physical entry into the private premises of individuals and groups. Once intelligence agents are inside, no "papers or effects" are secure. As the Huston Plan recommendations stated in 1970, "It amounts to burglary."[103]

The most private documents are rendered vulnerable by the use of surreptitious entries. According to a 1966 internal FBI memorandum, which discusses the use of this technique against domestic organizations:

> [The FBI has] on numerous occasions been able to obtain material held highly secret and closely guarded by subversive groups and organizations which consisted of membership lists and mailing lists of these organizations.[104]

A specific example cited in this memorandum also reveals the types of information that this technique can collect and the uses to which the information thus collected may be put:

> Through a "black bag" job, we obtained the records in the possession of three high-ranking officials of a Klan organization. . . . These records gave us the complete membership and financial information concerning the Klan's operation which we have been using most effectively to disrupt the organization and, in fact, to bring about its near disintegration.[105]

Unlike techniques such as electronic surveillance, government entries into private premises were familiar to the Founding Fathers. "Indeed," Judge Gesell wrote in the *Ehrlichman* case, "the American Revolution was sparked in part by the complaints of the colonists against the issuance of writs of assistance, pursuant to which the King's revenue officers conducted unrestricted, indiscriminate searches of persons and homes to uncover contraband."[106] Recognition of the intrusiveness of government break-ins was one of the primary reasons

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[102] According to the FBI, "there were at least 239 surreptitious entries (for purposes other than microphone installation) conducted against at least fifteen domestic subversive targets from 1942 to April 1968. . . . In addition, at least three domestic subversive targets were the subject of numerous entries from October 1952 to June 1966." (FBI memorandum to the Senate Select Committee, 10/13/76.) One target, the Socialist Workers Party, was the subject of possibly as many as 92 break-ins by the FBI, between 1960 and 1966 alone. The home of at least one SWP member was also apparently broken into. (Sixth Supplementary Response to Requests for Production of Documents of Defendant, Director of the FBI, *Socialist Workers Party* v. *Attorney General*, 73 Civ. 3160, (SDNY), 3/24/76.) An entry against one "white hate group" was also reported by the FBI. (Memorandum from FBI Headquarters to the Senate Select Committee, 10/13/75.)

[103] Memorandum from Tom Huston to H. R. Haldeman, 7/70, p. 3.

[104] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66.

[105] Ibid.

[106] *United States* v. *Ehrlichman*, 376 F. Supp. 29, 32 (D.D.C. 1974).

for the subsequent adoption of the Fourth Amendment in 1791,[107] and this technique is certainly no less intrusive today.

Subfunding (c)

The imprecision and manipulation of labels such as "national security," "domestic security," "subversive activities" and "foreign intelligence" have led to unjustified use of these techniques.

Using labels such as "national security" and "foreign intelligence", intelligence agencies have directed these highly intrusive techniques against individuals and organizations who were suspected of no criminal activity and who posed no genuine threat to the national security. In the absence of precise standards and effective outside control, the selection of American citizens as targets has at times been predicated on grounds no more substantial than their lawful protests or their non-conformist philosophies. Almost any connection with any perceived danger to the country has sufficed.

The application of the "national security" rationale to cases lacking a substantial national security basis has been most apparent in the area of warrantless electronic surveillance. Indeed, the unjustified use of wiretaps and bugs under this and related labels has a long history. Among the wiretaps approved by Attorney General Francis Biddle under the standard of "persons suspected of subversive activities," for example, was one on the Los Angeles Chamber of Commerce in 1941.[108] This was approved in spite of his comment to J. Edgar Hoover that the target organization had "no record of espionage at this time."[109] In 1945, Attorney General Tom Clark authorized a wiretap on a former aide to President Roosevelt.[110] According to a memorandum by J. Edgar Hoover, Clark stated that President Truman wanted "a very thorough investigation" of the activities of the former official so that "steps might be taken, if possible, to see that [his] activities did not interfere with the proper administration of government."[111] The memorandum makes no reference to "subversive activities" or any other national security considerations.

The "Sugar Lobby" and Martin Luther King, Jr., wiretaps in the early 1960s both show the elasticity of the "domestic security" standard which supplemented President Roosevelt's "subversive activities" formulation. Among those wiretapped in the Sugar Lobby investigation, as noted above, was a Congressional staff aide. Yet the documentary record of this investigation reveals no evidence indicating that the target herself represented any threat to the "domestic security." Similarly, while the FBI may properly have been concerned with the activities of certain advisors to Dr. King, the direct wiretapping of Dr. King shows that the "domestic security" standard could be stretched to unjustified lengths.

The microphone surveillances of Congressman Cooley and Dr. King under the "national interest" standard established by Attorney General Brownell in 1954 also reveal the relative ease with which electronic bugging devices could be used against American citizens who

[107] See, e.g., *Olmstead* v. *United States*, 277 U.S. 438, (1928).

[108] Memorandum from Francis Biddle to Mr. Hoover, 11/19/41.

[109] Ibid.

[110] Unaddressed Memorandum from J. Edgar Hoover, 11/15/45, found in Director Hoover's "Official and Confidential" files.

[111] Ibid.

posed no genuine "national security" threat. Neither of these targets advocated or engaged in any conduct that was damaging to the security of the United States.

In April, 1964, Attorney General Robert Kennedy approved "technical coverage (electronic surveillance)" of a black nationalist leader after the FBI advised Kennedy that he was "forming a new group" which would be "more aggressive" and would "participate in racial demonstrations and civil rights activities." The only indication of possible danger noted in the FBI's request for the wiretaps, however, was that this leader had "recommended the possession of firearms by members for their self-protection.[112]

One year later, Attorney General Nicholas Katzenbach approved a wiretap on the offices of the Student Non-Violent Coordinating Committee on the basis of *potential* communist infiltration into that organization. The request which was sent to the Attorney General noted that "confidential informants" described SNCC as "the principal target for Communist Party infiltration among the various civil rights organizations" and stated that some of its leaders had "made public appearances with leaders of communist-front organizations" and had "subversive backgrounds." [113] The FBI presented no substantial evidence however, that SNCC was in fact infiltrated by communists—only that the organization was apparently a target for such infiltration in the future.

After the Justice Department adopted new criteria for the institution of warrantless electronic surveillance in 1968, the unjustified use of wiretaps continued. In November 1969, Attorney General John Mitchell approved a series of three wiretaps on organizations involved in planning the antiwar "March on Washington." The FBI's request for coverage of the first group made no claim that its members engaged or were likely to engage in violent activity; the request was simply based on the statement that the anticipated size of the demonstration was cause for "concern should violence of any type break out." [114]

The only additional justification given for the wiretap on one of the other groups, the Vietnam Moratorium Committee, was that it "has recently endorsed fully the activities of the [first group] concerning the upcoming antiwar demonstrations." [115]

In 1970, approval for a wiretap on a "New Left oriented campus group" was granted by Attorney General Mitchell on the basis of an FBI request which included, among other factors deemed relevant to the necessity for the wiretap, evidence that the group was attempting "to develop strong ties with the cafeteria, maintenance and other workers on campus" and wanted to "go into industry and factories and . . . take the radical politics they learned on the campus and spread them among factory workers." [116]

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[112] Memorandum from J. Edgar Hoover to the Attorney General, 4/1/64.

[113] Memorandum from J. Edgar Hoover to the Attorney General, 6/15/65.

[114] Memorandum from J. Edgar Hoover to the Attorney General, 11/5/69.

[115] Memorandum from J. Edgar Hoover to Attorney General Mitchell, 11/7/69.

[116] Memorandum from J. Edgar Hoover to the Attorney General, 3/16/70. The strongest evidence that this group's conduct was inimical to the national security was reported as follows:

"The [group] is dominated and controlled by the pro-Chinese Marxist Leninist (excised).....

"In carrying out the Marxist-Leninist ideology of the (excised) members have repeatedly sought to become involved in labor disputes on the side of labor, join

This approval was renewed three months later despite the fact that the request for renewal made no mention of violent or illegal activity by the group. The value of the wiretap was shown, according to the FBI, by such results as obtaining "the identities of over 600 persons either in touch with the national headquarters or associated with" it during the preceding three months.[117] Six months after the original authorization the number of persons so identified had increased to 1,428; and approval was granted for a third three-month period."[118]

The "seventeen wiretaps" also show how the term "national security" as a justification for wiretapping can obscure improper use of this technique. Shortly after these wiretaps were revealed publicly, President Nixon stated they had been justified by the need to prevent leaks of classified information harmful to the national security.[119]

Wiretaps for this purpose had, in fact, been authorized under the Kennedy and Johnson administrations. President Nixon learned of these and other prior taps and, at a news conference, sought to justify the taps he had authorized by referring to past precedent. He stated that in the:

> period of 1961 to '63 there were wiretaps on news organizations, on news people, on civil rights leaders and on other people. And I think they were perfectly justified and I'm sure that President Kennedy and his brother, Robert Kennedy, would never have authorized them, unless he thought they were in the national interest. (Presidential News Conference, 8/22/73.)

Thus, questionable electronic surveillances by earlier administrations were put forward as a defense for improper surveillances exposed in 1973. In fact, however, two of these wiretaps were placed on domestic affairs advisers at the White House who had no foreign affairs responsibilities and apparently no access to classified foreign policy materials.[121] A third target was a White House speech writer who had been overheard on an existing tap agreeing to provide a reporter with background information on a Presidential speech con-

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picket lines and engage in disruptive and sometimes violent tactics against industry recruiters on college campuses. . . .

"This faction is currently very active in many of the major demonstrations and student violence on college campuses. . . ." (Memorandum from J. Edgar Hoover to the Attorney General, 3/16/70. The excised words have been deleted by the FBI.)

[117] Memorandum from J. Edgar Hoover to the Attorney General, 6/16/70. The only other results noted by Hoover related to the fact that the wiretap had "obtained information concerning the activities of the national headquarters of [the group and] plans for [the group's] support and participation in demonstrations supporting antiwar groups and the (excised)." It was also noted that the wiretap "revealed . . . contacts with Canadian student elements".

[118] Memorandum from J. Edgar Hoover to the Attorney General, 9/16/70. The only other results noted by Hoover again related to obtaining information about the "plans and activities" of the group. Specifically mentioned were the "plans for the National Interim Committee (ruling body of [excised]) meeting which took place in New York and Chicago", and the plans "for demonstrations at San Francisco, Detroit, Salt Lake City, Minneapolis, and Chicago." There was no indication that these demonstrations were expected to be violent. (The excised words have been deleted by the FBI).

[119] Public statement of President Nixon, 5/22/73.

[121] Memorandum from J. Edgar Hoover to the Attorney General 7/23/69; memorandum from J. Edgar Hoover to the Attorney General 12/14/70.

cerning domestic revenue sharing and welfare reform.[122] The reinstatement of another wiretap in this series was requested by H. R. Haldeman simply because "they may have a bad apple and have to get him out of the basket."[123] The last four requests in this series that were sent to the Attorney General (including the requests for a tap on the "bad apple") did not mention any national security justification at all. As former Deputy Attorney General William Ruckelshaus has testified:

> I think some of the individuals who were tapped, at least to the extent I have reviewed the record, had very little, if any, relationship to any claim of national security . . . I think that as the program proceeded and it became clear to those who could sign off on taps how easy it was to institute a wiretap under the present procedure that these kinds of considerations [i.e., genuine national security justifications] were considerably relaxed as the program went on.[124]

None of the "seventeen" wiretaps was ever reauthorized by the Attorney General, although 10 of them remained in operation for periods longer than 90 days and although President Nixon himself stated privately that "[t]he tapping was a very, very unproductive thing . . . it's never been useful to any operation I've conducted . . ."[125]

In short, warrantless electronic surveillance has been defended on the ground that it was essential for the national security, but the history of the use of this technique clearly shows that the imprecision and manipulation of this and similar labels, coupled with the absence of any outside scrutiny, has led to its improper use against American citizens who posed no criminal or national security threat to the country.[126]

Similarly, the terms "foreign intelligence" and "counterespionage" were used by the CIA and the FBI to justify their cooperation in the CIA's New York mail opening project, but this project was also used to target entirely innocent American citizens.

As noted above, the CIA compiled a "Watch List" of names of persons and organizations whose mail was to be opened if it passed through the New York facility. In the early days of the project, the names on this list—which then numbered fewer than twenty—might reason-

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[122] Memorandum from W. C. Sullivan to C. D. DeLoach, 8/1/69.

[123] Memorandum from J. Edgar Hoover to Messrs. Tolson, Sullivan and D. C. Brennan, 10/15/70.

[124] Ruckelshaus testimony before the Senate Subcommittee on Administrative Practice and Procedure, 5/9/74, pp. 311–12.

[125] Transcript of the Presidential Tapes, 2/28/73 (House Judiciary Committee Statement of Information Book VII, Part W, p. 1754.)

[126] The term "national security" was also used by John Ehrlichman and Charles Colson to justify their roles in the break-in of Dr. Fielding's office in 1971. A March 21, 1973 tape recording of a meeting between President Nixon, John Dean, and H. R. Haldeman suggests, however, that the national security "justification" may have been developed long after the event for the purpose of obscuring its impropriety. When the President asked what could be done if the break-in was revealed publicly, John Dean suggested, "You might put it on a national security grounds basis." Later in the conversation, President Nixon stated "With the bombing thing coming out and everything coming out, the whole thing was national security," and Dean said, "I think we could get by on that." (Transcript of Presidential tapes, 3/21/73.)

ably have been expected to lead to genuine foreign intelligence or counterintelligence information. But as the project developed, the Watch List grew and its focus changed. By the late 1960s there were approximately 600 names on the list, many of them American citizens and organizations who were engaged in purely lawful and constitutionally protected forms of protest against governmental policies. Among the domestic organizations on the Watch List, which was supplemented by submissions from the FBI, were: Clergy and Laymen Concerned about Vietnam, the National Mobilization Committee to End the War in Vietnam, *Ramparts*, the Student Non-Violent Coordinating Committee, the Center for the Study of Public Policy, and the American Friends Service Committee.[127]

The FBI levied more general requirements on the CIA's project as well. The focus of the original categories of correspondence in which the FBI expressed an interest was clearly foreign counterespionage, but subsequent requirements became progressively more domestic in their focus and progressively broader in their scope. The requirements that were levied by the FBI in 1972, one year before the termination of the project, included the following:

> "... [p]ersons on the Watch List; known communists, New Left activists, extremists, and other subversives . . .
>
> Communist party and front organizations ... extremist and New Left organizations.
>
> Protest and peace organizations, such as People's Coalition for Peace and Justice, National Peace Action Committee, and Women's Strike for Peace.
>
> Communists, Trotskyites and members of other Marxist-Leninist, subversive and extremist groups, such as the Black Nationalists and Liberation groups ... Students for a Democratic Society ... and other New Left groups.
>
> Traffic to and from Puerto Rico and the Virgin Islands showing anti-U.S. or subversive sympathies." [128]

This final set of requirements evidently reflected the domestic turmoil of the late 1960s and early 1970s. The mail opening program that began as a means of collecting foreign intelligence information and discovering Soviet intelligence efforts in the United States had expanded to encompass detection of the activities of domestic dissidents of all types.

. . . . . .

In the absence of effective outside control, highly intrusive techniques have been used to gather vast amounts of information about the entirely lawful activities—and privately held beliefs—of large numbers of American citizens. The very intrusiveness of these techniques demands the utmost circumspection in their use. But with vague or non-existent standards to guide them, and with labels such as "national security" and "foreign intelligence" to shield them, executive branch officials have been all too willing to unleash these techniques against American citizens with little or no legitimate justification.

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[127] Staff summary of Watch List review, 9/5/75.

[128] Routing slip from J. Edgar Hoover to James Angelton (attachment), 3/10/72.

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D. USING COVERT ACTION TO DISRUPT AND DISCREDIT DOMESTIC GROUPS

Major Finding

The Committee finds that covert action programs have been used to disrupt the lawful political activities of individual Americans and groups and to discredit them, using dangerous and degrading tactics which are abhorrent in a free and decent society.

Subfindings

(a) Although the claimed purposes of these action programs were to protect the national security and to prevent violence, many of the victims were concededly nonviolent, were not controlled by a foreign power, and posed no threat to the national security.

(b) The acts taken interfered with the First Amendment rights of citizens. They were explicitly intended to deter citizens from joining groups, "neutralize" those who were already members, and prevent or inhibit the expression of ideas.

(c) The tactics used against Americans often risked and sometimes caused serious emotional, economic, or physical damage. Actions were taken which were designed to break up marriages, terminate funding or employment, and encourage gang warfare between violent rival groups. Due process of law forbids the use of such covert tactics, whether the victims are innocent law-abiding citizens or members of groups suspected of involvement in violence.

(d) The sustained use of such tactics by the FBI in an attempt to destroy Dr. Martin Luther King, Jr., violated the law and fundamental human decency.

Elaboration of the Findings

For fifteen years from 1956 until 1971, the FBI carried out a series of covert action programs directed against American citizens.[1] These "counterintelligence programs" (shortened to the acronym COINTELPRO) resulted in part from frustration with Supreme Court rulings limiting the Government's power to proceed overtly against dissident groups.[2]

[1] Before 1956 the FBI engaged in activities to disrupt and discredit Communists and (before World War II) Fascists, but not as part of a formal program. The Bureau is the only agency which carried on a sustained effort to "neutralize" domestic groups, although other agencies made sporadic attempts to disrupt dissident groups. (See Military Surveillance Report; IRS Report.)

[2] The Bureau personnel involved in COINTELPRO link the first formal counterintelligence program, against the Communist Party, USA, to the Supreme Court reversal of the Smith Act convictions, which "made it impossible to prosecute Communist Party members at the time". (COINTELPRO unit chief, 10/16/75, p. 14.) It should be noted, however, that the Court's reversal occurred in 1957, the year after the program was instituted. This belief in the deficiencies of the law was a major factor in the four subsequent programs as well: "The other COINTELPRO programs were opened as the threat arose in areas of extremism and subversion and there were not adequate statutes to proceed against the organization or to prevent their activities." (COINTELPRO Unit Chief, 10/16/75, p. 15.)

They ended formally in 1971 with the threat of public exposure.[3] Some of the findings discussed herein are related to the findings on lawlessness, overbreadth, and intrusive techniques previously set forth. Some of the most offensive actions in the FBI's COINTELPRO programs (anonymous letters intended to break up marriages, or efforts to deprive people of their jobs, for example) were based upon the covert use of information obtained through overly-broad investigations and intrusive techniques.[4] Similarly, as noted above, COINTELPRO involved specific violations of law, and the law and the Constitution were "not [given] a thought" under the FBI's policies.[5]

But COINTELPRO was more than simply violating the law or the Constitution. In COINTELPRO the Bureau secretly [6] took the law into its own hands, going beyond the collection of intelligence and beyond its law enforcement function to act outside the legal process altogether and to covertly disrupt, discredit and harass groups and individuals. A law enforcement agency must not secretly usurp the functions of judge and jury, even when the investigation reveals criminal activity. But in COINTELPRO, the Bureau imposed summary punishment, not only on the allegedly violent, but also on the nonviolent advocates of change. Such action is the hallmark of the vigilante and has no place in a democratic society.

Under COINTELPRO, certain techniques the Bureau had used against hostile foreign agents were adopted for use against perceived domestic threats to the established political and social order.[7]

Some of the targets of COINTELPRO were law-abiding citizens merely advocating change in our society. Other targets were members

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[3] For further information on the termination of each of the programs, see The Accountability and Control Findings, p. 265 and the detailed reports on the Black Panther Party and COINTELPRO.

Although the programs have been formally terminated, Bureau witnesses agree that there is a "grey area" between "counter-intelligence" and investigative activities which are inherently disruptive. These investigative activities continue. (See COINTELPRO Report: "Command and Control—The Problems of Oversight.")

[4] Information gained from electronic surveillance, informant coverage, burglaries, and confidential financial records was used in COINTELPRO. p. 275.)

[5] Moore, 11/3/75, p. 83.

[6] Field offices were instructed that no one outside the Bureau was to know that COINTELPRO existed, although certain persons in the executive branch and in Congress were told about—and did not object to—efforts to disrupt the CPUSA and the Klan. However, no one was told about the other COINTELPRO programs, or about the more dangerous and degrading techniques employed. (See p. 275.)

[7] As the Chief of the Racial Intelligence Section put it:

"You can trace [the origins of COINTELPRO] up and back to foreign intelligence, particularly penetration of the group by the individual informant. Before you can engage in counterintelligence you must have intelligence. . . . If you have good intelligence and know what it's going to do, you can seed distrust, sow misinformation. The same technique is used, misinformation, disruption, is used in the domestic groups, although in the domestic groups you are dealing in '67 and '68 with many, many more across the country . . . than you had ever dealt with as far as your foreign groups." (Moore, 11/3/75, pp. 32–33.)

Former Assistant Director William C. Sullivan also testified that the "rough, tough, dirty business" of foreign counterintelligence was "brought home against any organization against which we were targeted. We did not differentiate." (Sullivan, 11/1/75, pp. 97–98.)

of groups that had been involved in violence, such as the Ku Klux Klan or the Black Panther Party. Some victims did nothing more than associate with targets.[8]

The Committee does not condone acts of violence, but the response of Government to allegations of illegal conduct must comply with the due process of law demanded by the Constitution. Lawlessness by citizens does not justify lawlessness by Government.

The tactics which were employed by the Bureau are therefore unacceptable, even against the alleged criminal. The imprecision of the targeting compounded the abuse. Once the Government decided to take the law into its own hands, those unacceptable tactics came almost inevitably to be used not only against the "kid with the bomb" but also against the "kid with the bumper sticker." [9]

Subfinding (a)

Although the claimed purposes of these action programs were to protect the "national security" and to prevent violence, many of the victims were concededly nonviolent, were not controlled by a foreign power, and posed no threat to the "national security."

The Bureau conducted five "counterintelligence programs" aimed against domestic groups: the "Communist Party, USA" program (1956–71); the "Socialist Workers Party" program (1961–69); the "White Hate" program (1964–1971); the "Black Nationalist-Hate Group" program (1967–71); and the "New Left" program (1968–71).

While the declared purposes of these programs were to protect the "national security" or prevent violence, Bureau witnesses admit that many of the targets were nonviolent and most had no connections with a foreign power. Indeed, nonviolent organizations and individuals were targeted because the Bureau believed they represented a "potential" for violence [10] and nonviolent citizens who were against the war in Vietnam were targeted because they gave "aid and comfort" to violent demonstrators by lending respectability to their cause.[11]

The imprecision of the targeting is demonstrated by the inability of the Bureau to define the subjects of the programs. The Black Nationalist program, according to its supervisor, included "a great number of organizations that you might not today characterize as black nationalist but which were in fact primarily black." [12] Thus, the nonviolent Southern Christian Leadership Conference was labeled as a Black Nationalist-"Hate Group."

Furthermore, the actual targets were chosen from a far broader group than the titles of the programs would imply. The CPUSA program targeted not only Communist Party members but also sponsors of the National Committee to Abolish the House Un-American

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[8] For example, parents and spouse, of targets received letters containing accusations of immoral conduct by the target. (Memorandum from St. Louis Field Office to FBI Headquarters, 1/30/70; memorandum from FBI Headquarters to Minneapolis Field Office, 11/4/68.)

[9] Huston, 9/23/75, Hearings, Vol. 2, p. 45.

[10] Moore, 11/8/75, p. 37.

[11] New Left supervisor, 10/28/75, p. 69.

[12] Black Nationalist Supervisor, 10/17/75, p. 12.

Activities Committee [14] and civil rights leaders allegedly under Communist influence or not deemed to be "anti-Communist".[15] The Socialist Workers Party program included non-SWP sponsors of antiwar demonstrations which were cosponsored by the SWP or the Young Socialist Alliance, its youth group.[16] The Black Nationalist program targeted a range of organizations from the Panthers to SNCC to the peaceful Southern Christian Leadership Conference, and included every Black Student Union and many other black student groups.[17] New Left targets ranged from the SDS [18] to the Inter-University Committee for Debate on Foreign Policy,[19] from Antioch College ("vanguard of the New Left") [20] to the New Mexico Free University and other "alternate" schools,[21] and from underground newspapers [22] to students protesting university censorship of a student publication by carrying signs with four-letter words on them.[23]

Subfinding (b)

The acts taken interfered with the First Amendment rights of citizens. They were explicitly intended to deter citizens from joining

[14] For example, the entire Unitarian Society of Cleveland was targeted because the minister and some members circulated a petition calling for the abolition of HUAC, and because the Church gave office space to the "Citizens for Constitutional Rights". (Memorandum from FBI Headquarters to Cleveland Field Office, 11/6/64.)

[15] See Finding on "Overbreadth" p. 181.

[16] For instance, the Bureau targeted two non-member students who participated in an anti-war "hunger strike" at Oberlin, which was "guided and directed" by the Young Socialists Alliance. The students' parents received anonymous letters, purportedly from a friend of their sons. One letter expressed concern that a group of "left wing students" were "cynically using" the boy, which would lead to "injury" to his health and "damage to his academic standing". The other letter also stated that it was motivated by concern for "damage" to the student's "health and personal future" and "the belief that you may not be aware of John's current involvement in left-wing activities." (Memorandum from FBI headquarters to Cleveland Field Office, 11/29/68.)

[17] One proposal sought to expose Black Student Union Chapters as "breeding grounds for racial militancy" by an anonymous mailing to "all institutions where there are BSU chapters or incipient chapters". (Memorandum from Portland Field Office to FBI Headquarters, 6/3/68.)

[18] For example Memorandum from FBI Headquarters to San Antonio Field Office, 10/31/68.

[19] An anonymous letter was sent to "influential" Michigan political figures, the mass media, University of Michigan administrators, and the Board of Regents, in an attempt to "discredit and neutralize" the "communist activities" of the IUCDFP. The letter decried the "undue publicity" given anti-war protest activities which "undoubtedly give 'aid and comfort' to the enemy" and encourage the Vietcong and the North Vietnamese in "refusing to come to the bargaining table". The letter continued, "I wonder if the strategy is to bleed the United States white by prolonging the war in Vietnam and pave the way for a takeover by Russia?" (Memorandum from Detroit Field Office to FBI Headquarters, 10/11/66; Memorandum from FBI Headquarters, to Detroit Field Office 10/26/66.)

[20] Memorandum from FBI Headquarters to Cincinnati Field Office, 6/18/68.

[21] The New Mexico Free University was targeted because it taught such courses as "confrontation politics" and "draft counselling". (Memorandum from FBI Headquarters to Albuquerque Field Office, 3/19/69.) In another case, an "alternate" school for students "aged five and beyond", which was co-sponsored by the ACLU, was targeted because "from the staff being assembled, it appears that the school will be a New Left venture and of a radical revolutionary nature". The Bureau contacted a confidential source in the bank financing the school so that he could "take steps to discourage its developments". (Memorandum from FBI Headquarters to San Antonio Field Office, 7/23/69.

[22] See *e.g.*, Memorandum from FBI Headquarters to Pittsburgh Field Office, 11/14/69.

[23] Memorandum from FBI Headquarters to Minneapolis Field Office, 11/4/68.

groups, "neutralize" those who were already members, and prevent or inhibit the expression of ideas.

In achieving its purported goals of protecting the national security and preventing violence, the Bureau attempted to deter membership in the target groups. As the supervisor of the "Black Nationalist" CO INTELPRO stated, "Obviously, you are going to prevent violence or a greater amount of violence if you have smaller groups." [24] The chief of the COINTELPRO unit agreed: "We also made an effort . . . to deter recruitment where we could. This was done with the view that if we could curb the organization, we could curb the action or the violence within the organization." [25] As noted above, many of the organizations "curbed" were not violent, and covert attacks on group membership contravened the First Amendment's guarantee of freedom to associate.

Nor was this the only First Amendment right violated by the Bureau. In addition to attempting to prevent people from joining or continuing to be members in target organizations, the Bureau tried to "deter or counteract" what it called "propaganda" [26]—the expression of ideas which it considered dangerous. Thus, the originating document for the "Black Nationalist" COINTELPRO noted that "consideration should be given to techniques to preclude" leaders of the target organizations "from spreading their philosophy publicly or through various mass communication media." [27]

Instructions to "preclude" free speech were not limited to "black nationalists;" they occurred in every program. In the New Left program, for instance, approximately thirty-nine percent of all actions attempted to keep targets from speaking, teaching, writing, or publishing.[28]

The cases included attempts (sometimes successful) to prompt the firing of university and high school teachers; [29] to prevent targets from speaking on campus; [30] to stop chapters of target groups from

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[24] Black Nationalist supervisor, 10/17/75, p. 24.

[25] COINTELPRO unit chief, 10/12/75, p. 54.

[26] COINTELPRO unit chief, 10/12/75, p. 54.

[27] Memorandum from FBI Headquarters to all SAC's, 8/25/67.

[28] The FBI was not the only intelligence agency to attempt to prevent the propagation of ideas with which it disagreed, but it was the only one to do so in any organized way. The IRS responded to Congressional and Administration pressure by targeting political organizations and dissidents for audit. The CIA improperly obtained the tax returns of Ramparts magazine after it learned that the magazine intended to publish an article revealing Agency support of the National Student Association. The CIA saw the article as "an attack on CIA in particular and the Administration in general." (CIA memorandum re: "IRS Briefing on Ramparts," 2/2/67.)

[29] For instance, a high school English teacher was targeted for inviting two poets to attend a class at his school. The poets were noted for their efforts in the draft resistance movement. The Bureau sent anonymous letters to two local newspapers, the Board of Education, and the school board. (Memorandum from FBI Headquarters to Pittsburgh Field Office, 6/19/69.)

[30] In one case, the Bureau attempted to stop a "Communist" speaker from appearing on campus. The sponsoring organization went to court and won an order permitting the lecture to proceed as scheduled; the Bureau then investigated the judge who issued the order. (Memorandum from Detroit Field Office to FBI Headquarters. 10/26/60; Memorandum from FBI Headquarters to Detroit Field Office, 10/27/60. 10/28/, 10/31/60; Memorandum from F. J. Baumgardner to A. H. Belmont, 10/26/60.)

being formed;[31] to prevent the distribution of books, newspapers, or periodicals;[32] to disrupt or cancel news conferences;[33] to interfere with peaceful demonstrations, including the SCLC's Poor People's Campaign and Washington Spring Project and most of the large anti-war marches;[34] and to deny facilities for meetings or conferences.[35]

As the above cases demonstrate, the FBI was not just "chilling" free speech, but squarely attacking it.

The tactics used against Americans often risked and sometimes caused serious emotional, economic, or physical damage. Actions were taken which were designed to break up marriages, terminate funding or employment, and encourage gang warfare between violent rival groups. Due process of law forbids the use of such covert tactics whether the victims are innocent law-abiding citizens or members of groups suspected of involvement in violence.

The former head of the Domestic Intelligence Division described counterintelligence as a "rough, tough, dirty, and dangerous" business.[36] His description was accurate.

One technique used in COINTELPRO involved sending anonymous letters to spouses intended, in the words of one proposal, to "produce ill-feeling and possibly a lasting distrust" between husband and wife, so that "concern over what to do about it" would distract the target from "time spent in the plots and plans" of the organization.[37] The image of an agent of the United States Government scrawling a poison-pen letter to someone's wife in language usually reserved for bathroom walls is not a happy one. Nevertheless, anonymous let-

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[31] The Bureau tried on several occasions to prevent the formation of campus chapters of SDS and the Young Socialist Alliance. (See, e.g., Memorandum from San Antonio Field Office to FBI Headquarters, 5/1/69; Memorandum from FBI Headquarters to San Antonio Field Office, 5/1/69.)

[32] For example, an anonymous letter to a state legislator protested the distribution on campus of an underground newspaper's "depravity", (Memorandum from Newark Field Office to FBI Headquarters, 5/23/69; Memorandum from FBI Headquarters to Newark Field Office, 6/4/69) and thhe Bureau anonymously contacted the landlady of premises rented by two "New Left" newspapers in an attempt to have them evicted. (Memorandum from Los Angeles Field Office to FBI Headquarters, 9/9/68; Memorandum from FBI Headquarters to Los Angeles Field Office, 9/23/68.)

[33] For example, a confidential source in a radio station was contacted in two successful attempts to cancel news conferences. (Memorandum from FBI Headquarters to Cleveland Field Office, 10/1/65; Memorandum from FBI Headquarters to Cleveland Field Office 10/4/65; Memorandum from Boston Field Office to FBI Headquarters, 2/5/64; Memorandum from F. J. Baumgardner to William C. Sullivan, 6/25/64.)

[34] For instance, the Bureau used the standard counterespionage technique of "disinformation" against demonstrators. In one case, the Chicago Field Office duplicated blank forms soliciting housing for demonstrators coming to Chicago for the Democratic National Convention, filled them out with fictitious names and addresses and sent them to the organizers. Demonstrators reportedly made "long and useless journeys to locate these addresses." (Memorandum from Chicago Field Office to FBI Headquarters, 9/9/68.) The same program was carried out by the Washington Field Office when housing forms were distributed for demonstrators coming to the 1969 Presidential inaugural ceremonies. (Memorandum from FBI Headquarters to Washington Field Office, 1/10/69.) Army intelligence agents occasionally took similar, but wholly unauthorized action, see Military Surveillance Report: Section III: "Domesttic Radio Monitoring by ASA: 1967–1970."

[35] Memorandum from FBI Headquarters to San Diego field office, 9/11/69.

[36] Sullivan, 11/1/75, pp. 97–98.

[37] Memorandum from St. Louis Field Office to FBI Headquarters, 2/14/69.

ters were sent to, among others, a Klansman's wife, informing her that her husband had "taken the flesh of another unto himself," the other person being a woman named Ruby, with her "lust filled eyes and smart aleck figure;" [38] and to a "Black Nationalist's" wife saying that her husband "been maken it here" with other women in his organization "and than he gives us this jive bout their better in bed then you." [39] A husband who was concerned about his wife's activities in a biracial group received a letter which started, "Look man I guess your old lady doesn't get enough at home or she wouldn't be shucking and jiving with our Black Men" in the group.[40] The Field Office reported as a "tangible result" of this letter that the target and her husband separated.[41]

The Bureau also contacted employers and funding organizations in order to cause the firing of the targets or the termination of their support.[42] For example, priests who allowed their churches to be used for the Black Panther breakfast programs were targeted, and anonymous letters were sent to their bishops; [43] a television commentator who expressed admiration for a Black Nationalist leader and criticized heavy defense spending was transferred after the Bureau contacted his employer; [44] and an employee of the Urban League was fired after the FBI approached a "confidential source" in a foundation which funded the League.[45]

The Bureau also encouraged "gang warfare" between violent groups. An FBI memorandum dated November 25, 1968 to certain Field Offices conducting investigations of the Black Panther Party ordered recipient offices to submit "imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP." Proposals were to be received every two weeks. Particular attention was to be given to capitalizing upon differences between the Panthers and US, Inc. (another "Black Nationalist" group), which had reached such proportions that "it is taking on the aura of gang warfare with attendant threats of murder and reprisals." [45a] On May 26, 1970, after U.S. organization members had killed four BPP members and members of each organization had been shot and beaten by members of the other, the Field Office reported:

> Information received from local sources indicate[s] that, in general, the membership of the Los Angeles BPP is physically afraid of US members and take premeditated precautions to avoid confrontations.

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[38] Memorandum from Richmond Field Office to FBI Headquarters, 8/26/66.

[39] The wife who received this letter was described in the Field Office proposal as "faithful . . . an intelligent respectable young mother who is active in the AME Methodist Church." (Memorandum from St. Louis Field Office to FBI Headquarters, 2/14/69.)

[40] Memorandum from St. Louis Field Office to FBI Headquarters, 1/30/70.

[41] Memorandum from St. Louis Field Office to FBI Headquarters, 6/19/70.

[42] When the targets were teachers, the intent was to prevent the propagation of ideas. In the case of other employer contacts, the purpose was to stop a source of funds.

[43] Memorandum from New Haven Field Office to FBI Headquarters, 11/12/69; memorandum from FBI Headquarters to San Diego Field Office, 9/9/69.

[44] Memorandum from FBI Headquarters to Cincinnati Field Office, 3/28/69.

[45] Memorandum from FBI Headquarters to Pittsburgh Field Office, 3/3/69.

[45a] Memorandum from FBI Headquarters to Baltimore Field Office, 11/25/68.

> In view of their anxieties, it is not presently felt that the Los Angeles BPP can be prompted into what could result in an internecine struggle between the two organizations. . . .
>
> The Los Angeles Division is aware of the mutually hostile feelings harbored between the organizations and the first opportunity to capitalize on the situation will be maximized. It is intended that US Inc. will be appropriately and discreetly advised of the time and location of BPP activities *in order that the two organizations might be brought together and thus grant nature the opportunity to take her due course.*[46] [Emphasis added.]

A second Field Office noted:

> Shootings, beatings and a high degree of unrest continues to prevail in the ghetto area of Southeast San Diego. Although no specific counterintelligence action can be credited with contributing to this overall situation, it is felt that a substantial amount of the unrest is directly attributable to this program.[47]

In another case, an anonymous letter was sent to the leader of the Blackstone Rangers (a group, according to the Field Offices' proposal, "to whom violent-type activity, shooting, and the like are second nature") advising him that "the brothers that run the Panthers blame you for blocking their thing and there's supposed to be a hit out for you." The letter was intended to "intensify the degree of animosity between the two groups" and cause "retaliatory action which could disrupt the BPP or lead to reprisals against its leadership."[48]

Another technique which risked serious harm to the target was falsely labeling a target an informant. This technique was used in all five domestic COINTELPRO. When a member of a nonviolent group was successfully mislabeled as an informant, the result was alienation from the group.[49] When the target belonged to a group known to have killed suspected informants, the risk was substantially more serious. On several occasions, the Bureau used this technique against members of the Black Panther Party; it was used at least twice after FBI documents expressed concern over the possible consequences because two members of the BPP had been murdered as suspected informants.[50]

The Bureau recognized that some techniques used in COINTELPRO were more likely than others to cause serious physical, emotional, or economic damage to the targets.[51] Any proposed use of such techniques—for example, encouraging enmity between violent rival

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[46] Memorandum from Los Angeles Field Office to FBI headquarters, 5/26/70, pp. 1–2.

[47] Memorandum from San Diego Field Office to FBI headquarters, 9/15/69.

[48] Memorandum from Chicago Field Office to FBI headquarters, 1/12/69; Memorandum from FBI Headquarters to Chicago Field Office, 1/30/69.

[49] See, e.g., Memorandum from San Diego Field Office to FBI Headquarters, 4/30/69.

[50] One proposal to label a BPP member a "pig informer" was rejected because the Panthers had recently murdered two suspected informers. The victims had not been targets of a Bureau effort to label them informants. (Memorandum from FBI Headquarters to Cincinnati Field Office, 2/18/71.) Nevertheless, two similar proposals were implemented a month later, (Memorandum from FBI Headquarters to Washington Field Office, 3/19/71; Memorandum from FBI Headquarters to Charlotte Field Office, 3/31/71.)

[51] At least four assaults—two of them on women—were reported as "results" of Bureau actions. (See COINTELPRO Report, Section IV: Wartimes Technique Brought Home.)

groups, falsely labeling group members as informants, and mailing anonymous letters to targets' spouses accusing the target of infidelity—was scrutinized carefully by headquarters supervisory personnel, in an attempt to balance the "greater good" to be achieved by the proposal against the known or risked harm to the target. If the "good" was sufficient, the proposal was approved. For instance, in discussing anonymous letters to spouses, the agent who supervised the New Left COINTELPRO stated:

> [Before recommending approval] I would want to know what you want to get out of this, who are these people. If it's somebody, and say they did split up, what would accrue from it as far as disrupting the New Left is concerned? Say they broke up, what then. . . .
>
> [The question would be] is it worth it? [52]

Similarly, with regard to causing false suspicions that an individual was an informant, the chief of the Racial Intelligence Section stated:

> You have to be able to make decisions and I am sure that labeling somebody as an informant, that you'd want to make certain that it served a good purpose before you did it and not do it haphazardly. . . . It is a serious thing . . . As far as I am aware, in the black extremist area, by using that technique, no one was killed. I am sure of that.[52a]

This official was asked whether the fact that no one was killed was the result of "luck or planning." He answered: "Oh, it just happened that way, I am sure." [52b]

It is intolerable in a free society that an agency of the Government should adopt such tactics, whether or not the targets are involved in criminal activity. The "greater good" of the country is in fact served by adherence to the rule of law mandated by the Constitution.

Subfinding (d)

The sustained use of such tactics by the FBI in an attempt to destroy Dr. Martin Luther King, Jr., violated the law and fundamental human decency.

The Committee devoted substantial attention to the FBI's covert action campaign against Dr. Martin Luther King because it demonstrates just how far the Government could go in a secret war against one citizen. In focusing upon Dr. King, however, it should not be forgotten that the Bureau carried out disruptive activities against hundreds of lesser-known American citizens. It should also be borne in mind that positive action on the part of high Government officials outside the FBI might have prevented what occurred in this case.[53]

The FBI's claimed justification for targeting Dr. King—alleged Communist influence on him and the civil rights movement—is examined elsewhere in this report.[54]

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[52] New Left supervisor 10/28/75, pp. 72, 74.

[52a] Moore, 11/3/75, p. 62.

[52b] Moore, 11/3/75, p. 64.

[53] See pp. 275–277 and 205–206 of this Report for a detailed discussion of which officials were aware or should have been aware of what the Bureau was doing to Dr. King and how their action or inaction might have contributed to what went on.

[54] See Marin Luther King Report, Section III, "Concern in the FBI and the Kennedy Administration Over Allegations of Communist Influence in the Civil Rights Movement Increases, and the FBI Intensifies the Investigation: October 1962–October 1963." See generally, Finding on Overbreadth, p. 175.

The FBI's campaign against Dr. Martin Luther King, Jr. began in December 1963, four months after the famous civil rights March on Washington,[55] when a nine-hour meeting was convened at FBI Headquarters to discuss various "avenues of approach aimed at neutralizing King as an effective Negro leader." [56] Following the meeting, agents in the field were instructed to "continue to gather information concerning King's personal activities . . . in order that we may consider using this information at an opportune time in a counterintelligence move to discredit him." [57]

About two weeks after that conference, FBI agents planted a microphone in Dr. King's bedroom at the Willard Hotel in Washington, D.C.[58] During the next two years, the FBI installed at least fourteen more "bugs" in Dr. King's hotel rooms across the country.[59] Physical and photographic surveillances accompanied some of the microphone coverage.[60]

The FBI also scrutinized Dr. King's tax returns, monitored his financial affairs, and even tried to determine whether he had a secret foreign bank account.[61]

In late 1964, a "sterilized" tape was prepared in a manner that would prevent attribution to the FBI and was "anonymously" mailed to Dr. King just before he received the Nobel Peace Prize.[62] Enclosed in the package with the tape was an unsigned letter which warned Dr. King,

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[55] The August 1963 march on Washington was the occasion of Dr. Kings "I Have a Dream" speech, on the steps of the Lincoln Memorial. (See memorandum from William C. Sullivan to Alan Belmont, 8/30/63, characterizing the speech as "demagogic".)

[56] Memorandum from William C. Sullivan to Alan Belmont, 12/24/63. Although FBI officials were making derogatory references to Dr. King and passing personal information about Dr. King to their superiors. (Memorandum from Hoover to Deputy Attorney General Katzenbach, 8/13/63.) Prior to December 1963, the Committee had discovered no document reflecting a strategy to deliberately discredit him prior to the memorandum relating to the December 1963 meeting.

[57] Memorandum from William C. Sullivan to Alan Belmont, 12/24/63.

[58] The microphone was installed on January 5, 1964 (Memorandum from William C. Sullivan to Alan Belmont, 1/6/64.), just days after Dr. King's picture appeared on the cover of Time magazine as "Man of the Year." (Time Magazine, January 3, 1964.) Reading of the Time magazine award, the Director had written, "They had to dig deep in the garbage to come up with this one." (Note on UP release, 12/29/63.)

[59] FBI memoranda make clear that microphones were one of the techniques being used in the effort to obtain information about Dr. King's private life. (Memorandum from F. J. Baumgardner to William C. Sullivan 1/28/64.) The microphones were installed at the following places: *Washington:* Willard Hotel (Jan. 1964); *Milwaukee:* Shroeder Hotel (Jan. 1964); *Honolulu:* Hilton Hawaiian Village (Feb. 1964); *Detroit:* Statler Hotel (March 1964); *Sacramento:* Senator Motel (Apr. 1964); *New York City:* Park Sheraton Hotel (Jan. 1965), Americana Hotel (Jan. and Nov. 1965), Sheraton Atlantic Hotel (May 1965), Astor Hotel (Oct. 1965), New York Hilton Hotel (Oct. 1965).

[60] FBI summary memorandum, 10/3/75; memorandum from F. J. Baumgardner to William C. Sullivan, 3/26/64; memorandum from William C. Sullivan to Alan Belmont, 2/22/64; and unsigned memorandum, 2/28/64.

[61] Memorandum from F. J. Baumgardner to William C. Sullivan, 3/27/64; memorandum from New York Field Office to FBI Headquarters, 6/2/64; memorandum from F. J. Baumgardner to William Sullivan, 7/14/65.

[62] Sullivan 11/1/75, pp. 104–105, staff summary of a special agent interview, 7/25/75. Three days before the tape was mailed, Director Hoover had publicly branded Dr. King "the most notorious liar in the country" and Dr. King had responded with a criticism of the Bureau. (Memorandum from Cartha DeLoach to John Mohr, 11/18/64; telegram from Martin Luther King to J. Edgar Hoover 11/19/64.)

"your end is approaching . . . you are finished." The letter intimated that the tape might be publicly released, and closed with the following message:

> King, there is only one thing left for you to do. You know what it is. You have just 34 days in which to do (this exact number has been selected for a specific reason, it has definite practical significance). You are done. There is but one way out for you . . .[63]

Dr. King's associates have said he interpreted the message as an effort to induce him to commit suicide.[64]

At about the same time that it mailed the "sanitized" tape, the FBI was also apparently offering tapes and transcripts to newsmen.[65] Later when civil rights leaders Roy Wilkins and James Farmer went to Washington to persuade Bureau officials to halt the FBI's discrediting efforts,[66] they were told that "if King want[s] war we [are] prepared to give it to him." [67]

Shortly thereafter, Dr. King went to Europe to receive the Nobel Peace Prize. The Bureau tried to undermine ambassadorial receptions in several of the countries he visited,[68] and when he returned to the

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[63] This paragraph appears in a document in the form of a letter which the FBI has supplied to the Committee and which the Bureau maintains was discovered in the files of former Assistant Director Sullivan. (FBI memorandum to the Select Committee, 9/18/75.) Sullivan stated that he did not recall the letter and suggested that it may have been "planted" in his files by his former colleagues. (Sullivan 11/1/75, p. 104.) Congressman Andrew Young has informed the Committee that an identical paragraph was contained in the letter which was actually received by Dr. King with the tape, and that the letter the committee had, supplied by the Bureau, appears to be an "early draft." (Young, 2/19/76, p. 36.)

Sullivan said that the purpose of sending the tape was "to blackmail King into silence . . . to stop him from criticising Hoover; . . . to diminish his stature. In other words, if it caused a break between Coretta and Martin Luther King, that would diminish his stature. It would weaken him as a leader." (Sullivan, 11/1/75, 11/26/75, p. 152.)

[64] Young, 2/19/76, p. 37, Time magazine had reported earlier in the year that Dr. King had attempted suicide twice as a child. [Time magazine, Jan. 4, 1964.]

[65] Several newsmen have informed the Committee that they were offered this kind of material or that they were aware that such material was available. Some have refused to identify the individuals who made the offers and others have said they could not recall their identities. Former FBI officials have denied that tapes or transcripts were offered to the press (e.g., DeLoach testimony, 11/26/75, p. 152) and the Bureau maintains that their files contain no documents reflecting that this occurred.

[66] Staff interviews of Roy Wilkins, 11/23/75, and James Farmer, 11/13/75.

[67] Memorandum from Cartha DeLoach to John Mohr, 11/27/64; staff interview of James Farmer, 11/13/75. Three days after Wilkins' meeting with DeLoach, Dr. King asked to see the Director, telling the press "the time has come to bring this controversy to an end." (UPI release, 12/1/64) Dr. King and Hoover met the following day; the meeting was described as "amicable." (Memoranda from Cartha DeLoach to John Mohr, 12/1/64 and 12/2/64.) Despite the "amicable" meeting, the Bureau's campaign against Dr. King continued.

[68] Memorandum from F. J. Baumgardner to William C. Sullivan, 11/30/64; memorandum from Legat to FBI Headquarters, 12/10/64. Steps were also taken to thwart a meeting which Dr. King was planning to have with a foreign leader during this same trip (Memorandum from F. J. Baumgardner to William C. Sullivan, 11/10/64; memorandum from FBI Headquarters to Legat, 11/10/64), and to influence a pending USIA decision to send Dr. King on a ten-day lecture trip in Africa after receiving the Nobel Prize. (Memorandum from F. J. Baumgardner to William C. Sullivan, 11/12/64.)

United States, took steps to diminish support for a banquet and a special "day" being planned in his honor.[69]

The Bureau's actions against Dr. King included attempts to prevent him from meeting with world leaders, receiving honors or favorable publicity, and gaining financial support. When the Bureau learned of a possible meeting between Dr. King and the Pope in August 1964, the FBI asked Cardinal Spellman to try to arrange a cancellation of the audience.[70] Discovering that two schools (Springfield College and Marquette University) were going to honor Dr. King with special degrees in the spring of 1964, Bureau agents tried to convince officials at the schools to rescind their plans.[71] And when the Bureau learned in October 1966 that the Ford Foundation might grant three million dollars to Dr. King's Southern Christian Leadership Conference, they asked a former FBI agent who was a high official at the Ford Motor Company to try to block the award.[72]

A magazine was asked not to publish favorable articles about him.[73] Religious leaders and institutions were contacted to undermine their support of him.[74] Press conference questions were prepared and dis-

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[69] The Bureau was in touch with Atlanta Constitution publisher Ralph McGill, and tried to obtain the assistance of the Constitution's editor, Eugene Patterson, to undermine the banquet. (Memorandum from William C. Sullivan to Alan Belmont, 12/21/64; staff summary of Eugene Patterson interview, 4/30/75.) A governor's assistance was sought in the effort to "water down" the "King day." (Memorandum from F. J. Baumgardner to William C. Sullivan, 3/2/65.)

[70] The Bureau had decided it would be "astounding" for Dr. King to have an audience with the Pope and that plans for any such meeting should be "nipped in the bud." (Memorandum from F. J. Baumgardner to William C. Sullivan, 8/31/64.) When the Bureau failed to block the meeting and the press reported that the audience was about to occur, the Director noted that this was "astounding." (FBI Director's notation on UPI release, 9/18/64). FBI officials took immediate steps to determine "if there could possibly have been a slip-up." (Memorandum from F. J. Baumgardner to William C. Sullivan, 9/17/64.)

[71] The Bureau had decided that it would be "shocking indeed that the possibility exists that King may receive an Honorary Degree from the same institution (Marquette) which honored the Director with such a Degree in 1950." With respect to Springfield College, where the Director had also been offered an honorary degree, the Bureau's decision about whom to contact included the observation that "it would not appear to be prudent to attempt to deal with" the President of the college because he "is very close to Sargent Shriver." (Memorandum from F. J. Baumgardner to William C. Sullivan, 3/4/64; and 4/2/64; memorandum from Cartha DeLoach to John Mohr, 4/8/64.)

[72] Memorandum from Cartha DeLoach to Clyde Tolson, 10/25/66 and 10/26/66. At about the same time, the Bureau leaked a story to the press about Dr. King's intention to seek financial assistance from Teamsters Union President James R. Hoffa because "[d]isclosure would be mutually embarrassing to both men and probably cause King's quest for badly needed funds to fail in this instance." (Memorandum from F. J. Baumgardner to William C. Sullivan, 10/28/66.)

The Bureau also tried to block the National Science Foundation (NSF) from dealing with the SCLC. "It is incredible that an outfit such as the SCLC should be utilized for the purpose of recruiting Negroes to take part in the NSF program, particularly where funds of the U.S. Government are involved." (Memorandum from F. J. Baumgardner to William C. Sullivan, 12/17/64.)

[73] Memorandum from Special Agent to Cartha DeLoach, 11/3/64.

[74] "It is shocking indeed that King continues to be honored by religious groups." (Memorandum from F. J. Baumgardner to William C. Sullivan, 2/1/65.) Contacts were made with representatives of the National Council of Churches of Christ, the Baptist World Alliance, the American Church in Paris, and Catholic Church, (Memoranda from William C. Sullivan to Alan Belmont, 6/12/64, 12/15/64 and 2/16/64; memorandum from F. J. Baumgardner to William C. Sullivan, 2/18/66; memorandum from Chicago Field Office to FBI Headquarters, 2/24/66, and

tributed to "friendly" journalists.[75] And plans were even discussed for sabotaging his political campaign in the event he decided to run for national office.[76] An SCLC employee was "anonymously" informed that the SCLC was trying to get rid of her "so that the Bureau [would be] in a position to capitalize on [her] bitterness."[78] Bureau officials contacted members of Congress,[79] and special "off the record" testimony was prepared for the Director's use before the House Appropriations Committee.[80]

The "neutralization" program continued until Dr. King's death. As late as March 1968, FBI agents were being instructed to neutralize Dr. King because he might become a "messiah" who could "unify, and electrify, the militant black nationalist movement" *if* he were to "abandon his supposed 'obedience' to 'white liberal doctrines' (nonviolence) and embrace black nationalism."[81] Steps were taken to subvert the "Poor People's Campaign" which Dr. King was planning to lead in the spring of 1968.[82] Even after Dr. King's death, agents in the field were proposing methods for harassing his widow,[83] and Bureau officials were trying to prevent his birthday from becoming a national holiday.[84]

The actions taken against Dr. King are indefensible. They represent a sad episode in the dark history of covert actions directed against law abiding citizens by a law enforcement agency.

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memorandum from Legat, Paris, to FBI Headquarters, 4/14/66 and 5/9/66.) The Director did disapprove a suggestion that religious leaders be permitted "to listen to sources we have" (FBI Director's note on memorandum from Jones to Thomas Bishop, 12/8/64.)

[75] Memorandum from Charles Brennan to William C. Sullivan, 3/8/67. The Bureau also disseminated to "friendly media sources" a newspaper article which was critical of Dr. King's position on the Vietnam war. The stated purposes were to "publicize King as a traitor to his country and his race," and to "reduce his income," (memorandum from George C. Moore to William C. Sullivan, 10/18/67.) "Background information" was also given to at least one wire service (memorandum from Sizoo to William C. Sullivan, 5/24/65).

[76] Memorandum from FBI Headquarters to New York Field Office 5/18/67. There has been rumors about a "peace ticket" headed by Dr. King and Benjamin Spock.

[78] Memorandum from FBI Headquarters to New York Field Office, 4/13/64; memorandum from New York Field Office to FBI Headquarters, 4/2/64.

[79] Memorandum from Cartha DeLoach to John Mohr, 8/14/65; memorandum from F. J. Baumgardner to William C. Sullivan, 1/10/67.

[80] Memorandum from F. J. Baumgardner to William C. Sullivan, 1/22/64; memorandum from Nicholas Callahan to John Mohr, 1/31/64. On one occasion the testimony leaked to other members of Congress, prompting the Director to note, "Someone on Rooney's Committee certainly betrayed the secrecy of the 'off the record' testimony I gave re: King." (Director's note on memorandum from Cartha DeLoach to John Mohr, 3/16/64.)

[81] Memorandum from FBI Headquarters to all SACs, 3/4/68.

[82] Memorandum from George C. Moore to William C. Sullivan, 3/26/68.

[83] Memorandum from Atlanta Field Office to FBI Headquarters, 3/18/69.

[84] Memoranda: From George C. Moore to William C. Sullivan, 1/17/69; and from Jones to Thomas Bishop, 3/18/69. Steps were even taken to prevent the issuance of "commemorative medals." (Memorandum from Jones to Thomas Bishop, 5/22/68.)

E. POLITICAL ABUSE OF INTELLIGENCE INFORMATION

Major Finding

The Committee finds that information has been collected and disseminated in order to serve the purely political interests of an intelligence agency or the administration, and to influence social policy and political action.

Subfindings

(a) White House officials have requested and obtained politically useful information from the FBI, including information on the activities of political opponents or critics.

(b) In some cases, political or personal information was not specifically requested, but was nevertheless collected and disseminated to administration officials as part of investigations they had requested. Neither the FBI nor the recipients differentiated in these cases between national security or law enforcement information and purely political intelligence.

(c) The FBI has also volunteered information to Presidents and their staffs, without having been asked for it, sometimes apparently to curry favor with the current administration. Similarly, the FBI has assembled intelligence on its critics and on political figures it believed might influence public attitudes or Congressional support.

(d) The FBI has also used intelligence as a vehicle for covert efforts to influence social policy and political action.

Elaboration of Findings

The FBI's ability to gather information without effective restraints gave it enormous power. That power was inevitably attractive to politicians, who could use information on opponents and critics for their own advantage, and was also an asset to the Bureau, which depended on politicians for support. In the political arena, as in other facets of American life touched by the intelligence community, the existence of unchecked power led to its abuse.

By providing politically useful information to the White House and congressional supporters, sometimes on demand and sometimes gratuitously, the Bureau buttressed its own position in the political structure. At the same time, the widespread—and accurate—belief in Congress and the administration that the Bureau had available to it, derogatory information on politicians and critics created what the late Majority Leader of the House of Representatives, Hale Boggs, called a "fear" of the Bureau:

> Freedom of speech, freedom of thought, freedom of action for men in public life can be compromised quite as effectively by the fear of surveillance as by the fact of surveillance.[1]

[1] Remarks by Rep. Hale Boggs, 4/22/71, Congressional Record, Vol. 117, Part 9, p. 11565.

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Information gathered and disseminated to the White House ranged from purely political intelligence, such as lobbying efforts on bills an administration opposed and the strategy of a delegate challenge at a national political convention, to "tidbits" about the activities of politicians and public figures which the Bureau believed "of interest" to the recipients.

Such participation in political machinations by an intelligence agency is totally improper. Responsibility for what amounted to a betrayal of the public trust in the integrity of the FBI must be shared between the officials who requested such information and those who provided it.

The Bureau's collection and dissemination of politically useful information was not colored by partisan considerations; rather its effect was to entrench the Bureau's own position in the political structure, regardless of which party was in power at the time. However, the Bureau also used its powers to serve ideological purposes, attempting covertly to influence social policy and political action.

In its efforts to "protect society," the FBI engaged in activities which necessarily affected the processes by which American citizens make decisions. In doing so, it distorted and exaggerated facts, made use of the mass media, and attacked the leadership of groups which it considered threats to the social order.

Law enforcement officers are, of course, entitled to state their opinions about what choices the people should make on contemporary social and political issues. The First Amendment guarantees their right to enter the marketplace of ideas and persuade their fellow citizens of the correctness of those opinions by making speeches, writing books, and, within certain statutory limits, supporting political candidates. The problem lies not in the open expression of views, but in the covert use of power or position of trust to influence others. This abuse is aggravated by the agency's control over information on which the public and its elected representatives rely to make decisions.

The essence of democracy is the belief that the people must be free to make decisions about matters of public policy. The FBI's actions interfered with the democratic process, because attitudes within the Bureau toward social change led to the belief that such intervention formed a part of its obligation to protect society. When a governmental agency clandestinely tries to impose its views of what is right upon the American people, then the democratic process is undermined.

Subfinding (a)

White House officials have requested and obtained politically useful information from the FBI, including personal life information on the activities of political opponents or critics.

Presidents and White House aides have asked the FBI to provide political or personal information on opponents and critics, including "name checks" of Bureau files.[2] They have also asked the Bureau to

[2] A "name check" is not an investigation, but a search of existing FBI files through the use of the Bureau's comprehensive general name index. Requests for FBI "name checks" were peculiarly damaging because no new investigation was done to verify allegations stored away for years in Bureau files. A former FBI official responsible for compliance with such requests said that the Bureau "answered . . . by furnishing the White House every piece of information in our files on the individuals requested." Deposition of Thomas E. Bishop, former Assistant Director, Crime Records Division, 12/2/75, p. 144.)

conduct electronic surveillance or more limited investigations of such persons. The FBI appears to have complied unquestioningly with these requests, despite occasional internal doubts about their propriety.[3]

Precedents for certain political abuses go back to the very outset of the domestic intelligence program. In 1940 the FBI complied with President Roosevelt's request to file the names of people sending critical telegrams to the White House.[4] There is evidence of improper electronic surveillance for the White House in the 1940s.[5] And an aide to President Eisenhower asked the FBI to conduct a questionable name check.[6] In 1962, the FBI complied unquestioningly with a request from Attorney General Kennedy to interview a steel executive and several reporters who had written stories about a statement by the executive.[7] As part of an investigation of foreign lobbying efforts on sugar quota legislation in 1961 and 1962, Attorney General Kennedy requested wiretaps on a Congressional aide, three executive officials, and two American lobbyists, including a Washington law firm.[8]

Nevertheless, the political misuse of the FBI under the Johnson and Nixon administrations appears to have been more extensive than in previous years.

Under the Johnson administration, the FBI was used to gather and report political intelligence on the administration's partisan opponents in the last days of the 1964 and 1968 Presidential election

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[3] Former FBI executive Cartha DeLoach, who was FBI liaison with the White House during part of the Johnson administration, has stated, "I simply followed Mr. Hoover's instructions in complying with White House requests and I never asked any questions of the White House as to what they did with the material afterwards." (DeLoach deposition, 11/25/75, p. 28.) On at least one occasion, when a White House aide indicated that President Johnson did not want any record made by the FBI of a request for a "run-down" on the links between Robert Kennedy and officials involved in the Bobby Baker investigation, the Bureau disregarded the order. DeLoach stated that he "ignored the specific instructions" in this instance because he "felt that any instructions we received from the White House should be a matter of record." (DeLoach deposition, 11/25/75, p. 89.)

Former Assistant Director Bishop stated, "Who am I to ask the President of the United States what statutory basis he has if he wants to know what information is in the files of the FBI?" It was a "proper dissemination" because it was "not a dissemination outside the executive branch" and because there was "no law, no policy of the Department of Justice, . . . no statute of the United States that says that was not permissible." But even if there had been a statute laying down standards, Bishop said "it wouldn't have made a bit of difference . . . when the Attorney General or the President asks for it."

Bishop recalled from his "own knowledge" instances where President Kennedy, Johnson, and Nixon had "called over and asked Mr. Hoover for a memo on certain people." (Bishop deposition, 12/2/75, pp. 153–154.)

[4] Memoranda from Stephen Early, Secretary to the President, to Hoover, 5/21/40 and 6/17/40.

[5] FBI memorandum to Senate Select Committee, 3/26/76; See pp. 36–37.

[6] Memorandum from J. Edgar Hoover to Thomas E. Stephens, Secretary to the President, 4/13/54.

[7] Courtney Evans deposition, 12/1/75, p. 39.

[8] See pp. 64–65. The tap authorized by Attorney General Kennedy on another high executive official was not related to political considerations, nor apparently was the tap authorized by Attorney General Katzenbach in 1965 on the editor of an anti-communist newsletter who had published a book alleging impropriety by Robert Kennedy a year earlier.

campaigns. In the closing days of the 1964 campaign, Presidential aide Bill Moyers asked the Bureau to conduct "name checks" on all persons employed in Senator Goldwater's Senate office, and information on two staff members was reported to the White House.[9] Similarly, in the last two weeks of the 1968 campaign, the Johnson White House requested an investigation (including indirect electronic surveillance and direct physical surveillance) of Mrs. Anna Chennault, a prominent Republican leader, and her relationships with certain South Vietnamese officials.[10] This investigation also included an FBI check of Vice Presidential candidate Spiro Agnew's long distance telephone call records, apparently at the personal request of President Johnson.[11]

Another investigation for the Johnson White House involved executive branch officials who took part in the criminal investigation of former Johnson Senate aide Bobby Baker. When Baker's trial began in 1967, it was revealed that one of the government witnesses had been "wired" to record his conversations with Baker. Presidential aide Marvin Watson told the FBI that Johnson was quite "exercised," and the Bureau was ordered to conduct a discreet "run-down" on the former head of the Justice Department's Criminal Division and four Treasury Department officials who had been responsible for "wiring"

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[9] Memorandum from Hoover to Moyers, 10/27/64, cited in FBI summary memorandum, 1/31/75.

[10] Bureau files indicate that the apparent "reason" for the "White House interest" was to determine "whether the South Vietnamese had secretly been in touch with supporters of Presidential candidate Nixon, possibly through Mrs. Chennault, as President Johnson was apparently suspicious that the South Vietnamese were trying to sabotage his peace negotiations in the hope that Nixon would win the election and then take a harder line towards North Vietnam." (FBI memorandum, subject: Mrs. Anna Chennault, 2/1/75.) The FBI has claimed that its investigation of Mrs. Chennault was "consistent with FBI responsibilities to determine if her activities were in violation of certain provisions of the Foreign Agents Registration Act and of the Neutrality Act."

Direct electronic surveillance of Mrs. Chennault was rejected, according to a contemporaneous FBI memorandum, because FBI executive Cartha DeLoach pointed out that "it was widely known that she was involved in Republican political circles and, if it became known that the FBI was surveilling her this would put us in a most untenable and embarrassing position." (Memorandum from DeLoach to Tolson, 10/30/68.)

Electronic surveillance was, however, directed at the South Vietnamese officials and was approved by Attorney General Ramsey Clark. Clark has testified that he did not know of the physical surveillance aspect of the FBI's investigation, but that he did authorize the electronic surveillance of the South Vietnamese officials. (Clark testimony, 12/3/75, Hearings, Vol. 6, p. 252.)

[11] FBI executive Cartha DeLoach has stated that a White House aide made the initial request for the check of telephone company records late one night. According to DeLoach, the request was "to find out who, either Mr. Agnew or Mr. Nixon, when they had been in Albuquerque (New Mexico) several days prior to that, had called from Albuquerque while they were there." When DeLoach refused to contact the telephone company "late in the evening," President Johnson "came on the phone and proceeded to remind me that he was Commander in Chief and he should get what he wanted, and he wanted me to do it immediately." DeLoach then talked with Director Hoover, who told him to "stand your ground." The next day, however, Hoover ordered that the records be checked, but the only calls identified were "made by Mr. Agnew's staff." These were reported to the White House. (DeLoach Deposition, 11/25/75, pp. 74–75.) Agnew's arrival and departure times in and out of Albuquerque were also "verified at the request of the White House." (FBI summary memorandum, subject: Mrs. Anna Chennault, 2/1/75).

the witness. The Bureau was specifically insisted to include any associations between those persons and Robert Kennedy.[12]

Several Johnson White House requests were directed at critics of the war in Vietnam, at newsmen, and at other opponents. According to a Bureau memorandum, White House aide Marvin Watson attempted to disguise his, and the President's interest in such requests by asking the FBI to channel its replies through a lower level White House staff member.[13]

In 1966, Watson asked the FBI to monitor the televised hearings of the Senate Foreign Relations Committee on Vietnam policy and prepare a memorandum comparing statements of the President's Senate critics with "the Communist Party line." [14] Similarly, in 1967 when seven Senators made statements criticizing the bombing of North Vietnam, Watson requested (and the Bureau delivered) a "blind memorandum" setting forth information from FBI files on each of the Senators. Among the data supplied were the following items:

> Senator Clark was quoted in the press as stating that the three major threats to America are the military-industrial complex, the Federal Bureau of Investigation, and the Central Intelligence Agency.
>
> Senator McGovern spoke at a rally sponsored by the Chicago Committee for a Sane Nuclear Policy, a pacifist group. Senator McGovern stated that the "United States was making too much of the communist take-over of Cuba."
>
> [Another Senator now deceased] has, on many occasions, publicly criticized United States policy toward Vietnam. He frequently speaks before groups throughout the United States on this subject. He has been reported as intentionally entering into controversial areas so that his services as a speaker for which he receives a fee, will be in demand.[15]

The Johnson administration also requested information on contacts between members of Congress and certain foreign officials known to oppose the United States presence in Vietnam. According to FBI

[12] FBI Director Hoover brought the matter to the attention of the White House in a letter describing why the FBI had refused to "wire" the witness (there was not adequate "security") and how the Criminal Division had then used the Bureau of Narcotics to do so. (Memorandum from Hoover to Watson, 1/12/67.) This was the instance where FBI executive Cartha DeLoach made a record, after Watson told him that "the President does not want any record made." (Memorandum from DeLoach to Tolson, 1/17/67; see also FBI summary memorandum, 2/3/75.)

[13] According to this memorandum, Watson told Cartha DeLoach in 1967 that "he and the President" wanted all "communications addressed to him by the Director" to be addressed instead to a lower level White House staff member. Watson told DeLoach that the "reason for this change" was that the staff member "did not have the direct connection with the President that he had and, consequently, people who saw such communications would not suspicion (sic) that Watson or the President had requested such information, nor were interested in such information." (Memorandum from De Loach to Tolson, 3/17/67.)

[14] FBI summary memorandum, subject: Coverage of Television Presentation, Senate Foreign Relations Committee, 1/31/75. Former FBI executive Cartha DeLoach has stated, regarding this incident, "We felt that it was beyond the jurisdiction of the FBI, but obviously Mr. Hoover felt that this was a request by the President and he desired it to be done." (DeLoach deposition, 11/25/75, p. 58.)

[15] Blind FBI memorandum, 2/10/67.

records, President Johnson believed these foreign officials had generated "much of the protest concerning his Vietnam policy, particularly the hearings in the Senate." [16]

White House requests were not limited to critical Congressmen. Ordinary citizens who sent telegrams protesting the Vietnam war to the White House were also the subject of Watson requests for FBI name check reports.[17] Presidential aide Jake Jacobsen asked for name checks on persons whose names appeared in the Congressional Record as signers of a letter to Senator Wayne Morse expressing support for his criticism of U.S. Vietnam policy.[18] On at least one occasion, a request was channeled through Attorney General Ramsey Clark, who supplied Watson (at the latter's request) with a summary of information on the National Committee for a Sane Nuclear Policy.[19]

Other individuals who were the subject of such name check requests under the Johnson Administration included NBC Commentator David Brinkley,[20] Associated Press reporter Peter Arnett,[21] columnist Joseph Kraft,[22] Life magazine Washington bureau chief Richard Stolley,[23] Chiago Daily News Washington bureau chief Peter Lisagor,[24] and Ben W. Gilbert of the Washington Post.[25] The Johnson White House also requested (and received) name check reports on the authors of books critical of the Warren Commission report; some of these reports included derogatory information about the personal lives of the individuals.[26]

The Nixon administration continued the practice of using the FBI to produce political information. In 1969 John Ehrlichman, counsel to President Nixon, asked the FBI to conduct a "name check" on Joseph Duffy, chairman of Americans for Democratic Action. Data in Bureau files covered Duffy's "handling arrangements" for an anti-war teach-in in 1965, his position as State Coordinator of the group

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[16] President Johnson's request also went beyond "legislators," and included contacts by any "prominent U.S. citizens." (FBI summary memorandum, subject: Information Concerning Contacts Between [Certain Foreign officials] and Members or Staff of the United States Congress Furnished to the White House at the Request of the President, 2/3/75.) The FBI's reports indicated that its information came "through coverage" of the foreign officials and that the Bureau, in this case, had "conducted no investigation of members of Congress." (FBI summary memorandum, 2/3/75.) FBI "coverage" apparently included electronic surveillance.

President Nixon also requested information on contacts between foreign officials and Congressmen, but his request does not appear to have related to Presidential critics. Rather, the Nixon request grew out of concern about "an increase in [foreign] interest on Capitol Hill" which had been expressed to President Nixon by at least one Senator; and the FBI's report "included two examples of [foreign] intelligence initiatives directed against Capitol Hill without identifying the [foreigners] or American involved." (FBI summary memorandum, 2/3/75.)

[17] Memoranda from Hoover to Watson, 6/4/65 and 7/30/65.

[18] Memorandum from Hoover to Watson, 7/15/66, citing Jacobsen request.

[19] Memorandum from Clark to Watson, 4/8/67, enclosing memorandum from Director, FBI to the Attorney General. 4/7/67. (LBJ Library.)

[20] Memoranda from Hoover to Watson, 2/15/65 and 5/29/65.

[21] Memorandum from Hoover to Watson, 7/22/65.

[22] Memorandum from Hoover to Watson, 1/27/67.

[23] Memorandum from Hoover to Watson, 4/6/66.

[24] Memorandum from Hoover to Watson, 2/24/66.

[25] Memorandum from Hoover to Watson, 4/6/66.

[26] Memorandum from Hoover to Watson, 11/8/66; DeLoach, 12/3/75, Hearings, Vol. 6, pp. 180–182.

"Negotiation Now" in 1967, and his activity as chairman of Connecticut Citizens for McCarthy in 1968.[26a]

Presidential aide H. R. Haldeman requested a name check on CBS reporter Daniel Schorr. In this instance, the FBI mistakenly considered the request to be for a full background investigation and began to conduct interviews. These interviews made the inquiry public. Subsequently, White House officials stated (falsely) that Schorr was under consideration for an executive appointment.[27] In another case, a Bureau memorandum states that Vice President Agnew asked the FBI for information about Rev. Ralph David Abernathy, then head of the Southern Christian Leadership Conference, for use in "destroying Abernathy's credibility." [28] (Agnew has denied that he made such a request, but agrees that he received the information.)[29]

Several White House requests involved the initiation of electronic surveillance. Apparently on the instructions of President Nixon's aide John Ehrlichman and Director Hoover, FBI Assistant Director William C. Sullivan arranged for the microphone surveillance of the hotel room of columnist Joseph Kraft while he was visiting a foreign country.[30] Kraft was also the target of physical surveillance by the FBI.[31] There is no record of any specific "national security" rationale for the surveillance.

Similarly, although the "17" wiretaps were authorized ostensibly to investigate national security "leaks," there is no record in three of the cases of any national security claim having been advanced in their support. Two of the targets were domestic affairs advisers at the White House, with no foreign affairs duties and no access to foreign policy materials.[32] A third was a White House speechwriter who had been overheard on an existing tap agreeing to provide a reporter with background on a presidential speech concerning, not foreign policy, but revenue sharing and welfare reform.[33]

[26a] Letter from J. Edgar Hoover to John D. Ehrlichman, 10/6/69; letter from Clarence M. Kelly to Joseph Duffy, 7/14/75, enclosing FBI records transmitted under Freedom of Information Act.

[27] House Judiciary Committee Hearings, Book VII, White House Surveillance Activities (1974), p. 1111.

[28] According to Director Hoover's memorandum of the conversation, Agnew asked Hoover for "some assistance" in obtaining information about Rev. Abernathy. Hoover recorded: "The Vice President said he thought he was going to have to start destroying Abernathy's credibility, so anything I can give him would be appreciated. I told him I would be glad to." (Memorandum from Hoover to Tolson, et al, 5/18/70.) Subsequently, the FBI Director sent Agnew a report on Rev. Abernathy containing not only the by-product of Bureau investigations, but also derogatory public record information. (Letter from Hoover to Agnew, 5/19/70.)

[29] Staff summary of Spiro Agnew interview, 10/15/75.

[30] Memoranda from Sullivan to Hoover, 6/30/69 and 7/2/69.

[31] Memorandum from Sullivan to DeLoach, 11/5/69. The Kraft surveillance is also discussed in Part II, pp. 121–122.

[32] Coverage in these two cases was requested by neither Henry Kissinger nor Alexander Haig (as most of the "17" were), but by other White House officials. Attorney General Mitchell approved the first at the request of "higher authority." (Memorandum from Hoover to Mitchell, 7/23/69.) The second was specifically requested by H. R. Haldeman. (Memorandum from Hoover to Mitchell, 12/14/70.

[33] This tap was also apparently requested by White House officials other than Kissinger or Haig. (Memorandum from Sullivan to DeLoach, 8/1/69.) The "17" wiretaps are also discussed at p. 122.

Subfinding (b)

In some cases, political or personal information was not specifically requested, but was nevertheless collected and disseminated to administration officials as part of investigations they had requested. Neither the FBI nor the recipients differentiated in these cases between national security or law enforcement information and purely political intelligence.

In some instances, the initial request for or dissemination of information was premised upon law enforcement or national security purposes. However, pursuant to such a request, information was furnished which obviously could serve only partisan or personal interests. As one Bureau official summarized its attitude, the FBI "did not decide what was political or what represented potential strife and violence. We are an investigative agency and we passed on all data." [34]

Examples from the Eisenhower, Kennedy, Johnson, and Nixon administrations illustrate this failure to distinguish between political and nonpolitical intelligence. They include the FBI's reports to the White House in 1956 on NAACP lobbying activities, the intelligence about the legislative process produced by the "sugar lobby" wiretaps in 1961–1962, the purely political data disseminated to the White House on the credentials challenge in the 1964 Democratic Convention, and dissemination of both political and personal information from the "leak" wiretaps in 1969–1972.

(i) The NAACP

In early 1956 Director Hoover sent the White House a memorandum describing the "potential for violence" in the current "racial situation".[35] Later reports to the White House, however, went far beyond intelligence about possible violence; they included extensive inside information about NAACP lobbying efforts, such as the following:

> A report on "meetings held in Chicago" in connection with a planned Leadership Conference on Civil Rights to be held in Washington under the sponsorship of the NAACP.[36]
>
> An extensive report on the Leadership Conference, based on the Bureau's "reliable sources" and describing plans of Conference delegations to visit Senators Paul Douglas, Herbert Lehman, Wayne Morse, Hubert Humphrey, and John Bricker. The report also summarized a speech by Roy Wilkins, other conference proceedings, and the report of "an informant" that the United Auto Workers was a "predominant organization" at the conference.[37]
>
> Another report on the conference included an account of what transpired at meetings between conference delegations and Senators Paul Douglas and Everett Dirksen.[38]

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[34] DeLoach, 12/3/75, Hearings, Vol. 6, p. 180.

[35] Memorandum from Hoover to Dillon Anderson, Special Assistant to the President, 1/3/56. This report was also provided to the Attorney General, the Secretary of Defense, and military intelligence.

[36] Memorandum from Hoover to Anderson, 3/2/56.

[37] Memorandum from Hoover to Anderson, 3/5/56.

[38] Memorandum from Hoover to Anderson, 3/6/56.

A report including the information that two New Jersey congressmen would sign a petition to the Attorney General.[39]

A presidential aide suggested that Hoover brief the Cabinet on "developments in the South."[40] Director Hoover's Cabinet briefing also included political intelligence. He covered not only the NAACP conference, but also the speeches and political activities of Southern Senators and Governors and the formation of the Federation for Constitutional Government with Southern Congressmen and Governors on its advisory board.[41]

(ii) The Sugar Lobby

The electronic surveillance of persons involved in a foreign country's lobbying activities on sugar quota legislation in 1961–1962, authorized by Attorney General Robert Kennedy for the White House, also produced substantial political intelligence unrelated to the activities of foreign officials.[42] Such information came from wiretaps both on foreign officials and on American citizens, as well as from the microphone surveillance of the chairman of the House Agriculture Committee when he met with foreign officials in a New York hotel room.[43] The following are examples of the purely political (and personal) by-product:

A particular lobbyist "mentioned he is working on the Senate and has the Republicans all lined up."[44]

The same lobbyist said that "he had seen two additional representatives on the House Agriculture Committee, one of

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[39] Memorandum from Hoover to Anderson, 3/7/56. A National Security Council staff member responsible for internal security matters summarized these reports as providing information "regarding attempts being made by the National Association for the Advancement of Colored People to send instructed delegations to high-ranking Government officials 'to tactfully draw out their positions concerning civil rights.'" (Memorandum from J. Patrick Coyne to Anderson, 3/6/56.)

[40] After consulting the Attorney General, this aide advised the Secretary to the Cabinet that the FBI had "reported developments in recent weeks in several southern States, indicating a marked deterioration in relationships between the races, and in some instances fomented by communist or communist-front organizations." (Memorandum from Anderson to Maxwell Rabb, 1/16/56.) The Secretary to the Cabinet, who had "experience in handling minority matters" for the White House, agreed that "each Cabinet Member should be equipped with the plain facts." (Memorandum from Rabb to Anderson, 1/17/56.) A National Security Council staff member who handled internal security matters reported shortly thereafter that the FBI Director was "prepared to brief the Cabinet along the general lines" of his written communications to the White House. (Memorandum from J. Patrick Coyne to Anderson, 2/1/56.)

[41] Memorandum from Director, FBI, to the Executive Assistant to the Attorney General, 3/9/56, enclosing FBI memorandum described as the "basic statement" used by the Director "in the Cabinet Briefing this morning on Racial Tension and Civil Rights." For a further discussion of the exaggeration of Communist influence on the NAACP in this briefing, see pp. 250–257, note 151a.

[42] The electronic surveillances were generally related to foreign affairs concerns. See pp. 64–65.

[43] The Americans include three Agriculture Department officials, the secretary to the Chairman of the House Agriculture Committee, and two registered lobbying agents for foreign interests. For Attorney General Kennedy's relationship to the microphone surveillance of the Congressman, see p. 61, note 233. One of the wiretaps directed at a registered lobbying agent was placed on the office telephone of a Washington law firm. (See p. 201)

[44] FBI memorandum, 6/15/62.

whom was 'dead set against us' and who may reconsider, and the other was neutral and 'may vote for us.' "[45]

The Agriculture Committee chairman believed "he had accomplished nothing" and that "he had been fighting over the Rules Committee and this had interfered with his attempt to organize."[46]

The "friend" of a foreign official "was under strong pressure from the present administration, and since the 'friend' is a Democrat, it would be very difficult for him to present a strong front to a Democratic Administration."[47]

A lobbyist stated that Secretary of State Rusk "had received a friendly reception by the Committee and there appeared to be no problem with regard to the sugar bill."[48]

A foreign official was reported to be in contact with two Congressmen's secretaries "for reasons other than business." The official asked one of the secretaries to tell the other that he "would not be able to call her that evening" and that one of his associates "was planning to take [the two secretaries and another Congressional aide] to Bermuda."[49]

The FBI's own evaluation of these wiretaps indicates that they "undoubtedly . . . contributed heavily to the Administration's success" in passing the legislation it desired.[50]

(iii) The 1964 Democratic Convention

Political reports were disseminated by the FBI to the White House from the 1964 Democratic convention in Atlantic City. These reports, from the FBI's "special squad" at the convention, apparently resulted from a civil disorders intelligence investigation which got out of hand because no one was willing to shut off the partisan by-product.[51] They centered on the Mississippi Freedom Democratic Party's credentials challenge. Examples of the political intelligence which flowed from FBI surveillance at the 1964 convention include the following:[52]

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[45] FBI memorandum, 6/15/62.

[46] Memorandum from Hoover to Attorney General Kennedy, 2/18/61. This information came from the Bureau's "coverage" (by microphone surveillance) of the Congressman's hotel room meeting.

[47] FBI memorandum, 2/15/62.

[48] Memorandum from J. Edgar Hoover to Robert Kennedy, 3/13/61.

[49] Memorandum from J. Edgar Hoover to Robert Kennedy, 3/13/61.

[50] Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/66. According to a Bureau memorandum of a meeting between Attorney General Kennedy and FBI Assistant Director Courtney Evans, Kennedy stated in April 1961 that "now the law has passed he did not feel there was justification for continuing this extensive investigation." (Memorandum from Evans to Parsons, 4/15/61.)

[51] There is no clear evidence as to what President Johnson had in mind when, as a contemporaneous FBI memorandum indicates, he directed "the assignment of the special squad to Atlantic City." (DeLoach to Mohr, 8/29/64) Cartha DeLoach has testified that Presidential aide Walter Jenkins made the original request to him, but that he said it should be discussed with Director Hoover and that "Mr. Jenkins or the President, to the best of my recollection, later called Mr. Hoover and asked that this be done." DeLoach claimed that the purpose was to gather "intelligence concerning matters of strife, violence, etc." which might arise out of the credentials challenge. (DeLoach, 12/3/75, hearings, Vol. 6, p. 175.)

[52] The operations of the FBI in Atlantic City are described in greater detail in Section II, pp. 117–119.

Dr. Martin Luther King and an associate "were drafting a telegram to President Johnson . . . to register a mild protest. According to King, the President pledged complete neutrality regarding the selecting of the proper Mississippi delegation to be seated at the convention. King feels that the Credentials Committee will turn down the Mississippi Freedom Party and that they are doing this because the President exerted pressure on the committee along this line." [53]

Another associate of Dr. King contacted a member of the MFDP who "said she thought King should see Governor Endicott Peabody of Massachusetts, Mayor Robert Wagner of New York City, Governor Edmund G. (Pat) Brown of California, Mayor Richard Daley of Chicago, and Governor John W. King of New Hampshire." The purpose was "to urge them to call the White House directly and put pressure on the White House in behalf of the MFDP." [54]

"MFDP leaders have asked Reverend King to call Governor Egan of Alaska and Governor Burns of Hawaii in an attempt to enlist their support. According to the MFDP spokesman, the Negro Mississippi Party needs these two states plus California and New York for the roll call tonight." [55]

An SCLC staff member told a representative of the MFDP: "Off the record, of course, you know we will accept the Green compromise proposed." This referred to "the proposal of Congresswoman Edith Green of Oregon." [56]

In a discussion between Dr. King and another civil rights leader, the question of "a Vice-Presidential nominee came up and King asked what [the other leader] thought of Hugh [sic] Humphrey, and [the other leader] said Hugh Humphrey is not going to get it, that Johnson needs a Catholic . . . and therefore the Vice-President will be Muskie of Maine." [57]

An unsigned White House memorandum disclosing Dr. King's strategy in connection with a meeting to be attended by President Johnson suggests that there was political use of these FBI reports.[58]

(*iv*) *The "17" Wiretaps.*

The Nixon White House learned a substantial amount of purely political intelligence from wiretaps to investigate "leaks" of classified information placed on three newsmen and fourteen executive officials during 1969–1971.[59] The following illustrate the range of data supplied:

One of the targets "recently stated that he was to spend an hour with Senator Kennedy's Vietnam man, as Senator Kennedy is giving a speech on the 15th." [60]

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[53] Memorandum from DeLoach to Jenkins, 8/24/64.
[54] Memorandum from DeLoach to Jenkins, 8/25/64.
[55] Memorandum from DeLoach to Jenkins, 8/25/64.
[56] Memorandum rom DeLoach to Jenkins, 8/25/64.
[56] Memorandum from DeLoach to Jenkins, 8/25/64.
[58] Blind memorandum from LBJ Library bearing handwritten date 8/26/64 and the typewritten date 8/19/64, Hearings, Vol. 6, Exhibit 68–2, p. 713.
[59] In at least two instances, the wiretaps continued on targets after they left the Executive Branch and became advisers to Senator Edmund Muskie, then the leading Democratic prospect for the Presidency. See Part II, p. 122.
[60] Memorandum from Hoover to Nixon, Kissinger, and Mitchell, 10/9/69.

Another target said that Senator Fulbright postponed congressional hearings on Vietnam because he did not believe they would be popular at that time.[61]

A well-known television news correspondent "was very distressed over having been 'singled out' by the Vice President." [62]

A friend of one of the targets said the *Washington Star* planned to do an article critical of Henry Kissinger.[63]

One of the targets helped former Ambassador Sargent Shriver write a press release criticizing a recent speech by President Nixon in which the President "attacked" certain Congressmen.[64]

One of the targets told a friend it "is clear the Administration will win on the ABM by a two-vote margin. He said 'They've got [a Senator] and they've got [another Senator].'." [65]

A friend of one of the targets wanted to see if a Senator would "buy a new amendment" and stated that "they" were "going to meet with" another Senator.[66]

A friend of one of the targets described a Senator as "marginal" on the Cooper-Church Amendment and stated that another Senator might be persuaded to support it.[67]

One of the targets said Senator Mondale was in a "dilemma" over the "trade bill." [68]

A friend of one of the targets said he had spoken to former President Johnson and "Johnson would not back Senator Muskie for the Presidency as he intended to stay out of politics." [69]

There is at least one clear example of the political use of such information. After the FBI Director informed the White House that former Secretary of Defense Clark Clifford planned to write a magazine article criticizing President Nixon's Vietnam policy,[70] White House aide Jeb Stuart Magruder advised John Ehrlichman and H. R. Haldeman that "we are in a position to counteract this article in any number of ways." [71] It is also significant that, after May 1970, the FBI Director's letters summarizing the results of the wiretaps were no longer sent to Henry Kissinger, the President's national security advisor, but to the President's political advisor, H. R. Haldeman.[72]

. . . . . .

[61] Memorandum from Hoover to Nixon and Kissinger, 12/3/69.
[62] Memorandum from Hoover to Nixon and Kissinger, 2/26/70.
[63] Memorandum from Hoover to H. R. Haldeman, 6/2/70.
[64] Memorandum from Hoover to Haldeman, 9/4/70.
[65] Memorandum from Hoover to Nixon and Kissinger, 7/18/69.
[66] Memorandum from Hoover to Haldeman, 5/18/70.
[67] Memorandum from Hoover to Haldeman, 6/23/70.
[68] Memorandum from Hoover to Haldeman, 11/24/70.
[69] Memorandum from Hoover to Haldeman, 12/22/70.
[70] Memorandum from Hoover to Nixon, Kissinger, and Mitchell, 12/29/69.
[71] Memorandum from Magruder to Haldeman and Ehrlichman, 1/15/70. Ehrlichman advised Haldeman, "This is the kind of early warning we need more of—your game planners are now in an excellent position to map anticipatory action." (Memorandum from "E" (Ehrlichman) to "H" (Haldeman), undated.) Haldeman responded, "I agree with John's point. Let's get going." (Memorandum from "H" to "M" (Magruder), undated).
[72] Report of the House Judiciary Committee, 8/20/74, p. 147.

These four illustrations from administrations of both political parties indicate clearly that direct channels of communication between top FBI officials and the White House, combined with the failure to screen out extraneous information, and coupled with overly broad investigations in the first instance, have been sources of flagrant political abuse of the intelligence process.[73]

Subfinding (c)

The FBI has also volunteered information to Presidents and their staffs, without having been asked for it, sometimes apparently to curry favor with the current administration. Similarly, the FBI has assembled information on its critics and on political figures it believed might influence public attitudes or Congressional support.

There have been numerous instances over the past three decades where the FBI volunteered to its superiors purely political or personal information believed by the FBI Director to be "of interest" to them.[74]

The following are examples of the information in Director Hoover's letters under the Truman, Eisenhower, Kennedy, and Johnson administrations.[75]

> To Major General Harry Vaughn, Military Aide to President Truman, a report on the activities of a former Roosevelt aide who was trying to influence the Truman administration's appointments.[76]
>
> To Matthew J. Connelly, Secretary to President Truman, a report from a "very confidential source" about a meeting of newspaper representatives in Chicago to plan publication of stories exposing organized crime and corrupt politicians.[77]
>
> To Dillon Anderson, Special Assistant to President Eisenhower, the advance text of a speech to be delivered by a prominent labor leader.[78]

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[73] It should be noted, however, that in at least one case the Bureau did distinguish between political and non-political information. In 1968, when an aide to Vice President Humphrey asked that a "special squad" be sent to the Democratic National Convention in Chicago, Director Hoover not only declined, but he also specifically instructed the SAC in Chicago not "to get into anything political" but to confine his reports to "extreme action or violence." (Memorandum from Hoover to Tolson., et al, 8/15/68.) There were no comparable instructions at Atlantic City.

[74] Former Attorney General Francis Biddle recalled in his autobiography how J. Edgar Hoover shared with him some of the "intimate details" of what his fellow Cabinet members did and said, "their likes and dislikes, their weaknesses and their associations." Biddle confessed that he enjoyed hearing these derogatory and sometimes "embarrassing" tidbits and that Hoover "knew how to flatter his superior." (Francis Biddle, *In Brief Authority* [Garden City: Doubleday, 1962], pp. 258–259.)

A former FBI official has described one aspect of the Bureau's practice:

"Mr. Hoover would say what do we have in our files on this guy? Just what do we have? Not blind memorandum, not public source information, everything we've got. And we would maybe write a 25 page memo. When he got it and saw what's in it, he'd say we'd better send that to the White House and the Attorney General so they can have in one place everything that the FBI has now on this guy. . . . (Bishop deposition, 12/2/75, pp. 141–142.)"

[75] None of these letters indicate that they were in response to requests, as is the case with other similar letters examined by the Committee. All were volunteered as matters which Director Hoover considered to be "of interest" to the recipients.

[76] Memorandum from Hoover to Vaughn, 2/15/47.

[77] Memorandum from Hoover to Connelly, 1/27/50.

[78] Memorandum from Hoover to Anderson, 4/21/55.

To Robert Cutler, Special Assistant to President Eisenhower, a report of a "confidential source" on plans of Mrs. Eleanor Roosevelt to hold a reception for the head of a civil rights group.[79]

To Attorney General Robert Kennedy, information from a Bureau "source" regarding plans of a group to publish allegations about the President's personal life.[80]

To Attorney General Kennedy, a summary of material in FBI files on a prominent entertainer which the FBI Director thought "may be of interest".[81]

To Marvin Watson, Special Assistant to President Johnson, a summary of data in Bureau files on the author of a play satirizing the President.[82]

As these illustrations indicate, the FBI Director provided such data to administrations of both political parties without apparent partisan favoritism.[83]

Additionally, during the Nixon Administration, the FBI's INLET (Intelligence Letter) Program for sending regular short summaries of FBI intelligence to the White House was used on one occasion to provide information on the purely personal relationship between an entertainer and the subject of an FBI domestic intelligence investigation.[84] SACs were instructed under the INLET program to submit to Bureau headquarters items with an "unusual twist" or regarding "prominent" persons.[85]

One reason for the Bureau's volunteering information to the White House was to please the Administration and thus presumably to build high-level political support for the FBI. Thus, a 1975 Bureau report on the Atlantic City episode states:

> One [agent said], "I would like to state that at no time did I ever consider (it) to be a political operation but it was obvious that DeLoach wanted to impress Jenkins and Moyers with the Bureau's ability to develop information which would be of interest to them." Furthermore, in response to a question as to whether the Bureau's services were being utilized for political reasons, [another] answered, "No. I do recall, however, that on one occasion I was present when DeLoach held a lengthy telephone conversation with Walter Jenkins. They appeared to be discussing the President's 'image.' At the end of the conversation DeLoach told us something to the effect, 'that may have sounded a little political to you but this doesn't do the Bureau any harm.' "[86]

In addition to providing information useful to superiors, the Bureau assembled information on its own critics and on political figures it believed might influence public attitudes or congressional support. FBI Director Hoover had massive amounts of information at his

[79] Memorandum from Hoover to Cutler, 2/13/58.
[80] Memorandum from Hoover to Robert Kennedy, 11/20/63.
[81] Memorandum from Hoover to Robert Kennedy, 2/10/61.
[82] Memorandum from Hoover to Watson, 1/9/67.
[83] For additional examples, See Section II, pp. 51–53.
[84] Staff memorandum: Review of INLET letters, 11/18/75.
[85] Memorandum from FBI Headquarters to all SAC's, 11/26/69.
[86] Memorandum from Bassett to Callahan, 1/29/75.

fingertips. As indicated above, he could have the Bureau's files checked on anyone of interest to him. He personally received political information and "personal tidbits" from the special agents in charge of FBI field offices.[87] This information, both from the files and Hoover's personal sources, was available to discredit critics.

The following are examples of how the Bureau disseminated information to discredit its opponents:

> In 1949 the FBI provided Attorney General J. Howard McGrath and Presidential aide Harry Vaughn inside information on plans of the Lawyers Guild to denounce Bureau surveillance so they would have an opportunity to prepare a rebuttal well in advance of the expected criticism.[88]
>
> In 1960, when the Knoxville Area Human Relations Council in Tennessee charged that the FBI was practicing racial discrimination, the Bureau conducted name checks on members of the Council's board of directors and sent the results to Attorney General William Rogers, including derogatory personal allegations and political affiliations from as far back as the late thirties and early forties.[89]
>
> When a reporter wrote stories critical of the Bureau, he was not only refused any further interviews, but an FBI official in charge of press relations also spread derogatory personal information about him to other newsmen.[90]

The Bureau also maintained a "not to contact list" of "those individuals known to be hostile to the Bureau." Director Hoover specifically ordered that "each name" on the list "should be the subject of a memo." [91]

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[87] Former FBI official Mark Felt has stated that the SAC's could have sent personal letters to Hoover containing such "personal tidbits" "to curry favor with him," and on one occasion he did so himself with respect to a "scandalous" incident. (W. Mark Felt testimony, 2/3/76, p. 91.)

The following excerpt from one SAC's letter is an example of political information fed to the Director: "I have heard several comments and items which I wanted to bring to your attention. As I imagine is true in all States at this time, the political situation in [this state] is getting to be very interesting. As you know, Senator [deleted] is coming up for re-election as is Representative [deleted]. For a long time it appeared that [the Senator] would have no opposition to amount to anything in his campaign for re-election. The speculation and word around the State right now is that probably [the Representative] will file for the U.S. Senate seat now held by [the Senator]. I have also been informed that [the Senator's] forces have offered [the Representative] $50,000 if he will stay out of the Senate race and run for re-election as Congressman." (Letter from SAC to Hoover, 5/20/64.)

[88] Letter from Attorney General McGrath to President Truman, 12/7/49; letter from Hoover to Vaughn, 1/14/50.

[89] Memorandum from Hoover to Rogers, 5/25/60.

[90] Bishop deposition, 12/2/75, p. 211. Bishop stated that he acted on his own, rather than at the direction of higher Bureau executives. However, Director Hoover did have a memorandum prepared on the reporter summarizing everything in the Bureau's files about him, which he referred to when he met with the reporter's superiors. (Bishop deposition, 12/2/75, p. 215.)

[91] Memorandum from Executives Conference to Hoover, 1/4/50. Early examples included historian Henry Steele Commager, "personnel of CBS," and former Interior Secretary Harold Ickes. (Memorandum from Mohr to Tolson, 12/21/49.) By the time it was abolished in 1972, the list included 332 names, including mystery writer Rex Stout, whose novel "The Doorbell Rang" had "presented a highly distorted and most unfavorable picture of the Bureau." (Memorandum from M. A. Jones to Bishop, 7/11/72.)

This request for "a memo" on each critic meant that, before someone was placed on the list, the Director received, in effect, a "name check" report summarizing "what we had in our files" on the individual.[92]

In addition to assembling information on critics, name checks were run as a matter of regular Bureau policy on all "newly elected Governors and Congressmen." The Crime Records Division instructed the field offices to submit "summary memoranda" on such officials, covering both "public source information" and "any other information that they had in their files." [93] These "summary memoranda" were provided to Director Hoover and maintained in the Crime Records Division for use in "congressional liaison"—which the Division head said included "selling" hostile Congressmen on "liking the FBI." [94]

It has been widely believed among Members of Congress that the Bureau had information on each of them.[95] The impact of that belief led Congressman Boggs to state:

> Our apathy in this Congress, our silence in this House, our very fear of speaking out in other forums has watered the roots and hastened the growth of a vine of tyranny which is ensnaring that Constitution and Bill of Rights which we are each sworn to uphold.
>
> Our society can survive many challenges and many threats. It cannot survive a planned and programmed fear of its own government bureaus and agencies.[96]

Subfinding (d)

The FBI has also used intelligence as a vehicle for covert efforts to influence social policy and political action.

The FBI's interference with the democratic process was not the result of any overt decision to reshape society in conformance with Bureau-approved norms. Rather, the Bureau's actions were the natural consequence of attitudes within the Bureau toward social change, combined with a strong sense of duty to protect society—even from its own "wrong" choices.

The FBI saw itself as the guardian of the public order, and believed that it had a responsibility to counter threats to that order, using any means available.[97] At the same time, the Bureau's assessment of what constituted a "threat" was influenced by its attitude toward the forces of change. In effect, the Bureau chose sides in the

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[92] Bishop deposition, 12/2/75, p. 207.

[93] The field office was also expected to send to headquarters any additional allegations about the Congressman or Governor which might come to its attention in future investigations, even if the Congressman or Governor was not himself the "subject" of the investigation. (Bishop deposition, 12/2/75, pp. 194–200.)

[94] Bishop deposition, 12/2/75, pp. 206–7.

[95] The FBI is not the only agency believed to have files on Congressmen. According to Rep. Andrew Young, "in the freshman orientation" of new House members, "one of the things you are told is that there are seven agenices that keep files on private lives of Congressmen." (Rep. Andrew Young testimony, 2/19/76, p. 48.)

[96] Remarks by Rep. Hale Boggs, House of Representatives, 4/22/71, Congressional Record, Vol. 117, Part 9, p. 11562.

[97] The means used are discussed in the finding on "Covert Action to Disrupt and Discredit Domestic Groups", as well as the Detailed Reports on COINTELPRO, Dr. Martin Luther King, Jr., and the Black Panther Party.

major social movements of the last fifteen years, and then attacked the other side with the unchecked power at its disposal.

The clearest proof of the Bureau's attitude toward change is its own rhetoric. The language used in internal documents which were not intended to be disseminated outside the Bureau is that of the highly charged polemic revealing clear biases.

For example, in one of its annual internal reports on COINTELPRO, the Bureau took pride in having given "the lie" to what it called "the Communist canard" that "the Negro is downtrodden and has no opportunities in America." This was accomplished by placing a story in a newspaper in which a "wealthy Negro industrialist" stated that "the Negro will have to earn respectability and a responsible position in the community before he is accepted as an equal." It is significant that this view was expressed at about the same time as the civil rights movement's March on Washington, which was intended to focus public attention on the denial of opportunities to black Americans, and which rejected the view that inalienable rights have to be "earned." [98]

The rhetoric used in dealing with the Vietnam War and those in opposition to it is even more revealing. The war in Vietnam produced sharply divided opinions in the country; again, the Bureau knew which side it was on. For instance, fifty copies of an article entitled "Rabbi in Vietnam Says Withdrawal Not The Answer" were anonymously mailed by the FBI to members of the Vietnam Day Committee to "convince" the recipients "of the correctness of the U.S. foreign policy in Vietnam." [99]

The Bureau also ordered copies of a film called "While Brave Men Die" which depicted "communists, left-wing and pacifist activities associated with the so-called 'peace movement' or student agitational demonstrations in opposition to the United States position in Vietnam." The film was to be used for training Bureau personnel in connection with "increased responsibilities relating to communist inspired student agitational activities." [100]

In the same vein, a directive to the Chicago field office shortly after the 1968 Democratic Convention instructed it to "obtain all possible evidence" that would "disprove" charges that the Chicago police used undue force in dealing with antiwar demonstrations at the Convention:

> Once again, the liberal press and the bleeding hearts and the forces on the left are taking advantage of the situation in Chicago surrounding the Democratic National Convention to attack the police and organized law enforcement agencies. . . . We should be mindful of this situation and develop all possible evidence to expose this activity and to refute these false allegations.[101]

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[98] Memorandum from FBI Headquarters to New York Field Office, et al., 8/13/63.

[99] Memorandum from FBI Headquarters to San Francisco Field Office, 11/11/65

[100] Memorandum from FBI Headquarters to New York Field Office et al., 3/9/66.

[101] Memorandum from FBI headquarters to Chicago Field Office 8/28/68.

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The Bureau also attempted to enforce its view of sexual morality. For example, two students became COINTELPRO targets when they defended the use of a four-letter word, even though the demonstration in which they participated "does not appear to be inspired by the New Left," because it "shows obvious disregard for decency and established morality." [102] An anonymous letter purportedly from an irate parent and an article entitled "Free Love Comes to Austin" were mailed to a state senator and the chairman of the University of Texas Board of Regents to aid in "forcing the University to take action against those administrators who are permitting an atmosphere to build up on campus that will be a fertile field for the New Left." [103] And a field office was outraged at the distribution on campus of a newspaper called SCREW, which was described as "containing a type of filth that could only originate in a depraved mind. It is representative of the type of mentality that is following the New Left theory of immorality on certain college campuses." [104]

As these examples demonstrate, the FBI believed it had a duty to maintain the existing social and political order. Whether or not one agrees with the Bureau's views, it is profoundly disturbing that an agency of the government secretly attempted to impose its views on the American people.

(*i*) *Use of the Media*

The FBI attempted to influence public opinion by supplying information or articles to "confidential sources" in the news media. The FBI's Crime Records Division [105] was responsible for covert liaison with the media to advance two main domestic intelligence objectives: [106]

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[102] Memorandum from FBI Headquarters to Minneapolis Field Office, 11/4/68.

[103] Memorandum from San Antonio field office to FBI Headquarters, 8/12/68; memorandum from FBI Headquarters to San Antonio Feld Office, 8/27/68.

[104] The field office also disapproved of the "hippy types" distributing the newspaper, with their "unkempt clothes", "wild beards", and "other examples of their nonconformity". Accordingly, an anonymous letter was sent to a state legislator protesting the distribution of such "depravity" at a state university, noting that "this is becoming a way of campus life. Poison the minds of the young, destroy their moral being, and in less than one generation this country will be ripe for its downfall." (Memorandum from New York Field Office to FBI Headquarters, 5/23/69; memorandum from FBI Headquarters to Newark Field Office, 1/69.

[105] The Crime Records Division also had responsibility for disseminating information to cultivate a favorable public image for the FBI—a practice common to many government agencies. This objective was pursued in various ways. One section of the Crime Records Division was assigned to assemble "material that was needed for a public relations program." This section "developed information for television shows, for writers, for authors, for newspapermen, people who wanted in-depth information concerning the FBI." The section also "handled scripts" for public service radio programs produced by FBI Field Offices; reviewed scripts for television and radio shows dealing with the FBI; and handled the "public relations and publicity aspect" of the "ten most wanted fugitives program." The Bureau attempted to assert control over media presentations of information about its activities. For example, Director Hoover's approval was necessary before the Crime Records Division would cooperate with an author intending to write a book about the FBI (Bishop testimony, 12/2/75, pp. 6–8. 18.)

[106] Memoranda recommending use of the media for COINTELPRO purposes sometimes bore the designation "Mass Media Program," which appeared merely to signify the function of the Crime Records Division as a "conduit" for disseminating information at the request of the Domestic Intelligence Division. (Bishop testimony, 12/2/75, pp. 63–68, 88.) The dissemination of derogatory information to the media was usually reviewed through the Bureau's chain of command and received final approval from Director Hoover. (Bishop testimony, 12/2/75, p. 89.)

(1) providing derogatory information to the media intended to generally discredit the activities or ideas of targeted groups or individuals; and (2) disseminating unfavorable articles, news releases, and background information in order to disrupt particular activities.

Typically, a local FBI agent would provide information to a "friendly news source" on the condition "that the Bureau's interest in these matters is to be kept in the strictest confidence." [107] Thomas E. Bishop, former Director of the Crime Records Division, testified that he kept a list of the Bureau's "press friends" in his desk.[108] Bishop and one of his predecessors indicated that the FBI sometimes refused to cooperate with reporters critical of the Bureau or its Director.[109]

Bishop stated that as a "general rule," the Bureau disseminated only "public record information" to its media contacts, but this category was viewed by the Bureau to include any information which could conceivably be obtained by close scrutiny of even the most obscure publications.[110] Within these parameters, background information supplied to reporters "in most cases [could] include everything" in the Bureau files on a targeted individual; the selection of information for publication would be left to the reporter's judgment.[111]

There are numerous examples of authorization for the preparation and dissemination of unfavorable information to discredit generally the activities and ideas of a target; [112]

—FBI headquarters solicited information from field offices "on a continuing basis" for "prompt . . . dissemination to the news media . . . to discredit the New Left movement and its adherents." Headquarters requested, among other things, that:

> specific data should be furnished depicting the scurrilous and depraved nature of many of the characters, activities, habits and living conditions representative of New Left adherents.

Field Offices were to be exhorted that "Every avenue of possible embarrassment must be vigorously and enthusiastically explored." [113]

—FBI headquarters authorized a Field Office to furnish a media contact with "background information and any arrest record" on a man

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[107] For example, Memorandum from FBI Headquarters to Atlanta Field Office, 10/22/68.

[108] Bishop, 12/2/75, p. 33.

[109] Cartha DeLoach, who handled media contacts for several years, testified that this technique was not actually used as much as the Director desired:

> If any unfair comment appeared in any segment of the press concerning Mr. Hoover or the FBI . . . Mr. Hoover . . . would say do not contact this particular newspaper or do not contact this person or do not cooperate with this person. . . . If I had complied strictly to the letter of the law to Mr. Hoover's instructions, I think I would be fair in saying that we wouldn't be cooperating with hardly a single newspaper in the United States. . . . The men down through the years had to overlook some of those instructions and deal fairly with all segments of the press. (DeLoach testimony, 11/25/75, pp. 213–214.)

[110] Bishop stated that the Crime Records Division was "scrupulous" in providing information which could be cited to a "page and paragraph" in a public source. (Bishop, 12/2/75, pp. 24, 177–178.)

[111] Bishop, 12/2/75, pp. 135–136.

[112] T. E. Bishop stated that from the FBI documents available to the Committee, it was impossible to determine whether an article was actually printed after a news release or a draft article had been supplied to a media source. (Bishop, 12/2/75, p. 86.)

[113] Memorandum from C. D. Brennan to W. C. Sullivan, 5/22/68.

affiliated with "a radical New Left element" who had been "active in showing films on the Black Panthers and police in action at various universities during student rioting." The media contact had requested material from the Bureau which "would have a detrimental effect on [the target's] activities." [114]

—Photographs depicting a radical group's apartment as "a shambles with lewd, obscene and revolutionary slogans displayed on the walls" were furnished to a free-lance writer. The directive from headquarters said: "As this publicity will be derogatory in nature and might serve to neutralize the group, it is being approved." [115]

—The Boston Field Office was authorized to furnish "derogatory information about the Nation of Islam (NOI) to established source [name excised]":

> Your suggestions concerning material to furnish [name] are good. Emphasize to him that the NOI predilection for violence, preaching of race hatred, and hypocrisy, should be exposed. Material furnished [name] should be either public source or known to enough people as to protect your sources. Insure the Bureau's interest in this matter is completely protected by [name].[116]

One Bureau-inspired documentary on the NOI reached an audience of 200,000.[117] Although the public was to be convinced that the NOI was "violent", the Bureau knew this was not in fact true of the organization as a whole.[118]

—The Section which supervised the COINTELPRO against the Communist Party intended to discredit a couple "identified with the Community Party movement" by preparing a news release on the drug arrest of their son, which was to be furnished to "news media contacts and sources on Capitol Hill." A Bureau official observed that the son's "arrest and the Party connections of himself and his parents presents an excellent opportunity for expoitation." The news release noted that "the Russian-born mother is currently under a deportation order" and had a former marriage to the son of a prominent Communist Party member. The release added: "the Red Chinese have long used narcotics to help weaken the youth of target countries." [119]

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[114] Memorandum to Director from SAC Miami, 3/10/70. Bishop testified that he "would hope" that in response to the directive to disseminate the target's "arrest record" the Division would have disseminated only conviction records. Bishop said that under the Attorney General's guidelines then in effect only conviction records or arrests which were a matter of public record in a particular jurisdiction were to be disseminated. Bishop stated that his policy was not to disseminate an arrest record "especially if that arrest record resulted in an acquittal or if the charge was never completed . . . because that is not, to my mind, anything derogatory against a guy, until he actually gets convicted." (Bishop testimony, 12/2/75, pp. 163–167, 173.)

[115] Memorandum from FBI Headquarters to Boston Field Office, 1/13/68.

[116] Memorandum from FBI Headquarters to Boston Field Office, 2/27/68.

[117] Memorandum from Tampa Field Office to FBI Headquarters, 2/7/69.

[118] Deposition of Black Nationalist COINTELPRO supervisor, 10/17/75, p. 21; Deposition of George C. Moore, Chief of the Racial Intelligence Section, 11/3/75. p. 36.

[119] Memorandum from F. J. Baumgardner to W. C. Sullivan, 6/3/63.

—When the wife of a Communist Party leader purchased a new car, the FBI prepared a news item for distribution to "a cooperative news media source" mocking the leader's "prosperity" "as a disruptive tactic." The item commented sarcastically that "comrades of the self-proclaimed leader of the American working class should not allow this example of [the leader's] prosperity to discourage their continued contributions to Party coffers." [120]

—After a public meeting in New York City, where "the handling of the [JFK assassination] investigation was criticized," the FBI prepared a news item for placement "with a cooperative news media source" to discredit the meeting on the grounds that "a reliable [FBI] source" had reported a "convicted perjurer and identified espionage agent as present in the audience." [121]

—As part of the new Left COINTELPRO, the FBI sent a letter under a fictitious name to *Life* magazine to "call attention to the unsavory character" of the editor of an underground magazine, who was characterized as "one of the moving forces behind the Youth International Party, commonly known as the Yippies." To counteract a recent *Life* "article favorable" to the Yippie editor, the FBI's fictitious letter said that "the cuckoo editor of an unimportant smutty little rag" should be "left in the sewers." [122]

Much of the Bureau's use of the media to influence public opinion was directed at disrupting specific activities or plans of targeted groups or individuals:

—In March 1968, FBI Headquarters granted authority for furnishing to a "cooperative national news media source" an article "designed to curtail success of Martin Luther King's fund raising" for the poor people's march on Washington, D.C. by asserting that "an embarrassment of riches has befallen King . . . and King doesn't need the money." [123] To further this objective, Headquarters authorized the Miami Office "to furnish data concerning money wasted by the Poor People's Campaign" to a friendly news reporter on the usual condition that "the Bureau must nat be revealed as the source." [124]

The Section Chief in charge of the Black Nationalist COINTELPRO also recommended that "photographs of demonstrators" at the march should be furnished; he attached six photographs of Poor People's Campaign participants at a Cleveland rally, accompanied by the note: "These show the militant, aggressive appearance of the participants and might be of interest to a cooperative news source." [125]

—As part of the New Left COINTELPRO, authority was granted to the Atlanta Field Office to furnish a newspaper editor who had "written numerous editorials praising the Bureau" with "information to supplement that already known to him from public sources concerning subversive influences in the Atlanta peace movement. His use of this material in well-timed articles would be used to thwart the [upcoming] demonstrations." [126]

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[120] Memorandum from F. J. Baumardner to W. C. Sullivan, 8/9/65.
[121] Memorandum from F. J. Baumgardner to W. C. Sullivan, 2/24/64.
[122] Memorandum from New York Field Office to FBI Headquarters, 10/16/68.
[123] Memorandum from G. C. Moore to W. C. Sullivan, 10/26/68.
[124] Memorandum from FBI Headquarters to Miami Field Office, 7/9/68.
[125] Memorandum from G. C. Moore to W. C. Sullivan, 5/17/76.
[126] Memorandum from FBI Headquarters to Atlanta Field Office, 10/22/68.

—An FBI Special Agent in Chicago contacted a reporter for a major newspaper to arrange for the publication of an article which was expected to "greatly encourage factional antagonisms during the SDS Convention" by publicizing the attempt of "an underground communist organization" to take over SDS. This contact resulted in an article headlined "Red Unit Seeks SDS Rule." [127]

—FBI Director Hoover approved a Field Office plan "to get cooperative news media to cover closed meetings of Students for a Democratic Society (SDS) and other New Left groups" with the aim of "disrupting them." [128]

—Several months after COINTELPRO operations were supposed to have terminated, the FBI attempted to discredit attorney Leonard Boudin at the time of his defense of Daniel Ellsberg in the Pentagon Papers case. The FBI "called to the attention" of the Washington bureau chief of a major news service information on Boudin's alleged "sympathy" and "legal services" for "communist causes." The reporter placed a detailed news release on the wires which cited Boudin's "identification with Leftist causes" and included references to the arrest of Boudin's daughter, his legal representation of the Cuban government and "Communist sympathizer" Paul Robeson, and the statement that "his name also has been connected with a number of other alleged communist front groups." In a handwritten note, J. Edgar Hoover directed that copies of the news release be sent to "Haldeman, A. G., and Deputy." [129]

The Bureau sometimes used its media contacts to prevent or postpone the publication of articles it considered favorable to its targets of unfavorable to the FBI. For example, to influence articles which related to the FBI, the Bureau took advantage of a close relationship with a high official of a major national magazine, described in an FBI

[127] Memorandum from Chicago Field Office to FBI Headquarters, 6/18/69.

[128] Memorandum from FBI Headquarters to Indianapolis Field Office, 6/17/68.

[129] FBI Memorandum from Bishop to Mohr, 7/6/71; Bishop testimony, 12/2/75, pp. 148–151.

Two years earlier the Crime Records Division prepared a sixteen-page memorandum containing information on "Leonard B. Boudin, Attorney for Dr. Benjamin Spock," written at the time of Spock's indictment for conspiring to violate the Selective Service Act. (FBI Memorandum from M. A. Jones to T. E. Bishop, 2/26/68) The memorandum described "alleged associations and activities of Boudin" related to organizations or individuals considered "subversive" by the FBI, (Bishop, 12/2/75, pp. 134–135) and included: names of many of Boudin's clients; citations to magazines and journals in which Boudin had published articles; references to petitions he had signed; and notes on rallies and academic conferences at which he had spoken. The memorandum indicated that "the White House and Attorney General have been advised" of the information on Boudin's background. Notations on the cover sheet of the memorandum by high Bureau officials indicate that approval was granted for "furnishing the attached information to one of our friendly news contacts" but the information was not used until after the "results of appeal in Spock's case." Bishop did not recall distributing the Boudin memorandum. (Bishop, 12/2/75, pp. 125–126)

The head of the Crime Records Division speculated that the memorandum was prepared at the request of a reporter because he did not remember a request from Hoover or from the Domestic Intelligence Division, which was the normal route for assignments to the Crime Records Division. Division Chief Bishop testified that he probably instructed the Division "to get up any public source information that we have concerning Boudin that shows his connection with the Communist Party or related groups of that nature." (Bishop, 12/2/75, pp. 131–133)

memorandum as "our good friend." Through this relationship, the FBI "squelched" an "unfavorable article against the Bureau" written by a free-lance writer about an FBI investigation; "postponed publication" of an article on another FBI case; "forestalled publication" of an article by Dr. Martin Luther King, Jr.; and received information about proposed editing of King's articles.[130]

The Bureau also attempted to influence public opinion by using news media sources to discredit dissident groups by linking them to the Communist Party:

—A confidential source who published a "self-described conservative weekly newspaper" was anonymously mailed information on a church's sponsorship of efforts to abolish the House Committee on Un-American activities. This prompted an article entitled "Locals to Aid Red Line," naming the minister, among others, as a local sponsor of what it termed a "Communist dominated plot" to abolish HUAC.[131]

—The Bureau targeted a professor who had been the president of a local peace center, a "coalition of anti-Vietnam and anti-draft groups." In 1968, he resigned temporarily to become state chairman of Eugene McCarthy's presidential campaign organization. Information on the professor's wife, who had apparently associated with Communist Party members in the early 1950's, was furnished to a newspaper editor to "expose those people at this time when they are receiving considerable publicity in order" to "disrupt the members" of the peace organization.[132]

—Other instances included an attempt to link a school boycott with the Communists by alerting newsmen to the boycott leader's plans to attend a literary reception at the Soviet mission;[133] furnishing information to the media on the participation of the Communist Party presidential candidate in the United Farm Workers' picket line;[134] "confidentially" informing established sources in three northern California newspapers that the San Francisco County Communist Party Committee had stated that civil rights groups were to "begin working" on the area's large newspapers "in an effort to secure greater employment of Negroes;"[135] and furnishing information to the media on Socialist Workers Party participation in the Spring Mobilization Committee to End the War in Vietnam to "discredit" the antiwar group.[136]

(ii) Attacks on Leaders

Through covert propaganda, the FBI not only attempted to influence public opinion on matters of social policy, but also directly in-

[130] Memorandum from W. H. Stapleton to C. D. DeLoach, 11/5/64.

[131] Memorandum from Cleveland Field Office to FBI Headquarters, 10/28/64; memorandum from FBI Headquarters to Cleveland Field Office, 11/6/64.

[132] Memorandum from FBI Headquarters to Phoenix Field Office, 6/11/68.

[133] Memorandum from FBI Headquarters to New York Field Office, 2/4/64.

[134] The target was not intended to be the United Farm Workers, but a local college professor expected to participate in the picket line. The Bureau had unsuccessfully directed "considerable efforts to prevent hiring" the professor. Apparently, the Bureau did not consider the impact of this technique on the United Farm Workers' efforts. (Memorandum from San Francisco Field Office to FBI Headquarters, 9/12/68; memorandum from FBI Headquarters to San Francisco Field Office, 9/13/68.)

[135] Memorandum from San Francisco Field Office to FBI Headquarters, 4/16/64.

[136] Memorandum from San Francisco Field Office to FBI Headquarters, 3/10/67; memorandum from FBI Headquarters to San Francisco Field Office, 3/14/67.

tervened in the people's choice of leadership both through the electoral process and in other, less formal arenas.

For instance, the Bureau made plans to disrupt a possible "Peace Party" ticket in the 1968 elections. One field office noted that "effectively tabbing as communists or as communist-backed the more hysterical opponents of the President on the Vietnam question in the midst of the presidential campaign would be a real boon to Mr. Johnson." [137]

In the FBI's COINTELPRO programs, political candidates were targeted for disruption. The document which originated the Socialist Workers Party COINTELPRO noted that the SWP "has, over the past several years, been openly espousing its line on a local and national basis through running candidates for public office." The Bureau decided to "alert the public to the fact that the SWP is not just another socialist group but follows the revolutionary principles of Marx, Lenin, and Engels as interpreted by Leon Trotsky." Several SWP candidates were targeted, usually by leaking derogatory information about the candidate to the press.[138]

Other COINTELPRO programs also included attempts to disrupt campaigns. For example, a Midwest lawyer running for City Council was targeted because he and his firm had represented "subversives". The Bureau sent an anonymous letter to several community leaders which decried his "communist background" and labelled him a "charlatan." [139] Under a fictitious name, the Bureau sent a letter to a television station on which the candidate was to appear, enclosing a series of questions about his clients and his activities which it believed should be asked.[140] The candidate was defeated. He later ran (successfully, as it happened) for a judgeship. The Bureau attempted to disrupt this subsequent, successful campaign for a judgeship by using an anti-communist group to distribute fliers and write letters opposing his candidacy.[141]

In another instance, the FBI attempted to have a Democratic Party fundraising affair raided by the state Alcoholic Beverage Control Commission. The fund raiser was targeted because of two of the candidates who would be present. One, a state assemblyman running for reelection, was active in the Vietnam Day Committee; the other, the Democratic candidate for Congress, had been a sponsor of the National Committee to Abolish the House Committee on Un-American Activities and had led demonstrations opposing the manufacture of napalm bombs.[142]

Although the disruption of election campaigns is the clearest example, the FBI's interference with the political process was much broader.

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[137] Memorandum from Chicago Field Office to FBI Headquarters, 6/1/67.

[138] Memorandum from FBI Headquarters to all SAC's, 10/12/61.

[139] Memorandum from Detroit Field Office to FBI Headquarters, 9/1/65; memorandum from FBI Headquarters to Detroit Field Office, 9/22/65.

[140] Memorandum from Detroit Field Office to FBI Headquarters, 9/28/65; memorandum from FBI Headquarters to Detroit Field Office, 10/1/65.

[141] Memorandum from Detroit Field Office, to FBI Headquarters, 1/19/67.

[142] Memorandum from FBI Headquarters to San Antonio Field Office, 11/14/66. The attempt was unsuccessful; a prior raid on a fire department's fund raiser had angered the local District Attorney, and the ABC decided not to raid the Democrats because of "political ramifications."

For example, all of the COINTELPRO programs were aimed at the leadership of dissident groups.[143]

In one case, the Bureau's plans to discredit a civil rights leader included an attempt to replace him with a candidate chosen by the Bureau. During 1964, the FBI began a massive program to discredit Dr. Martin Luther King, Jr. and to "neutralize" his effectiveness as the leader of the civil rights movement.[144] On January 8, 1964, Assistant Director William C. Sullivan proposed that the FBI select a new "national Negro leader" as Dr. King's successor after the Bureau had taken Dr. King "off his pedestal":

> When this is done, and it can and will be done . . . the Negroes will be left without a national leader of sufficiently compelling personality to steer them in the right direction. This is what could happen, but need not happen if the right kind of Negro leader could at this time be gradually developed so as to overshadow Dr. King and be in the position to assume the role of leadership of the Negro people when King has been completely discredited.
>
> I want to make it clear at once that I don't propose that the FBI in any way became involved openly as the sponsor of a Negro leader to overshadow Martin Luther King. . . . But I do propose that I be given permission to explore further this entire matter. . . .
>
> If this thing can be set up properly without the Bureau in any way becoming directly involved, I think it would not only be a great help to the FBI but would be a fine thing for the country at large. While I am not specifying at this moment, there are various ways in which the FBI could give this entire matter the proper direction and development. There are highly placed contacts of the FBI who might be very helpful to further such a step. . . .[145]

The Bureau's efforts to discredit Dr. King are discussed more fully elsewhere.[146] It is, however, important to note here that some of the Bureau's efforts coincided with Dr. King's activities and statements concerning major social and political issues.

(iii) Exaggerating The Threat

The Bureau also used its control over the information-gathering process to shape the views of government officials and the public on the

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[143] The originating document for the "Black Nationalist" COINTELPRO ordered field offices to "expose, disrupt, misdirect, discredit, or otherwise neutralize" the "leadership" and "spokesmen" of the target groups. The "New Left" originating memo called for efforts to "neutralize" the New Left and the "Key Activitists," defined as "those individuals who are the moving forces behind the New Left;" the letter to field offices made it clear that the targets were the "leadership" of the "New Left"—a term which was never defined. (Memorandum from FBI Headquarters to all SAC's, 8/25/67.)

[144] Memorandum from Brennan to Sullivan, 5/9/68; memorandum from FBI Headquarters to all SAC's, 5/10/68.

[145] Memorandum from Sullivan to Belmont, 1/8/64. Although this proposal was approved by Director Hoover, there is no evidence that any steps were taken to implement the plan.

[146] See Martin Luther King, Jr. Report: Sec. V, The FBI's Efforts to Discredit Dr. Martin Luther King: 1964, Sec. VII, The FBI Program Against Dr. King: 1965–1968.

threats it perceived to the social order. For example, the FBI exaggerated the strength of the Communist Party and its influence over the civil rights and anti-Vietnam war movements.

Opponents of civil rights legislation in the early 1960s had charged that such legislation was "a part of the world Communist conspiracy to divide and conquer our country from within." The truth or falsity of these charges was a matter of concern to the administration, Congress, and the public. Since the Bureau was assigned to compile intelligence on Communist activity, its estimate was sought and, presumably, relied upon. Accordingly, in 1963, the Domestic Intelligence Division submitted a memorandum to Director Hoover detailing the CPUSA's "efforts" to exploit black Americans, which it concluded were an "obvious failure." [147]

Director Hoover was not pleased with this conclusion. He sent a sharp message back to the Division which, according to the Assistant Director in charge, made it "evident that we had to change our ways or we would all be out on the street." [148] Another memorandum was therefore written to give the Director "what Hoover wanted to hear." [149]

The memorandum stated, "The Director is correct;" it called Dr. Martin Luther King, Jr. "the most dangerous Negro of the future in this Nation from the standpoint of communism, the Negro, and national security;" and it concluded that it was "unrealistic" to "limit ourselves" to "legalistic proofs or definitely conclusive evidence" that the Communist Party wields "substantial influence over Negroes which one day could become decisive." [150]

Although the Division still had not said the influence *was* decisive, by 1964 the Director testified before the House Appropriations Subcommittee that the "Communist influence" in the "Negro movement" was "vitally important." [151] Only someone with access to the underlying information would note that the facts could be interpreted quite differently.[151a]

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[147] Memorandum from Baumgardner to Sullivan, 8/23/63, p. 1.

[148] Sullivan deposition, 11/1/75, p. 20.

[149] Sullivan deposition, 11/1/75, p. 29.

[150] Memorandum from Sullivan to Director, FBI, 8/30/63. Sullivan described this process of "interpretive" memo writing to lead a reader to believe the Communists were influential without actually stating they were in control of a movement: "You have to spend years in the Bureau really to get the feel of this. . . . You came down here to 'efforts', these 'colossal efforts'. That was a key word of ours when we are getting around the facts. . . . You will not find anywhere in the memorandum whether the efforts were successful or unsuccessful. . . . Here is another one of our words that we used to cover up the facts, 'efforts to exploit', that word 'exploit'. Nowhere will you find in some of these memos the results of the exploitation. [Like] 'planning to do all possible', you can search in vain for a statement to the effect that their plans were successful or unsuccessful, partly successful or partly unsuccessful." (Sullivan, 11/1/75, pp. 15–16.)

[151] Hearings before the House Appropriations Subcommittee, 88th Cong., 2d Sess. (1964), p. 309. Director Hoover's statement was widely publicized. (E.g., "Hoover Says Reds Exploit Negroes," New York Times, 4/22/64, p. 30) It caused serious concern among civil rights leaders who feared that it would hurt the prospects for passage of the 1964 civil rights bill.

[151a] Director Hoover had included similar exaggerated statements about Communist influence in a briefing to the Eisenhower Cabinet in 1956. Hoover had stated, regarding an NAACP-sponsored conference:

"The Communist Party *plans* to use this conference to embarrass the Administration by causing a rift between the Administration and Dixiecrats who have

A similar exaggeration occurred in some of the Bureau's statements on communist influence on the anti-Vietnam war demonstrations.

In April 1965 President Johnson met with Director Hoover to discuss Johnson's "concern over the anti-Vietnam situation." According to Hoover, Johnson said he had "no doubt" that Communists were "behind the disturbances." [152] Hoover agreed, stating that upcoming demonstrations in eighty-five cities were being planned by the Students for a Democratic Society and that SDS was "largely infiltrated by communists and [it] has been woven into the civil rights situation which we know has large communist influence." [153]

Immediately after the meeting, however, Hoover told his associates that the Bureau might not be able to "technically state" that SDS was "an actual communist organization." The FBI merely knew that there were "communists in it." Hoover instructed, however, "What I want to get to the President is the background with emphasis upon the communist influence therein so that he will know exactly what the picture is." The Director added that he wanted "a good, strong memorandum" pinpointing that the demonstrations had been "largely participated in by communists even though they may not have initiated them;" the Bureau could "at least" say that they had "joined and forced the issue." According to the Director, President Johnson was "quite concerned" and wanted "prompt and quick action." [154]

Once again, the Bureau wrote a report which made Communist "efforts" sound like Communist success. The eight-page memorandum detailed all of the Communist Party's attempts to "encourage" domestic dissent by "a crescendo of criticism aimed at negating every effort of the United States to prevent Vietnam from being engulfed by communist aggressors." Twice in the eight pages, for a total of two and a half sentences, it was pointed out that most demonstrators were not Party members and their decisions were not initiated or controlled by the communists. Each of these brief statements moreover, was followed by a qualification: (1) "*however*, the Communist Party, USA . . . has vigorously supported these groups and exerted influence;" (2) "*While* the March [on Washington] was not Communist initiated . . . Communist Party members from throughout the nation participated." [Emphasis added.] [155]

The rest of the memorandum is an illustration of what former Assistant Director Sullivan called "interpretive" memo writing in

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supported it, by forcing the Administration to take a stand on civil rights legislation with the present Congress. The Party *hopes* through a rift to affect the 1956 elections." [Emphasis added.] (Memorandum from Director, FBI, to the Executive Assistant to the Attorney General, 3/9/56, and enclosure.)

Director Hoover did not include in his prepared briefing statement the information reported to the White House separately earlier that there was "no indication" the the NAACP had "allowed the Communist Party to infiltrate the conference." (Hoover to Dillon Anderson, Special Assistant to the President, 3/5/56.) According to one historical account, Hoover's Cabinet briefing "reinforced the President's inclination to passivity" on civil rights legislation. (J. W. Anderson, *Eisenhower, Brownell, and the Congress: The Tangled Origins of the Civil Rights Bill of 1956–57* [University of Alabama Press, 1964], p. 34.)

[152] Memorandum from Hoover to subordinate FBI officials, 4/28/65.

[153] Hoover memorandum, 4/28/65.

[154] Hoover memorandum, 4/28/65.

[155] Letter from Hoover to McGeorge Bundy, Special Assistant to the President (National Security), 4/28/65, enclosing FBI memorandum, Subject: Communist Activities Relative to United States Policy on Vietnam.

which Communist efforts and desires are emphasized without any evaluation of whether they had been or were likely to be successful.

The exaggeration of Communist participation, both by the FBI and White House staff members relying on FBI reports,[156] could only have had the effect of reinforcing President Johnson's original tendency to discount dissent against the Vietnam War as "Communist inspired"—a belief shared by his successor.[157] It is impossible to measure the full effect of this distorted perception at the very highest policymaking level.

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[156] See, *e.g.*, a memorandum from Marvin (Watson) to the President, 5/16/67, quoting from a Bureau report that: "the Communist Party and other organizations are continuing their efforts to force the United States to change its present policy toward Vietnam."

[157] The report prepared by the intelligence agencies as the basis for the 1970 "Huston Plan" included the following similar emphasis on the potential threat (and downplaying of the actual lack of success):

"Leaders of student protest groups" who traveled abroad were "considered to have *potential* for recruitment and participation in foreign-directed intelligence activity."

"Antiwar activists" who had "frequently traveled abroad" were considered "as having *potential* for engaging in foreign-directed intelligence collection."

The CIA was "of the view that the Soviet and bloc intelligence services *are committed* at the political level to exploit all domestic dissidents wherever possible."

Although there was "no hard evidence" of substantial foreign control of "the black extremist movement," there was "*a marked potential*" and the groups were "*highly susceptible* to exploitation by hostile foreign intelligence services."

"Communist intelligence services *are capable of* using their personnel, facilities, and agent personnel to work in the black extremist field."

While there were "no substantial indications that the communist intelligence services have actively fomented domestic unrest," their "*capability*" could not "*be minimized*."

"The dissidence and violence in the United States today present adversary intelligence services with *opportunities unparalleled* for forty years." [Emphasis added.] (Special Report, Interagency Committee on Intelligence (Ad Hoc), June 1970; substantial portions of this report appear in Hearings, Vol. 2, pp. 141–188.)

F. FINDING—INADEQUATE CONTROLS ON DISSEMINATION AND RETENTION

Major Finding

The Committee finds that the product of intelligence investigations has been disseminated without adequate controls. Reports on lawful political activity and law-abiding citizens have been disseminated to agencies having no proper reason to receive them. Information that should have been discarded, purged, or sealed, including the product of illegal techniques and overbroad investigations, has been retained and is available for future use.

Subfindings

(a) Agencies have volunteered massive amounts of irrelevant information to other officials and agencies and have responded unquestioningly in some instances to requests for data without assuring that the information would be used for a lawful purpose.

(b) Excessive dissemination has sometimes contributed to the inefficiency of the intelligence process itself.

(c) Under the federal employee security program, unnecessary information about the political beliefs and associations of prospective government employees has been disseminated.

(d) The FBI, which has been the "clearinghouse" for all domestic intelligence data, maintains in readily accessible files sensitive and derogatory personal information not relevant to any investigation, as well as information which was improperly or illegally obtained.

Elaboration of Findings

The adverse effects on privacy of the Overbreadth of domestic intelligence collection and of the use of Intrusive Techniques have been magnified many times over by the dissemination practices of the collecting agencies. Information which should not have been gathered in the first place has gone beyond the initial agency to numerous other agencies and officials, thus compounding the original intrusion. The amount disseminated within the Executive branch has often been so voluminous as to make it difficult to separate useful data from worthless detail.

The Committee's finding on Political Abuse describes dissemination of intelligence for the political advantage of high officials or the self-interest of an agency. The problems of excessive dissemination, however, include more than political use. Dissemination has not been confined to what is appropriate for law enforcement or other proper government purposes. Rather, any information which could have been conceived to be useful was passed on, and doubts were generally resolved in favor of dissemination. Until recently, none of the standards for the exchange of data among agencies has taken privacy interests into account. The same failure to consider privacy interests

has characterized the retention of data by the original collecting agency.

Subfinding (a)

Agencies have volunteered massive amounts of irrelevant information to other officials and agencies and have responded unquestioningly in some instances to requests for data without assuring that the information would be used for a lawful purpose.

The following examples illustrate the extent of dissemination:

—FBI reports on dissident Americans flowed to the CIA at a rate as high as 1,000 a month. CIA officials regarded any names in these reports as a standing requirement from the FBI for information about those persons.[1]

—In 1967 the Internal Security Division of the Justice Department was receiving 150 reports and memoranda a day from the FBI on "organizations and individuals engaged in agitational activity of one kind or another." [2]

—Attorney General Ramsey Clark could not "keep up with" the volume of FBI memoranda coming into him and to the Assistant Attorneys General on the 700,000 FBI investigations per year.[3]

—The Justice Department's IDIU sent its computer list of 10,000 to 12,000 American dissidents to the CIA's Operation CHAOS (which apparently found it useless) and to the Special Service Staff of the Internal Revenue Service (which did use it as part of its program of tax investigations).[4]

—In fiscal year 1974 alone, the FBI, the Civil Service Commission, and military intelligence received over 367,000 requests for "national agency checks," or name checks of their files, on prospective federal government employees.[5]

The information disseminated to other agencies has often been considered useless by the recipients. FBI officials have said they received "very little in the way of good product" from the National Security Agency's interception of the international communications of Americans.[6] FBI officials also considered most of the material on "the domestic scene" sent to them from the CIA mail opening project to be irrelevant "junk." [6a] The Secret Service destroyed over ninety percent of the information disseminated to it by the FBI without ever putting it in its own intelligence files.[7] Defense Department directives require the destruction of a great deal of information it receives from the FBI about civilians considered "threatening" to the military, including reports on civilian "subversion." [8]

Sometimes dissemination has become almost an end in itself. The FBI would often anticipate what it considered to be the needs of other

[1] Richard Ober testimony, 10/28/75, pp. 67, 68.

[2] Memorandum from Kevin Maroney, et al, to Attorney General Ramsey Clark, 12/6/67.

[3] Clark, 12/3/75, Hearings, Vol. 6, p. 249. This statistic refers to criminal investigations as well as intelligence investigations.

[4] See Part II, pp. 80, 95.

[5] Statement of Attorney General Edward H. Levi before House Judiciary Committee, February 1975.

[6] W. R. Wannall testimony, 10/3/75, p. 13.

[6a] W. A. Branigan testimony, 10/24/75, Hearings, Vol. 4, p. 168.

[7] GAO Report, p. 125.

[8] DOD Directive 5200.27, 3/1/71.

"appropriate agencies."[9] The Bureau has disseminated data to military intelligence agencies, regardless of whether or not there was likely to be serious violence requiring the dispatch of troops; the Bureau also disseminated information when there was no connection between the subject of the report and any military personnel or facility.[10] Consequently, the computerized and non-computerized domestic intelligence data banks compiled by the Continental Army Command cited the FBI as "data source" for about 80 percent of the information where a source was identified.[11]

FBI dissemination to the military has shown how information can get into the hands of agencies which have no proper reason to receive it.[12]

The FBI disseminated a large volume of information on domestic political activities to the CIA, thus providing a substantial part of the data for the CHAOS program.[13] Much of this information was also furnished to the State Department.[14] The FBI sometimes disseminated reports to the CIA and the State Department if the subject matter involved public discussion of national security policy and possible "subversive" influence.[15]

The FBI was also the largest source of political targets for tax investigations by the Special Service Staff of the Internal Revenue Service. While still in its formative days, SSS was placed on the FBI's distribution list in response to a request from an Assistant IRS Commissioner for information regarding:

> various organizations of predominantly dissident or extremist nature and/or people prominently identified with those organizations.[16]

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[9] For example, in 1966 before the FBI had received any specific instructions from the Attorney General to gather civil disturbance intelligence, Bureau Headquarters advised all Field Offices that "national, state, and local" government officials "rely on us" for information "so they can take appropriate action to avert disastrous outbreaks." Thus, FBI offices were told to "intensify and expand" their "coverage" of demonstrations opposing "United States foreign policy in Vietnam" or "protests involving racial issues," in order to insure that "advance signs" of violence could be "disseminated to appropriate authorities." (SAC Letter 66–27, 5/2/66)

[10] These policies were part of the formal obligation of the FBI under the 1949 Delimitation Agreement with military intelligence. The Agreement itself required the FBI to keep military intelligence agencies advised of the activities of "civilian groups" classed as "subversive." (Delimitation Agreement, 2/23/49.) And a Supplementary Agreement said, "Where there is doubt as to whether or not one of the other agencies is interested in information collected, it should be transmitted to the other agency." (Supplemental Agreement No. 1 to the Delimitation Agreement, 6/2/49.)

[11] "Military Surveillance of Civilian Politics," Report of the Senate Subcommittee on Constitutional Rights (1973), p. 72.

[12] The Agreements between the FBI and military intelligence have not been revised to take account of the restrictions on Army surveillance imposed by the Department of Defense in 1971. See DOD Directive 5200.27, 3/1/71.

[13] Richard Ober, 10/28/75, pp. 67, 68.

[14] The FBI Manual stated that information concerning "proposed travel abroad" by domestic "subversives" was to be furnished to the CIA and the State Department, and Bureau Field Offices were told to recommend the "extent of foreign investigation" required. (FBI Manual of Instructions, Section 87, p. 33a, revised 4/15/63.)

[15] For example, Reports on the ABM debate discussed on pp. 257–258.

[16] Memorandum from D. W. Bacon to Director, FBI, 8/8/69.

The FBI, perceiving that SSS would "deal a blow to dissident elements," [17] decided to supply reports relating to this broad category of individuals and organizations.

The FBI did not select the reports it forwarded on the basis of the presence of a probable tax violation, but on the basis of the political and ideological criteria IRS had supplied; yet the furnishing of the report resulted in establishment of an SSS file and, subject to resource limitations, to a review of possible tax liability.[18] Among the other lists of "extremists," "subversives" and dissidents SSS received was a list of 2,300 organizations the FBI categorized as "Old Left," "New Left," and "Right Wing." [19]

One reason for the Bureau's widespread dissemination of intelligence throughout the Executive branch was recalled by a former FBI official. In the late 1940s a sensitive espionage case involved a high government official. At that time the FBI held such information "very tightly," as it had during World War II. However, one item of information that "became rather significant" had allegedly "not been disseminated to the White House or the Secretary of State."

> Mr. Hoover was criticized for that, and frankly, he never forgot it. From then on, you might say, the policy was disseminate, disseminate, disseminate.[20]

This testimony illustrates the dilemma of an agency which was blamed for inadequate dissemination, but never criticized for too much dissemination. In practice, this dilemma was resolved by passing on any information "which in any way even remotely suggested that there was a responsibility for another agency." [21]

The following are examples of excessive dissemination, drawn from a random sample of materials in FBI headquarters files:

—In 1969 the FBI disseminated to Army and Air Force intelligence, Secret Service, and the IDIU a report on a Black Student Union; the report which discussed "a tea" sponsored by the group to develop faculty-student "dialogue" as a junior college and the plans of the college to establish a course on "The History of the American Negro." There was no indication of violence whatsoever. Dissemination to the military intelligence agencies and Secret Service took place both at the field level and at headquarters in Washington, D.C. The information came from college officials.[22]

—In 1970 the FBI disseminated to military intelligence and the Secret Service (both locally and at Headquarters), as well as to the Justice Department (IDIU, Internal Security Division, and Civil Rights Division) a report received from a local police intelligence unit on the picketing of a local Industries of the Blind plant by "blind black workers" who were on strike. The sixteen-page report included a copy of a handbill distributed at a United Church of Christ announc-

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[17] FBI memorandum from D. J. Brennan, Jr., to W. C. Sullivan, 8/15/69.
[18] SSS Bi-weekly Reports, 6/15/70; from Donald Bacon, 9/15/75 pp. 91–05.
[19] SSS Bi-weekly Report, 8/29/69.
[20] Former FBI liaison with CIA deposition, 9/22/75, pp. 16–17.
[21] Former FBI liaison with CIA deposition, 9/22/75, pp. 16–17; memorandum from Attorney General Tom Clark to J. Edgar Hoover, 12/5/47.
[22] Memorandum from Tampa Field Office to FBI Headquarters, 5/29/69.

ing a meeting at the church to support the strike, as well as copies of "leaflets that had been distributed by the blind workers." The only hint of violence in this report was the opinion of a local police intelligence officer that "young black militants," who supported the strike by urging blacks to boycott white-owned stores in the community, might cause "confrontations that might result in violence." [23]

—The FBI dissiminated a report on Dr. Carl McIntyre's American Christian Action Council to the Secret Service in 1972. The cover memorandum to Secret Service indicated that the group fell within the category of the FBI-Secret Service agreement described as "potentially dangerous because of background, emotional instability or activity in groups engaged in activities inimical to U.S." The report itself reflected no "activities inimical to" the country, but only plans to hold peaceful demonstrations. The report also discussed policies and activities of the group unrelated to demonstrations, including plans to enter lawsuits in "school busing" cases, opposition to "Nixon's China trip" and support for a constitutional amendment for "public school prayer." This data came from a Bureau informant.[24]

—In 1966 the FBI disseminated to the Army, Navy, and Air Force intelligence divisions, to the Secret Service (locally and at Headquarters), to the Justice Department and to the State Department a ten-page report on a "Free University." The report described in detail the courses offered, including such subjects as "Modern Film," "Workshop on Art and Values," "Contemporary Music," "Poetry Now," and "Autobiography and the Image of Self." Over thirty "associates" were listed by name, although only one was identified as having "subversive connections" (and his course had been "dropped because not enough students had registered.") Others were identified as "involved in Vietnam protest activities" or as being known to officials of a nearby established university as "problem people." The information came from several FBI informants and a confidential source.[25]

—In 1966 the FBI disseminated to "appropriate federal and local authorities," including military intelligence, Secret Service, the Department of State and Justice, and a campus security officers (who was a former FBI agent) a report on a group formed for "discussion on Vietnam." The "controlling influence" on the organization was said to be "the local Friends Meeting." Only one person characterized as "subversive" was active in the group. The report was devoted to describing a "speak out" demonstration attended by approximately 300 persons on a university campus. The gathering was entirely peaceful and included "speakers who supported U.S. policies in Viet Nam." The data came from two Bureau informants.[26]

—In 1969 the FBI disseminated reports to the White House, the CIA, the State Department, the three military intelligence agencies, Secret Service, the IDIU, the Attorney General, the Deputy Attorney General, and the Internal Security and Civil Rights Divisions on a meeting sponsored by a coalition of citizens concerned about the Anti-

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[23] Memorandum from Charlotte Field Office to FBI Headquarters, 12/10/70.

[24] Letter from Acting Director, FBI, to Director, United States Secret Service, 5/25/72.

[25] Memorandum from Detroit Field Office, to FBI Headquarters, 4/15/66.

[26] Memorandum from Springfield Field Office to FBI Headquarters, 7/5/66.

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Ballistic Missile. The only indication of "subversive" influence was that one woman married to a Communist was assisting in publicity work for the meeting. The reports described (from reliable FBI sources) the speakers, pro and con, including prominent scientists, academics, and a Defense Department spokesman.[27]

—In 1974 the FBI disseminated to the State Department, the Defense Intelligence Agency, the Secret Service, the Internal Security Division, and the Civil Disturbance Unit (formerly IDIU), extensive reports on a national conference on amnesty for war resisters. One of the participants had "recently organized [a] nonviolent protest demonstration" during a visit by President Ford, two others were identified as draft evaders, and the Vietnam Veterans Against the War were active at the conference. But the report went much further to describe—based on information from FBI informants—the activities of religious, civil liberties, and student groups, as well as "families of men killed in Vietnam" and congressional staff aides.[28]

—In 1974 the FBI disseminated a report on a peaceful vigil in the vicinity of the Soviet Embassy in support of the rights of Soviet Jews, not just to the Secret Service and the Justice Department's Civil Disturbance Unit, but also to the CIA and the State Department.[29]

—In 1972 the FBI disseminated a report to the CIA, Army and Navy intelligence, and an un-named "U.S. Government agency which conducts security-type investigations" in West Germany (apparently a military intelligence agency). The latter agency had asked the Bureau for information about an antiwar reservist group and a project to furnish "legal advice to GI's and veterans." The report described not only the reservists group, but also "a group dedicated to giving free legal aid to servicemen" and "an antiwar political group" which endorsed "political candidates for office who have a solid peace position and a favorable chance of being elected." The three groups "planned to share offices." This data came from a Bureau informant.[30]

The FBI does have an obligation to disseminate to local law enforcement agencies information about crimes within their jurisdiction. Nevertheless, there has been improper dissemination to local police under at least two Bureau programs. Such dissemination occurred under COINTELPRO, as part of the FBI's effort to discredit individuals or disrupt groups.[31] Others were in response to local police requests for "public source" information relating to "subversive matters." [32] Experienced police officials confirmed that the term

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[27] Memorandum from Washington Field Office to FBI Headquarters, 5/28/69; memorandum from Alexandria Field Office to FBI Headquarters, 6/3/69.

[28] Memorandum from Louisville Field Office to FBI Headquarters, 11/14/74, 11/15/74, 11/20/74.

[29] Memorandum from Washington Field Office to FBI Headquarters, 6/28/74.

[30] Memorandum from Legal Attache, Bonn, to FBI Headquarters, 1/11/72; memorandum from Boston Field Office to FBI Headquarters, 5/4/72.

[31] See COINTELPRO report: Sec. IV, for examples of FBI dissemination to local police of data on trivial offenses for the purpose of disruption.

[32] The FBI responds to such requests with "a blind memorandum" upon the condition that the Bureau's "identity as source of the information must be kept strictly confidential." Bureau regulations do not link this procedure to any specific criminal law enforcement function. (FBI Manual of Rules and Regulations, Part II, Section 5, p. 7.)

"subversive" is so broad that it inevitably leads to dissemination about political beliefs.[33]

Other executive agencies have also engaged in excessive dissemination. The Justice Department's Inter-Division Information Unit (IDIU) sent its computerized data to the CIA, in order that the CIA could check its records on foreign travel of American dissidents.[34] The IDIU sent the same material to the Internal Revenue Service's Special Service Staff, which used the information as part of its program for initiating tax audits.[35] The Internal Revenue Service itself disseminated tax returns or related tax information to the CIA, the FBI, and the Justice Department's Internal Security Division (which also made requests on behalf of the FBI), without ascertaining whether there was a proper basis for the request or the purpose for which the information would be used.[36]

Subfinding (b)

Excessive dissemination has sometimes contributed to the inefficiency of the intelligence process itself.

The dissemination of large amounts of relatively useless or totally irrelevant information has reduced the efficiency of the intelligence process. It has made it difficult for decision-makers to weigh the importance of reports.[37] Agencies such as the FBI have collected intelligence, not because of its own needs or desires, or because it had been requested to do so, but because the data was assumed to be of value to someone else. Units established to screen and evaluate intelligence have encouraged, rather than reduced, further dissemination.

In some instances the FBI has disseminated information to local police in a manner that was counterproductive to effective law enforcement. One former police chief has described how the Bureau, under "pressure" from the White House to prepare for a specific demonstration, "passed on information in such a way that it was totally useless" because it was not "evaluated" and thus exaggerated the dangers.[38] The need for prior evaluation of the significance of raw intelligence has not been fully recognized in the Bureau's policy for dissemination of data on protest demonstrations.[39]

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[33] Testimony of James F. Ahern (former New Haven police chief), Robert diGrazia (Boston chief of police), and Patrick V. Murphy (former New York police commissioner and President of the Police Foundation), 1/20/76, p. 44. These experienced law enforcement officials stated that local police do not need information from the FBI about "political beliefs."

[34] See CHAOS Report: Section III.

[35] See IRS Report: Section, "SSS."

[36] See IRS Report: Section, "Dissemination."

[37] On at least one occasion, Justice Department officials expressed concern that they had received a report from the FBI on an incident and then a second report from Army intelligence which appeared to confirm the Bureau's information, but the Army's report turned out to have been based on the FBI's information. This led to a Justice Department request that the Army "screen" its intelligence and send "only key items." (Memorandum for the Record General Counsel Robert E. Jordan to Under Secretary of the Army David McGiffert, 1/10/68.)

[38] Ahern, 1/20/76, p. 4.

[39] The FBI had adhered across-the-board to the position that its reports do not contain "conclusions," and Bureau rules have permitted the dissemination of data from "sources known to be unreliable" so long as "good judgment" is used. It has been up to the recipient agencies "to intelligently evaluate the information" on the basis of "descriptive information" about the Bureau's sources. (FBI Man-

(Continued)

The impediments to accurate intelligence collection have been augmented by the dissemination practices of some local law enforcement agencies. An example is the report on the Chicago Police Department's Security Section, which has been described as having passed "inherently inaccurate and distortive data" to federal intelligence agencies.[40] The General Accounting Office has confirmed that this is a general problem.[41] While the Committee has not examined local law enforcement intelligence, the dissemination practices of such agencies require as much careful control as federal agencies.[42]

The assumption that some other agency might need information has not only produced excessive dissemination, but has also served as a specific rationale for collection of intelligence that was not otherwise within an agency's jurisdiction. The best example is the FBI's collection of intelligence on "general racial matters" for the military.[43]

One of the ironies in the recent history of domestic intelligence was that the Justice Department's IDIU, which was set up to collate and evaluate the massive amounts of data flowing to the Justice Department from the FBI, contributed to even more extensive collection and dissemination.[44] The IDIU encouraged numerous federal agencies

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(Continued)
ual of Rules and Regulations, Part II, Section 5) Thus the FBI has not adequately distinguished between situations where evaluation is or is not necessary. More than just "descriptive information" about FBI sources is needed to help recipients of data on possible violent protest demonstration understand the likelihood of actual disorders.

[40] See Part II, p. 78.

[41] The GAO has ranked the types of sources of information relied upon by the FBI in beginning domestic intelligence investigations according to whether the data initially supplied were "hard," "medium," or "soft." According to the GAO, police and other state and local agencies were found to have provided the lowest proportion of "hard" information and the highest proportion of "soft" information. (GAO Report, p. 106).

[42] Two major cities have made efforts recently to establish standards for police intelligence activities. (Los Angeles Police Department, Public Disorder Intelligence Division: Standards and Procedures, 4/10/75; New York City Police Department. Procedures: Public Security Activities of the Intelligence Division, House Internal Security Committee, Hearings, Domestic Intelligence Operations for Internal Security Purposes, 1974.)

[43] The FBI Manual cited the needs of the military as a basis for its intelligence-gathering on "general racial matters." The Manual stated that the Bureau did not itself have "investigative jurisdiction over such general racial matters," but that its "intelligence function" included advising "appropriate Government agencies" of information about "proposed or actual activities of individuals, officials, committees, legislatures, organizations, etc., in the racial field." The Manual based "Federal jurisdiction" on the military's responsibility:

"Insofar as Federal jurisdiction in general racial matters is concerned, U.S. Army regulations place responsibility upon the Army to keep advised of any developments of a civil disturbance nature which may require the rendering of assistance to civil authorities or the intervention of federal troops. OSI (Air Force) and ONI (Navy) have a collateral responsibility under Army in such matters and copies of pertinent documents disseminated to Army concerning such matters should be furnished to OSI and ONI." (1960 FBI Manual Section 122, pp. 5–6)

[44] For example, in addition to containing the names of known activists, the IDIU printouts supplied to IRS's SSS also contained the names of many prominent citizens whom the Justice Department thought could be of assistance in quelling a civil disturbance in a particular locality should one occur. SSS personnel were unaware that the IDIU printout contained the names of these persons and established files indiscriminately on them.

(including many without regular investigative functions) to disseminate information to it about "organizations and individuals" who might "instigate" or "prevent" civil disorders.[45]

Subfinding (c)

Under the federal employee security program, unnecessary information about the political beliefs and associations of prospective government employees has been disseminated.

For nearly thirty years the federal employee security program has required a "national agency check" of the files of several government agencies, including the FBI, the Civil Service Commission, and military intelligence, on prospective employees.[46] Although there was often no information to report, federal agencies received "name check" reports on all candidates for employment. This appears to have been the single largest source of regular dissemination of data in intelligence files.

These name check reports have provided information from intelligence files not only about possible criminal activity or personal weaknesses of the individual, but also about lawful political activity and association. Until recently the Executive Order on employee security required reports on any "association" with a person or group supporting "subversive" views. These reports have been required for every federal employee, regardless of whether he or she holds a sensitive position or has access to classified information.[47]

It has been the policy of the FBI, and presumably other agencies as well, to disseminate via name check reports any information in its files—no matter how old or how unreliable—which might relate to the standards of the Executive Order.[48] The current criteria have been substantially narrowed: the basic standards for reporting are group membership and potential criminal conduct.[49] However, the Justice Department has advised the FBI that "it is not possible to set definite parameters" for organizations and that the Bureau should include those with a "potential" for meeting the criteria.[50] The FBI does not determine whether or not the information it furnishes is decisive under these standards. Departmental instructions state:

> It is not the Bureau's responsibility to determine whether the information is or is not of importance to the particular

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[45] Attorney General Clark to Maroney, et al, 11/9/67.

[46] Executive Order 10450, Section 3(a). For a discussion of the origins and application of this order, pp. 42–44.

[47] Executive Order 10450, Section 8(a)(5).

[48] Memorandum from FBI to Senate Select Committee, 3/3/76.

[49] The current criteria are: "Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means." (Executive Order 11785, Section 3, June 4, 1974.) This order also abolished the "Attorney General's list."

[50] Memorandum from Assistant Attorney General Glen E. Pommerening to FBI Director Clarence Kelley, 11/1/74.

> agency in the carrying out of its current activities and responsibilities and whether or not any action is taken by the department or agency is not, of course, a principal concern of the Bureau.[51]

The FBI itself has expressed misgivings about the breadth of its responsibilities under the employee security program. It has continued to seek "clarification" from the Justice Department, and it has pointed out that there have been no "adverse actions" taken against current or prospective Federal employees under the loyalty and security provisions of the Executive Order "for several years." This has been due to the fact "that difficulties of proof imposed by the courts in loyalty and security cases have proved almost insurmountable." [52]

The employee security program has served an essential function in full background investigation and name checks for those having access to classified information. But its extension to vaguely-defined "subversives" in nonsensitive positions has gone beyond the Government's proper need for information on the suitability of persons for employment.[53]

Subfinding (d)

The FBI, which has been the "clearinghouse" for all domestic intelligence data, maintains in readily accessible files sensitive and derogatory personal information not relevant to any investigation, as well as information which was improperly or illegally obtained.

In recent years, the Secret Service, military intelligence, and other agencies have instituted significant programs for the destruction or purging of useless information.[54] However, the FBI has retained its vast general files, accumulated over the years under its duty to serve as a "clearinghouse" for domestic intelligence data.[55] There are over 6,500,000 files at FBI headquarters; and the data is retrievable through a general index consisting of over 58,000,000 index cards. Each Bureau Field Office has substantial additional information in its files. Domestic intelligence information included in the general index is described by the FBI as:

> associates and relatives of the subject; members of organizations under investigation or determined to be possible subver-

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[51] Letter from Attorney General Tom Clark to J. Edgar Hoover, 12/5/47. The FBI advises that it considers this directive still to be in effect. (Memorandum from FBI to Select Committee, 3/3/76.)

[52] Letter from Kelley to Pommerening, 12/11/74. The FBI has advised that federal employees are now evaluated according to "suitability" rather than "loyalty and security" criteria. (Memorandum from FBI to Select Committee, 3/3/76.)

[53] According to a 1974 Bureau memorandum and a confirming Justice Department memorandum, the purpose is to provide "information concerning possible subversive infiltration into the Executive Branch of Government." (Kelley to Pommerening, 8/14/74; Pommerening to Kelley, 8/26/74.) As indicated in the Committee's finding on overbreadth, the concept "subversion" is so vague and flexible as to invite excesses.

[54] Secret Service practices are described in *Review of Secret Service Protective Measures*, Hearings before the Senate Committee on Appropriations, 94th Cong., 1st Sess. (1975), p. 16. Destruction of Army intelligence files is discussed in Report on Military Surveillance.

[55] For a discussion or the origins of this function, see p. 23.

sive; individuals contributing funds to subversive-type activity; subversive or seditious publications; writers of articles in subversive or seditious publications; bookstores specializing in subversive-type publications and related types of information.[56]

The Committee has found that there are massive amounts of irrelevant and trivial information in these files.[57] The FBI has kept such data in its filing system on the theory that they might be useful someday in the future to solve crimes, for employee background checks, to evaluate the reliability of the source, or to "answer questions or challenges" about the Bureau's conduct.[58]

The FBI has recently issued instructions to its Field Offices to take greater care in recording domestic intelligence information in its files. They are to exercise "judgment" as to whether or not the activity is "pertinent" to the Bureau's "legitimate investigative interest."[59] Nevertheless, current policies still allow the indexing of the names of persons who are not the subject of investigation but just attend meetings of a group under investigation.[60]

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[56] Memorandum from FBI to Senate Select Committee, 5/22/75.

[57] Current FBI policies modify past practice with respect to the indexing of unsolicited allegations, including those of "a personal nature," not requiring "investigative action." The Bureau no longer includes in its name index the name of the person about whom the information is volunteered where the Bureau has "no legitimate investigative interest." In the case of an unsolicited letter, for example, the name of the sender only is included in the index. The letter itself is also retained so the FBI "can retrieve" it via the index reference to the sender "should an occasion arise in the future when we need to refer back to it." (Memorandum from FBI Headquarters to all SACs, 11/10/75.)

[58] Memorandum from FBI to Select Committee, 7/21/75. This memorandum states that the Bureau has adopted, under regulations of the National Archives, a program for destroying files which "no longer have contemporary value." The FBI has not included within this program most of the investigative and intelligence information in its files dating back as far as 1939.

[59] Memorandum from FBI Headquarters to all SACs, 1/27/76. The Field Offices were given the following specific guidance:

"For example, the statement of a local leader of the Ku Klux Klan in which he advocates regular attendance at church would be merely an exercise of his right to free speech and, hence, maintenance of such a record would be prohibited. On the other hand, should this same individual stand up before a gathering and advocate the use of violence in furthering the organization's objectives, this obviously would be pertinent to our investigation."

Bureau headquarters recognized that these were "extreme" examples and that "problems" were created in "those instances which are in the middle and which are not so clear." Thus, FBI agents were encouraged to consult Headquarters "to resolve any question concerning a specific problem."

[60] One Field Office has described regular Bureau procedures as follows:

"[Our] informants, after attending meetings of these organizations [under investigation], usually submit reports in which they describe briefly the activities and discussions which took place as well as listing those members and non-members in attendance at such meetings. Copies of these informant reports are disseminated to various individuals' files *and the names of those in attendance where no individuals file exists, are indexed* to the organization's file." (Memorandum from SAC to FBI Headquarters, 12/1/75). [Emphasis added.]

FBI headquarters did not indicate that this practice was outside the "scope" of authorized "law enforcement activity." It is considered "pertinent" to the investigation "to maintain records concerning membership, public utterings, and/or other activities" of an organization under investigation. (Memorandum from FBI Headquarters to all SACs, 1/27/76.)

Finally, there is information in FBI files which was collected by illegal or improper means. It ranges from the fruits of warrantless electronic surveillance, mail openings, and surreptitious entries, to the results of sweeping intelligence investigations which collected data about the lawful political activities and personal lives of Americans. Where such intelligence remain in the name-indexed files, it can be retrieved and disseminated along with other information, thus continuing indefinitely the potential for compounding the initial intrusion into constitutionally protected areas.

G. DEFICIENCIES IN CONTROL AND ACCOUNTABILITY

Major Finding

The Committee finds that those responsible for overseeing, supervising, and controlling domestic activities of the intelligence community, although often unaware of details of the excesses described in this report, made those excesses possible by delegating broad authority without establishing adequate guidelines and procedural checks; by failing to monitor and coordinate sufficiently the activities of the agencies under their charge; by failing to inquire further after receiving indications that improper activities may have been occurring; by exhibiting a reluctance to know about secret details of programs; and sometimes by requesting intelligence agencies to engage in questionable practices. On numerous occasions, intelligence agencies have, by concealment, misrepresentation, or partial disclosure, hidden improper activities from those to whom they owed a duty of disclosure. But such deceit and the improper practices which it concealed would not have been possible to such a degree if senior officials of the Executive Branch and Congress had clearly allocated responsibility and imposed requirements for reporting and obtaining prior approval for activities, and had insisted on adherence to those requirements.

Subfindings

(a) Presidents have given intelligence agencies firm orders to collect information concerning "subversive activities" of American citizens, but have failed until recently to define the limits of domestic intelligence, to provide safeguards for the rights of American citizens, or to coordinate and control the ever-expanding intelligence efforts by an increasing number of agencies.

(b) Attorneys General have permitted and even encouraged the FBI to engage in domestic intelligence activities and to use a wide range of intrusive investigative techniques—such as wiretaps, microphones, and informants—but have failed until recently to supervise or establish limits on these activities or techniques by issuing adequate safeguards, guidelines, or procedures for review.

(c) Presidents, White House officials, and Attorneys General have requested and received domestic political intelligence, thereby contributing to and profiting from the abuses of domestic intelligence and setting a bad example for their subordinates.

(d) Presidents, Attorneys General, and other Cabinet officers have neglected until recently to make inquiries in the face of clear indications that intelligence agencies were engaging in improper domestic activities.

(e) Congress, which has the authority to place restraints on domestic intelligence activities through legislation, appropriations, and

oversight committees, has not effectively asserted its responsibilities until recently. It has failed to define the scope of domestic intelligence activities or intelligence collection techniques, to uncover excesses, or to propose legislative solutions. Some of its members have failed to object to improper activities of which they were aware and have prodded agencies into questionable activities.

(f) Intelligence agencies have often undertaken programs without authorization with insufficient authorization, or in disregard of express orders.

(g) The weakness of the system of accountability and control can be seen in the fact that many illegal or abusive domestic intelligence operations were terminated only after they had been exposed or threatened with exposure by Congress or the news media.

Elaboration of Findings

The Committee has found excesses committed by intelligence agencies—lawless and improper behavior, intervention in the democratic process, overbroad intelligence targeting and collection, and the use of covert techniques to discredit and "neutralize" persons and groups defined as enemies by the agencies. But responsibility for those acts does not fall solely on the intelligence agencies which committed them. Systematic excesses would not have occurred if lines of authority had been clearly defined; if procedures for reporting and review had been established; and if those responsible for supervising the intelligence community had properly discharged their duties.

The pressure of events and the widespread confidence in the FBI help to explain the deficiencies in command and authorization discovered by the Committee. Most of the activities examined in this report occurred during periods of foreign or domestic crisis. There was substantial support from the public and all branches of government for some of the central objectives of domestic intelligence policy, including the search for "Fifth Columnists" before World War II; the desire to identify communist "influence" in the Cold War atmosphere of the 1950s; the demand for action against Klan violence in the early 1960s; and the reaction to violent racial disturbances and anti-Vietnam war activities in the late 1960s and early 1970s. It was in this heated environment that President and Attorneys General ordered the FBI to investigate "subversive activities". Further, the Bureau's reputation for effectiveness and professionalism, and Director Hoover's ability to cultivate political support and to inspire apprehension, played a significant role in shaping the relationship between the FBI and the rest of the Government.

With only a few exceptions, the domestic intelligence activities reviewed by the Committee were properly authorized *within* the intelligence agencies. The FBI epitomizes a smoothly functioning military structure: activities of agents are closedly supervised; programs are authorized only after they have traveled a well-defined bureaucratic circuit; and virtually all activities—ranging from high-level policy considerations to the minutia of daily reports from field agencies—are reduced to writing. These characteristics are commendable. An efficient law enforcement and intelligence-gathering machine, acting consistently with law, can greatly benefit the nation. However, when used for wrongful purposes, this efficiency can pose a grave danger.

It appears that many specific abuses were not known by the Attorney General, the President, or other Cabinet-level officials directly responsible for supervising domestic intelligence activities. But whether or not particular activities were authorized by a President or Attorney General, those individuals must—as the chief executive and the principal law enforcement officer of the United States Government—bear ultimate responsibility for the activities of executive agencies under their command. The President and his Cabinet officers have a duty to determine the nature of activities engaged in by executive agencies and to prevent undesired activities from taking place. This duty is particularly compelling when responsible officials have reason to believe that undesirable activity is occurring, as has often been the case in the context of domestic intelligence.

The Committee's inquiry has revealed a pattern of reckless disregard of activities that threatened our Constitutional system. Intelligence agencies were ordered to investigate "subversive activities," and were then usually left to determine for themselves which activities were "subversive" and how those activities should be investigated. Intelligence agencies were told they could use investigative techniques—wiretaps, microphones, informants—that permitted them to pry into the most valued areas of privacy and were then given in many cases the unregulated authority to determine when to use those techniques and how long to continue them. Intelligence agencies were encouraged to gather "pure intelligence," which was put to political use by public officials outside of those agencies. This was possibly because Congress had failed to pass laws limiting the areas into which intelligence agencies could legally inquire and the information they could disseminate.

Improper acts were often intentionally concealed from the Government officials responsible for supervising the intelligence agencies, or undertaken without express authority. Such behavior is inexcusable. But equally inexcusable is the absence of executive and congressional oversight that engendered an atmosphere in which the heads of those agencies believed they could conceal activities from their superiors. Attorney General Levi's recent guidelines and the recommendations of this Committee are intended to provide the necessary guidance.

Whether or not the responsible Government officials knew about improper intelligence activities, and even if the agency heads failed in their duty of full disclosure, it still follows that Presidents and the appropriate Cabinet officials *should* have known about those activities. This is a demanding standard, but one that must be imposed. The future of democracy rests upon such accountability.

Subfinding (a)

Presidents have given intelligence agencies firm orders to collect information concerning "subversive activities" of American citizens, but have failed until recently to define the limits of domestic intelligence, to provide safeguards for the rights of American citizens, or to coordinate and control the ever-expanding intelligence efforts by an increasing number of agencies.

As emphasized throughout this report, domestic intelligence activities have been undertaken pursuant to mandates from the Executive branch, generally issued during times of war or domestic crisis. The

directives of Presidents Roosevelt, Truman, and Eisenhower to investigate "subversive activities," or other equally ill-defined targets, were echoed in various orders from Attorneys General, who themselves encouraged the FBI to undertake domestic intelligence activities with vague but vigorous commands.

Neither Presidents nor their chief legal officers, the Attorneys General, have defined the "subversive activities" which may be investigated or provided guidelines to the agencies in determining which individuals or groups were engaging in those activities. No reporting procedures were established to enable Cabinet-level officials or their designees to review the types of targets of domestic investigations and to exercise independent judgment concerning whether such investigations were warranted. No mechanisms were established for monitoring the conduct of domestic investigations or for determining if and when they should be terminated. If Presidents had articulated standards in these areas, or had designated someone to do the job for them, it is possible that many of the abuses described in this report would not have occurred.

Considering the proliferation of agencies engaging in domestic intelligence and the overlapping jurisdictional lines, it is surprising that no President has successfully designated one individual or body to coordinate and supervise the domestic intelligence activities of the various agencies. The half-hearted steps that were taken in that direction appear either to have been abandoned or to have resulted in the concentration of even more power in individual agency heads. For example, in 1949 President Truman attempted to establish a control mechanism—the Interdepartmental Intelligence Conference—to centralize authority for supervising domestic intelligence activities of the FBI and military intelligence agencies in a committee chaired by the Director of the FBI. The Committee reported to the National Security Council, and an NSC staff member was assigned responsibility for internal security.[1] The practical effect of the IIC was apparently to increase the power of the FBI Director and to remove control further from the Cabinet level. In 1962, the functions of the IIC were transferred to the Justice Department, and the Attorney General was put in nominal charge of domestic intelligence.[2] While in theory supervision resided in the Internal Security Division of the Justice Department, that Division deferred in large part to the FBI and provided little oversight.[3] The top two executives of the Internal Security Division were former FBI officials. They

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[1] National Security Council memorandum 17/5, 6/15/49.

[2] National Security Action memorandum 161, 6/9/62.

[3] For example, the FBI continued an investigation of one group in 1964 after the Internal Security Division told the Bureau there was "insufficient evidence" of any legal violations. (Memorandum from Yeagley to Hoover, 3/3/64.) Two years later, an FBI intelligence official suggested that it would be "in the Bureau's best interest to put the Department on record again." The Department approved the FBI's request for permission to continue the investigation even though there had been "no significant changes as to the character and tactics of the organization." The FBI did not request further instructions in this investigation until 1973. (Memorandum from Baumgardner to Sullivan, 7/15/66; memorandum from Yeagley to Hoover, 7/28/66.)

appeared sympathetic to the Bureau, and like the Bureau, emphasized threats of Communist "influence" without mentioning actual results.[4]

Another opportunity to coordinate intelligence collection was missed in 1967, when Attorney General Ramsey Clark established the Interdivisional Intelligence Unit (IDIU) to draw on virtually the entire Federal Government's intelligence collecting capability for information concerning groups and individuals "who may play a role, whether purposefully or not, either in instigating or spreading civil disorders, or in preventing or checking them." [5] In the rush to obtain intelligence, no efforts were made to formulate standards or guidelines for controlling how the intelligence would be collected. In the absence of such guidelines and under pressure for results, the agencies undertook some of the most overly broad programs encountered by the Committee. For example, the FBI's "ghetto" informant program was a direct response to the Attorney General's broad requests for intelligence.

The need for centralized control of domestic intelligence was again given serious consideration during the vigorous demonstrations against the war in Vietnam in 1970. The intelligence community's program for dealing with internal dissent—the Huston Plan—envisioned not only relaxing controls on surveillance techniques, but also coordinating intelligence collection efforts. According to Tom Charles Huston's testimony, the President viewed the suggestion of a coordinating body as the most important contribution of the plan.[8] Although the President quickly revoked his approval for the Huston Plan, the idea of a central domestic intelligence body had taken root. Two months later, with the encouragement of Attorney General John Mitchell, the Intelligence Evaluation Committee was established in the Justice Department. That Committee, like its precursor, the IDIU, compiled and evaluated raw intelligence; it did not exercise supervision.[9]

The growing sophistication of intelligence collection techniques underscores the present need for central control and coordination of domestic intelligence activities. Although the Executive Branch has

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[4] For example, the annual report of Assistant Attorney General J. Walter Yeagley for Fiscal Year 1959 emphasized Communist attempts to wield influence, without pointing out the lack of tangible results:

"Despite the 'thaw,' real or apparent, in the Cold War, and despite [its] losses, the [Communist] Party has continued as an organized force, constantly *seeking to repair* its losses and *to regain* its former position of influence. In a number of fields its activities are directed ostensibly toward laudable objectives, such as the elimination of discrimination by reason of race, low cost housing for the economically underprivileged, and so on. These activities are pursued in large part *as a way of extending* the forces and currents in American life, and *with the hope of being able* to 'move in' on such movements when the time seems propitious." [Emphasis added.] (Annual Report of the Attorney General for Fiscal Year 1959, pp. 247–248.)

The same executives headed the Internal Security Division from 1959 until 1970, through the administrations of five Attorneys General and four Presidents. In 1971 a new Assistant Attorney General for the Internal Security Division, Robert Mardian, actively encouraged FBI surveillance and collaborated with FBI executive William C. Sullivan in transferring the records of the "17" wiretaps from the Bureau to the Nixon White House.

[5] Memorandum from Attorney General Clark to Kevin Maroney, et al., 11/9/67.

[8] Tom Charles Huston deposition, 5/23/75, p. 32.

[9] Staff summary of interview of Colonel Werner E. Michel, 5/12/75.

recognized that need in the past, it has not, until recently, faced up to its responsibilities. President Gerald Ford's joint effort with members of Congress to place further restrictions on wiretaps is a welcome step in the right direction. Congress must act expeditiously in this area.

Subfinding (b)

Attorneys General have permitted and even encouraged the FBI to engage in domestic intelligence activities and to use a wide range of intrusive investigative techniques—such as wiretaps, microphones, and informants—but have failed until recently to supervise or establish limits on these activities or techniques by issuing adequate safeguards, guidelines, or procedures for review.

The Attorney General is the chief law enforcement officer of the United States and the Cabinet-level officer formally in charge of the FBI.[10] The Justice Department, until recently, has failed to issue directives to the FBI articulating the grounds for opening domestic intelligence investigations or the standards to be followed in carrying out those investigations. The Justice Department has neglected to establish machinery for monitoring and supervising the conduct of FBI investigations, for requiring approval of major investigative decisions, and for determining when an investigation should be terminated. Indeed, in 1972 the Attorney General said he did not even know whether the FBI itself had formulated guidelines and standards for domestic intelligence activities, was not aware of the FBI's manual of instructions, and had never reviewed the FBI's internal guidelines.[11]

The Justice Department has frequently levied specific demands on the FBI for domestic intelligence, but has not accompanied these demands with restrictions or guidelines. Examples include the Justice Department's Civil Rights Division's requests for reports on demonstrations in the early 1960's (including coverage of a speech by Governor-elect George Wallace [11a] and coverage of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation [12]) : Attorney General Kennedy's efforts to expand FBI infiltration of the Ku Klux Klan in 1964; [13] Attorney General Clark's sweeping instructions to collect intelligence about civil disorders in 1967; [14] and the Internal Security Division's request for more extensive investigations of campus demonstrations in 1969.[15] While a limited investigation into some of these areas may have been warranted, the improper acts committed in the course of those investigations were possible because no restraints had been imposed.

The Justice Department also cooperated with the FBI in defying the Emergency Detention Act of 1950 by approving the Bureau's Security Index criteria for the investigation of "potentially dangerous"

[10] Despite the formal line of responsibility to the Attorney General, Director J. Edgar Hoover in fact developed an informal channel to the White House. During several administrations beginning with President Franklin Roosevelt the Director and the President circumvented the Justice Department and dealt directly with each other.

[11a] Memorandum from St. John Barrett to Marshall, 6/18/63.

[11a] Memorandum from Director, FBI to Assistant Attorney General Burke Marshall, 12/4/62.

[12] Memorandum from Director, FBI to Assistant Attorney General Burke

[13] Annual Report of the Attorney General for Fiscal Year 1965, pp. 185–186.

[14] Memorandum from Attorney General Clark to Hoover, 9/14/67.

[15] Memorandum from Assistant Attorney General Yeagley to Hoover, 3/3/69.

persons.[16] Even after Congress repealed the Detention Act, the Justice Department allowed the Bureau to continue listing "potentially dangerous" persons on a new Administrative Index. The Department stopped reviewing the names on the FBI's index, and apparently endorsed the FBI's view that the list could, contrary to law, be used for detention purposes in an "emergency."

The FBI's autonomy has been a prominent and long-accepted feature of the Federal bureaucratic terrain. As early as the 1940s the FBI could oppose Justice Department inquiries into its internal affairs by raising the specter of "leaks." [17] The Department acquiesced in the Bureau's claim that it was entitled to withhold its raw files, conceal the identities of informants, and, in a number of cases, refuse to give the Justice Department evidence supporting broad allegations and characterizations. Former Attorney General Katzenbach has pointed out that there were both positive and negative sides to the Bureau's autonomy:

> Keeping the Bureau free from political interference was a powerful argument against efforts by politically appointed officials, whatever their motivations, to gain a greater measure of control over operations of the Bureau.... [Director Hoover also] found great value in his formal position as subordinate to the Attorney General and the fact that the FBI was a part of the Department of Justice. . . . In effect, he was uniquely successful in having it both ways; he was protected from public criticism by having a theoretical superior who took responsibility for his work, and was protected from his suprior by his public reputation.[18]

As a consequence of its autonomy, the Bureau could plan and implement many of the abusive operations described in this report. Former Attorneys General have told the Committee that they would never have permitted the more unsavory aspects of the New Left or Racial COINTELPROs if they had been aware of the Bureau's plans. To the extent that Attorneys General were ignorant of the Bureau's activities, it was the consequence not only of the FBI Director's independent political position, but also of the failure of the Attorneys General to establish procedures for finding out what the Bureau was doing and for permitting an atmosphere to evolve in which Bureau officials believed that they had no duty to report their activities to the Justice Department, and that they could conceal those activities with little risk of exposure.[20]

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[16] Memorandum from Belmont to Ladd, 10/15/52.

[17] Memorandum from Hoover to L. M. C. Smith, Chief, Neutrality Laws Unit, 11/28/40.

[18] Nicholas Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 201.

[20] The Justice Department's investigation of the FBI's COINTELPRO illustrates the reluctance of the Justice Department to interfere in or even inquire about Internal Bureau matters. Although the existence of COINTELPRO was made public in 1971, the Justice Department did not initiate an investigation until 1974. The Department's Committee, headed by Assistant Attorney General Henry Petersen, which conducted the investigation, agreed to use only summaries of documents prepared by the Bureau instead of examining the Bureau documents themselves.

Those summaries were often extremely misleading. For example, one summary stated:

"It was recommended that an anonymous letter be mailed to the leader of the Blackstone Rangers, a black extremist organization in Chicago. The letter would

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Attorneys General have not only neglected to establish procedures for reviewing FBI programs and activities, but they have at the same time granted the FBI authority to employ highly intrusive investigative techniques with inadequate guidelines and review procedures, and in some instances with no external restraints whatsoever. Before 1965, wiretaps required the approval of the Attorney General in advance, but once the Attorney General had authorized wiretap coverage of a subject, the Bureau could continue the surveillance for as long as it judged necessary.

This permissive policy was current in October 1963 when Attorney General Robert Kennedy authorized the FBI to wiretap the phones of Dr. Martin Luther King, Jr. "at his current address or at any future address to which he may move" and to wiretap the New York and Atlanta SCLC offices.[21] Reading the Attorney General's wiretap authorization broadly, the FBI construed Dr. King's "residence" so as to permit wiretaps on three of his hotel rooms and the homes of friends with whom he stayed temporarily.[22] The FBI was still relying on Attorney General Kennedy's initial authorization when it sought reauthorization for the King wiretaps in April 1965 in response to new procedures formulated by Attorney General Katzenbach. Although Attorney General Kennedy's authorizing memorandum in October 1963 said that the FBI should provide him with an evaluation of the wiretaps after 60 days, he failed to complain when the FBI neglected to send him the evaluation. Apparently the Attorney General never mentioned the wiretaps to the FBI again, even though he received FBI reports from the wiretaps until he resigned in September, 1964.[23]

The Justice Department's policy toward the use of microphones has been even more permissive than for wiretaps. Until 1965, the FBI was free to carry out microphone surveillance in national security cases without first seeking the approval of the Attorney General or notifying him afterward. The total absence of supervision enabled the FBI to hide microphones in Dr. Martin Luther King's hotel rooms for nearly two years for the express purpose of not only determining whether he was being influenced by allegedly communist advisers, but to "attempt" to obtain information about the private "activities

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hopefully drive a wedge between the Blackstone Rangers and the Black Panthers Party. The anonymous letter would indicate that the Black Panther Party in Chicago blamed the leader of the Blackstone Rangers for blocking their programs."

The document from which this summary was derived, however, stated that the Blackstone Rangers were prone to "violent type activity, shooting, and the like." The anonymous letter was to state that "the Panthers blame you for blocking their thing and there's supposed to be a hit out for you." The memorandum concluded that the letter "may intensify the degree of animosity between the two groups" and "lead to reprisals against its leadership." (Memorandum from Chicago Field Office to FBI Headquarters, 1/18/69.)

[21] Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/7/63; memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/18/63.

[22] Letter from FBI to Senate Select Committee, 7/24/75, pp. 4–5.

[23] See M. L. King Report: "Elecrtronic Surveillance of Dr. Martin Luther King and the Christian Leadership Conference." It should be noted, however, that President Kennedy was assassinated a month after the wiretap was installed which may account for Attorney General Kennedy's failure to inquire about the King wiretaps, at least for the first few months.

of Dr. King and his associates" so that Dr. King could be "completely discredited." [24] Attorney General Kennedy was apparently never told about the microphone surveillances of Dr. King, although he did receive reports containing unattributed information from that surveillance from which he might have concluded that microphones were the source.[25]

The Justice Department imposed external control over microphones for the first time in March 1965, when Attorney General Katzenbach applied the same procedures to wiretaps and microphones, requiring not only prior authorization but also formal periodic review.[26] But irregularities were tolerated even with this standard. For example, the FBI has provided the Committee three memoranda from Director Hoover, initialed by Attorney General Katzenbach, as evidence that it informed the Justice Department of its microphone surveillance of Dr. King after the March 1965 policy change. These documents, however, show that Katzenbach was informed about the microphones only after they had already been installed.[27] Such after-the-fact approval was permitted under Katzenbach's procedures.[27a] There is no indication that Katzenbach inquired further after receiving the notice.[28]

The Justice Department condoned, and often encouraged, the FBI's use of informants—the investigative technique with the highest potential for abuse. However, the Justice Department imposed no restrictions on informant activity or reporting, and established no procedures for reviewing the Bureau's decision to use informants in a particular case.

In 1954 the Justice Department entered into an agreement with the CIA in which the CIA was permitted to withhold the names of

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[24] Memorandum from Frederick Baumgardner to William Sullivan, 1/28/64.

[25] The FBI informed the Committee that it has no documents indicating that Attorney General Kennedy was told about the microphones. His associates in the Justice Department testified that they were never told, and they did not believe that the Attorney General had been told about the microphones. (See memorandum from Charles Brennan to William Sullivan, 12/19/66; Courtney Evans testimony, 12/1/75, p. 20; Burke Marshall testimony, 3/3/76, p. 43.)

The question of whether Attorney General Kennedy suspected that the FBI was using microphones to gather information about Dr. King must be viewed in light of the Attorney General's express authorization of wiretaps in the King case on national security grounds, and the FBI's practice—known to the Attorney General—of installing microphones in such national security cases without notifying the Department.

[26] Memorandum from Director, FBI to Attorney General, 3/30/65, p. 2. The Attorney General's policy change occurred during a period of publicity and Congressional inquiry into the FBI's use of electronic surveillance.

[27] Memorandum from Director, FBI to Attorney General, 5/17/65; Memorandum from Director, FBI, to Attorney General, 10/19/65; Memorandum from Director, FBI, to Attorney General, 12/1/65.

[27a] Katzenbach advised Director Hoover in September 1965 that "in emergency situations [wiretaps and microphones] may be used subject to my later ratification." (Memorandum from Katzenbach to Hoover, 9/27/65.) Nevertheless, there is no indication that these microphone surveillances of Dr. King presented "emergency situations."

[28] Katzenbach testified that he could not recall having seen the notices, although he acknowledged the initials on the memoranda as in his handwriting and in the location where he customarily placed his initials. (Katzenbach, 12/3/75, Hearings, Vol. 6, p. 227.)

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employees whom it had determined were "almost certainly guilty of violations of criminal statutes" when the CIA could "devise no charge" under which they could be prosecuted that would not "require revelation of highly classified information." [29] This practice was terminated by the Justice Department in January, 1975.[29a]

Despite the failure of Attorneys General to exercise the supervision that is necessary in the area of domestic intelligence, several Attorneys General have taken steps in the right direction. Of note were Attorney General Nicholas Katzenbach's review procedures for electronic surveillance in 1965; Ramsey Clark's refusal to approve electronic surveillance of domestic intelligence targets and his rejection of repeated requests by the FBI for such surveillance; Acting Deputy Attorney General William Ruckelshaus' inquiries into the Bureau's domestic intelligence program; Deputy Attorney General Laurence Silberman's inquiry into political abuses of the FBI in early 1975; and Attorney General Saxbe's decision to make the Justice Department's COINTELPRO report public.

During the past year, Attorney General Edward H. Levi has exercised welcome leadership by formulating guidelines for FBI investigations; developing legislative proposals requiring a judicial warrant for national security wiretaps and microphones; establishing the Office of Professional Responsibility to inquire into departmental misconduct; initiating investigations of alleged wrongdoing by the FBI; and cooperating with this Committee's requests for documents on FBI intelligence operations.[30] The Justice Department's concern in recent years is a hopeful sign, but long overdue.

Subfinding (c)

Presidents, White House officials, and Attorneys General have requested and received domestic political intelligence, thereby contributing to and profiting from the abuses of domestic intelligence and setting a bad example for their subordinates.

The separate finding on "political abuse" sets forth instances in which the FBI was used by White House officials to gather politically useful information, including data on administration opponents and critics. This misuse of the Bureau's powers by its political superiors necessarily contributed to the atmosphere in which abuses flourished.

If the Bureau's superiors were willing to accept the fruits of excessive intelligence gathering, to authorize electronic surveillance for political purposes, and to receive reports on critics which included intimate details of their personal lives, they could not credibly hold the Bureau to a high ethical standard. If political expediency characterized the decisions of those expected to set limits on the Bureau's conduct, it is not surprising that the FBI considered the principle of expediency endorsed.

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[29] Memorandum from Lawrence Houston to Deputy Attorney General, 3/1/54.

[29a] Memorandum for the Record by General Counsel, CIA, 1/31/75.

[30] The Committee's requests also provided the Department of Justice with the opportunity to see most of these FBI documents for the first time.

Subfinding (d)

Presidents, Attorneys General, and other cabinet officers have neglected, until recently, to make inquiries in the face of clear indications that intelligence agencies were engaging in improper domestic activities.

Executive branch officials contributed to an atmosphere in which excesses were possible by ignoring clear indications of excesses and failing to take corrective measures when directly confronted with improper behavior. The Committee's findings on "Violating and Ignoring the Law" illustrate that several questionable or illegal programs continued after higher officials had learned partial details and failed to ask for additional information, either out of the naive assumption that intelligence agencies would not engage in lawless conduct, or because they preferred not to be informed.[31]

Some of the most disturbing examples of insufficient action in the face of clear danger signals were uncovered in the Committee's investigation of the FBI's program to "neutralize" Dr. Martin Luther King, Jr. as the leader of the civil rights movement. The Bureau informed the Committee that its files contain no evidence that any officials outside of the FBI "were specifically aware of any efforts, steps, or plans or proposals to 'discredit' or 'neutralize' King." [32] The relevant executive branch officials have told the Committee that they were unaware of a general Bureau program to discredit King. Former Attorney General Katzenbach, however, told the Committee:

> Nobody in the Department of Justice connected with Civil Rights could possibly have been unaware of Mr. Hoover's feelings [against Dr. King]. Nobody could have been unaware of the potential for disaster which those feelings embodied. But, given the realities of the situation, I do not believe one could have anticipated the extremes to which it was apparently carried.[34]

The evidence before the Committee confirms that the "potential for disaster" was indeed clear at the time. There is no question that officials in the White House and Justice Department, including President Johnson and Attorney General Katzenbach, knew that the Bureau was taking steps to discredit Dr. King, although they did not know the full extent of the Bureau's efforts.

—In January 1964 the FBI gave Presidential Assistant Walter Jenkins an FBI report unfavorable to Dr. King. According to a contemporaneous FBI memorandum, Jenkins said that he "was of the opinion that the FBI could perform a good service to the country if this matter could somehow be confidentially given to members of the press." Jenkins, in a staff interview, denied having made such a suggestion.[35]

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[31] One cabinet official, when told that the CIA wanted to tell him something secret, replied, "I would rather not know anything about it." The "secret" matter was CIA's illegal mail opening program. (J. Edward Day testimony, 10/22/75, Hearings, Vol. 4, p. 45.)

[32] Letter from FBI to the Senate Select Committee, 11/6/75.

[34] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 209.

[35] Memorandum from Cartha DeLoach to J. Edgar Hoover, 1/14/64; Staff summary of Walter Jenkins Interview, 12/1/75, pp. 1–2. Mr. Jenkins subsequently said that he was unable to testify formally because of illness and has failed to answer written interrogatories submitted to him by the Committee for response under oath.

—In February 1964 a reporter informed the Justice Department that the FBI had offered to "leak" information unfavorable to Dr. King to the press. The Justice Department's Press Chief, Edwin Guthman, asked Cartha DeLoach, the FBI's liaison with the press, about this allegation and DeLoach denied any involvement. The Justice Department took no further action.[36]

—Bill Moyers, an Assistant to President Johnson, testified that he learned sometime in early 1964 that an FBI agent twice offered to play a tape recording for Walter Jenkins that would have been personally embarrassing to Dr. King and that Jenkins refused to listen to the tape on both occasions.[36a] Moyers testified that he never asked the FBI why it had the tape or was offering to play it in the White House.[37] When asked if he had ever questioned the propriety of the FBI's disseminating information of a personal nature about Dr. King within the Government, he replied, "I never questioned it, no." When he was asked if he could recall anyone in the White House ever questioning the propriety of the FBI disseminating this type of material, Moyers testified. "I think . . . there were comments that tended to ridicule the FBI's doing this, but no." [38]

—Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division, testified that sometime in 1964 a reporter told him that the Bureau had offered information unfavorable to Dr. King. Marshall testified that he repeated this allegation to a Bureau official and asked for a report. The Bureau official subsequently informed him "The Director wants you to know that you're a . . . damned liar." [39]

—In November 1964 the Washington Bureau Chief of a national news publication told Attorney General Katzenbach and Assistant Attorney General Marshall that one of his reporters had been approached by the FBI and offered the opportunity to hear some "interesting" tape recordings involving Dr. King. Katzenbach testified that he had been "shocked," and that he and Marshall had informed President Johnson, who "took the matter very seriously" and promised to contact Director Hoover.[40] Neither Marshall nor Katzenbach knew if the President contacted Hoover.[41] Katzenbach testified that, during this same period, he learned of at least one other reporter who had been offered tape recordings by the Bureau, and that he personally confronted DeLoach, who was reported to have made the offers.[42] DeLoach told Katzenbach that he had never made such offers.[43] The only record of this episode in FBI files is a memorandum by DeLoach stating that Moyers had informed him that the newsman was "telling

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[36] Memorandum from John Mohr to Cartha DeLoach, 2/5/65; Edwin Guthman testimony, 3/16/76, pp. 20–23.

[36a] Bill Moyers testimony, 3/2/76, p. 19.

[37] Bill Moyers testimony, 3/2/76, p. 19; staff summary of Bill Moyers interview, 11/24/75.

In an unsworn staff interview, Jenkins denied that he ever received an offer to listen to such tapes. (Staff summary of Walter Jenkins interview, 12/1/75.)

[38] Moyers, 3/2/76, pp. 17–18.

[39] Marshall, 3/8/76, pp. 46–47.

[40] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

[41] Marshall, 3/3/76, p. 43; Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

[42] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

[43] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210. DeLoach testified before the Committee that he did not recall conversations with reporters about tape recordings of Dr. King. (Cartha DeLoach testimony, 11/25/75, p. 156.)

all over town" that the FBI was making allegations concerning Dr. King, and that Moyers had "stated that the President felt that [the newsman] lacked integrity. . . ." [44] Moyers could not recall this episode, but told the Committee that it would be fair to conclude that the President had been upset by the fact that the newsman revealed the Bureau's conduct rather than by the Bureau's conduct itself.[45]

The response of top White House and Justice Department officials to strong indications of wrongdoing by the FBI was clearly inadequate. The Attorney General went no further than complaining to the President and asking a Bureau official if the charges were true. President Johnson apparently not only failed to order the Bureau to stop, but indeed warned it not to deal with certain reporters because they had complained about the Bureau's improper conduct.

In 1968 Attorney General Ramsey Clark asked Director Hoover if he had "any information as to how" facts about Attorney General Kennedy's authorization of the wiretap on Dr. King had leaked to columnists Drew Pearson and Jack Anderson. Clark requested the FBI Director to "undertake whatever investigation you deem feasible to determine how this happened." [45a] Director Hoover's reply, drafted in the office of Cartha DeLoach, expressed "dismay" at the leak and offered no indication of the likely source.[45b]

In fact, DeLoach had prepared a memorandum ten days earlier stating that a middle-level Justice Department official with knowledge of the King wiretap met with him and admitted having "discussed this matter with Drew Pearson." According to this memorandum, DeLoach attempted to persuade the official not to allow the story to be printed because "certain Negro groups would still blame the FBI, whether we were ordered to take such action or not." [45c] Thus, DeLoach and Hoover deliberately misled Attorney General Clark by withholding their knowledge of the source of the "leak."

Subfinding (e)

Congress, which has the authority to place restraints on domestic intelligence activities through legislation, appropriations, and oversight committees, has not effectively asserted its responsibilities until recently. It has failed to define the scope of domestic intelligence activities or intelligence collection techniques, to uncover excesses, or to propose legislative solutions. Some of its members have failed to object to improper activities of which they were aware and have prodded agencies into questionable activities.

Congress, unlike the Executive branch, does not have the function of supervising the day-to-day activities of agencies engaged in domestic

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[44] Memorandum from Cartha DeLoach to John Mohr, 12/1/64.

[45] Moyers, 3/2/76, p. 9.

[45a] Memorandum from Clark to Hoover, 5/27/68. The story was published in the midst of Robert Kennedy's campaign for the Democratic presidential nomination.

[45b] Memorandum from Hoover to Clark, 5/28/68.

[45c] Memorandum from C. D. DeLoach to Mr. Tolson, 5/17/68. Four days later DeLoach had a phone conversation with Jack Anderson in which, according to partment official "had advised him concerning specific information involving an old wire tap on King." (Memorandum from C. D. DeLoach to Mr. Tolson, 5/21/68.) Both of these memoranda were initialed by Hoover.

intelligence. Congress does, however, have the ability through legislation to affect almost every aspect of domestic intelligence activity: to erect the framework for coordinating domestic intelligence activities; to define and limit the types of activities in which executive agencies may engage; to establish the standards for conducting investigations; and to promulgate guidelines for controlling the use of wiretaps, microphones, and informants. Congress could also exercise a great influence over domestic intelligence through its power over the appropriations for intelligence agencies' budgets and through the investigative powers of its committees.

Congress has failed to establish precise standards governing domestic intelligence. No congressional statutes deal with the authority of executive agencies to conduct domestic intelligence operations, or instruct the executive in how to structure and supervise those operations. No statutes address when or under what conditions investigations may be conducted. Congress did not attempt to formulate standards for wiretaps or microphones until 1968, and even then avoided the issue of domestic intelligence wiretaps by allowing an exception for an undefined claim of inherent executive power to conduct domestic security surveillance, which was subsequently held unconstitutional. [45d] No legislative standards have been enacted to govern the use of informants.

Congress has helped shape the environment in which improper intelligence activities were possible. The FBI claims that sweeping provisions in several vague criminal statutes and regulatory measures enacted by Congress provide a basis for much of its domestic intelligence activity.[45e] Congress also added its voice to the strong consensus in favor of governmental action against Communism in the 1950's and domestic dissidents in the 1960's and 1970's.

Congress' failure to define intelligence functions has invited action by the executive. If the top officials of the executive branch are responsible for failing to control the intelligence agencies, that failure is in part due to a lack of guidance from Congress.

During most of the 40-year period covered in this report, congressional committees did not effectively monitor domestic intelligence activities. For example, in 1966, a Senate Judiciary subcommittee undertook an investigation of electronic surveillance and other intrusive techniques by Federal agencies. According to an FBI memorandum, its chairman told a delegation from the FBI that he would make "a commitment that he would in no way embarrass the FBI," and acceded in the FBI's request that the subcommittee refrain from calling FBI witnesses.[46]

[45d] *U.S.* v. *U.S. District Court*, 407 U.S. 297 (1972).

[45e] These include the Smith Act of 1940 and the Voorhis Act of 1941. In addition to reliance on these statutes to buttress its claim of authority for domestic intelligence operations, the FBI has also placed reliance on a Civil War seditious conspiracy statute and a rebellion and insurrection statute passed during the Whiskey Rebellion of the 1790's. FBI Director Clarence Kelley, in a letter to the Attorney General, stated that these later statutes were designed for past centuries, "not the Twentieth Century." (Memorandum from Director, FBI, to Attorney General, Hearings, Vol. 6, Exhibit 53.) The Committee agrees.

[46] Memorandum from DeLoach to Clyde Tolson, 1/21/66.

Another example of the deficiencies in congressional oversight is seen in the House Appropriations Committee's regular approval of the FBI's requests for appropriations without raising objections to the activities described in the Director's testimony and off-the-record briefings. There is no question that members of a House Appropriations subcommittee were aware not only that the Bureau was engaged in broad domestic intelligence investigations, but that it was also employing disruptive tactics against domestic targets.

In 1958, Director Hoover informed the subcommittee that the Bureau had an "intensive program" to "disorganize and disrupt" the Communist Party, that the program had existed "for years" and that Bureau informants were used "as a disruptive tactic." [47] The next year, the Director informed the subcommittee that informants in 12 field offices

> have been carefully briefed to engage in controversial discussions with the Communist Party so as to promote dissention, factionalism and defections from the communist cause. This technique has been extremely successful from a disruptive standpoint.
>
> Under another phase of this program, we have carefully selected 28 items of anticommunist propaganda and have anonymously mailed it to selected communists, carefully concealing the identity of the FBI as its source. More than 2,800 copies of literature have been placed in the hands of active communists.[48]

Hoover described more aggressive "psychological warfare" techniques in 1962:

> During the past year we have caused disruption at large Party meetings, rallies and press conferences through various techniques such as causing the last-minute cancellation of the rental of the hall, packing the audience with anticommunists, arranging adverse publicity in the press and making available embarrassing questions for friendly reporters to ask the Communist Party functionaries.

The Appropriations subcommittee was also told during this briefing that the FBI's operations included exposing and discrediting "communists who are secretly operating in legitimate organizations and employments, such as the Young Men's Christian Association, Boy Scouts, civic groups, and the like." [49]

In 1966 Director Hoover informed the Appropriations subcommittee that the disruptive program had been extended to the Ku Klux Klan.[50]

The present Associate Director of the FBI, Nicholas Callahan, who accompanied Director Hoover during several of his appearances before the Appropriations subcommittee, said that members of the subcom-

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[47] 1958 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

[48] 1959 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

[49] 1962 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

[50] 1966 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

mittee made "no critical comment" about "the Bureau's efforts to neutralize groups and associations." [51]

Subcommittee Chairman John Rooney's statements in a televised interview in 1971 regarding FBI briefings about Dr. Martin Luther King are indicative of the subcommittee's attitude toward the Bureau:

> Representative ROONEY. Now you talk about the F.B.I. leaking something about Martin Luther King. I happen to know all about Martin Luther King, but I have never told anybody.
>
> *Interviewer.* How do you know everything about Martin Luther King?
>
> Representative ROONEY. From the Federal Bureau of Investigation.
>
> *Interviewer.* They've told you—gave you information based on taps or other sources about Martin Luther King.
>
> Representative ROONEY. They did.
>
> *Interviewer.* Is that proper?
>
> Representative ROONEY. Why not? [52]

Former Assistant Attorney General Fred Vinson recalled that in 1967 the Justice Department averaged "fifty letters a week from Congress" demanding that "people like [Stokely] Carmichael be jailed." Vinson said that on one occasion when he was explaining First Amendment limits at a congressional hearing, a Congressman "got so provoked he raised his hand and said, 'to hell with the First Amendment.'" Vinson testified that these incidents fairly characterized "the atmosphere of the time." [53]

The congressional performance has improved, however, in recent years. Subcommittees of the Senate Judiciary Committee have initiated inquiries into Army surveillance of domestic targets and into electronic surveillance by the FBI. House Judiciary Committee subcommittees commissioned a study of the FBI by the General Accounting Office and have inquired into FBI misconduct and surveillance activities. Concurrent with this Committee's investigations, the House Select Committee on Intelligence considered FBI domestic intelligence activities.

Our Constitution envisions Congress as a check on the Executive branch, and gives Congress certain powers for discharging that function. Until recently, Congress has not effectively fulfilled its constitutional role in the area of domestic intelligence. Although the appropriate congressional committees did not always know what intelligence agencies were doing, they could have asked. The Appropriations subcommittee was aware that the FBI was engaging in activities far beyond the mere collection of intelligence, yet it did not inquire into the details of those programs.[54] If Congress had addressed the issues of domestic intelligence and passed regulatory legislation, and if it had probed into the activities of intelligence agencies and required them to

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[51] Memorandum from FBI to Select Committee, 1/12/76.

[52] Interview with Congressman Rooney, NBC News' "First Tuesday," 6/1/71.

[53] Fred Vinson testimony, 1/27/76, p. 34.

[54] Director Hoover appears to have told the subcommittee of the House Appropriations Committee more about COINTELPRO operations and techniques than he told the Justice Department or the White House.

account for their deeds, many of the excesses in this Report might not have occurred.

Subfinding (f)

Intelligence agencies have often undertaken programs without authorization, with insufficient authorization, or in defiance of express orders.

The excesses detailed in this report were due in part to the failure of Congress and the Executive branch to erect a sound framework for domestic intelligence, and in part to the dereliction of responsibility by executive branch officials who were in charge of individual agencies. Yet substantial responsibility lies with officials of the intelligence agencies themselves. They had no justification for initiating major activities without first seeking the express approval of their superiors. The pattern of concealment and partial and misleading disclosures must never again be allowed to occur.

The Committee's investigations have revealed numerous instances in which intelligence agencies have assumed programs or activities were authorized under circumstances where it could not reasonably be inferred that higher officials intended to confer authorization. Sometimes far-reaching domestic programs were initiated without the knowledge or approval of the appropriate official outside of the agencies. Sometimes it was claimed that higher officials had been "notified" of a program after they had been informed only about some aspects of the program, or after the program had been described with vague references and euphemisms, such as "neutralize," that carried different meanings for agency personnel than for uninitiated outsiders. Sometimes notice consisted of references to programs buried in the details of lengthy memoranda; and "authorization" was inferred from the fact that higher officials failed to order the agency to discontinue the program that had been obscurely mentioned.

The Bureau has made no claim of outside authorization for its COINTELPROs against the Socialist Workers Party, Black Nationalists, or New Left adherents. After 1960, its fragile claim for authorization of the COINTELPROs against the Communist Party USA and White Hate Groups was drawn from a series of hints and partial, obscured disclosures to the Attorneys General and the White House.

The first evidence of notification to higher government officials of the FBI's COINTELPRO against the Communist Party USA consists of letters from Director Hoover to President Eisenhower and Attorney General William Rogers in May 1958 informing them that "in August of 1956, this Bureau initiated a program designed to promote disruption within the ranks of the Communist Party (CP) USA." [55] There is no record of any reply to these letters.

Later that same year, Director Hoover told President Eisenhower and his Cabinet:

> To counteract a resurgence of Communist Party influence in the United States, we have a . . . program designed to intensify any confusion and dissatisfaction among its members.

[55] Memorandum from the Director, FBI to the Attorney General, 5/8/58.

> During the past few years, this program has been most effective. Selected informants were briefed and trained to raise controversial issues within the Party. . . . The Internal Revenue Service was furnished names and addresses of Party functionaries who had been active in the underground apparatus . . . ; Anticommunist literature and simulated Party documents were mailed anonymously to carefully chosen members. . . .[56]

The FBI's only claim to having notified the Kennedy Administration about COINTELPRO rests upon a letter written shortly before the inauguration in January 1961 from Director Hoover to Attorney General-designate Robert Kennedy, Deputy Attorney General-designate Byron R. White, and Secretary of State-designate Dean Rusk. One paragraph in the five-page letter stated that the Bureau had a "carefully planned program of counterattack against the CPUSA which keeps it off balance," and which was "carried on from both inside and outside the party organization." The Bureau claimed to have been "successful in preventing communists from seizing control of legitimate mass organizations" and to have "discredited others who were secretly operating inside such organizations." [57] Specific techniques were not mentioned, and no additional notice was provided to the Kennedy Administration. Indeed, when the Kennedy White House formally requested of Hoover a report on "Internal Security Programs," the Director described only the FBI's "investigative program," and made no reference to disruptive activities.[58]

The only claimed notice of the COINTELPRO against the Ku Klux Klan was given after the program had begun and consisted of a partial description buried within a discussion of other subjects. In September 1965, copies of a two-page letter were sent to President Johnson and Attorney General Katzenbach, describing the Bureau's success in solving a number of cases involving racial violence in the South. That report contained a paragraph stating that the Bureau was "seizing every opportunity to disrupt the activities of Klan organizations," and briefly described the exposure of a Klan member's "kickback" scheme involving insurance company premiums.[59] More questionable tactics, such as sending a letter to a Klansman's wife to destroy their marriage, were not mentioned. The Bureau viewed Katzenbach's reply to its letter—which praises the investigative successes which are the focus of the FBI's letter—as constituting authorization for the White Hate COINTELPRO.[60]

The claimed notification to Attorney General Ramsey Clark of the White Hate COINTELPRO consisted of a ten-page memorandum captioned "Ku Klux Klan Investigations—FBI Accomplishments" with a buried reference to Bureau informants "removing" Klan officers and "provoking scandal" within the Klan organization [61] Clark

[56] Excerpt from FBI Director's Briefing of Cabinet, 11/6/58.

[57] Memorandum from Hoover to Attorney General Robert Kennedy, 1/10/61, copies to White and Rusk.

[58] Letter from J. Edgar Hoover to McGeorge Bundy, 7/25/61, and attached I.I.C. Report: "Status of U.S. Internal Security Programs."

[59] Letters from Hoover to Marvin Watson, Special Assistant to the President, and Attorney General Katzenbach, 9/17/65.

[60] Memorandum from Katzenbach to Hoover, 9/3/65.

[61] Memorandum from Hoover to Clark, 12/18/67.

told the Committee that he did not recall reading those phrases or interpreting them as notice that the Bureau was engaging in disruptive tactics [62] Cartha DeLoach, Assistant to the Director during this period, testified that he "distinctly" recalled briefing Attorney General Clark "generally . . . concerning COINTELPRO." [63] Clark denied having been briefed.[64]

The letters and briefings described above, which constitute the Bureau's entire claim to notice and authorization for the CPUSA and White Hate COINTELPROs, failed to mention techniques which risked physical, emotional, or economic harm to their targets. In no case was an Attorney General clearly told the nature and extent of the programs and asked for his approval. In no case was approval expressly given.

Former Attorney General Katzenbach cogently described another misleading form of "authorization" relied on by the Bureau and other intelligence agencies:

> As far as Mr. Hoover was concerned, it was sufficient for the Bureau if at any time any Attorney General had authorized [a particular] activity in any circumstances. In fact, it was often sufficient if any Attorney General had written something which could be construed to authorize it or had been informed in some one of hundreds of memoranda of some facts from which he could conceivably have inferred the possibility of such an activity. Perhaps to a permanent head of a large bureaucracy this seems a reasonable way of proceeding. However, there is simply no way an incoming Cabinet officer can or should be charged with endorsing every decision of his predecessor. . . .[65]

For example, the CPUSA COINTELPRO was substantially described to the Eisenhower Administration, obliquely to the Kennedy Administration designees, but continued—apparently solely on the strength of those assumed authorizations—through the Johnson Administration and into the Nixon Administration. The idea that authority might continue from one administration to the next and that there is no duty to reaffirm authority inhibits responsible decision making. Circumstances may change and judgments may differ. New officials should be given—and should insist upon—the opportunity to review significant programs.

The CIA's mail opening project illustrates an instance in which an intelligence agency apparently received authorization for a limited program and then expanded that program into significant new areas without seeking further authorization. In May 1954, DCI Allen Dulles and Richard Helms, then Chief of Operations in the CIA's Directorate of Plans, briefed Postmaster General Arthur Summerfield about the CIA's New York mail project, which at that time involved only the examination of envelope exteriors. CIA memoranda indicate that Summerfield's approval was obtained for photographing envelope exteriors, but no mention was made of the possibility of mail opening.[66]

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[62] Clark, 12/3/75, Hearings, Vol. 6, p. 235.
[63] DeLoach, 12/3/75, Hearings, Vol. 6, p. 183.
[64] Clark, 12/3/75, Hearings, Vol. 6, p. 232.
[65] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 202.
[66] Memorandum from Richard Helms, Chief of Operations, DDP, to Director of Security, 5/17/54.

The focus of the CIA's project shifted to mail opening sometime during the ensuing year, but the CIA did not return to inform Summerfield and made no attempt to secure his approval for this illegal operation.

Intelligence officers have sometimes withheld information from their superiors and concealed programs to prevent discovery by their superiors. The Bureau apparently ignored the Attorney General's order to stop classifying persons as "dangerous" in 1943; unilaterally decided not to provide the Justice Department with information about communist espionage on at least two occasions "for security reasons;" and withheld similar information from the Presidential Commission investigating the government's security program in 1947.[67] More recently, CIA and NSA concealed from President Richard Nixon their respective mail opening and communications interception programs.

These incidents are not unique. The FBI also concealed its Reserve Index of prominent persons who were not included on the Security Index reviewed by the Justice Department; its other targeting programs against "Rabble Rousers," "Agitators," "Key Activists," and "Key Extremists;" and its use of intrusive mail opening and surrepititious entry techniques. Indeed, the FBI institutionalized its capability to conceal activities from the Justice Department by establishing a regular "Do Not File" procedure, which assured internal control while frustrating external accountability.

Subfinding (g)

The weakness of the system of accountability and control can be seen in the fact that many illegal or abusive domestic intelligence operations were terminated only after they had been exposed or threatened with exposure by Congress or the news media.

The lack of vigorous oversight and internal controls on domestic intelligence activity frequently left the termination of improper programs to the *ad hoc* process of public exposure or threat of exposure by Congress, the press, or private citizens. Less frequently, domestic intelligence projects were terminated solely because of an agency's internal review of impropriety.

The Committee is aware that public exposure can jeopardize legitimate, productive, and costly intelligence programs. We do not condone the extralegal activities which led to the exposure of some questionable operations.

Nevertheless two point emerge from an examination of the termination of numerous domestic intelligence activities: (1) major illegal or improper operations thrived in an atmosphere of secrecy and inadequate executive control; and (2) public airing proved to be the most effective means of terminating or reforming those operations.

Some intelligence officers and Executive branch administrators sought the termination of questionable programs as soon as they became aware of the nature of the operation—the Committee praises their actions. However, too often we have seen that the secrecy that protected illegal or improper activities and the insular nature of the agencies involved prevented intelligence officers from questioning their actions or realizing that they were wrong.

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[67] See Part II, pp. 35–36, 55–56.

There are several noteworthy examples of illegal or abusive domestic intelligence activities which were terminated only after the threat of public exposure:

—The FBI's widesweeping COINTELPRO operations were terminated on April 27, 1971, in response to disclosures about the program in the press.[73]

—IRS payments to confidential informants were suspended in March 1975 as a result of journalistic investigation of Operation Leprechaun.[74]

—The Army's termination of several major domestic intelligence operations, which were clearly overbroad or illegal, came only after the programs were disclosed in the press or were scheduled as the subject of congressional inquiry.[75]

—On one occasion, FBI Director Hoover insisted that electronic surveillance be discontinued prior to his appearance before the House Appropriations Committee so that he could report a relatively small number of wiretaps in place.[76] Contrary to frequent allegations, however, no general pattern of temporary suspensions or terminations during the Director's appearances before the House Appropriations Committee is revealed by Bureau records.

—Following the report of a Presidential committee which had been established in response to news reports in 1967, the CIA terminated its covert relationship with a large number of domestically based organizations, such as academic institutions, student groups, private foundations, and media projects aimed at an international audience.[78]

Other examples of curtailment of domestic intelligence activity in response to the prospect of public exposure include: President Nixon's

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[73] Memorandum from Brennan to Sullivan, 4/27/71; letter from Director, FBI, to all Field Offices, 4/28/71. Even after the termination of COINTELPRO, it was suggested that "counterintelligence action" would be considered "in exceptional instances" so long as there were "tight procedures to insure absolute secrecy" (Sullivan memorandum, 4/27/71; letter from Director, FBI to all Field Offices, 4/28/71.)

[74] See IRS Report: "Operation Leprechaun."

[75] The Army made its first effort to curb its domestic collection of "civil disturbance" intelligence on the political activities of private citizens in June 1970, only after press disclosures about the program which prompted two Congressional committees to schedule hearings on the matter, (Christopher Pyle, "CONUS Intelligence: The Army Watches Civilian Politics" *Washington Monthly*, January 1970.) Despite legal opinions, both from inside and outside the Army, that domestic radio monitoring by the Army Security Agency was illegal, the Army did not move to terminate the program until after the media revealed that the Army Security Agency had monitored radio transmissions during the 1968 Democratic National Convention (Memorandum from Army Assistant Chief of Staff for Intelligence to the Army General Counsel re: UPASA Covert Activities in Civil Disturbance Control Operations.) Department of Defense controls on domestic surveillance were not imposed until March 1971, after NBC News reported that the Army had placed Senator Adlai Stevenson III and Congressman Abner Mikva under surveillance. (NBC News, "First Tuesday", 12/1/70.)

[76] This involved nine of the so-called "17" wiretaps in February 1971. (Report of the Committee on the Judiciary, House of Representatives, 8/20/75, pp. 148, 149.)

[78] This included nine of the so-called "17" wiretaps in February 1971. In response to the storm of public and congressional criticism engendered by a press account of CIA support for a student organization, President Johnson appointed a Committee, chaired by then Under Secretary of State Nicholas Katzenbach, to review government activities that "endanger the integrity and independence" of United States educational and private voluntary organizations which operate abroad. In March 1967, the Committee recommended "that no federal agency shall provide any covert financial assistance or support, direct or

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revocation of approval for the Huston Plan out of concern for the risk of disclosure of the possible illegal actions proposed and the fact that "their sensitivity would likely generate media criticism if they were employed;" [79] J. Edgar Hoover's cessation of the bugging of Dr. Martin Luther King, Jr.'s hotel rooms after the initiation of a Senate investigation chaired by Edward V. Long of Missouri; [80] and the CIA's consideration of suspending mail-opening until the Long inquiry abated and eventual termination of the program "in the Watergate climate." [81] More recently, several questionable domestic intelligence practices have been terminated at least in part as a result of Congressional investigation.[82]

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indirect, to any of the nation's educational or private voluntary organizations." The CIA responded with a major review of such projects.

The question of the nature and extent of the CIA's compliance with the Katzenbach guidelines is discussed in the Committee's Foreign Intelligence Report.

[79] Response by Richard Nixon to Interrogatory Number 17 posed by Senate Select Committee.

[80] On January 7, 1966, in response to Associate Director Tolson's recommendation, Director Hoover "reserve[d] final decision" about whether to discontinue all microphone surveillance of Dr. King "until DeLoach sees [Senator Edward V.] Long." (Memorandum from Sullivan to DeLoach, 1/21/66.) The only occasion on which the FBI Director rejected a recommendation for bugging a hotel room of Dr. King's was January 21, 1966, the same day that Assistant Director DeLoach met with an aide to Senator Long to try to head off the Long Committee's hearings on the subject of FBI "bugs" and taps. (Memorandum from DeLoach to Tolson, 1/21/66.) When DeLoach returned from the meeting, he reported:

"While we have neutralized the threat of being embarrassed by the Long Subcommittee, we have not yet eliminated certain dangers which might be created as a result of newspaper pressure on Long. We therefore must keep on top of this situation at all times." (Memorandum, Executives Conference to the Director, 1/7/66.)

Another possible explanation for Hoover's cessation of the King hotel bugging is found in the impact of a memorandum from the Solicitor General in the Black case which Hoover apparently interpreted as a restriction upon the FBI's authority to conduct microphone surveillance. (Supplemental memorandum for the *United States, U.S.* v. *Black*, submitted by Solicitor General Thurgood Marshall, 7/13/66; Katzenbach, 10/11/75. p. 58.)

[81] In 1965, the Long Subcommittee investigation caused the CIA to consider whether its major mail opening "operations should be partially or fully suspended until the subcommittee's investigations are completed." When the CIA contacted Chief Postal Inspector Henry Montague and learned that he believed that the Long investigation would "soon cool off," it was decided to continue the operation. (Memorandum to the files by "CIA officer." 4/23/65.)

Despite continued apprehensions about the "flap potential" of exposure and repeated recognition of its illegality, the actual termination of the CIA's New York mail-opening project came, according to CIA Office of Security Director Howard Osborn because: "I thought it was illegal and in the Watergate climate we had absolutely no business doing this." (Howard Osborn deposition, 8/28/75, p. 89.) He discussed the matter with William Colby who agreed that the project was illegal and should not be continued, "particularly in a climate of that type." (Osborn deposition, 8/28/75, p. 90.)

[82] Shortly after the Senate Select Committee on Intelligence Activities held hearings on the laxity of the system for disclosure of tax return information to United States attorneys, the practice was changed. In October 1975, U.S. Attorneys requesting tax return information were required by the IRS to provide a sufficient explanation of the need for the information and the intended use to which it would be put to enable IRS to ascertain the validity of the request. Operation SHAMROCK, NSA's program of obtaining millions of international telegrams, was terminated in May 1975, according to a senior NSA official, primarily because it was no longer a valuable source of foreign intelligence and because the Senate Select Committee's investigation of the program had increased the risk of exposure. (Staff summary of "senior NSA official" interview, 9/17/75, p. 3.)

There are several prominent instances of terminations which resulted from an internal review process:

—In August 1973, shortly after taking office, Internal Revenue Service Commissioner Donald Alexander abolished the Special Service Staff upon learning that it was engaged in political intelligence activities which he considered "antithetical to proper tax administration." [83]

—An internal legal review in 1973 prompted the termination of the joint effort by NSA and CIA to monitor United States-South American communications by individuals named on a drug traffic "watch list." [84]

—On May 9, 1973, newly appointed CIA Director James Schlesinger requested from CIA personnel an inventory of all "questionable activities" which the Agency had undertaken. The 694 pages of memoranda received in response to this request—which became known at the CIA as "The Family Jewels"—prompted the termination or limitation of a number of programs which were in violation of the the Agency's mandate, notably the CHAOS project involving intelligence-gathering against American citizens.[85]

—In the early 1960s, the CIA's MKULTRA testing program, which involved surreptitiously administering drugs to unwitting persons,

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[83] Donald Alexander testimony, 10/2/75, Hearings, Vol. 3, p. 8. Alexander testified, however, that in a meeting with IRS administrators on the day after he took office, the SSS was discussed, and "full disclosure" was not made to him. Prior to the Leprechaun revelations, Commissioner Alexander had also initiated a general review of IRS information-gathering and retrieval systems, and he had already suspended certain types of information-gathering due to discovery of vast quantities of non-tax-related material. (Alexander, 10/2/75, Hearings, Vol. 3, pp. 8–10.)

Another termination due to internal review took place at IRS in 1968. The Chief of the Disclosure Branch terminated what he considered the "illegal" provision of tax return information to the FBI by another IRS Division. (IRS Memorandum, D. O. Virdin to Harold Snyder, 5/2/68.) During this same period, the CIA was also obtaining returns in a manner similar to the FBI (though in much smaller numbers), yet no one in the Intelligence Division or elsewhere in the Compliance Division apparently thought to examine that practice in light of the change being made in the practice with respect to the FBI. (Donald O. Virdin testimony, 9/16/75, pp. 69–73.)

[84] The CIA suspended its participation in the program as a result of an opinion by its General Counsel, Lawrence Houston, that the intercepts were illegal. (Memorandum from Houston to Acting Chief of Division, 1/29/73.) Shortly thereafter, NASA reviewed the legality and appropriateness of its own involvement in what was essentially a law enforcement effort by the Bureau of Narcotics and Dangerous Drugs rather than a foreign intelligence program, which is the only authorized province for NSA operations. ("Senior NSA official deposition," 9/16/75, p. 10.) In June 1973 the Director of NSA terminated the drug watch list, several months after the CIA had terminated its own intercept program. NSA's drug watch list activity had been in operation since 1970. (Allen, 10/29/75, Hearings, Vol. 5, p. 23.)

In the fall of 1973, NSA terminated the remainder of its watch list activity, which had involved monitoring communications by individuals targeted for NSA by other agencies including CIA, FBI, and BNDD. In response to the Keith case and to another case which threatened to disclose the existence of the NSA watch list, NSA and the Justice Department had begun to reconsider the propriety of the program. The review process culminated in termination. See NSA Report: Termination of Civil Disturbance Watch List.

[85] Schlesinger described his review of "grey area activities" which were "perhaps legal, perhaps not legal" as a part of "the enhanced effort that came in the wake of Watergate" for oversight of the propriety of Government activities. (Schlesinger testimony. Rockefeller Commission, 5/5/75, pp. 114, 116.) Schlesinger testified that his request for the reporting of "questionable activities" came after

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was "frozen" after the Inspector General questioned the morality and lack of administrative control of the program.[85a]

—Several mail-opening operations were terminated because they lacked sufficient intelligence value, which was often measured in relation to the "flap potential"—or risk of disclosure—of an operation. However, both the CIA and the FBI continued other mail-opening operations after these terminations.[86]

The Committee's examination of the circumstances surrounding terminations of a wide range of improper or illegal domestic intelligence activities clearly points to the need for more effective oversight from outside the agencies. In too many cases, the impetus for the termination of programs of obviously questionable propriety came from the press or the Congress rather than from intelligence agency administrators or their superiors in the Executive Branch. Although there were several laudable instances of termination as a responsible outgrowth of an agency's internal review process, the Committee's record indicates that this process alone is insufficient—intelligence agencies cannot be left to police themselves.

(Continued)
learning that "there was this whole set of relationships" between the CIA and White House "plumber" E. Howard Hunt, Jr., about which Schlesinger had not been briefed completely upon assuming his position. (Schlesinger, Rockefeller Commission testimony, p. 115.) "As a consequence," Schlesinger "insisted that all people come forward" with "anything to do with the Watergate affair" and any other arguably improper or illegal operations. (Schlesinger, Rockefeller Commission, 5/5/75, p. 116.)

[85a] After the Inspector General's survey of the Technical Services Division, he recommended termination of the testing program. (Earman memorandum, 5/5/63.) The program was then suspended pending resolution at the highest levels within the CIA of the issues presented by the program—"the risks of embarrassment to the Agency, coupled with the moral problem." (Memorandum from DDP Helms to DCI McCone, 9/4/65.) In response to the IG Report, DDP Helms recommended to DCI McCone that unwitting testing continue. Helms maintained that the program could be conducted in a "secure and effective manner" and believed it "necessary that the Agency maintain a central role in this activity, keep current on enemy capabilities in the manipulation of human behavior, and maintain an offensive capability." (Memorandum from Helms to DCI McCone, 8/19/63.) The Acting DCI deferred decision on the matter and directed TSD in the meantime to "continue the freeze on unwitting testing." (CIA memorandum to Senate Select Commitee, received 9/4/75.) According to a CIA report to the Select Committee:

"With the destruction of the MKULTRA files in early 1973, it is believed that there are no definitive records in CIA that would record the termination of the program for testing behavioral drugs on unwitting persons. . . . There is no record to our knowledge, that [the] freeze was ever lifted." (CIA memorandum to Senate Select Committee, received 9/4/75.)

Testimony from the CIA officials involved confirmed that the testing was not resumed. (See Foreign and Military Intelligence Report.)

[86] Two FBI mail-opening programs were suspended for security reasons involving changes in local postal personnel and never reinstituted, on the theory that the value of the programs did not justify the risk involved. (Memorandum from San Francisco Field Office to FBI Headquarters, 5/19/66.) The CIA's San Francisco mail-opening project "was terminated since the risk factor outweighed continuing an activity which had already achieved its objectives." (Memorandum to Chief, East Asia Division, June 1973.) The lack of any significant intelligence value to the CIA apparently led to the termination of the New Orleans mail-opening program. (Memorandum from "Identity 13" to Deputy Director of Security, 10/9/57.) Three other programs were terminated because they had produced no valuable counterintelligence information, while diverting manpower needed for other operations.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

The findings which have emerged from our investigation convince us that the Government's domestic intelligence policies and practices require fundamental reform. We have attempted to set out the basic facts; now it is time for Congress to turn its attention to legislating restraints upon intelligence activities which may endanger the constitutional rights of Americans.

The Committee's fundamental conclusion is that intelligence activities have undermined the constitutional rights of citizens and that they have done so primarily because checks and balances designed by the framers of the Constitution to assure accountability have not been applied.

Before examining that conclusion, we make the following observations.

—While nearly all of our findings focus on excesses and things that went wrong, we do not question the need for lawful domestic intelligence. We recognize that certain intelligence activities serve perfectly proper and clearly necessary ends of government. Surely, catching spies and stopping crime, including acts of terrorism, is essential to insure "domestic tranquility" and to "provide for the common defense." Therefore, the power of government to conduct *proper* domestic intelligence activities under effective restraints and controls must be preserved.

—We are aware that the few earlier efforts to limit domestic intelligence activities have proven ineffectual. This pattern reinforces the need for statutory restraints coupled with much more effective oversight from all branches of the Government.

—The crescendo of improper intelligence activity in the latter part of the 1960s and the early 1970s shows what we must watch out for: In time of crisis, the Government will exercise its power to conduct domestic intelligence activities to the fullest extent. The distinction between legal dissent and criminal conduct is easily forgotten. Our job is to recommend means to help ensure that the distinction will always be observed.

—In an era where the technological capability of Government relentlessly increases, we must be wary about the drift toward "big brother government." The potential for abuse is awesome and requires special attention to fashioning restraints which not only cure past problems but anticipate and prevent the future misuse of technology.

—We cannot dismiss what we have found as isolated acts which were limited in time and confined to a few willful men. The failures to obey the law and, in the words of the oath of office, to "preserve, protect, and defend" the Constitution, have occurred repeatedly throughout administrations of both political parties going back four decades.

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—We must acknowledge that the assignment which the Government has given to the intelligence community has, in many ways, been impossible to fulfill. It has been expected to predict or prevent every crisis, respond immediately with information on any question, act to meet all threats, and anticipate the special needs of Presidents. And then it is chastised for its zeal. Certainly, a fair assessment must place a major part of the blame upon the failures of senior executive officials and Congress.

In the final analysis, however, the purpose of this Committee's work is not to allocate blame among individuals. Indeed, to focus on personal culpability may divert attention from the underlying institutional causes and thus may become an excuse for inaction.

Before this investigation, domestic intelligence had never been systematically surveyed. For the first time, the Government's domestic surveillance programs, as they have developed over the past forty years, can be measured against the values which our Constitution seeks to preserve and protect. Based upon our full record, and the findings which we have set forth in Part III above, the Committee concludes that:

> *Domestic Intelligence Activity Has Threatened and Undermined The Constitutional Rights of Americans to Free Speech, Association and Privacy. It Has Done So Primarily Because The Constitutional System for Checking Abuse of Power Has Not Been Applied.*

Our findings and the detailed reports which supplement this volume set forth a massive record of intelligence abuses over the years. Through a vast network of informants, and through the uncontrolled or illegal use of intrusive techniques—ranging from simple theft to sophisticated electronic surveillance—the Government has collected, and then used improperly, huge amounts of information about the private lives, political beliefs and associations of numerous Americans.

Affect Upon Constitutional Rights.—That these abuses have adversely affected the constitutional rights of particular Americans is beyond question. But we believe the harm extends far beyond the citizens directly affected.

Personal privacy is protected because it is essential to liberty and the pursuit of happiness. Our Constitution checks the power of Government for the purpose of protecting the rights of individuals, in order that all our citizens may live in a free and decent society. Unlike totalitarian states, we do not believe that any government has a monopoly on truth.

When Government infringes those rights instead of nurturing and protecting them, the injury spreads far beyond the particular citizens targeted to untold numbers of other Americans who may be intimidated.

Free government depends upon the ability of all its citizens to speak their minds without fear of official sanction. The ability of ordinary people to be heard by their leaders means that they must be free to join in groups in order more effectively to express their grievances. Constitutional safeguards are needed to protect the timid as well as the courageous, the weak as well as the strong. While many Americans have been willing to assert their beliefs in the face of possible govern-

mental reprisals, no citizen should have to weigh his or her desire to express an opinion, or join a group, against the risk of having lawful speech or association used against him.

Persons most intimidated may well not be those at the extremes of the political spectrum, but rather those nearer the middle. Yet voices of moderation are vital to balance public debate and avoid polarization of our society.

The federal government has recently been looked to for answers to nearly every problem. The result has been a vast centralization of power. Such power can be turned against the rights of the people. Many of the restraints imposed by the Constitution were designed to guard against such use of power by the government.

Since the end of World War II, governmental power has been increasingly exercised through a proliferation of federal intelligence programs. The very size of this intelligence system, multiplies the opportunities for misuse.

Exposure of the excesses of this huge structure has been necessary. Americans are now aware of the capability and proven willingness of their Government to collect intelligence about their lawful activities and associations. What some suspected and others feared has turned out to be largely true—vigorous expression of unpopular views, association with dissenting groups, participation in peaceful protest activities, have provoked both government surveillance and retaliation.

Over twenty years ago, Supreme Court Justice Robert Jackson, previously an Attorney General, warned against growth of a centralized power of investigation. Without clear limits, a federal investigative agency would "have enough on enough people" so that "even if it does not elect to prosecute them" the Government would, he wrote, still "find no opposition to its policies". Jackson added, "Even those who are supposed to supervise [intelligence agencies] are likely to fear [them]." His advice speaks directly to our responsibilities today:

> I believe that the safeguard of our liberty lies in limiting any national police or investigative organization, first of all to a small number of strictly federal offenses, and secondly to nonpolitical ones. The fact that we may have confidence in the administration of a federal investigative agency under its existing head does not mean that it may not revert again to the days when the Department of Justice was headed by men to whom the investigative power was a weapon to be used for their own purposes.[1]

Failure to Apply Checks and Balances.—The natural tendency of Government is toward abuse of power. Men entrusted with power, even those aware of its dangers, tend, particularly when pressured, to slight liberty.

Our constitutional system guards against this tendency. It establishes many different checks upon power. It is those wise restraints which keep men free. In the field of intelligence those restraints have too often been ignored.

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[1] Robert H. Jackson, *The Supreme Court in the American System of Government* (New York: Harper Torchbook, 1955, 1963), pp. 70–71.

The three main departures in the intelligence field from the constitutional plan for controlling abuse of power have been:

(*a*) *Excessive Executive Power.*—In a sense the growth of domestic intelligence activities mirrored the growth of presidential power generally. But more than any other activity, more even than exercise of the war power, intelligence activities have been left to the control of the Executive.

For decades Congress and the courts as well as the press and the public have accepted the notion that the control of intelligence activities was the exclusive prerogative of the Chief Executive and his surrogates. The exercise of this power was not questioned or even inquired into by outsiders. Indeed, at times the power was seen as flowing not from the law, but as inherent in the Presidency. Whatever the theory, the fact was that intelligence activities were essentially exempted from the normal system of checks and balances.

Such Executive power, not founded in law or checked by Congress or the courts, contained the seeds of abuse and its growth was to be expected.

(*b*) *Excessive Secrecy.*—Abuse thrives on secrecy. Obviously, public disclosure of matters such as the names of intelligence agents or the technological details of collection methods is inappropriate. But in the field of intelligence, secrecy has been extended to inhibit review of the basic programs and practices themselves.

Those within the Executive branch and the Congress who would exercise their responsibilities wisely must be fully informed. The American public, as well, should know enough about intelligence activities to be able to apply its good sense to the underlying issues of policy and morality.

Knowledge is the key to control. Secrecy should no longer be allowed to shield the existence of constitutional, legal and moral problems from the scrutiny of all three branches of government or from the American people themselves.

(*c*) *Avoidance of the Rule of Law.*—Lawlessness by Government breeds corrosive cynicism among the people and erodes the trust upon which government depends.

Here, there is no sovereign who stands above the law. Each of us, from presidents to the most disadvantaged citizen, must obey the law.

As intelligence operations developed, however, rationalizations were fashioned to immunize them from the restraints of the Bill of Rights and the specific prohibitions of the criminal code. The experience of our investigation leads us to conclude that such rationalizations are a dangerous delusion.

B. Principles Applied in Framing Recommendations and The Scope of the Recommendations.

Although our recommendations are numerous and detailed, they flow naturally from our basic conclusion. Excessive intelligence activity which undermines individual rights must end. The system for controlling intelligence must be brought back within the constitutional scheme.

Some of our proposals are stark and simple. Because certain domestic intelligence activities were clearly wrong, the obvious solution is to prohibit them altogether. Thus, we would ban tactics such as those used

in the FBI's COINTELPRO. But other activities present more complex problems. We see a clear need to safeguard the constitutional rights of speech, assembly, and privacy. At the same time, we do not want to prohibit or unduly restrict necessary and proper intelligence activity.

In seeking to accommodate those sometimes conflicting interests we have been guided by the earlier efforts of those who originally shaped our nation as a republic under law.

The Constitutional amendments protecting speech and assembly and individual privacy seek to preserve values at the core of our heritage and vital to our future. The Bill of Rights, and the Supreme Court's decisions interpreting it suggest three principles which we have followed:

(1) Governmental action which directlv infringes the rights of free speech and association must be prohibited. The First Amendment recognizes that even if useful to a proper end, certain governmental actions are simply too dangerous to permit at all. It commands that "Congress shall make *no* law" abridging freedom of speech or assembly.

(2) The Supreme Court, in interpreting that command, has required that any governmental action which has a collateral (rather than direct) impact upon the rights of speech and assembly is permissible only if it meets two tests. First, the action must be undertaken only to fulfill a compelling governmental need, and second, the government must use the least restrictive means to meet that need. The effect upon protected interests must be minimized.[2]

(3) Procedural safeguards—"auxiliary precautions" as they were characterized in the Federalist Papers [3]—must be adopted along with substantive restraints. For example, while the Fourth Amendment prohibits only "unreasonable" searches and seizures, it requires a procedural check for reasonableness—the obtaining of a judicial warrant upon probable cause from a neutral magistrate. Our proposed procedural checks range from judicial review of intelligence activity before or after the fact, to formal and high level Executive branch approval, to greater disclosure and more effective Congressional oversight.

The Committee believes that its recommendations should be embodied in a comprehensive legislative charter defining and controlling the domestic security activities of the Federal Government. Accordingly, Part i of the recommendations provides that intelligence agencies must be made subject to the rule of law. In addition, Part i makes clear that no theory, of "inherent constitutional authority" or otherwise, can justify the violation of any statute.

Starting from the conclusion, based upon our record, that the Constitution and our fundamental values require a substantial curtailment

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[2] *De Gregory* v. *New Hampshire*, 383 U.S. 825, 829 (1966); *NAACP* v. *Alabama*, 377 U.S. 288 (1964); *Gibson* v. *Florida Legislative Investigation Commission*, 372 U.S. 539, 546 (1962); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960).

[3] Madison, Federalist No. 51. Madison made the point with grace:

"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. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions."

of the scope of domestic surveillance, we deal after Part i with five basic questions:

1. Which agencies should conduct domestic security investigations?

The FBI should be primarily responsible for such investigations. Under the minimization principle, and to facilitate the control of domestic intelligence operations, only one agency should be involved in investigative activities which, even when limited as we propose, could give rise to abuse. Accordingly, Part ii of these recommendations reflects the Committee's position that foreign intelligence agencies (the CIA, NSA, and the military agencies) should be precluded from domestic security activity in the United States. Moreover, they should only become involved in matters involving the rights of Americans abroad where it is impractical to use the FBI, or where in the course of their lawful foreign intelligence operations [4] they inadvertently collect information relevant to domestic security investigations. In Part iii the Committee recommends that non-intelligence agencies such as the Internal Revenue Service and the Post Office be required, in the course of any incidental involvement in domestic security investigations, to protect the privacy which citizens expect of first class mail and tax records entrusted to those agencies.

2. When should an American be the subject of an investigation at all; and when can particularly intrusive covert techniques, such as electronic surveillance or informants, be used?

In Part iv, which deals with the FBI, the Committee's recommendations seek to prevent the excessively broad, ill-defined and open ended investigations shown to have been conducted over the past four decades. We attempt to change the focus of investigations from constitutionally protected advocacy and association to dangerous conduct. Part iv also sets forth specific substantive standards for, and procedural controls on, particular intrusive techniques.

3. Who should be accountable within the Executive branch for ensuring that intelligence agencies comply with the law and for the investigation of alleged abuses by employees of those agencies?

In Parts v and vi, the Committee recommends that these responsibilities fall initially upon the agency heads, their general counsel and inspectors general, but ultimately upon the Attorney General. The information necessary for control must be made available to those responsible for control, oversight and review; and their responsibilities must be made clear, formal, and fixed.

4. What is the appropriate role of the courts?

In Part vii, the Committee recommends the enactment of a comprehensive civil remedy providing the courts with jurisdiction to entertain legitimate complaints by citizens injured by unconstitutional or illegal activities of intelligence agencies. Part viii suggests that criminal penalties should attach in cases of gross abuse. In addition, Part iv provides for judicial warrants before certain intrusive techniques can be used.

5. What is the appropriate role of Congress:

In Part xii the Committee reiterates its position that the Senate create a permanent intelligence oversight committee.

The recommendations deal with numerous other issues such as the proposed repeal or amendment of the Smith Act, the proposed mod-

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[4] Directed primarily at foreigners abroad.

ernization of the Espionage Act to cover modern forms of espionage seriously detrimental to the national interest, the use of the GAO to assist Congressional oversight of the intelligence community, and remedial measures for past victims of improper intelligence activity.

Scope of Recommendations.—The scope of our recommendations coincides with the scope of our investigation. We examined the FBI, which has been responsible for most domestic security investigations, as well as foreign and military intelligence agencies, the IRS, and the Post Office, to the extent they became involved incidentally in domestic intelligence functions. While there are undoubtedly activities of other agencies which might legitimately be addressed in these recommendations, the Committee simply did not have the time or resources to conduct a broader investigation. Furthermore, the mandate of Senate Resolution 21 required that the Committee exclude from the coverage of its recommendations those activities of the federal government which are directed at organized crime and narcotics.

The Committee believes that American citizens should not lose their constitutional rights to be free from improper intrusion by their Government when they travel overseas. Accordingly, the Committee proposes recommendations which apply to protect the rights of Americans abroad as well as at home.

1. Activities Covered

The Domestic Intelligence Recommendations pertain to: the domestic security activities of the federal government;[5] and any activities of military or foreign intelligence agencies which affect the rights of Americans[6] and any intelligence activities of any non-intelligence agency working in concert with intelligence agencies, which affect those rights.

2. Activities Not Covered

The recommendations are not designed to control federal investigative activities directed at organized crime, narcotics, or other law enforcement investigations unrelated to domestic security activities.

3. Agencies Covered

The agencies whose activities are specifically covered by the recommendations are:

(i) the Federal Bureau of Investigation; (ii) the Central Intelligence Agency; (iii) the National Security Agency and other intelligence agencies of the Department of De-

[5] "Domestic security activities" means federal governmental activities, directed against Americans or conducted within the United States or its territories, including enforcement of the criminal law, intended to (a) protect the United States from hostile foreign intelligence activity, including espionage; (b) protect the federal, state, and local governments from domestic violence or rioting; and (c) protect Americans and their government from terrorist activity. See Part xiii of the recommendations and conclusions for all the definitions used in the recommendations.

[6] "Americans" means U.S. citizens, resident aliens and unincorporated associations, composed primarily of U.S. citizens or resident aliens; and corporations, incorporated or having their principal place of business in the United States or having majority ownership by U.S. citizens, or resident aliens, including foreign subsidiaries of such corporations, provided, however, Americans does not include corporations directed by foreign governments or organizations.

fense; (iv) the Internal Revenue Service; and (v) the United States Postal Service.

While it might be appropriate to provide similar detailed treatment to the activities of other agencies, such as the Secret Service, Customs Service, and Alcohol, Tobacco, and Firearms Division (Treasury Department), the Committee did not study these agencies intensively. A permanent oversight committee should investigate and study the intelligence functions of those agencies and the effect of their activities on the rights of Americans.

4. Indirect Prohibitions

Except as specifically provided herein, these Recommendations are intended to prohibit any agency from doing indirectly that which it would be prohibited from doing directly. Specifically, no agency covered by these Recommendations should request or induce any other agency, or any person, whether the agency or person is American or foreign, to engage in any activity which the requesting or inducing agency is prohibited from doing itself.

5. Individuals and Groups Not Covered

Except as specifically provided herein, these Recommendations do not apply to investigation of foreigners [7] who are officers or employees of a foreign power, or foreigners who, pursuant to the direction of a foreign power, are engaged in or about to engage in "hostile foreign intelligence activity" or "terrorist activity".[8]

6. Geographic Scope

These Recommendations apply to intelligence activities which affect the rights of Americans whether at home or abroad, including all domestic security activities within the United States.

7. Legislative Enactment of Recommendations

Most of these Recommendations are designed to be implemented in the form of legislation and others in the form of regulations pursuant to statute. (Recommendations 85 and 90 are not proposed to be implemented by statute.

C. Recommendations

Pursuant to the requirement of Senate Resolution 21, these recommendations set forth the new congressional legislation [the Committee] deems necessary to "safeguard the rights of American citizens." [9] We believe these recommendations are the appropriate conclusion to a traumatic year of disclosures of abuses. We hope they will prevent such abuses in the future.

i. Intelligence Agencies Are Subject to the Rule of Law

Establishing a legal framework for agencies engaged in domestic security investigation is the most fundamental reform needed to end the long history of violating and ignoring the law set forth in Finding A. The legal framework can be created by a two-stage process of enabling legislation and administrative regulations promulgated to implement the legislation.

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[7] "Foreigners" means persons and organizations who are not Americans as defined above.

[8] These terms, which cover the two areas in which the Committee recommends authorizing preventive intelligence investigations, are defined on pp. 340–341.

[9] S. Res. 21, Sec. 5; 2(12).

However, the Committee proposes that the Congress, in developing this mix of legislative and administrative charters, make clear to the Executive branch that it will not condone, and does not accept, any theory of inherent or implied authority to violate the Constitution, the proposed new charters, or any other statutes. We do not believe the Executive has, or should have, the inherent constitutional authority to violate the law or infringe the legal rights of Americans, whether it be a warrantless break-in into the home or office of an American, warrantless electronic surveillance, or a President's authorization to the FBI to create a massive domestic security program based upon secret oral directives. Certainly, there would be no such authority after Congress has, as we propose it should, covered the field by enactment of a comprehensive legislative charter.[10] Therefore statutes enacted pursuant to these recommendations should provide the exclusive legal authority for domestic security activities.

Recommendation 1.—There is no inherent constitutional authority for the President or any intelligence agency to violate the law.

Recommendation 2.—It is the intent of the Committee that statutes implementing these recommendations provide the exclusive legal authority for federal domestic security activities.

(*a*) No intelligence agency may engage in such activities unless authorized by statute, nor may it permit its employees, informants, or other covert human sources [11] to engage in such activities on its behalf.

(*b*) No executive directive or order may be issued which would conflict with such statutes.

Recommendation 3.—In authorizing intelligence agencies to engage in certain activities, it is not intended that such authority empower agencies, their informants, or covert human sources to violate any prohibition enacted pursuant to these Recomendations or contained in the Constitution or in any other law.

ii. United States Foreign and Military Agencies Should Be Precluded from Domestic Security Activities

Part iv of these Recommendations centralizes domestic security investigations within the FBI. Past abuses also make it necessary that the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the military departments be precluded expressly, except as specifically provided herein, from investigative activity which is conducted within the United States. Their activities abroad should also be controlled as provided herein to minimize their impact on the rights of Americans.

a. Central Intelligence Agency

The CIA is responsible for foreign intelligence and counterintelligence. These recommendations minimize the impact of CIA operations on Americans. They do not affect CIA investigations of foreigners outside of the United States. The main thrust is to prohibit past actions revealed as excessive, and to transfer to the FBI other activities which might involve the CIA in internal security or law enforce-

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[10] See, *e.g.*, *Youngstown Sheet and Tube Company* v. *Sawyer*, 343 U.S. 579 (1952).

[11] "Covert human sources" means undercover agents or informants who are paid or otherwise controlled by an agency.

ment matters. Those limited activities which the CIA retains are placed under tighter controls.

The Committee's recommendations on CIA domestic activities are similar to Executive Order 11905. They go beyond the Executive Order, however, in that they recommend that the main safeguards be made law. And, in addition, the Committee proposes tighter standards to preclude repetition of some past abuses.

General Provisions

The first two Recommendations pertaining to the CIA provide the context for more specific proposals. In Recommendation 4, the Committee endorses the prohibitions of the 1947 Act upon exercise by the CIA of subpoena, police or law enforcement powers or internal security functions. The Committee intends that Congress supplement, rather than supplant or derogate from the more general restrictions of the 1947 Act.

Recommendation 5 clarifies the role of the Director of Central Intelligence in the protection of intelligence sources and methods. He should be charged with "coordinating" the protection of sources and methods—that is, the development of procedures for the protection of sources and methods.[12] (Primary responsibility for investigations of security leaks should reside in the FBI.) Recommendation 5 also makes clear that the Director's responsibility for protecting sources and methods does not permit violations of law. The effect of the new Executive Order is substantially the same as Recommendation 5.

Recommendation 4—To supplement the prohibitions in the 1947 National Security Act against the CIA exercising "police, subpoena, law enforcement powers or internal security functions," the CIA should be prohibited from conducting domestic security activities within the United States, except as specifically permitted by these recommendations.

Recommendation 5—The Director of Central Intelligence should be made responsible for "coordinating" the protection of sources and methods of the intelligence community. As head of the CIA, the Director should also be responsible in the first instance for the security of CIA facilities, personnel, operations, and information. Neither function, however, authorizes the Director of Central Intelligence to violate any federal or state law, or to take any action which is otherwise inconsistent with statutes implementing these recommendations.

CIA Activities Within the United States

1. *Wiretapping, Mail Opening and Unauthorized Entry.*—The Committee's recommendations on CIA domestic activities apply primarily to actions directed at Americans. However, in Recommendation 6 the Committee recommends that the most intrusive and dangerous investi-

[12] As noted in the Report on CHAOS, former Directors have had differing interpretations of the mandate of the 1947 Act to the Director of Central Intelligence to protect intelligence sources and methods. The Committee agrees with former Director William Colby that the 1947 Act only authorizes the Director to perform a "coordinating" and not an "operational" role.

gative techniques (electronic surveillance;[13] mail opening; or unauthorized entry[14]) should be used in the United States only by the FBI and only pursuant to the judicial warrant procedures described in Recommendations 53, 54 and 55.

This approach is similar to the Executive order except that the Order permits the CIA to open mail in the United States pursuant to applicable statutes and regulations (i.e., with a warrant). The Committee's recommendations (see Parts iii and iv), places all three techniques—mail opening, electronic surveillance and unauthorized entry—under judicial warrant procedures and centralizes their use within the FBI under Attorney General supervision. The Committee sees no justification for distinguishing among these techniques, all of which represent an exercise of domestic police powers[15] which is inappropriate for a U.S. foreign intelligence agency within the United States and which inherently involve special dangers to civil liberties and personal privacy.

2. *Other Covert Techniques.*—The use of other covert techniques[16] by the CIA within the United States is sharply restricted by Recommendation 7 to specific situations.

The Committee would permit the CIA to conduct physical surveillance of persons on the premises of its own installations and facilities. Outside of its premises, the Committee would permit the CIA to conduct limited physical surveillance and confidential inquiries of its own employees[17] as part of a preliminary security investigation.

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[13] The activity completely prohibited to CIA includes only the interception of communications restricted under the 1968 Safe Streets Act, and would not limit the use of body recorders, or telephone taps or other electronic surveillance where one party to the communication has given his consent. For example, electronic coverage of a case officer's meeting with his agent would not be included. The prohibition also is not intended to cover the testing of equipment in the United States, when done with the written approval of the Attorney General and under procedures he has approved to minimize interception of private communications and to prevent improper dissemination or use of the communications which are unavoidably intercepted in the testing process. Nor does the prohibition preclude the use of countermeasures to detect electronic surveillance mounted against the CIA, when conducted under general procedures and safeguards approved in writing by the CIA General Counsel.

[14] "Unauthorized entry" means entry unauthorized by the target.

[15] As part of the CIA's responsibility for its own security, however, appropriate personnel should be permitted to carry firearms within the United States not only for courier protection of documents, but also to protect the Director and Deputy Director and defectors and to guard CIA installations.

[16] "Covert techniques" means the collection of information including collection from records sources not readily available to a private person (except state or local law enforcement files) in such a manner as not to be detected by the subject. Covert techniques do not include a check of CIA or other federal agency or state and local police records, or a check of credit bureaus for the limited purpose of obtaining non-financial biographical data, i.e., date and place of birth, to facilitate such name checks, and the subject's place of employment. Nor do "covert techniques" include interviews with persons knowledgeable about the subject conducted on a confidential basis to avoid disclosure of the inquiry to others or to the subject, if he is not yet aware of CIA interest in a prospective relationship, provided the interview does not involve the provision of information from medical, financial, educational, phone or other confidential records.

[17] For purposes of this section employees includes those employees or contractors who work regularly at CIA facilities and have comparable access or freedom of movement at CIA facilities as employees of CIA.

Although the Committee generally centralizes such investigations within the FBI, it would be too burdensome to require the Bureau to investigate every allegation that an employee has personal difficulties, which could make him a security risk, or allegations of suspicious behavior suggesting the disclosure of information. Before involving the FBI, the CIA could conduct a preliminary inquiry, which usually consists of nothing more than interviews with the subject's office colleagues, or his family, neighbors or associates, and perhaps confrontation of the subject himself. In some situations, however, limited physical surveillance might enable the CIA to resolve the allegation or to determine that there was a serious security breach involved.

Unlike the Executive Order, however, the Committee recommendations limit this authority to present CIA employees who are subject to summary dismissal. The only remedy available to the Government for security problems with past employees is criminal prosecution or other legal action. All security leak investigations for proposed criminal prosecution should be centralized in the FBI. Authorizing the use of any covert technique against contractors and their employees, let alone former employees of CIA contractors, as the Executive Order does, would authorize CIA surveillance of too large a number of Americans. The CIA can withdraw security clearances until satisfied by the contractor that a security risk has been remedied and, in serious cases, any investigations could be handled by the FBI.

The recommendation on the use of covert techniques within the United States also precludes the use of covert human sources such as undercover agents and informants,[18] with one exception expressly stated to be limited to "exceptional" cases. The Committee would authorize the CIA to place an agent in a domestic group, but only for the purpose of establishing credible cover to be used in a foreign intelligence mission abroad and only when the Director of Central Intelligence finds it to be "essential" to collection of information "vital" to the United States and the Attorney General finds that the operation will be conducted under procedures designed to prevent misuse.[19]

Apart from this limited exception, the CIA could not infiltrate groups within the United States for any purpose, including, as was done in the past, the purported protection of intelligence sources and methods or the general security of the CIA's facilities and personnel. (The Executive Order prohibits infiltration of groups within the United States "for purposes of reporting on or influencing its activities or members," but does not explicitly prohibit infiltration to protect intelligence sources and methods or the physical security of the agency.)

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[18] Recommendation 7(c) does permit background and other security investigations conducted with government credentials which do not reveal CIA involvement and, in extremely sensitive cases commercial or other private identification to avoid disclosure of any government connection.

It would also permit CIA investigators to check the effectiveness of cover operations, without revealing their affiliation, by means of inquiries at the vicinity of particularly sensitive CIA projects. If in the course of such inquiries, unidentified CIA employees or contractors' employees are observed to be endangering the project's cover, they may be the subject of limited physical

3. *Collection of Information.*—In addition to limiting the use of particular covert techniques, the Committee limits, in Recommendation 8, the situations in which the CIA may intentionally collect, by any means, information within the United States concerning Americans. The recommendation permits the CIA to collect information within the United States about Americans only with respect to persons working for the CIA or having some other significant affiliation or contact with CIA. The CIA should not be in the business of investigating Americans as intelligence or counterintelligence targets within the United States—a responsibility which should be centralized in the FBI and performed only under the circumstances proposed as lawful in Part iv.

The Executive Order only restricts CIA collection of information about Americans if the information concerns "the *domestic activities* of United States citizens." Unlike the Committee, the Order does not restrict CIA collection of information about foreign travel or wholly lawful international contacts and communication of Americans. As the Committee has learned from its study of the CIA's CHAOS operation, in the process of gathering information about the international travel and contacts of Americans, the CIA acquired within the United States a great deal of additional information about the domestic activities of Americans.

The Executive Order also permits collection within the United States of information about the domestic activities of Americans in several other instances not permitted under the Committee recommendations:

(*a*) Collection of "foreign intelligence or counterintelligence" about the domestic activity of commercial organizations. (The Committee's restrictions on the collection of information apply to investigations of organizations as well as individuals.);

(*b*) Collection of information concerning the identity of persons in contact with CIA employees or with foreigners who are subjects of a counterintelligence inquiry. (Within the United States, the Commit-

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surveillance at that time for the sole purpose of ascertaining their identity so that they may be subsequently contacted.

[19] Such action poses serious danger of misuse. The preparation may involve the agent reporting on his associates so that the CIA can assess his credentials and his observation and reporting ability. This could become an opportunity to collect domestic intelligence on the infiltrated group even when an investigation of that group could not otherwise be commenced under the applicable standards. Obviously, without restrictions the intelligence community could use this technique to conduct domestic spying, arguing that the agents were not being "targeted" against the group but were merely preparing for an overseas operation.

This was done, for example, in the use by Operation CHAOS of agents being provided with radical credentials for use in "Project 2," a foreign intelligence operation abroad. (See the CHAOS Report and the Rockefeller Commission Report.)

One alternative would be to let the FBI handle the agent while he is preparing for overseas assignment. On balance, however, that seems less desirable. The temptation to use the agent to collect domestic intelligence might be stronger for the agency with domestic security responsibilities than it would for the area division of the CIA concerned with foreign intelligence. Also, improper use of the agent to collect such information would be more readily identifiable in the context of the foreign intelligence operation run by the CIA than it would in the context of an agent operation run by the Intelligence Division of the FBI.

tee would require any investigations to collect such information to be conducted by the FBI, *and* only if authorized under Part iv, and subject to its procedural controls.);

(*c*) Collection of "foreign intelligence" from a cooperating source within the United States about the domestic activities of Americans. "Foreign intelligence," is an exceedingly broad and vague standard. The use of such a standard raises the prospect of another Project CHAOS. (The Committee would prohibit such collection by the CIA within the United States, except with respect to persons presently or prospectively affiliated with CIA.);

(*d*) Collection of information about Americans "reasonably believed" to be acting on behalf of a foreign power or engaging in international terrorist or narcotic activities. (The Committee would require investigations to collect such information within the United States, to be conducted by the FBI, and only if authorized under Part iv.);

(*e*) Collection of information concerning persons considered by the CIA to pose a clear threat to intelligence agency facilities or personnel, provided such information is retained only by the "threatened" agency and that proper coordination is established with the FBI. (This was the basis for the Office of Security's RESISTANCE program investigating dissent throughout the country.) (The Committee would require any such "threat" collection outside the CIA be conducted by the FBI, *and* only if authorized by Part iv, or by local law enforcement.)

Recommendation 6.—The CIA should not conduct electronic surveillance, unauthorized entry, or mail opening within the United States for any purpose.

Recommendation 7.—The CIA should not employ physical surveillance, infiltration of groups or any other covert techniques against Americans within the United States except:

(*a*) Physical surveillance of persons on the grounds of CIA installations;

(*b*) Physical surveillance during a preliminary investigation of allegations an employee is a security risk for a limited period outside of CIA installations. Such surveillance should be conducted only upon written authorization of the Director of Central Intelligence and should be limited to the subject of the investigation and, only to the extent necessary to identify them, to persons with whom the subject has contact;

(*c*) Confidential inquiries, during a preliminary investigation of allegations an employee is a security risk, of outside sources concerning medical or financial information about the subject which is relevant to those allegations;[19a]

(*d*) The use of identification which does not reveal CIA or government affiliation, in background and other security investigations permitted the CIA by these recommendations, and the conduct of checks, which do not reveal CIA or government affiliation for the purpose of judging the effectiveness of cover operations, upon the written authorization of the Director of Central Intelligence;

[19a] Any further investigations conducted in connection with (b) or (c) should be conducted by the FBI, and only if authorized by Part iv.

(*e*) In exceptional cases, the placement or recruitment of agents within an unwitting domestic group solely for the purpose of preparing them for assignments abroad and only for as long as is necessary to accomplish that purpose. This should take place only if the Director of Central Intelligence makes a written finding that it is essential for foreign intelligence collection of vital importance to the United States, and the Attorney General makes a written finding that the operation will be conducted under procedures designed to prevent misuse of the undisclosed participation or of any information obtained therefrom.[20] In the case of any such action, no information received by CIA from the agent as a result of his position in the group should be disseminated outside the CIA unless it indicates felonious criminal conduct or threat of death or serious bodily harm, in which case dissemination should be permitted to an appropriate official agency if approved by the Attorney General.

Recommendation 8.—The CIA should not collect[21] information within the United States concerning Americans except:

(*a*) Information concerning CIA employees,[22] CIA contractors and their employees, or applicants for such employment or contracting;

(*b*) Information concerning individuals or organizations providing, or offering to provide,[23] assistance to the CIA;

(*c*) Information concerning individuals or organizations being considered by the CIA as potential sources of information or assistance;[24]

(*d*) Visitors to CIA facilities;[25]

(*e*) Persons otherwise in the immediate vicinity of sensitive CIA sites;[26] or

(*f*) Persons who give their informed written consent to such collection.

In (a), (b) and (c) above, information should be collected only if necessary for the purpose of determining the person's fitness for employment, contracting or assistance. If, in the course of such collection, information is obtained which indicates criminal activity, it should be transmitted to the FBI or other appropriate agency. When an American's relationship with the CIA is prospective, information should only be collected if there is a bona fide expectation the person might be used by the CIA.

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[20] In addition, the FBI should be notified of such insertions.

[21] "Collect" means to gather or initiate the acquisition of information, or to request it from another agency. It does not include dissemination of information to CIA by another agency acting on its own initiative.

[22] "Employees," as used in this recommendation, would include members of the employee's immediate family or prospective spouse.

[23] In the case of persons unknown to the CIA who volunteer to provide information or otherwise request contact with CIA personnel, the agency may conduct a name check before arranging a meeting.

[24] The CIA may only conduct a name check and confidential interviews of persons who know the subject, if the subject is unaware of CIA interest in him.

[25] The CIA may only collect information by means of a name check.

[26] The CIA may make a name check and determine the place of employment of persons residing or working in the immediate vicinity of sensitive sites, such as persons residing adjacent to premises used for safe houses or defector resettlement, or such as proprietors of businesses in premises adjacent to CIA offices in commercial areas.

CIA Activities Outside of the United States

The Committee would permit a wider range of CIA activities against Americans abroad than it would permit the CIA to undertake within the United States, but it would not permit the CIA to investigate abroad the lawful activities of Americans to any greater degree than the FBI could investigate such activities at home.

Abroad, the FBI is not in a position to protect the CIA from serious threats to its facilities or personnel, or to investigate all serious security violations. To the extent it is impractical to rely on local law enforcement authorities, the CIA should be free to preserve its security by specified appropriate investigations which may involve Americans, including surveillance of persons other than its own employees.

The Committee gives to the FBI the sole responsibility within the United States for authorized domestic security investigations of Americans. However, when such an investigation has overseas aspects, the FBI looks to the CIA as the overseas operational arm of the intelligence community. The recommendations would authorize the CIA to target Americans abroad as part of an authorized investigation initiated by the FBI.

The Committee does not recommend permitting the CIA itself to initiate such investigations of Americans overseas.[27] Present communications permit rapid consultation with the Department of Justice. Moreover, the lesson of CHAOS is that an American's activities abroad may be ambiguous, such as contact with persons who may be acting on behalf of hostile foreign powers at an international conference on disarmament. The question is who shall determine there is sufficient information to justify making an American citizen a target of his government's intelligence apparatus?

The limitations contained in Recommendation 9 only pertain to the CIA initiating investigations or otherwise intentionally collecting information on Americans abroad. The CIA would not be prohibited from accepting and passing on information on the illegal activities of Americans which the CIA acquires incidentally in the course of its other activities abroad.

The Committee believes that judgments should be centralized within the Justice Department to promote consistent, carefully controlled application of the appropriate standards and protection of Constitutional rights. This is the same position taken by Director Colby in setting current CIA policy for mounting operations against Americans abroad. In March 1974, Director Colby formally terminated the CHAOS program and promulgated new guidelines for future activity abroad involving Americans, which, in effect, transferred such responsibilities to the Department of Justice.[28]

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[27] The counterintelligence component of the CIA would be able to call to the attention of the FBI any patterns of significance which the CIA thought warranted opening an investigation of an American.

[28] The guidelines state:

A. "Whenever information is uncovered as a byproduct result of CIA foreign targeted intelligence or counterintelligence operations abroad which makes Americans suspect for security or counterintelligence reasons . . . such information will be reported to the FBI . . . specific CIA operations will not be mounted against such individuals; CIA responsibilities thereafter will be restricted to

The Committee is somewhat more restrictive than the Executive Order with respect to collection of information on Americans. As mentioned earlier, the Order only restricts CIA collection of information about the "domestic activities" of Americans and does not prohibit the collection of information regarding the lawful travel or international contacts of American citizens. This creates a particularly significant problem with respect to CIA activities directed against Americans abroad.

The Order permits the CIA wider latitude abroad than do the Committee's Recommendations in two other important respects. The Order permits collection of information if the American is reasonably believed to be acting on behalf of a foreign power. That exemption on its face would include Americans working for a foreign country on business or legal matters or otherwise engaged in wholly lawful activities in compliance with applicable registration or other regulatory statutes. More importantly, the Order permits the CIA to collect "foreign intelligence" or "counterintelligence" information abroad about the *domestic activities* of Americans. The Order then broadly defines "foreign intelligence" as information about the intentions or activities of a foreign country or person, or information about areas outside the United States. This would authorize the CIA to collect, abroad, for example, information about the domestic activities of American businessmen which provided intelligence about business transactions of foreign persons.

The CIA does not at present specifically collect intelligence on the economic activities of Americans overseas. The Committee suggests that appropriate oversight committees examine the question of the overseas collection of economic intelligence.

Use of Covert Techniques Against Americans Abroad

Recommendation 11 requires the use of all covert techniques be governed by the same standards, procedures, and approvals required for their use by the Justice Department against Americans within the United States. Thus, in the case of electronic surveillance, unauthorized entry, or mail opening, a judicial warrant would be required. As a matter of sound Constitutional principle, the Fourth Amendment protections enjoyed by Americans at home should also apply to protect them against their Government abroad. It would be just as offensive to have a CIA agent burglarize an American's apartment in Rome as it would be for the FBI to do so in New York.

Requirements that a warrant be obtained in the United States would not present an excessive burden. Electronic surveillance and unauthorized entries are not presently conducted against Americans abroad without prior consultation and approval from CIA Headquarters in

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reporting any further intelligence or counterintelligence aspects to the specific case which comes to CIA's attention as a byproduct of its continuing foreign targeted operational activity. If the FBI, on the basis of the receipt of the CIA information, however, specifically requests further information on terrorist or counterintelligence matters relating to the private American citizens . . . CIA may respond to written requests by the FBI for clandestine collection abroad by CIA of information on foreign terrorist or counterintelligence matters involving American citizens."

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Langley, Virginia. Moreover, the present Deputy Director of CIA for Operations has testified that bona fide counterintelligence investigations are lengthy and time consuming and prior review within the United States, including consultation with the Justice Department, would not be a serious problem.[29] Indeed electronic surveillance of Americans abroad under present administration policy also requires approval by the Attorney General.

The Committee reinforces the general restrictions upon overseas targeting of Americans by recommending that the CIA be prohibited from requesting a friendly foreign intelligence service or other person from undertaking activities against Americans which the CIA itself may not do. This would not require that a foreign government's use of covert techniques be conducted under the same procedures, e.g., warrants, required by those Recommendations for the CIA and the FBI. It would mean that the CIA cannot ask a foreign intelligence service to bug the apartment of an American unless the circumstances would permit the United States Government to obtain a judicial warrant from a Federal Court in this country to conduct such surveillance of the American abroad.

The Committee places greater restrictions upon the CIA's use of covert techniques against Americans abroad than does the Executive Order. For example, the Order permits the CIA to conduct electronic surveillance and unauthorized entries under "procedures approved by the Attorney General consistent with the law." No judicial warrant procedure is required. In addition, the Order's restriction on CIA's opening mail of Americans is limited to mail "in the United States postal channels." In other words, under the Order the CIA is not prevented from intercepting abroad and opening a letter mailed by an American to his family, or sent to him from the United States.

The Order also contains no restrictions on the CIA infiltrating a group abroad, even if it were one composed entirely of Americans engaged in wholly lawful activities such as a political club of American students in Paris. Furthermore, the Order permits the CIA to conduct physical surveillance abroad of any American "reasonably believed to be" engaged in "activities threatening to the national security." On its face this language appears overly permissive and might be read to authorize a repetition of the CHAOS program in which Americans were targeted for surveillance because of their participation in international conferences critical of the U.S. role in Vietnam.

Recommendation 9.—The CIA should not collect information abroad concerning Americans except:

(*a*) Information concerning Americans which it is permitted to collect within the United States;[30]

(*b*) At the request of the Justice Department as part of criminal investigations or an investigation of an American for suspected ter-

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[29] William Nelson testimony, 1/28/76, pp. 33–34. Mr. Nelson was not addressing procedures to obtain a judicial warrant; but the time required for an *ex parte* application on an expedited basis to a Federal Court in Washington, D.C., would not be excessive for the investigative time frames which Nelson described.

Furthermore, the present wiretap statute authorizes electronic surveillance (for 48 hours) on an emergency basis prior to judicial authorization.

[30] Recommendation 8, p. 303.

rorist,[30a] or hostile foreign intelligence [30b] activities or security leak or security risk investigations which the FBI has opened pursuant to Part iv of those recommendations and which is conducted consistently with recommendations contained in Part iv.[31]

Recommendation 10.—The CIA should be able to transmit to the FBI or other appropriate agencies information concerning Americans acquired as the incidental byproduct of otherwise permissible foreign intelligence and counterintelligence operations,[32] whenever such information indicates any activity in violation of American law.

Recommendation 11.—The CIA may employ covert techniques abroad against Americans:

(*a*) Under circumstances in which the CIA could use such covert techniques against Americans within the United States; [33] or

(*b*) When collecting information as part of Justice Department investigation, in which case the CIA may use a particular covert techniques under the standards and procedures and approvals applicable to its use against Americans within the United States by the FBI (See Part iv); or

(*c*) To the extent necessary to identify persons known or suspected to be Americans who come in contact with foreigners the CIA is investigating.

CIA Human Experiments and Drug Use

Recommendation 12 tracks similar restrictions in the Executive Order but proposes an additional safeguard—giving the National Commission on Biomedical Ethics and Human Standards jurisdiction to review any testing on Americans.

[30a] "Terrorist activities" means acts, or conspiracies, which: (a) are violent or dangerous to human life; and (b) violate federal or state criminal statutes concerning assassination, murder, arson, bombing, hijacking, or kidnaping; and (c) appear intended to, or are likely to have the effect of:

(1) Substantially disrupting federal, state or local government; or

(2) Substantially disrupting interstate or foreign commerce between the United States and another country; or

(3) Directly interfering with the exercise by Americans, of Constitutional rights protected by the Civil Rights Act of 1968, or by foreigners, of their rights under the laws or treaties of the United States.

[30b] "Hostile foreign intelligence activities" means acts, or conspiracies, by Americans or foreigners, who are officers, employees, or conscious agents of a foreign power, or who, pursuant to the direction of a foreign power, engage in clandestine intelligence activity, or engage in espionage, sabotage or similar conduct in violation of federal criminal statutes. (The term "clandestine intelligence activity" is included in this definition at the suggestion of officials of the Department of Justice. Certain activities engaged in by conscious agents of foreign powers, such as some forms of industrial, technological, or economic espionage, are not now prohibited by federal statutes. It would be preferable to amend the espionage laws to cover such activity and eliminate this term. As a matter of principle, intelligence agencies should not investigate activities of Americans which are not violations of federal criminal statutes. Therefore, the Committee recommends (in Recommendation 94) that Congress immediately consider enacting such statutes and then eliminating this term.)

[31] If the CIA believes that an investigation of an American should be opened but the FBI declines to do so, the CIA should be able to appeal to the Attorney General or to the appropriate committee of the National Security Council.

[32] Such information would include material volunteered by a foreign intelligence service independent of any request by the CIA.

[33] See Recommendation 7, p. 302.

Recommendation 12—The CIA should not use in experimentation on human subjects, any drug, device or procedure which is designed or intended to harm, or is reasonably likely to harm, the physical or mental health of the human subject, except with the informed written consent, witnessed by a disinterested third party, of each human subject, and in accordance with the guidelines issued by the National Commission for the Protection of Human Subjects for Biomedical and Behavioral Research The jurisdiction of the Commission should be amended to include the Central Intelligence Agency and other intelligence agencies of the United States Government.

Review and Certification

Recommendation 13 ensures careful monitoring of those CIA activities authorized in the recommendations which are directed at Americans.

Recommendation 13—Any CIA activity engaged in pursuant to Recommendations 7, 8, 9, 10, or 11 should be subject to periodic review and certification of compliance with the Constitution, applicable statutes, agency regulations and executive orders by:

(*a*) The Inspector General of the CIA;

(*b*) The General Counsel of the CIA in coordination with the Director of Central Intelligence;

(*c*) The Attorney General; and

(*d*) The oversight committee recommended in Part xii.

All such certifications should be available for review by congressional oversight committees.

b. National Security Agency

The recommendations contained in this section suggest controls on the electronic surveillance activities of the National Security Agency insofar as they involve, or could involve, Americans. There is no statute which either authorizes or specifically restricts such activities. NSA was created by executive order in 1952, and its functions are described in directives of the National Security Council.

While, in practice, NSA's collection activities are complex and sophisticated, the process by which it produces foreign intelligence can be reduced to a few easily understood principles. NSA intercepts messages passing over international lines of communication, some of which have one terminal within the United States. Traveling over these lines of communication, especially those with one terminal in the United States, are the messages of Americans, most of which are irrelevant to NSA's foreign intelligence mission. NSA often has no means of excluding such messages, however, from others it intercepts which might be of foreign intelligence value. It does have, however, the capability to select particular messages from those it intercepts which are of foreign intelligence value. Most international communications of Americans are not selected, since they do not meet foreign intelligence criteria. Having selected messages of possible intelligence value, NSA monitors (reads) them, and uses the information it obtains as the basis for reports which it furnishes the intelligence agencies.

Having this process in mind, one will more readily understand the recommendations of the Committee insofar as NSA's handling of the messages of Americans is concerned. The Committee recommends first that NSA monitor only foreign communications. It should not monitor

domestic communications, even for foreign intelligence purposes. Second, the Committee recommends that NSA should not select messages for monitoring, from those foreign communications it has intercepted, because the message is to or from or refers to a particular American, unless the Department of Justice has first obtained a search warrant, or the particular American has consented. Third, the Committee recommends that NSA be required to make every practicable effort to eliminate or minimize the extent to which the communications of Americans are intercepted, selected, or monitored. Fourth, for those communications of Americans which are nevertheless incidentally selected and monitored, the Committee recommends that NSA be prohibited from disseminating such communication, or information derived therefrom, which identifies an American, unless the communication indicates evidence of hostile foreign intelligence or terrorist activity, or felonious criminal conduct, or contains a threat of death or serious bodily harm. In these cases, the Committee recommends that the Attorney General approve any such dissemination as being consistent with these policies.

In summary, the Committee's recommendations reflect its belief that NSA should have no greater latitude to monitor the communications of Americans than any other intelligence agency. To the extent that other agencies are required to obtain a warrant before monitoring the communications of Americans, NSA should be required to obtain a warrant.[34]

Recommendation 14.—NSA should not engage in domestic security activities. Its functions should be limited in a precisely drawn legislative charter to the collection of foreign intelligence from foreign communications.[35]

Recommendation 15.—NSA should take all practicable measures consistent with its foreign intelligence mission to eliminate or minimize the interception, selection, and monitoring of communications of Americans from the foreign communications.[36]

Recommendation 16.—NSA should not be permitted to select for monitoring any communication to, from, or about an American without his consent, except for the purpose of obtaining information about hostile foreign intelligence or terrorist activities, and then only if a warrant approving such monitoring is obtained in accordance with procedures similar [37] to those contained in Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

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[34] None of the Committee's recommendations pertaining to NSA should be construed as inhibiting or preventing NSA from protecting U.S. communications against interception or monitoring by foreign intelligence services.

[35] "Foreign communications," as used in this section, refers to a communication between or among two or more parties in which at least one party is outside the United States, or a communication transmitted between points within the United States only if transmitted over a facility which is under the control of, or exclusively used by, a foreign government.

[36] In order to ensure that this recommendation is implemented, both the Attorney General and the appropriate oversight committees of the Congress should be continuously apprised of, and periodically review, the measures taken by NSA pursuant to this recommendation.

[37] The Committee believes that in the case of interceptions authorized to obtain information about hostile foreign intelligence, there should be a presumption that notice to the subject of such intercepts, which would ordinarily be required under Title III (18 U.S.C. 2518(8)(d)), is not required, unless there is evidence of gross abuse.

(This recommendation would eliminate the possibility that NSA would re-establish its "watch lists" of the late 1960s and early 1970s. In that case, the names of Americans were submitted to NSA by other federal agencies and were used as a basis for selecting and monitoring, without a warrant, the international communications of those Americans.)

Recommendation 17.—Any personally identifiable information about an American which NSA incidentally acquires, other than pursuant to a warrant, should not be disseminated without the consent of the American, but should be destroyed as promptly as possible, unless it indicates:

(*a*) Hostile foreign intelligence or terrorist activities; or

(*b*) Felonious criminal conduct for which a warrant might be obtained pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968; or

(*c*) A threat of death or serious bodily harm.

If dissemination is permitted, by (*a*), (*b*) and (*c*) above, it must only be made to an appropriate official and after approval by the Attorney General.

(This recommendation is consistent with NSA's policy prior to the Executive Order.[38] NSA's practice prior to the Executive Order was not to disseminate material containing personally identifiable information about Americans.)

Recommendation 18.—NSA should not request from any commercial carrier any communication which it could not otherwise obtain pursuant to these recommendations.

(This recommendation is to ensure that NSA will not resume an operation such as SHAMROCK, disclosed during the Committee's hearings, whereby NSA received for almost 30 years copies of most international telegrams transmitted by certain international telegraph companies in the United States.)

Recommendation 19.—The Office of Security at NSA should be permitted to collect background information on present or prospective employees or contractors of NSA, solely for the purpose of determining their fitness for employment. With respect to security risks or the security of its installations, NSA should be permitted to conduct physical surveillances, consistent with such surveillances as the CIA is permitted to conduct, in similar circumstances, by these recommendations.

c. Military Service and Defense Department Investigative Agencies

This section of the Committee's recommendations pertains to the controls upon the intelligence activities of the military services and Department of Defense insofar as they involve Americans who are not members of or affiliated with the armed forces.

In general, the restrictions seek to limit military investigations to activities in the civilian community which are necessary and pertinent to the military mission, and which cannot feasibly be accomplished by civilian agencies. In overseas locations where civilian agencies do not

[38] The Executive Order places no such restriction on the dissemination of information by NSA. Under the Executive Order, NSA is not required to delete names or destroy messages which are personally identifiable to Americans. As long as these messages fall within the categories established by the Order, the names of Americans *could* be transmitted to other intelligence agencies of the Government.

perform investigative activities to assist the military mission, military intelligence is given more latitude. Specifically, the Committee recommends that military intelligence be limited within the United States to conducting investigations of violations of the Uniform Code of Military Justice; investigations for security clearances of Department of Defense employees and contractors; and investigations immediately before and during the deployment of armed forces in connection with civil disturbances. None of these investigations should involve the use of any covert technique employed against American civilians. In overseas locations, the Committee recommends that military intelligence have additional authority to conduct investigations of terrorist activity and hostile foreign intelligence activity. In these cases, covert techniques directed at Americans may be employed if consistent with the Committee's restrictions upon the use of such techniques in the United States in Part iv.

Recommendation 20.—Except as specifically provided herein, the Department of Defense should not engage in domestic security activities. Its functions, as they relate to the activities of the foreign intelligence community, should be limited in a precisely drawn legislative charter to the conduct of foreign intelligence and foreign counterintelligence activities and tactical military intelligence activities abroad, and production, analysis, and dissemination of departmental intelligence.

Recommendation 21.—In addition to its foreign intelligence responsibility, the Department of Defense has a responsibility to investigate its personnel in order to protect the security of its installations and property, to ensure order and discipline within its ranks, and to conduct other limited investigations once dispatched by the President to suppress a civil disorder. A legislative charter should define precisely—in a manner which is not inconsistent with these recommendations—the authorized scope and purpose of any investigations undertaken by the Department of Defense to satisfy these responsibilities.

Recommendation 22.—No agency of the Department of Defense should conduct investigations of violations of criminal law or otherwise perform any law enforcement or domestic security functions within the United States, except on military bases or concerning military personnel, to enforce the Uniform Code of Military Justice.

Control of Civil Disturbance Intelligence

The Department of the Army has executive responsibility for rendering assistance in connection with civil disturbances. In the late 1960s, it instituted a nationwide collection program in which Army investigators were dispatched to collect information on the political activities of Americans. This was done on the theory that such information was necessary to prepare the Army in the event that its troops were sent to the scene of civil disturbances. The Committee believes that the Army's potential role in civil disturbances does not justify such an intelligence effort directed against American civilians.

Recommendation 23.—The Department of Defense should not be permitted to conduct investigations of Americans on the theory that the information derived therefrom might be useful in potential civil disorders. The Army should be permitted to gather information about geography, logistical matters, or the identity of local officials which is

necessary to the positioning, support, and use of troops in an area where troops are likely to be deployed by the President in connection with a civil disturbance. The Army should be permitted to investigate Americans involved in such disturbances after troops have been deployed to the site of a civil disorder, (i) to the extent necessary to fulfill the military mission, and (ii) to the extent the information cannot be obtained from the FBI. (The FBI's responsibility in connection with civil disorders and its assistance to the Army is described in Part iv.)

Recommendation 24.—Appropriate agencies of the Department of Defense should be permitted to collect background information on their present or prospective employees or contractors. With respect to security risks or the security of its installations, the Department of Defense should be permitted to conduct physical surveillance consistent with such surveillances as the CIA is permitted to conduct, in similar circumstances, by these recommendations.

Prohibitions and Limitations of Covert Techniques

During the Army's civil disturbance collection program of the late 1960s, Army intelligence agents employed a variety of covert techniques to gather information about civilian political activities. These included covert penetrations of private meetings and organizations, use of informants, monitoring amateur radio broadcasts, and posing as newsmen. This provision is designed to prevent the use of such covert techniques against American civilians. The Committee believes that none of the legitimate investigative tasks of the military within the United States justified the use of such techniques against unaffiliated Americans.

Recommendation 25.—Except as provided in 27 below, the Department of Defense should not direct any covert technique (e.g., electronic surveillance, informants, etc.) at American civilians.

Limited Investigations Abroad

The military services currently conduct preventive intelligence investigations within the United States where members of their respective services are agents of, or are collaborating with, a hostile foreign intelligence service. These investigations are coordinated with, and under the ultimate control of, the FBI. The Committee's recommendations are not intended to prevent the military services from continuing to assist the FBI with such investigations involving members of the armed forces. They are intended, however, to place responsibility for these investigations, insofar as they take place within the United States, in the FBI, and not in the military services themselves. The military services, on the other hand, are given additional responsibility to conduct investigations of Americans who are suspected of engaging in terrorist activity or hostile foreign intelligence activity in overseas locations.

Recommendation 26.—The Department of Defense should be permitted to conduct abroad preventive intelligence investigations of unaffiliated Americans, as described in Part iv below, provided such investigations are first approved by the FBI. Such investigations by the Department of Defense, including the use of covert techniques,

should ordinarily be conducted in a manner consistent with the recommendations pertaining to the FBI, contained in Part iv; however, in overseas locations, where U.S. military forces constitute the governing power, or where U.S. military forces are engaged in hostilities, circumstances may require greater latitude to conduct such investigations.

iii. Non-Intelligence Agencies Should Be Barred From Domestic Security Activity

a. Internal Revenue Service

The Committee's review of intelligence collection and investigative activity by IRS' Intelligence Division and of the practice of furnishing information in IRS files to the intelligence agencies demonstrates that reforms are necessary and appropriate. The primary objective of reform is to prevent IRS from becoming an instrumentality of the intelligence agencies, beyond the scope of what IRS, as the Federal tax collector, should be doing. Recommendations 27 through 29 are designed to achieve this objective by providing that IRS collection of intelligence and its conduct of investigations are to be confined strictly to tax matters. Moreover, programs of tax investigation, in which targets are selected partly because of indications of tax violations and partly because of reasons relating to domestic security, are prohibited where they would erode constitutional rights. Where otherwise appropriate, such programs must be conducted under special safeguards to prevent any adverse effect on the exercise of those rights.

These recommendations should prevent a recurrence of the excesses associated with the Special Services Staff and the Intelligence Gathering and Retrieval System.

Targeting of Persons or Groups for Investigations or Intelligence-Gathering by IRS [39]

Recommendation 27.—The IRS should not, on behalf of any intelligence agency or for its own use, collect any information about the activities of Americans except for the purposes of enforcing the tax laws.

Recommendation 28.—IRS should not select any person or group for tax investigation on the basis of political activity or for any other reason not relevant to enforcement of the tax laws.

Recommendation 29.—Any program of intelligence investigation relating to domestic security in which targets are selected by both tax and non-tax criteria should only be initiated:

(*a*) Upon the written request of the Attorney General or the Secretary of the Treasury, specifying the nature of the requested program and the need therefore; and

(*b*) After the written certification by the Commissioner of the IRS that procedures have been developed which are sufficient to prevent the infringement of the constitutional rights of Americans; and

(*c*) With congressional oversight committees being kept continually advised of the nature and extent of such programs.

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[39] Based upon its study of the IRS, the Committee believes these recommendations might properly be applied beyond the general domestic security scope of the recommendations.

Disclosure Procedures

The Committee's review of disclosure of tax information by IRS to the FBI and the CIA showed three principal abuses by those intelligence agencies: (1) the by-passing of disclosure procedures mandated by law, resulting in the agencies obtaining access to tax returns and tax-related information through improper channels, and, sometimes, without a proper basis; (2) the failure to state the reasons justifying the need for the information and the uses contemplated so that IRS could determine if the request met the applicable criteria for disclosure; and (3) the improper use of tax returns and information, particularly by the FBI in COINTELPRO. Recommendations 30 through 35 are designed to prevent these abuses from occurring again.

While general problems of disclosure are being studied by several different congressional committees with jurisdiction over IRS, these recommendations reflect this Committee's focus on disclosure problems seen in the interaction between IRS and the intelligence agencies.

Recommendation 30.—No intelligence agency should request[40] from the Internal Revenue Service tax returns or tax-related information except under the statutes and regulations controlling such disclosures. In addition, the existing procedures under which tax returns and tax-related information are released by the IRS should be strengthened, as suggested in the following five recommendations.

Recommendation 31.—All requests from an intelligence agency to the IRS for tax returns and tax-related information should be in writing, and signed by the head of the intelligence agency making the request, or his designee. Copies of such requests should be filed with the Attorney General. Each request should include a clear statement of:

(*a*) The purpose for which disclosure is sought;

(*b*) Facts sufficient to establish that the requested information is needed by the requesting agency for the performance of an authorized and lawful function;

(*c*) The uses which the requesting agency intends to make of the information;

(*d*) The extent of the disclosures sought;

(*e*) Agreement by the requesting agency not to use the documents or information for any purpose other than that stated in the request; and

(*f*) Agreement by the requesting agency that the information will not be disclosed to any other agency or person except in accordance with the law.

Recommendation 32.—IRS should not release tax returns or tax-related information to any intelligence agency unless it has received a request satisfying the requirements of Recommendation 31, and the Commissioner of Internal Revenue has approved the request in writing.

Recommendation 33.—IRS should maintain a record of all such requests and responses thereto for a period of twenty years.

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[40] "Request" as used in the recommendations concerning the Internal Revenue Service should not include circumstances in which the agency is acting with the informed written consent of the taxpayer.

Recommendation 34.—No intelligence agency should use the information supplied to it by the IRS pursuant to a request of the agency except as stated in a proper request for disclosure.

Recommendation 35.—All requests for information sought by the FBI should be filed by the Department of Justice. Such requests should be signed by the Attorney General or his designee, following a determination by the Department that the request is proper under the applicable statutes and regulations.

b. Post Office (U.S. Postal Service)

These recommendations are designed to tighten the existing restrictions regarding requests by intelligence agencies for both inspection of the exteriors of mail ("mail cover") and inspection of the contents of first class mail ("mail opening"). As to mail cover, the Committee's recommendation is to centralize the review and approval of all requests by requiring that only the Attorney General may authorize mail cover, and to eliminate unjustified mail covers by requiring that the mail cover be found "necessary" to a domestic security investigation. With respect to mail opening, the recommendations provide that it can only be done pursuant to court warrant.

Recommendation 36.—The Post Office should not permit the FBI or any intelligence agency to inspect markings or addresses on first class mail, nor should the Post Office itself inspect markings or addresses on behalf of the FBI or any intelligence agency, on first class mail, except upon the written approval of the Attorney General or his designee. Where one of the correspondents is an American, the Attorney General or his designee should only approve such inspection for domestic security purposes upon a written finding that it is necessary to a criminal investigation or a preventive intelligence investigation of terrorist activity or hostile foreign intelligence activity.

Upon such a request, the Post Office may temporarily remove from circulation such correspondence for the purpose of such inspection of its exterior as is related to the investigation.

Recommendation 37.—The Post Office should not transfer the custody of any first class mail to any agency except the Department of Justice. Such mail should not be transferred or opened except upon a judicial search warrant.

(*a*) In the case of mail where one of the correspondents is an American, the judge must find that there is probable cause to believe that the mail contains evidence of a crime.[41]

(*b*) In the case of mail where both parties are foreigners:

(1) The judge must find that there is probable cause to believe that both parties to such correspondence are foreigners, and one of the correspondents is an officer, employee or conscious agent of a foreign power; and

(2) The Attorney General must certify that the mail opening is likely to reveal information necessary either (i) to the protection of the nation against actual or potential attack or other hostile acts of force of a foreign power; (ii) to obtain foreign intelligence information deemed essential to the security of the United States; or (iii) to

[41] See recommendation 94 for the Committee's recommendation that Congress consider amending the Espionage Act so as to cover modern forms of espionage not now criminal.

protect national security information against hostile foreign intelligence activity.

iv. Federal Domestic Security Activities Should Be Limited and Controlled to Prevent Abuses Without Hampering Criminal Investigations or Investigations of Foreign Espionage

The recommendations contained in this part are designed to accomplish two principal objectives: (1) prohibit improper intelligence activities and (2) define the limited domestic security investigations which should be permitted. As suggested earlier, the ultimate goal is a statutory mandate for the federal government's domestic security function that will ensure that the FBI, as the primary domestic security investigative agency, concentrates upon criminal conduct as opposed to political rhetoric or association. Our recommendations would vastly curtail the scope of domestic security investigations as they have been conducted, by prohibiting inquiries initiated because the Bureau regards a group as falling within a vaguely defined category such as "subversive," "New Left," "Black Nationalist Hate Groups," or "White Hate Groups." The recommendations also ban investigations based merely upon the fact that a person or group is associating with others who are being investigated (e.g., the Bureau's investigation of the Southern Christian Leadership Conference because of alleged "Communist infiltration").

The simplest way to eliminate investigations of peaceful speech and association would be to limit the FBI to traditional investigations of crimes which have been committed (including the crimes of attempt and conspiracy). The Committee found, however, that there are circumstances where the FBI should have authority to conduct limited "intelligence investigations" of threatened conduct (terrorism and foreign espionage) which is generally covered by the criminal law, where the conduct has not yet reached the stage of a prosecuteable act.

The Committee, however, found that abuses were frequently associated even with such intelligence investigations. This led us also to recommend: precise limitations upon the use of covert techniques (Recommendations 51 to 60); restrictions upon maintenance and dissemination of information gathered in such investigations (Recommendations 64 to 68); and a statutory requirement that the Attorney General monitor these investigations and terminate them as soon as practical (Recommendation 69).

a. Centralize Supervision, Investigative Responsibility, and the Use of Covert Techniques

Investigations should be centralized within the Department of Justice. It is the Committee's judgment that if former Attorneys General had been held accountable by the Congress for ensuring compliance by the FBI and the intelligence agencies with laws designed to protect the rights of Americans, the Department of Justice would have been more likely to discover and enjoin improper activities. Furthermore, centralizing domestic security investigations within the FBI will facilitate the Attorney General's supervision of them.

Recommendation 38.—All domestic security investigative activity, including the use of covert techniques, should be centralized within the Federal Bureau of Investigation, except those investigations by the

Secret Service designed to protect the life of the President or other Secret Service protectees. Such investigations and the use of covert techniques in those investigations should be centralized within the Secret Service.

Recommendation 39.—All domestic security activities of the federal government and all other intelligence agency activities covered by the Domestic Intelligence Recommendations should be subject to Justice Department oversight to assure compliance with the Constitution and laws of the United States.

b. Prohibitions

The Committee recommends a set of prohibitions, in addition to its later recommendations limiting the scope of and procedural controls for domestic security investigations.

The following prohibitions cover abuses ranging from the political use of the sensitive information maintained by the Bureau to the excesses of COINTELPRO. They are intended to cover activities engaged in, by, or on behalf of, the FBI. For example, in prohibiting Bureau interference in lawful speech, publication, assembly, organization, or association of Americans, the Committee intends to prohibit a Bureau agent from mailing fake letters to factionalize a group as well as to prohibit an informant from manipulating or influencing the peaceful activities of a group on behalf of the FBI.

Subsequent recommendations limit the kinds of investigations which can be opened and provide controls for those investigations. Specifically, the Committee limits FBI authority to collect information on Americans to enumerated circumstances; limits authority to maintain information on political beliefs, political assocations, or private lives of Americans; requires judicial warrants for the most intrusive covert collection techniques (electronic surveillance, mail opening, and surreptitious entry); and proposes new restrictions upon the use of other covert techniques, particularly informants.

Recommendation 40.—The FBI should be prohibited from engaging on its own or through informants or others, in any of the following activities directed at Americans:

(*a*) Disseminating any information to the White House, any other federal official, the news media, or any other person for a political or other improper purpose, such as discrediting an opponent of the administration or a critic of an intelligence or investigative agency.

(*b*) Interfering with lawful speech, publication, assembly, organizational activity, or association of Americans.

(*c*) Harassing individuals through unnecessary overt investigative techniques [42] such as interviews or obvious physical surveillance for the purpose of intimidation.

Recommendation 41.—The Bureau should be prohibited from maintaining information on the political beliefs, political associations, or private lives of Americans except that which is clearly necessary for domestic security investigations as described in Part c.[43]

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[42] "Overt investigative techniques" means the collection of information readily available from public sources or to a private person (including interviews of the subject or his friends or associates).

[43] Thus, the Bureau would have an obligation to review any such information before it is placed in files and to review the files, thereafter, to remove it if no longer needed. This obligation does not extend to files sealed under Recommendation 65.

c. Authorized Scope of Domestic Security Investigations

The Committee sought three objectives in defining the appropriate jurisdiction of the FBI. First, we sought to carefully limit any investigations other than traditional criminal investigations to five defined areas: preventive intelligence investigations (in two areas closely related to serious criminal activity—terrorist and hostile foreign intelligence activities), civil disorders assistance, background investigations, security risk investigations, and security leak investigations.

Second, we sought substantially to narrow, and to impose special restrictions on the conduct of, those investigations which involved the most flagrant abuses in the past: preventive intelligence investigations and civil disorders assistance. Third, we sought to provide a clear statutory foundation for those investigations which the Committee believes are appropriate to fill the vacuum in FBI legal authority.

Achieving the first and second objectives will have the most significant impact upon the FBI's domestic intelligence program and indeed, could eliminate almost half its workload. Recommendations 44 through 46 impose two types of restrictions upon the conduct of intelligence investigations and civil disorders assistance. First, the scope of intelligence investigations is limited to terrorist activities or espionage and the scope of civil disorders assistance is limited to civil disorders which may require federal troops. Second, the Committee suggests that the threshold for initiation of a full intelligence investigation be "reasonable suspicion." [44] Preliminary intelligence investigations—limited in scope, duration, and investigative technique—could be opened upon a "specific allegation or specific or substantiated information." A written finding by the Attorney General of a likely need for federal troops is required for civil disorders assistance.

The Committee's approach to FBI domestic security investigations is basically the same as that adopted by the Attorney General's guidelines for domestic security investigations. Both are cautious about any departures from former Attorney General Stone's maxim that the FBI should only conduct criminal investigations. For example, neither the Committee nor the Attorney General would condone investigations which are totally unrelated to criminal statutes (e.g., the FBI's 1970 investigation of all black student unions).

However, the Committee views its recommendations as a somewhat more limited departure from former Attorney General Stone's line than the present Attorney General's guidelines. First, the Committee would only permit intelligence investigations with respect to hostile foreign intelligence activity and terrorism. The Attorney General's guidelines have been read by FBI officials as authorizing intelligence investigations of "subversives" (individuals who may attempt to overthrow the government in the indefinite future). While the Justice Department, under its current leadership, might not adopt such an interpretation, a different Attorney General might. Second, the guidelines on their face appear to permit investigating essentially local civil disobedience (e.g., "use of force" to interfere with state or local government which could be construed too broadly).

[44] "Reasonable suspicion" is based upon the Supreme Court's decision in the case of *Terry* v. *Ohio*, 392 U.S. 1 (1968), and means specific and articulable facts which taken together with rational inferences from those facts, give rise to a reasonable suspicion that specified activity has occurred, is occurring, or is about to occur.

There are two reasons why the Committee would prohibit intelligence investigations of "subversives" or local civil disobedience. First, those investigations inherently risk abuse because they inevitably require surveillance of lawful speech and association rather than criminal conduct. The Committee's examination of forty years of investigations into "subversion" has found the term to be so vague as to constitute a license to investigate almost any activity of practically any group that actively opposes the policies of the administration in power.

A second reason for prohibiting intelligence investigations of "subversion" and local civil disobedience is that both can be adequately handled by less intrusive methods without unnecessarily straining limited Bureau resources. Any real threats to our form of government can be best identified through intelligence investigations focused on persons who may soon commit illegal violent acts. Local civil disobedience can be best handled by local police. Indeed, recent studies by the General Accounting Office suggest that FBI investigations in these areas result in very few prosecutions and little information of help to authorities in preventing violence.

The FBI now expends more money in its domestic security program than it does in its organized crime program, and, indeed, twice the amount on "internal security" informant operations as on organized crime informant coverage. "Subversive investigations" and "civil disorders assistance" represent almost half the caseload of the FBI domestic security program. The national interest would be better served if Bureau resources were directed at terrorism, hostile foreign intelligence activity, or organized crime, all more serious and pressing threats to the nation than "subversives" or local civil disobedience.

For similar reasons, the Committee, like the Attorney General's guidelines, requires "reasonable suspicion" for preventive intelligence investigations which extend beyond a preliminary stage. Investigations of terrorism and hostile foreign intelligence activity which are not limited in time and scope could lead to the same abuses found in intelligence investigations of subversion or local civil disobedience. However, an equally important reason for this standard is that it should increase the efficiency of Bureau investigations. The General Accounting Office found that when the FBI initiated its investigations on "soft evidence"—evidence which probably would not meet this "reasonable suspicion" standard—it usually wasted its time on an innocent target. When it initiated its investigation on harder evidence, its ability to detect imminent violence improved significantly.

The Committee's recommendations limit preventive intelligence investigations to situations where information indicates that the prohibited activity will "soon" occur, whereas the guidelines do not require that the activity be imminent. This limit is essential to prevent a return to sweeping, endless investigations of remote and speculative "threats." The Committee's intent is that, to open or continue a full investigation, there should be a substantial indication of terrorism or hostile foreign intelligence activity in the near future.

The Committee's restrictions are intended to eliminate unnecessary investigations and to provide additional protections for constitutional rights. Shifting the focus of Bureau manpower in domestic security investigations from lawful speech and association to criminal conduct

by terrorists and foreign spies provides further protection for constitutional rights of Americans as well as serving the nation's interest in security.

1. Investigations of Committed or Imminent Offenses

Recommendation 42.—The FBI should be permitted to investigate a committed act which may violate a federal criminal statute pertaining to the domestic security to determine the identity of the perpetrator or to determine whether the act violates such a statute.

Recommendation 43.—The FBI should be permitted to investigate an American or foreigner to obtain evidence of criminal activity where there is "reasonable suspicion" that the American or foreigner has committed, is committing, or is about to commit a specific act which violates a federal statute pertaining to the domestic security.[45]

2. Preventive Intelligence Investigations

Recommendation 44.—The FBI should be permitted to conduct a preliminary preventive intelligence investigation of an American or foreigner where it has a specific allegation or specific or substantiated information that the American or foreigner will soon engage in terrorist activity or hostile foreign intelligence activity. Such a preliminary investigation should not continue longer than thirty days from receipt of the information unless the Attorney General or his designee finds that the information and any corroboration which has been obtained warrants investigation for an additional period which may not exceed sixty days. If, at the outset or at any time during the course of a preliminary investigation the Bureau establishes "reasonable suspicion" that an American or foreigner will soon engage in terrorist activity or hostile foreign intelligence activity, it may conduct a full preventive intelligence investigation. Such full investigation should not continue longer than one year except upon a finding of compelling circumstances by the Attorney General or his designee.

In no event should the FBI open a preliminary or full preventive intelligence investigation based upon information that an American is advocating political ideas or engaging in lawful political activities or is associating with others for the purpose of petitioning the government for redress of grievances or other such constitutionally protected purpose.

The second paragraph of Recommendation 44 will serve as an important safeguard if enacted into any statute authorizing preventive intelligence investigations. It would supplement the protection that would be afforded by limiting the FBI's intelligence investigations to terrorist and hostile foreign intelligence activities. It re-emphasizes the Committee's intent that the investigations of peaceful protest groups and other lawful associations should not recur. It serves as a further reminder that advocacy of political ideas is not to be the basis for governmental surveillance. At the same time Recommendation 44 permits the initiation of investigations where the Bureau possesses information consisting of a "specific allegation or specific or substantiated informa-

[45] This includes conspiracy to violate a federal statute pertaining to the domestic security. The Committee, however, recommends repeal or amendment of the Smith Act to make clear that "conspiracy" to engage in political advocacy cannot be investigated. (See Recommendation 93.)

tion that [an] American or foreigner will soon engage in terrorist activity or hostile foreign intelligence activity."

This recommendation has been among the most difficult of the domestic intelligence recommendations to draft. It was difficult because it represents the Committee's effort to draw the fine line between legitimate investigations of conduct and illegitimate investigations of advocacy and association. Originally the Committee was of the view that a threshold of "reasonable suspicion" should apply to initiating even limited preliminary intelligence investigations of terrorist or hostile foreign intelligence activities. However, the Committee was persuaded by the Department of Justice that, having narrowly defined terrorist and hostile foreign intelligence activities, a "reasonable suspicion" threshold might be unworkable at the preliminary stage. Such a threshold might prohibit the FBI from investigating an allegation of extremely dangerous activity made by an anonymous source or a source of unknown reliability. The "reasonable suspicion" standard requires that the investigator have confidence in the reliability of the individual providing the information and some corroboration of the information.

However, the Committee is cautious in proposing a standard of "specific allegation or specific or substantiated information" because it permits initiation of a preliminary investigation which includes the use of physical surveillance and a survey of, but not targeting of, existing confidential human sources. The Committee encourages the Attorney General to work with the Congress to improve upon the language we recommend in Recommendation 44 before including it in any legislative charter. If adopted, both the Attorney General and the appropriate oversight committees should periodically conduct a careful review of the application of the standard by the FBI.

The ultimate goal which Congress should seek in enacting such legislation is the development of a standard for the initiation of intelligence investigations which permits investigations of credible allegations of conduct which if uninterrupted will soon result in terrorist activities or hostile foreign intelligence activities as we define them. It must not permit investigations of consitutionally protected activities as the Committee described them in the last paragraph of Recommendation 44. The following are examples of the Committee's intent.

Recommendation 44 would prohibit the initiation of an investigation based upon "mere advocacy:"

—An investigation could not be initiated, for example, when the Bureau receives an allegation that a member of a dissident group has made statements at the group's meeting that "America needs a Marxist-Leninist government and needs to get rid of the fat cat capitalist pigs."

The Committee has found serious abuses in past FBI investigations of groups. In the conduct of these investigations, the FBI often failed to distinguish between members who were engaged in criminal activity and those who were exercising their constitutional rights of association. The Committee's recommendations would only permit investigation of a group in two situations: first, where the FBI receives information that the avowed purpose of the group is "soon to engage in terrorist activity or hostile foreign intelligence activity"; or second, where the FBI has information that unidentified members of a group are

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"soon to engage in terrorist activity or hostile foreign intelligence activity". In both cases the FBI may focus on the group to determine the identity of those members who plan soon to engage in such activity. However, in both cases the FBI should minimize the collection of information about law-abiding members of the group or any lawful activities of the group.

—Where the FBI has information that certain chapters of a political organization had "action squads," the purpose of which was to commit terrrorist acts, the FBI could investigate all members of a particular "action squad" where it had an allegation that this "action squad" planned to assassinate, for example, Members of Congress.

—An investigation could be initiated based upon specific information obtained by the FBI that unidentified members of a Washington, D.C., group are planning to assassinate Members of Congress.

The Committee's recommendations would not permit investigation of mere association:

—The FBI could not investigate an allegation that a member of the Klan has lunch regularly with the mayor of a southern community.

—The FBI could not investigate the allegation that a U.S. Senator attended a cocktail party at a foreign embassy where a foreign intelligence agent was present.

However, when additional facts are added indicating conduct which might constitute terrorist activity or hostile foreign intelligence activity, investigation might be authorized:

—The FBI could initiate an investigation of a dynamite dealer who met with a member of the "action squad" described above.

—Likewise, the FBI could initiate an investigation of a member of the National Security Council staff who met clandestinely with a known foreign intelligence agent in an obscure Paris restaurant.

Investigations of contacts can become quite troublesome when the contact takes place within the context of political activities or association for the purpose of petitioning the government. Law-abiding American protest groups may share common goals with groups in other countries. The obvious example was the widespread opposition in the late 1960's, at home and abroad, to America's role in Vietnam.

Furthermore, Americans should be free to communicate about such issues with persons in other countries, to attend international conferences and to exchange views or information about planned protest activities with like-minded foreign groups. Such activity, in itself, would not be the basis for a preliminary investigation under these recommendations:

—The FBI could not open an investigation of an anti-war group because "known communists" were also in attendance at a group meeting even if it had reason to believe that the communists' instructions were to influence the group or that the group shared the goals of the Soviet Union on ending the war in Vietnam.

—The FBI could not open an investigation of an anti-war activist who attends an international peace conference in Oslo where foreign intelligence agents would be in attendance even if the FBI had reason to believe that they might attempt to recruit the activist. Of course, the CIA would not be prevented from surveillance of the foreign agent's activities.

However, if the Bureau had additional information suggesting that the activities of the Americans in the above hypothetical cases were

more than mere association to petition for redress of grievances, an investigation would be legitimate.

—Where the FBI had received information that the anti-war activist traveling to Oslo intended to meet with a person he knew to be a foreign intelligence agent to receive instructions to conduct espionage on behalf of a hostile foreign country, the FBI could open a preliminary investigation of the activist.

The Committee cautions the Department of Justice and FBI that in opening investigations of conduct occurring in the context of political activities, it should endeavor to ensure that the allegation prompting the investigation is from a reliable source.

Certainly, however, where the FBI has received a specific allegation or specific or substantiated information that an American or foreigner will soon engage in hostile foreign intelligence activity or terrorist activity, it may conduct an investigation. For example, it could do so:

—Where the FBI receives information that an American has been recruited by a hostile intelligence service;

—Where the FBI receives information that an atomic scientist has had a number of clandestine meetings with a hostile foreign intelligence agent.

Recommendation 45.—The FBI should be permitted to collect information to assist federal, state, and local officials in connection with a civil disorder either—

(i) After the Attorney General finds in writing that there is a clear and immediate threat of domestic violence or rioting which is likely to require implementation of 10 U.S.C. 332 or 333 (the use of federal troops for the enforcement of federal law or federal court orders), or likely to result in a request by the governor or legislature of a state pursuant to 10 U.S.C. 331 for the use of federal militia or other federal armed forces as a countermeasure; [45a] or

(ii) After such troops have been introduced.

Recommendation 46.—FBI assistance to federal, state, and local officials in connection with a civil disorder should be limited to collecting information necessary for

(1) the President in making decisions concerning the introduction of federal troops;

(2) military officials in positioning and supporting such troops; and

(3) state and local officials in coordinating their activities with such military officials.

4. Background Investigations

Recommendation 47.—The FBI should be permitted to participate in the federal government's program of background investigations of federal employees or employees of federal contractors. The authority to conduct such investigations should not, however, be used as the basis for conducting investigations of other persons. In addition, Congress should examine the standards of Executive Order 10450, which serves as the current authority for FBI background investigations, to determine whether additional legislation is necessary to:

(*a*) modify criteria based on political beliefs and associations unrelated to suitability for employment; such modification should make

[45a] This recommendation does not prevent the FBI from conducting criminal investigations or preventive intelligence investigations of terrorist acts in connection with a civil disorder.

those criteria consistent with judicial decisions regarding privacy of political association;[46] and

(*b*) restrict the dissemination of information from name checks[47] of information related to suitability for employment.

5. Security Risk Investigations

Recommendation 48.—Under regulations to be formulated by the Attorney General, the FBI should be permitted to investigate a specific allegation that an individual within the Executive branch with access to classified information is a security risk as described in Executive Order 10450. Such investigation should not continue longer than thirty days except upon written approval of the Attorney General or his designee.

6. Security Leak Investigations

Recommendation 49.—Under regulations to be formulated by the Attorney General, the FBI should be permitted to investigate a specific allegation of the improper disclosure of classified information by employees or contractors of the Executive branch.[48] Such investigation should not continue longer than thirty days except upon written approval of the Attorney General or his designee.

d. Authorized Investigative Techniques

The following recommendations contain the Committee's proposed controls on the use of investigative techniques in domestic security investigations which would be authorized herein. There are three types of investigative techniques: (1) overt techniques (e.g., interviews), (2) name checks (review of existing government files), and (3) covert techniques (which range, for example, from electronic surveillance and informants to the review of credit records).

The objective of these recommendations, like the Attorney General's domestic security guidelines, is to ensure that the more intrusive the technique, the more stringent the procedural checks that will be applied to it. Therefore, the recommendation would permit overt techniques and name checks in any of the investigative areas described above.

With respect to covert technique, the Committee decided upon procedures to apply to the use of a particular covert technique based upon three considerations: (1) its potential for abuse, (2) the practicability of applying the procedure to the technique, and (3) the facts and circumstances giving rise to the request for use of the technique (whether the facts warrant a full investigation or only a preliminary investigation). The most intrusive covert techniques (electronic surveillance, mail opening, and surreptitious entry) would be permissible only if a judicial warrant were obtained as required in Recommendations 51 through 54. FBI requests to target paid or controlled informants, to review tax returns, to use mail covers, or to use any other covert techniques in domestic security investigations would be subject to review

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[46] For example, *NAACP* v. *Alabama*, 357 U.S. 449 (1958); *Bates* v. *Little Rock*, 361 U.S. 516 (1960).

[47] See definition of "name checks" at p. 340.

[48] If Congress enacts a security leak criminal statute, this additional investigative authority would be unnecessary. Security leaks would be handled as traditional criminal investigations as described in Recommendations 42 and 43 above.

and in some cases to prior approval by the Attorney General's office, as described in Recommendations 55 through 62.[49]

The judicial warrant requirement the Committee recommends for electronic surveillance is similar in many respects to the Administration's bill, which is a welcome departure from past practice. The Committee, like the Administration, believes that there should be no electronic surveillance within the United States which is not subject to a judicial warrant procedure. Both would also authorize warrants for electronic surveillance of foreigners who are officers, agents, or employees of foreign powers, even though the government could not point to probable cause of criminal activity.

However, while the constitutional issue has not been resolved, the Committee does not believe that the President has inherent power to authorize the targeting of an American for electronic surveillance without a warrant, as suggested by the Administration bill. Certainly, if Congress requires a warrant for the targeting of an American for traditional electronic surveillance or for the most sophisticated NSA techniques, at home or abroad, then the dangerous doctrine of inherent Executive power to target an American for electronic surveillance can be put to rest at last.[49a] The Committee also would require that no American be targeted for electronic surveillance except upon a judicial finding of probable criminal activity. The Administration bill would permit electronic surveillance in the absence of probable crime if the American is engaged in (or aiding or abetting a person engaged in) "clandestine intelligence activity" (an undefined term) under the direction of a foreign power. Targeting an American for electronic surveillance in the absence of probable cause to believe he might commit a crime is unwise and unnecessary.

In Part X, the Committee recommends that Congress consider amending the Espionage Act to cover modern forms of industrial, technological, or economic espionage not now prohibited. At the same time, electronic surveillance targeted at an American should be authorized where there is probable cause to believe he is engaged in such activity. Thus, the Committee agrees with the Attorney General that such activity may subject an American to electronic surveillance. But, as a matter of principle, the Committee believes that an American ought not to be targeted for surveillance unless there is probable cause to believe he may violate the law. The Committee's record suggests that use of undefined terms, not tied to matters sufficiently serious to be the subject of criminal statutes, is a dangerous basis for intrusive investigations.

The paid and directed informant was a principal source of excesses revealed in our record. However, we do not propose the application of a judicial warrant procedure to informants. Instead, we propose a requirement of approval by the Attorney General based upon a probable cause standard. Because of the potential for abuse, however, we believe the warrant issue should be thoroughly reviewed after two years' experience.

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[49] Review of tax returns and mail covers would also be subject to the Post Office and IRS procedures described in earlier recommendations.

[49a] "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb. . . ." (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 637 (1952), Justice Jackson concurring.)

There are some differences between the Attorney General and the Committee on the use of informants.[50] The Attorney General would permit the FBI to make unrestricted use of existing informants in a preliminary intelligence investigation. The Committee recognizes the legitimacy of using existing informants for certain purposes—for example, to identify a new subject who has come to the attention of the Bureau. However, the Committee believes there should be certain restrictions for existing informants. Indeed, almost all of the informant abuses—overly broad reporting, the ghetto informant program, agents provocateur, etc.—involved existing informants.

The real issue is not the development of new informants, but the sustained direction of informants, new or old, at a new target. Therefore, the restrictions suggested in Recommendations 55 through 57 are designed to impose standards for the sustained targeting of informants against Americans.

The Committee requires that before an informant can be targeted in an intelligence investigation the Attorney General or his designee must make a finding that he has considered and rejected less intrusive techniques and that targeting the informant is necessary to the investigation. Furthermore, the Committee would require that the informant cannot be targeted for more than ninety days [51] in the intelligence investigation unless the Attorney General finds that there is "probable cause" that the American will soon engage in terrorist or hostile foreign intelligence activity, except that if the Attorney General finds compelling circumstances he may permit an additional sixty days.

Other than the restrictions upon the use of informants, the Committee would permit basically the same techniques in preliminary and full investigations as the Attorney General's guidelines, although the Committee would require somewhat closer supervision by the Attorney General or his designee. Interviews (including interviews of existing informant's), name checks (including checks of local police intelligence files), and physical surveillance and review of credit and telephone records would be permitted during the preliminary investigation. The Attorney General or his designee would have to review that investigation within one month. Under the guidelines, preliminary investigations do not require approval by the Attorney General or his designee and can continue for as long as ninety days with an additional ninety-day extension. The remainder of the covert techniques would be permitted in full intelligence investigations. Under the Attorney General's guidelines, the Attorney General or his designee only become involved in the termination of such investigations (at the end of one year), while the Committee's recommendations would require the Attorney General or his designee to authorize the initiation of the full investigation and the use of covert techniques in the investigation.

1. Overt Techniques and Name Checks

Recommendation 50.—Overt techniques and name checks should be permitted in all of the authorized domestic security investigations

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[50] The Attorney General is considering additional guidelines on informants.

[51] The period of ninety days begins when the informant is in place and capable of reporting.

described above, including preliminary and full preventive intelligence investigations.

2. Covert Techniques

a. Covert Techniques Covered

This section covers the standards and procedures for the use of the following covert techniques in authorized domestic security investigations:

(i) electronic surveillance;
(ii) search and seizure or surreptitious entry;
(iii) mail opening;
(iv) informants and other covert human sources;
(v) mail surveillance;
(vi) review of tax returns and tax-related information;
(vii) other covert techniques—including physical surveillance, photographic surveillance, use of body recorders and other consensual electronic surveillance, and use of sensitive records of state and local government, and other institutional records systems pertaining to credit, medical history, social welfare history, or telephone calls.[52]

b. Judicial Warrant Procedures (Electronic Surveillance, Mail Opening, Search and Seizure, and Surreptitious Entry)

The requirements for judicial warrants, set forth below, are not intended to cover NSA communication intercepts. Recommendations 14 through 18 contain the Committee's recommendations pertaining to NSA intercepts, the circumstances in which a judicial warrant is required and the standards applicable for the issuance of such a warrant.

Recommendation 51.—All non-consensual electronic surveillance, mail-opening, and unauthorized entries should be conducted only upon authority of a judicial warrant.

Recommendation 52.—All non-consensual electronic surveillance should be conducted pursuant to judicial warrants issued under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

The Act should be amended to provide, with respect to electronic surveillance of foreigners in the United States, that a warrant may issue if

(*a*) There is probable cause that the target is an officer, employee, or conscious agent of a foreign power.

(*b*) The Attorney General has certified that the surveillance is likely to reveal information necessary to the protection of the nation against actual or potential attack or other hostile acts of force of a foreign power; to obtain foreign intelligence information deemed essential to the security of the United States; or to protect national security information against hostile foreign intelligence activity.

(*c*) With respect to any such electronic surveillance, the judge should adopt procedures to minimize the acquisition and retention of non-foreign intelligence information about Americans.

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[52] The Committee has not taken extensive testimony on these "other covert techniques" and therefore, aside from the general administrative procedures contained in c. below, makes no recommendations designed to treat these techniques fully.

(*d*) Such electronic surveillance should be exempt from the disclosure requirements of Title III of the 1968 Act as to foreigners generally and as to Americans if they are involved in hostile foreign intelligence activity.[53]

As noted earlier, the Committee believes that the espionage laws should be amended to include industrial espionage and other modern forms of espionage not presently covered and Title III should incorporate any such amendment. The Committee's recomendation is that both that change and the amendment of Title III to require warrants for all electronic surveillance be promptly made.

Recommendation 53.—Mail opening should be conducted only pursuant to a judicial warrant issued upon probable cause of criminal activity as described in Recommendation 37.

Recommendation 54.—Unauthorized entry should be conducted only upon judicial warrant issued on probable cause to believe that the place to be searched contains evidence of a crime, except unauthorized entry, including surreptitious entry, against foreigners who are officers, employees, or conscious agents of a foreign power should be permitted upon judicial warrant under the standards which apply to electronic surveillance described in Recommendation 52.

c. Administrative Procedures (Covert Human Sources, Mail Surveillance, Review of Tax Returns and Tax-Related Information, and Other Covert Techniques)

Recommendation 55.—Covert human sources may not be directed [54] at an American except:

(1) In the course of a criminal investigation if necessary to the investigation *provided* that covert human sources should not be directed at an American as a part of an investigation of a committed act unless there is reasonable suspicion to believe that the American is responsible for the act and then only for the purpose of identifying the perpetrators of the act.

(2) If the American is the target of a full preventive intelligence investigation and the Attorney General or his designee makes a written finding that [55] (i) he has considered and rejected less intrusive techniques; and (ii) he believes that covert human sources are necessary to obtain information for the investigation.

Recommendation 56.—Covert human sources which have been directed at an American in a full preventive intelligence investigation should not be used to collect information on the activities of the American for more than 90 days after the source is in place and capable of reporting, unless the Attorney General or his designee finds in writing

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[53] Except where disclosure is called for in connection with the defense in the case of criminal prosecution.

[54] A "covert human source" is an undercover agent or informant who is paid or otherwise controlled by the agency. A cooperating citizen is not ordinarily a covert human source. A covert human source is "directed" at an American when the intelligence agency requests the covert human source to collect new information on the activities of that individual. A covert human source is not "directed" at a target if the intelligence agency merely asks him for information already in his possession, unless through repeated inquiries, or otherwise, the agency implicitly directs the informant against the target of the investigation.

[55] The written finding must be made prior to the time the covert human source is directed at an American, unless exigent circumstances make application impossible, in which case the application must be made as soon thereafter as possible.

either that there are "compelling circumstances" in which case they may be used for an additional 60 days, or that there is probable cause that the American will soon engage in terrorist activities or hostile foreign intelligence activities.

Recommendation 57.—All covert human sources used by the FBI should be reviewed by the Attorney General or his designee as soon as practicable, and should be terminated [56] unless the covert human source could be directed against an American in a criminal investigation or a full preventive intelligence investigation under these recommendations.

Recommendation 58.—Mail surveillance and the review of tax returns and tax-related information should be conducted consistently with the recommendations contained in Part iii. In addition to restrictions contained in Part iii, the review of tax returns and tax-related information, as well as review of medical or social history records, confidential records of private institutions and confidential records of Federal, state, and local government agencies other than intelligence or law enforcement agencies may not be used against an American except:

(1) In the course of a criminal investigation if necessary to the investigation;

(2) If the American is the target of a full preventive intelligence investigation and the Attorney General or his designee makes a written finding that [57] (i) he has considered and rejected less intrusive techniques; and (ii) he believes that the covert technique requested by the Bureau is necessary to obtain information necessary to the investigation.

Recommendation 59.—The use of physical surveillance and review of credit and telephone records and any records of governmental or private institutions other than those covered in Recommendation 58 should be permitted to be used against an American, if necessary, in the course of either a criminal investigation or a preliminary or full preventive intelligence investigation.

Recommendation 60.—Covert techniques should be permitted at the scene of a potential civil disorder in the course of preventive criminal intelligence and criminal investigations as described above. Non-warrant covert techniques may also be directed at an American during a civil disorder in which extensive acts of violence are occurring and Federal troops have been introduced. This additional authority to direct such covert techniques at Americans during a civil disorder should be limited to circumstances where Federal troops are actually in use and the technique is used only for the purpose of preventing further violence.

Recommendation 61.—Covert techniques should not be directed at an American in the course of a background investigation without the informed written consent of the American.

Recommendation 62.—If Congress enacts a statute attaching criminal sanctions to security leaks, covert techniques should be directed at Americans in the course of security leak investigations only if such

[56] Termination requires cessation of payment or any other form of direction or control.

[57] The written finding must be made prior to the time the technique is used against an American, unless exigent circumstances make application impossible, in which case the application must be made as soon thereafter as possible.

techniques are consistent with Recommendation 55(1), 58(1) or 59. With respect to security risks, Congress might consider authorizing covert techniques, other than those requiring a judicial warrant, to be directed at Americans in the course of security risk [58] investigations, *but* only upon a written finding of the Attorney General that (i) there is reasonable suspicion to believe that the individual is a security risk, (ii) he has considered and rejected less intrusive techniques, and (iii) he believes the technique requested is necessary to the investigation.

(*d*) *Incidental Overhears*

Recommendation 63.—Except as limited elsewhere in these recommendations or in Title III of the Omnibus Crime Control and Safe Streets Act of 1968, information obtained incidentally through an authorized covert technique about an American or a foreigner who is not the target of the covert technique can be used as the basis for any authorized domestic security investigation.

e. Maintenance and Dissemination of Information

The following limitations should apply to the maintenance and dissemination of information collected as a result of domestic security investigations.

1. Relevance

Recommendation 64.—Information should not be maintained except where relevant to the purpose of an investigation.

2. Sealing or Purging

Recommendation 65.—Personally identifiable information on Americans obtained in the following kinds of investigations should be sealed or purged as follows (unless it appears on its face to be necessary for another authorized investigation):

(*a*) Preventive intelligence investigations of terrorist or hostile foreign intelligence activities—as soon as the investigation is terminated by the Attorney General or his designee pursuant to Recommendation 45 or 69.

(*b*) Civil disorder assistance—as soon as the assistance is terminated by the Attorney General or his designee pursuant to Recommendation 69, provided that where troops have been introduced such information need be sealed or purged only within a reasonable period after their withdrawal.

Recommendation 66.—Information previously gained by the FBI or any other intelligence agency through illegal techniques should be sealed or purged as soon as practicable.

3. Dissemination

Recommendation 67.—Personally identifiable information on Americans from domestic security investigations may be disseminated outside the Department of Justice as follows:

(*a*) Preventive intelligence investigations of terrorist activities—personally identifiable information on Americans from preventive criminal intelligence investigations of terrorist activities may be disseminated only to:

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[58] If Congress does not enact a security leak criminal statute, Congress might consider authorizing covert techniques in the same circumstances as security risk investigations either as an interim measure or as an alternative to such a statute.

(1) A foreign or domestic law enforcement agency which has jurisdiction over the criminal activity to which the information relates; or

(2) To a foreign intelligence or military agency of the United States, if necessary for an activity permitted by these recommendations; or

(3) To an appropriate federal official with authority to make personnel decisions about the subject of the information; or

(4) To a foreign intelligence or military agency of a cooperating foreign power if necessary for an activity permitted by these recommendations to similar agencies of the United States; or

(5) Where necessary to warn state or local officials of terrorist activity likely to occur within their jurisdiction; or

(6) Where necessary to warn any person of a threat to life or property from terrorist activity.

(*b*) Preventive intelligence investigations of hostile foreign intelligence activities—personally identifiable information on Americans from preventive criminal intelligence investigations of hostile intelligence activities may be disseminated only:

(1) To an appropriate federal official with authority to make personnel decisions about the subject of the information; or

(2) To the National Security Council or the Department of State upon request or where appropriate to their administration of U.S. foreign policy; or

(3) To a foreign intelligence or military agency of the United States, if relevant to an activity permitted by these recommendations; or

(4) To a foreign intelligence or military agency of a cooperating foreign power if relevant to an activity permitted by these recommendations to similar agencies of the United States.

(*c*) Civil disorders assistance—personally identifiable information on Americans involved in an actual or potential disorder, collected in the course of civil disorders assistance, should not be disseminated outside the Department of Justice except to military officials and appropriate state and local officials at the scene of a civil disorder where federal troops are present.[59]

(*d*) Background investigations—to the maximum extent feasible, the results of background investigations should be segregated within the FBI and only disseminated to officials outside the Department of Justice authorized to make personnel decisions with respect to the subject.

(*e*) All other authorized domestic security investigations—to governmental officials who are authorized to take action consistent with the purpose of an investigation or who have statutory duties which require the information.

4. Oversight Access

Recommendation 68.—Officers of the Executive branch, who are made responsible by these recommendations for overseeing intelligence activities, and appropriate congressional committees should

[59] Personally identifiable information on terrorist activity which pertains to a civil disorder could still be disseminated pursuant to (a) above.

have access to all information necessary for their functions. The committees should adopt procedures to protect the privacy of subjects of files maintained by the FBI and other agencies affected by the domestic intelligence recommendations.

f. Attorney General Oversight of the FBI, Including Termination of Investigations and Covert Techniques

Recommendation 69.—The Attorney General should:

(*a*) Establish a program of routine and periodic review of FBI domestic security investigations to ensure that the FBI is complying with all of the foregoing recommendations; and

(*b*) Assure, with respect to the following investigations of Americans, that:

(1) Preventive intelligence investigations of terrorist activity or hostile foreign intelligence activity are terminated within one year, except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances";

(2) Covert techniques are used in preventive intelligence investigations of terrorist activity or hostile foreign intelligence activity only so long as necessary and not beyond time limits established by the Attorney General except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances";

(3) Civil disorders assistance is terminated upon withdrawal of federal troops or, if troops were not introduced. within a reasonable time after the finding by the Attorney General that troops are likely to be requested, except that the Attorney General or his designee may grant extensions upon a written finding of "compelling circumstances."

v. The Responsibility and Authority of the Attorney General for Oversight of Federal Domestic Security Activities Must Be Clarified and General Counsels and Inspectors General of Intelligence Agencies Strengthened

The Committee's Recommendations give the Attorney General broad oversight responsibility for federal domestic security activities. As the chief legal officer of the United States, the Attorney General is the most appropriate official to be charged with ensuring that the intelligence agencies of the United States conduct their activities in accordance with the law. The Executive Order, however, places primary responsibility for oversight of the intelligence agencies with the newly created Oversight Board.

Both the Recommendations and the Order recognize the Attorney General's primary responsibility to detect, or prevent, violations of law by any employee of intelligence agencies. Both charge the head of intelligence agencies with the duty to report to the Attorney General information which relates to possible violations of law by any employee of the respective intelligence agencies. The Order also requires the Oversight Board to report periodically, at least quarterly, to the Attorney General on its findings and to report, in a timely manner, to the Attorney General, any activities that raise serious questions about legality.

a. Attorney General Responsibility and Relationship With Other Intelligence Agencies

These recommendations are intended to implement the Attorney General's responsibility to control and supervise all of the domestic security activities of the federal government and to oversee activities of any agency affected by the Domestic Intelligence Recommendations:

Recommendation 70.—The Attorney General should review the internal regulations of the FBI and other intelligence agencies engaging in domestic security activities to ensure that such internal regulations are proper and adequate to protect the constitutional rights of Americans.

Recommendation 71.—The Attorney General or his designee (such as the Office of Legal Counsel of the Department of Justice) should advise the General Counsels of intelligence agencies on interpretations of statutes and regulations adopted pursuant to these recommendations and on such other legal questions as are described in b. below.

Recommendation 72.—The Attorney General should have ultimate responsibility for the investigation of alleged violations of law relating to the Domestic Intelligence Recommendations.

Recommendation 73.—The Attorney General should be notified of possible alleged violations of law through the Office of Professional Responsibility (described in c. below) by agency heads, General Counsel, or Inspectors General of intelligence agencies as provided in B. below.

Recommendation 74.—The heads of all intelligence agencies affected by these recommendations are responsible for the prevention and detection of alleged violations of the law by, or on behalf of, their respective agencies and for the reporting to the Attorney General of all such alleged violations.[60] Each such agency head should also assure his agency's cooperation with the Attorney General in investigations of alleged violations.

b. General Counsel and Inspectors General of Intelligence

The Committee recommends that the FBI and each other intelligence agency should have a general counsel nominated by the President and confirmed by the Senate. There is no provision in the Executive Order making General Counsels of intelligence agencies subject to Senate confirmation. The Committee believes that the extraordinary responsibilities exercised by the General Counsel of these agencies make it very important that these officials are subject to examination by the Senate prior to their confirmation. The Committee further believes that making such positions subject to Presidential appointment and senatorial confirmation will increase the stature of the office and will protect the independence of judgment of the General Counsel.

The Committee Recommendations differ from the Executive Order in two other important respects. The Recommendations provide that the General Counsel should review all significant proposed agency activities to determine their legality. They also provide a mechanism

[60] This recommendation must be read along with recommendations contained in Part ii, limiting the authority of foreign intelligence and military agencies to investigate security leaks or security risks involving their employees and centralizing those investigations in the FBI.

whereby the Inspector General or General Counsel of an intelligence agency can, in extraordinary circumstances, and if requested by an employee of the Agency, provide information directly to the Attorney General or appropriate congressional oversight committees without informing the head of the agency.

The Committee Recommendations also go beyond the Executive Order in requiring agency heads to report to appropriate committees of the Congress and the Attorney General on the activities of the Office of the General Counsel and the Office of the Inspector General. The Committee believes that the reporting requirements will facilitate oversight of the intelligence agencies and of those important offices within them.

Recommendation 75.—To assist the Attorney General and the agency heads in the functions described in a. above, the FBI and each other intelligence agency should have a General Counsel, nominated by the President and confirmed by the Senate, and an Inspector General appointed by the agency head.

Recommendation 76.—Any individual having information on past, current, or proposed activities which appear to be illegal, improper, or in violation of agency policy should be required to report the matter immediately to the Agency head, General Counsel, or Inspector General. If the matter is not initially reported to the General Counsel, he should be notified by the Agency head or Inspector General. Each agency should regularly remind employees of their obligation to report such information.

Recommendation 77.—As provided in Recommendation 74, the heads of the FBI and of other intelligence agencies are responsible for reporting to the Attorney General alleged violations of law. When such reports are made, the appropriate congressional committees should be notified.[61]

Recommendation 78.—The General Counsel and Inspector General of the FBI and of each other intelligence agency should have unrestricted access to all information in the possession of the agency and should have the authority to review all of the agency's activities.[62] The Attorney General, or the Office of Professional Responsibility on his behalf, should have access to all information in the possession of an agency which, in the opinion of the Attorney General, is necessary for an investigation of illegal activity.

Recommendation 79.—The General Counsel of the FBI and of each other intelligence agency should review all significant proposed agency activities to determine their legality and constitutionality.

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[61] The Inspector General and General Counsel should have authority, in extraordinary circumstances, and if requested by an employee of the agency providing information, to pass the information directly to the Attorney General and to notify the appropriate congressional committees without informing the head of the agency. Furthermore, nothing herein should prohibit an employee from reporting on his own such information directly to the Attorney General or an appropriate congressional oversight committee.

[62] The head of the agency should be required to provide to the appropriate oversight committees of the Congress and the Executive branch and the Attorney General an immediate explanation, in writing, of any instance in which the Inspector General or the General Counsel has been denied access to information, has been instructed not to report on a particular activity or has been denied the authority to investigate a particular activity.

Recommendation 80.—The Director of the FBI and the heads of each other intelligence agency should be required to report, at least annually, to the appropriate committee of the Congress, on the activities of the General Counsel and the Office of the Inspector General.[63]

Recommendation 81.—The Director of the FBI and the heads of each other intelligence agency should be required to report, at least annually, to the Attorney General on all reports of activities which appear illegal, improper, outside the legislative charter, or in violation of agency regulations. Such reports should include the General Counsel's findings concerning these activities, a summary of the Inspector General's investigations of these activities, and the practices and procedures developed to discover activities that raise questions of legality or propriety.

c. Office of Professional Responsibility

Recommendation 82.—The Office of Professional Responsibility created by Attorney General Levi should be recognized in statute. The director of the office, appointed by the Attorney General, should report directly to the Attorney General or the Deputy Attorney General. The functions of the office should include:

(*a*) Serving as a central repository of reports and notifications provided the Attorney General; and

(*b*) Investigation, if requested by the Attorney General of alleged violations by intelligence agencies of statutes enacted or regulations promulgated pursuant to these recommendations.[64]

d. Director of the FBI and Assistant Directors of the FBI

Recommendation 83.—The Attorney General is responsible for all of the activities of the FBI, and the Director of the FBI is responsible to, and should be under the supervision and control of, the Attorney General.

Recommendation 84.—The Director of the FBI should be nominated by the President and confirmed by the Senate to serve at the pleasure of the President for a single term of not more than eight years.

Recommendation 85.—The Attorney General should consider exercising his power to appoint Assistant Directors of the FBI. A maximum term of years should be imposed on the tenure of the Assistant Director for the Intelligence Division.[64a]

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[63] The report should include: (a) a summary of all agency activities that raise questions of legality or propriety and the General Counsel's findings concerning these activities; (b) a summary of the Inspector General's investigations concerning any of these activities; (c) a summary of the practices and procedures developed to discover activities that raise questions of legality or propriety; (d) a summary of each component, program or issue survey, including the Inspector General's recommendations and the Director's decisions; and (e) a summary of all other matters handled by the Inspector General.

The report should also include discussion of: (a) major legal problems facing the Agency; (b) the need for additional statutes; and (c) any cases referred to the Department of Justice.

[64] The functions of the Office should not include: (a) exercise of routine supervision of FBI domestic security investigations; (b) making requests to other agencies to conduct investigations or direct covert techniques at Americans; or (c) involvement in any other supervisory functions which it might ultimately be required to investigate.

[64a] It is not proposed that this recommendation be enacted as a statute.

vi. Administrative Rulemaking and Increased Disclosure Should Be Required

a. Administrative Rulemaking

Recommendation 86.—The Attorney General should approve all administrative regulations required to implement statutes created pursuant to these recommendations.

Recommendation 87.—Such regulations, except for regulations concerning investigations of hostile foreign intelligence activity or other matters which are properly classified, should be issued pursuant to the Administrative Procedures Act and should be subject to the approval of the Attorney General.

Recommendation 88.—The effective date of regulations pertaining to the following matters should be delayed ninety days, during which time Congress would have the opportunity to review such regulations:[65]

(*a*) Any CIA activities against Americans, as permitted in ii.a. above;

(*b*) Military activities at the time of a civil disorder;

(*c*) The authorized scope of domestic security investigations, authorized investigative techniques, maintenance and dissemination of information by the FBI; and

(*d*) The termination of investigations and covert techniques as described in Part iv.

b. Disclosure

Recommendation 89.—Each year the FBI and other intelligence agencies affected by these recommendations should be required to seek annual statutory authorization for their programs.

Recommendation 90.—The Freedom of Information Act (5 U.S.C. 552(b)) and the Federal Privacy Act (5 U.S.C. 552(a)) provide important mechanisms by which individuals can gain access to information on intelligence activity directed against them. The Domestic Intelligence Recommendations assume that these statutes will continue to be vigorously enforced. In addition, the Department of Justice should notify all readily identifiable targets of past illegal surveillance techniques, and all COINTELPRO victims, and third parties who had received anonymous COINTELPRO communications, of the nature of the activities directed against them, or the source of the anonymous communication to them.[65a]

vii. Civil Remedies Should Be Expanded

Recommendation 91 expresses the Committee's concern for establishing a legislative scheme which will afford effective redress to people who are injured by improper federal intelligence activity. The recommended provisions for civil remedies are also intended to deter improper intelligence activity without restricting the sound exercise of discretion by intelligence officers at headquarters or in the field.

As the Committee's investigation has shown, many Americans have suffered injuries from domestic intelligence activity, ranging from deprivation of constitutional rights of privacy and free speech to the loss of a job or professional standing, break-up of a marriage, and impairment of physical or mental health. But the extent, if any, to

[65] This review procedure would be similar to the procedure followed with respect to the promulgation of the Federal Rules of Criminal and Civil Procedure.

[65a] It is not proposed that this recommendation be enacted as a statute.

which an injured citizen can seek relief—either monetary or injunctive—from the government or from an individual intelligence officer is far from clear under the present state of the law.

One major disparity in the current state of the law is that, under the Reconstruction era Civil Rights Act of 1871, the deprivation of constitutional rights by an officer or agent of a state government provides the basis for a suit to redress the injury incurred;[66] but there is no statute which extends the same remedies for identical injuries when they are caused by a federal officer.

In the landmark *Bivens* case, the Supreme Court held that a federal officer could be sued for money damages for violating a citizen's Fourth Amendment rights.[67] Whether monetary damages can be obtained for violation of other constitutional rights by federal officers remains unclear.

While we believe that any citizen with a substantial and specific claim to injury from intelligence activity should have standing to sue, the Committee is aware of the need for judicial protection against legal claims which amount to harassment or distraction of government officials, disruption of legitimate investigations, and wasteful expenditure of government resources. We also seek to ensure that the creation of a civil remedy for aggrieved persons does not impinge upon the proper exercise of discretion by federal officials.

Therefore, we recommend that where a government official—as opposed to the government itself—acted in good faith and with the reasonable belief that his conduct was lawful, he should have an affirmative defense to a suit for damages brought under the proposed statute. To tighten the system of accountability and control of domestic intelligence activity, the Committee proposes that this defense be structured to encourage intelligence officers to obtain written authorization for questionable activities and to seek legal advice about them.[68]

To avoid penalizing federal officers and agents for the exercise of discretion, the Committee believes that the government should indemnify their attorney fees and reasonable litigation costs when they are held not to be liable. To avoid burdening the taxpayers for the deliberate misconduct of intelligence officers and agents, we believe the government should be able to seek reimbursement from those who willfully and knowingly violate statutory charters or the Constitution.

Furthermore, we believe that the courts will be able to fashion discovery procedures, including inspection of material in chambers, and to issue orders as the interests of justice require, to allow plaintiffs with substantial claims to uncover enough factual material to argue their case, while protecting the secrecy of governmental information in which there is a legitimate security interest.

The Committee recommends that a legislative scheme of civil remedies for the victims of intelligence activity be established along the

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[66] 42 U.S.C. 1983.

[67] *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971).

[68] One means of structuring such a defense would be to create a rebuttable presumption that an individual defendant acted so as to avail himself of this defense when he proves that he acted in good faith reliance upon: (1) a written order or directive by a government officer empowered to authorize him to take action; or (2) a written assurance by an appropriate legal officer that his action is lawful.

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following lines to clarify the state of the law, to encourage the responsible execution of duties created by the statutes recommended herein to regulate intelligence agencies, and to provide relief for the victims of illegal intelligence activity.

Recommendation 91.—Congress should enact a comprehensive civil remedies statute which would accomplish the following:[69]

(a) Any American with a substantial and specific claim[70] to an actual or threatened injury by a violation of the Constitution by federal intelligence officers or agents[71] acting under color of law should have a federal cause of action against the government and the individual federal intelligence officer or agent responsible for the violation, without regard to the monetary amount in controversy. If actual injury is proven in court, the Committee believes that the injured person should be entitled to equitable relief, actual, general, and punitive damages, and recovery of the costs of litigation.[72] If threatened injury is proven in court, the Committee believes that equitable relief and recovery of the costs of litigation should be available.

(*b*) Any American with a substantial and specific claim to actual or threatened injury by violation of the statutory charter for intelligence activity (as proposed by these Domestic Intelligence Recommendations) should have a cause of action for relief as in (a) above.

(*c*) Because of the secrecy that surrounds intelligence programs, the Committee believes that a plaintiff should have two years from the date upon which he discovers, or reasonably should have discovered, the facts which give rise to a cause of action for relief from a constitutional or statutory violation.

(*d*) Whatever statutory provision may be made to permit an individual defendant to raise an affirmative defense that he acted within the scope of his official duties, in good faith, and with a reasonable belief that the action he took was lawful, the Committee believes that to ensure relief to persons injured by governmental intelligence activity, this defense should be available solely to individual defendants and should not extend to the government. Moreover, the defense should not be available to bar injunctions against individual defendants.

viii. Criminal Penalties Should Be Enacted

Recommendation 92.—The Committee believes that criminal penalties should apply, where appropriate, to willful and knowing

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[69] Due to the scope of the Committee's mandate, we have taken evidence only on constitutional violations by intelligence officers and agents. However, the anomalies and lack of clarity in the present state of the law (as discussed above) and the breadth of constitutional violations revealed by our record, suggest to us that a general civil remedy would be appropriate. Thus, we urge consideration of a statutory civil remedy for constitutional violations by any federal officer; and we encourage the appropriate committees of the Congress to take testimony on this subject.

[70] The requirement of a substantial and specific claim is intended to allow a judge to screen out frivolous claims where a plaintiff cannot allege specific facts which indicate that he was the target of illegal intelligence activity.

[71] "Federal intelligence officers or agents" should include a person who was an intelligence officer, employee, or agent at the time a cause of action arose. "Agent" should include anyone acting with actual, implied, or apparent authority.

[72] The right to recover "costs of litigation" is intended to include recovery of reasonable attorney fees as well as other litigation costs reasonably incurred.

violations of statutes enacted pursuant to the Domestic Intelligence Recommendations.

ix. The Smith Act and the Voorhis Act Should Either Be Repealed or Amended

Recommendation 93.—Congress should either repeal the Smith Act (18 U.S.C. 2385) and the Voorhis Act (18 U.S.C. 2386), which on their face appear to authorize investigation of "mere advocacy" of a political ideology, or amend those statutes so that domestic security investigations are only directed at conduct which might serve as the basis for a constitutional criminal prosecution, under Supreme Court decisions interpreting these and related statutes.[73]

x. The Espionage Statute Should be Modernized

As suggested in its definition of "hostile foreign intelligence activity" and its recommendations on warrants for electronic surveillance, the Committee agrees with the Attorney General that there may be serious deficiencies in the Federal Espionage Statute (18 U.S.C. 792 et seq.). The basic prohibitions of that statute have not been amended since 1917 and do not encompass certain forms of industrial, technological, or economic espionage. The Attorney General in a recent letter to Senator Kennedy (Reprinted on p. S3889 of the Congressional Record of March 23, 1976) describes some of the problem areas of the statute, including industrial espionage (e.g., a spy obtaining information on computer technology for a foreign power). The Committee took no testimony on this subject and, therefore, makes no specific proposal other than that the appropriate committees of the Congress explore the necessity for amendments to the statute.

Recommendation 94.—The appropriate committees of the Congress should review the Espionage Act of 1917 to determine whether it should be amended to cover modern forms of foreign espionage, including industrial, technological or economic espionage.

xi. Broader Access to Intelligence Agency Files Should be Provided to GAO, as an Investigative Arm of the Congress

Recommendation 95.—The appropriate congressional oversight committees of the Congress should, from time to time, request the Comptroller General of the United States to conduct audits and reviews of the intelligence activities of any department or agency of the United States affected by the Domestic Intelligence Recommendations. For such purpose, the Comptroller General, or any of his duly authorized representatives, should have access to, and the right to examine, all necessary materials of any such department or agency.

xii. Congressional Oversight Should Be Intensified

Recommendation 96.—The Committee reendorses the concept of vigorous Senate oversight to review the conduct of domestic security activities through a new permanent intelligence oversight committee.

xiii. Definitions

For the purposes of these recommendations:

A. "Americans" means U.S. citizens, resident aliens and unincorporated associations, composed primarily of U.S. citizens or res-

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[73] E.g. *Yates* v. *United States*, 354 U.S. 298 (1957); *Noto* v. *United States*, 367 U.S. 290 (1961); *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

ident aliens; and corporations, incorporated or having their principal place of business in the United States or having majority ownership by U.S. citizens, or resident aliens, including foreign subsidiaries of such corporations provided, however, "Americans" does not include corporations directed by foreign governments or organizations.

B. "Collect" means to gather or initiate the acquisition of information, or to request it from another agency.

C. A "covert human source" means undercover agents or informants who are paid or otherwise controlled by an agency.

D. "Covert techniques" means the collection of information, including collection from record sources not readily available to a private person (except state or local law enforcement files), in such a manner as not to be detected by the subject.

E. "Domestic security activities" means governmental activities against Americans or conducted within the United States or its territories, including enforcement of the criminal laws, intended to:

1. protect the United States from hostile foreign intelligence activity including espionage;
2. protect the federal, state, and local governments from domestic violence or rioting; and
3. protect Americans and their government from terrorists.

F. "Foreign communications," refers to a communication between, or among, two or more parties in which at least one party is outside the United States, *or* a communication transmitted between points within the United States if transmitted over a facility which is under the control of, or exclusively used by, a foreign government.

G. "Foreigners" means persons and organizations who are not Americans as defined above.

H. "Hostile foreign intelligence activities" means acts, or conspiracies, by Americans or foreigners, who are officers, employees, or conscious agents of a foreign power, or who, pursuant to the direction of a foreign power, engage in clandestine intelligence activity,[74] or engage in espionage, sabotage or similar conduct in violation of federal criminal statutes.

I. "Name checks" means the retrieval by an agency of information already in the possession of the federal government or in the possession of state or local law enforcement agencies.

J. "Overt investigative techniques" means the collection of information readily available from public sources, or available to a private person, including interviews of the subject or his friends or associates.

K. "Purged" means to destroy or transfer to the National Archieves all personally identifiable information (including references in any general name index).

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[74] The term "clandestine intelligence activity" is included in this definition at the suggestion of officials of the Department of Justice. Certain activities engaged in by the conscious agents of foreign powers, such as some forms of industrial, technological, or economic espionage, are not now prohibited by federal statutes. It would be preferable to amend the espionage laws to cover such activity and eliminate this term. As a matter of principle, intelligence agencies should not investigate activities of Americans which are not federal criminal statutes. Therefore, the Committee recommends (in Recommendation ——) that Congress immediately consider enacting such statutes and then eliminating this term.

L. "Sealed" means to retain personally identifiable information and to retain entries in a general name index but to restrict access to the information and entries to circumstances of "compelling necessity."

M. "Reasonable suspicion" is based upon the Supreme Court's decision in the case of *Terry* v. *Ohio*, 392 U.S. 1 (1968), and means specific and articulable facts which taken together with rational inferences from those facts, give rise to a reasonable suspicion that specified activity has occurred, is occurring, or is about to occur.

N. "Terrorist activities" means acts, or conspiracies, which: (a) are violent or dangerous to human life; and (b) violate federal or state criminal statutes concerning assassination, murder, arson, bombing, hijacking, or kidnapping; and (c) appear intended to, or are likely to have the effect of:

(1) Substantially disrupting federal, state or local government; or

(2) Substantially disrupting interstate or foreign commerce between the United States and another country; or

(3) Directly interfering with the exercise by Americans, of Constitutional rights protected by the Civil Rights Act of 1968, or by foreigners, of their rights under the laws or treaties of the United States.

O. "Unauthorized entry" means entry unauthorized by the target.

APPENDIX-A

94TH CONGRESS
1ST SESSION

S. RES. 21

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1975

Mr. PASTORE submitted the following resolution; which was ordered to be placed on the calendar (under general orders)

JANUARY 27, 1975

Considered, amended, and agreed to

RESOLUTION

To establish a select committee of the Senate to conduct an investigation and study with respect to intelligence activities carried out by or on behalf of the Federal Government.

1 *Resolved,* To establish a select committee of the Senate
2 to conduct an investigation and study of governmental op-
3 erations with respect to intelligence activities and of the
4 extent, if any, to which illegal, improper, or unethical activ-
5 ities were engaged in by any agency of the Federal Govern-
6 ment or by any persons, acting individually or in combination
7 with others, with respect to any intelligence activity carried
8 out by or on behalf of the Federal Government; be it further
9 *Resolved,* That (a) there is hereby established a select
10 committee of the Senate which may be called, for con-

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1 venience of expression, the Select Committee To Study
2 Governmental Operations With Respect to Intelligence Ac-
3 tivities to conduct an investigation and study of the extent, if
4 any, to which illegal, improper, or unethical activities were
5 engaged in by any agency or by any persons, acting either
6 individually or in combination with others, in carrying out
7 any intelligence or surveillance activities by or on behalf
8 of any agency of the Federal Government.

9 (b) The select committee created by this resolution
10 shall consist of eleven Members of the Senate, six to be
11 appointed by the President of the Senate from the majority
12 Members of the Senate upon the recommendation of the
13 majority leader of the Senate, and five minority Members of
14 the Senate to be appointed by the President of the Senate
15 upon the recommendation of the minority leader of the
16 Senate. For the purposes of paragraph 6 of rule XXV of the
17 Standing Rules of the Senate, service of a Senator as a
18 member, chairman, or vice chairman of the select committee
19 shall not be taken into account.

20 (c) The majority members of the committee shall select
21 a chairman and the minority members shall select a vice
22 chairman and the committee shall adopt rules and procedures
23 to govern its proceedings. The vice chairman shall preside
24 over meetings of the select committee during the absence
25 of the chairman, and discharge such other responsibilities

1 as may be assigned to him by the select committee or the
2 chairman. Vacancies in the membership of the select com-
3 mittee shall not affect the authority of the remaining mem-
4 bers to execute the functions of the select committee and
5 shall be filled in the same manner as original appointments
6 to it are made.

7 (d) A majority of the members of the select committee
8 shall constitute a quorum for the transaction of business but
9 the select committee may affix a lesser number as a quorum
10 for the purpose of taking testimony or depositions.

11 SEC. 2. The select committee is authorized and directed
12 to do everything necessary or appropriate to make the in-
13 vestigations and study specified in subsection (a) of the
14 first section. Without abridging in any way the authority
15 conferred upon the select committee by the preceding
16 sentence, the Senate further expressly authorizes and directs
17 the select committee to make a complete investigation and
18 study of the activities of any agency or of any and all persons
19 or groups of persons or organizations of any kind which
20 have any tendency to reveal the full facts with respect to
21 the following matters or questions:

22 (1) Whether the Central Intelligence Agency has
23 conducted an illegal domestic intelligence operation in
24 the United States.

1 (2) The conduct of domestic intelligence or coun-
2 terintelligence operations against United States citizens
3 by the Federal Bureau of Investigation or any other
4 Federal agency.
5 (3) The origin and disposition of the so-called Hus-
6 ton Plan to apply United States intelligence agency
7 capabilities against individuals or organizations within
8 the United States.
9 (4) The extent to which the Federal Bureau of In-
10 vestigation, the Central Intelligence Agency, and other
11 Federal law enforcement or intelligence agencies coordi-
12 nate their respective activities, any agreements which
13 govern that coordination, and the extent to which a lack
14 of coordination has contributed to activities or actions
15 which are illegal, improper, inefficient, unethical, or con-
16 trary to the intent of Congress.
17 (5) The extent to which the operation of domestic
18 intelligence or counterintelligence activities and the
19 operation of any other activities within the United States
20 by the Central Intelligence Agency conforms to the leg-
21 islative charter of that Agency and the intent of the
22 Congress.
23 (6) The past and present interpretation by the
24 Director of Central Intelligence of the responsibility to
25 protect intelligence sources and methods as it relates to

1 the provision in section 102 (d) (3) of the National
2 Security Act of 1947 (50 U.S.C. 403 (d) (3)) that
3 "... that the agency shall have no police, subpena, law
4 enforcement powers, or internal security functions. . . ."
5 (7) Nature and extent of executive branch over-
6 sight of all United States intelligence activities.
7 (8) The need for specific legislative authority to
8 govern the operations of any intelligence agencies of
9 the Federal Government now existing without that
10 explicit statutory authority, including but not limited to
11 agencies such as the Defense Intelligence Agency and
12 the National Security Agency.
13 The nature and extent to which Federal agencies
14 cooperate and exchange intelligence information and
15 the adequacy of any regulations or statutes which
16 govern such cooperation and exchange of intelligence
17 information.
18 (9) The extent to which United States intelligence
19 agencies are governed by Executive orders, rules, or
20 regulations either published or secret and the extent
21 to which those Executive orders, rules, or regulations
22 interpret, expand, or are in conflict with specific legis-
23 lative authority.
24 (10) The violation or suspected violation of any
25 State or Federal statute by any intelligence agency or

1 by any person by or on behalf of any intelligence agency
2 of the Federal Government including but not limited
3 to surreptitious entries, surveillance, wiretaps, or eaves-
4 dropping, illegal opening of the United States mail, or
5 the monitoring of the United States mail.

6 (11) The need for improved, strengthened, or con-
7 solidated oversight of United States intelligence ac-
8 tivities by the Congress.

9 (12) Whether any of the existing laws of the
10 United States are inadequate, either in their provisions
11 or manner of enforcement, to safeguard the rights of
12 American citizens, to improve executive and legislative
13 control of intelligence and related activities, and to re-
14 solve uncertainties as to the authority of United States
15 intelligence and related agencies.

16 (13) Whether there is unnecessary duplication of
17 expenditure and effort in the collection and processing
18 of intelligence information by United States agencies.

19 (14) The extent and necessity of overt and covert
20 intelligence activities in the United States and abroad.

21 (15) Such other related matters as the committee
22 deems necessary in order to carry out its responsibilities
23 under section (a).

24 SEC. 3. (a) To enable the select committee to make
25 the investigation and study authorized and directed by this

1 resolution, the Senate hereby empowers the select committee
2 as an agency of the Senate (1) to employ and fix the com-
3 pensation of such clerical, investigatory, legal, technical,
4 and other assistants as it deems necessary or appropriate,
5 but it may not exceed the normal Senate salary schedules;
6 (2) to sit and act at any time or place during sessions,
7 recesses, and adjournment periods of the Senate; (3) to hold
8 hearings for taking testimony on oath or to receive docu-
9 mentary or physical evidence relating to the matters and
10 questions it is authorized to investigate or study; (4) to
11 require by subpena or otherwise the attendance as witnesses
12 of any persons who the select committee believes have
13 knowledge or information concerning any of the matters
14 or questions it is authorized to investigate and study; (5)
15 to require by subpena or order any department, agency,
16 officer, or employee of the executive branch of the United
17 States Government, or any private person, firm, or corpora-
18 tion, to produce for its consideration or for use as evidence
19 in its investigation and study any books, checks, canceled
20 checks, correspondence, communications, document, papers,
21 physical evidence, records, recordings, tapes, or materials re-
22 lating to any of the matters or questions it is authorized to
23 investigate and study which they or any of them may have
24 in their custody or under their control; (6) to make to the
25 Senate any recommendations it deems appropriate in respect

1 to the willful failure or refusal of any person to answer ques-
2 tions or give testimony in his character as a witness during
3 his appearance before it or in respect to the willful failure
4 or refusal of any officer or employee of the executive branch
5 of the United States Government or any person, firm, or
6 corporation to produce before the committee any books,
7 checks, canceled checks, correspondence, communications,
8 document, financial records, papers, physical evidence,
9 records, recordings, tapes, or materials in obedience to any
10 subpena or order; (7) to take depositions and other testi-
11 mony on oath anywhere within the United States or in any
12 other country; (8) to procure the temporary or intermit-
13 tent services of individual consultants, or organizations there-
14 of, in the same manner and under the same conditions as
15 a standing committee of the Senate may procure such serv-
16 ices under section 202 (i) of the Legislative Reorganiza-
17 tion Act of 1946; (9) to use on a reimbursable basis, with
18 the prior consent of the Committee on Rules and Adminis-
19 tration, the services of personnel of any such department
20 or agency; (10) to use on a reimbursable basis or other-
21 wise with the prior consent of the chairman of any sub-
22 committee of any committee of the Senate the facilities or
23 services of any members of the staffs of such other Senate
24 committees or any subcommittees of such other Senate com-
25 mittees whenever the select committee or its chairman deems

1 that such action is necessary or appropriate to enable the
2 select committee to make the investigation and study author-
3 ized and directed by this resolution; (11) to have direct
4 access through the agency of any members of the select
5 committee or any of its investigatory or legal assistants
6 designated by it or its chairman or the ranking minority
7 member to any data, evidence, information, report, analysis,
8 or document or papers, relating to any of the matters or
9 questions which it is authorized and directed to investigate
10 and study in the custody or under the control of any depart-
11 ment, agency, officer, or employee of the executive branch
12 of the United States Government, including any department,
13 agency, officer, or employee of the United States Govern-
14 ment having the power under the laws of the United States
15 to investigate any alleged criminal activities or to prosecute
16 persons charged with crimes against the United States and
17 any department, agency, officer, or employee of the United
18 States Government having the authority to conduct intelli-
19 gence or surveillance within or outside the United States;
20 without regard to the jurisdiction or authority of any other
21 Senate committee, which will aid the select committee to
22 prepare for or conduct the investigation and study authorized
23 and directed by this resolution; and (12) to expend to the
24 extent it determines necessary or appropriate any moneys

1 made available to it by the Senate to perform the duties
2 and exercise the powers conferred upon it by this resolution
3 and to make the investigation and study it is authorized by
4 this resolution to make.

5 (b) Subpenas may be issued by the select committee
6 acting through the chairman or any other member designated
7 by him, and may be served by any person designated by
8 such chairman or other member anywhere within the borders
9 of the United States. The chairman of the select committee,
10 or any other member thereof, is hereby authorized to admin-
11 ister oaths to any witnesses appearing before the committee.

12 (c) In preparing for or conducting the investigation
13 and study authorized and directed by this resolution, the
14 select committee shall be empowered to exercise the powers
15 conferred upon committees of the Senate by section 6002 of
16 title 18, United States Code, or any other Act of Congress
17 regulating the granting of immunity to witnesses.

18 SEC. 4. The select committee shall have authority to
19 recommend the enactment of any new legislation or the
20 amendment of any existing statute which it considers neces-
21 sary or desirable to strenghen or clarify the national secu-
22 rity, intelligence, or surveillance activities of the United
23 States and to protect the rights of United States citizens
24 with regard to those activities.

1 SEC. 5. The select committee shall make a final report
2 of the results of the investigation and study conducted by
3 it pursuant to this resolution, together with its findings and
4 its recommendations as to new congressional legislation it
5 deems necessary or desirable, to the Senate at the earliest
6 practicable date, but no later than September 1, 1975. The
7 select committee may also submit to the Senate such interim
8 reports as it considers appropriate. After submission of its
9 final report, the select committee shall have three calendar
10 months to close its affairs, and on the expiration of such
11 three calendar months shall cease to exist.

12 SEC. 6. The expenses of the select committee through
13 September 1, 1975, under this resolution shall not exceed
14 $750,000 of which amount not to exceed $100,000 shall be
15 available for the procurement of the services of individual
16 consultants or organizations thereof. Such expenses shall be
17 paid from the contingent fund of the Senate upon vouchers
18 approved by the chairman of the select committee.

19 SEC. 7. The select committee shall institute and carry
20 out such rules and procedures as it may deem necessary to
21 prevent (1) the disclosure, outside the select committee, of
22 any information relating to the activities of the Central In-
23 telligence Agency or any other department or agency of the
24 Federal Government engaged in intelligence activities, or-

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1 tained by the select committee during the course of its study
2 and investigation, not authorized by the select committee
3 to be disclosed; and (2) the disclosure, outside the select
4 committee, of any information which would adversely affect
5 the intelligence activities of the Central Intelligence Agency
6 in foreign countries or the intelligence activities in foreign
7 countries of any other department or agency of the Federal
8 Government.

9 SEC. 8. As a condition for employment as described in
10 section 3 of this resolution, each person shall agree not to
11 accept any honorarium, royalty or other payment for a
12 speaking engagement, magazine article, book, or other en-
13 deavor connected with the investigation and study under-
14 taken by this committee.

15 SEC. 9. No employee of the select committee or any
16 person engaged by contract or otherwise to perform services
17 for the select committee shall be given access to any classi-
18 fied information by the select committee unless such em-
19 ployee or person has received an appropriate security clear-
20 ance as determined by the select committee. The type of
21 security clearance to be required in the case of any such
22 employee or person shall, within the determination of the
23 select committee, be commensurate with the sensitivity of
24 the classified information to which such employee or person
25 will be given access by the select committee.

APPENDIX B

Previously Issued Reports and Hearings of the Senate Select Committee

A. Reports

1. Senate Report: "Alleged Assassination Plots Involving Foreign Leaders", November 20, 1975.
2. Staff Report: "Covert Action in Chile, 1963–1973", December 18, 1975.

B. Hearings

1. "Unauthorized Storage of Toxic Agents", Volume 1, September 16, 17 and 18, 1975.
2. "Huston Plan", Volume 2, September 23, 24 and 25, 1975.
3. "Internal Revenue Service", Volume 3, October 2, 1975.
4. "Mail Opening", Volume 4, October 21, 22 and 24, 1975.
5. "The National Security Agency and Fourth Amendment Rights", Volume 5, October 29 and November 6, 1975.
6. "Federal Bureau of Investigation", Volume 6, November 18 and 19, December 2, 3, 9, 10 and 11, 1975.
7. "Covert Action", Volume 7, December 4 and 5, 1975.

APPENDIX C

Staff Acknowledgments: Final Report on Intelligence Activities and the Rights of Americans

The volume of the final report which summarizes the Committee's inquiry into domestic intelligence activity and sets forth its findings and recommendations was written and edited, along with the supplementary detailed reports, under the supervision of Chief Counsel Frederick A. O. Schwarz, Jr., and Counsel to the Minority Curtis R. Smothers. The work of the entire staff of the Committee—over the long course of investigation, research and hearings—was channeled into the final report. The staff members listed below made major contributions to the writing and editing of this volume.

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The Development of FBI Domestic Intelligence Investigations.	John Elliff
The Internal Revenue Service: An Intelligence Resource and Collector.	Walter Ricks, Arthur Harrigan, assisted by Thomas Dawson.
National Security Agency Surveillance Affecting Americans.	Peter Fenn, Britt Snider, James Turner, assisted by Judi Mason.
Improper Surveillance of Private Citizens by the Military.	Britt Snider, assisted by James Turner.
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National Security, Civil Liberties, and the Collection of Intelligence: A Report on the Huston Plan.	Loch Johnson, assisted by Margaret Carpenter and Daniel Dwyer.

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ADDITIONAL VIEWS OF SENATOR PHILIP A. HART

The Committee's proposal on domestic intelligence is a carefully crafted system of controls to prevent abuse and preserve vigorous dissent in America. The report lays out the issues, notes the problems, and suggests solutions. Committee members and staff, under Senator Mondale's conscientious leadership, grappled with the exceedingly difficult task of shaping broad principles into workable safeguards.

The recommendations would narrow the scope of permissible intelligence, set standards and time limits for investigations, control dissemination, and provide civil remedies for improprieties.

This comprehensive scheme may be the best we can do to set the delicate balance wheel between liberty and security. It is a considerable accomplishment, and I endorse its consideration by the appropriate legislative committees. I do so, however, with misgivings that the Committee's record fails to justify even this degree of preventive intelligence investigation of American citizens.

Unlike investigation of committed crimes, "preventive intelligence" means investigating persons thought likely to commit particularly serious acts; it is intended to prevent them. Providing, for the first time, statutory authorization of such surveillance is a dramatic and dangerous step. Congress should take that step with the utmost caution.

It is appealing to say we should let the FBI do everything possible to avert bombing of the Capitol or other terrorist acts. But in America we must refuse to let the Government "do everything possible." For that would entail spying on every militant opponent of official policy, just in case some of them may resort to violence. We would become a police state. The question, then, is whether a limited form of preventive intelligence, consistent with preserving our civil liberties, can be justified by the expected benefits and can also be kept under effective control.

The Committee was reluctant to authorize any investigations except those of committed or imminent criminal acts. Nevertheless, our Report concludes that some preventive intelligence is justified because it might prevent a significant amount of terrorist activity without posing unacceptable risks for a free society.

However, the shocking record of widespread abuse suggests to me that before Congress endorses a blueprint for preventive intelligence, we need a more rigorous presentation of the case for it than was offered to this Committee.

The FBI only provided the Committee with a handful of substantiated cases—out of the thousands of Americans investigated—in which preventive intelligence produced warning of terrorist activity. Further, most of those few investigations which did detect terrorism could

not have been opened under the Committee's proposed restrictions.[1] In short, there is no substantial record before the Committee that preventive intelligence, under the restrictions we propose, would enable the Government to thwart terrorism.

Essentially, we are asking the American people to accept the risks of preventive intelligence on the hypothetical possibility that the worst imaginable terrorist acts might be averted. Faced with the specter of bombings or assassination plots, we may be in danger of sanctioning domestic spying without any significant prospect that such intelligence activities will in fact prevent them.

It might be argued that with adequate restraints to focus on hard core terrorism, preventive intelligence should be authorized even though we cannot demonstrate it is likely to prevent much violence. In that view, some insurance would be worth the limited cost.

Assuming that premise, there are two overriding issues:

—When may the Government investigate the activities of Americans engaged in political dissent; and

—When may the Government use informants to spy on those Americans?

If we are to have a preventive intelligence program at all, then I believe the Committee's recommendations on both these issues require refinement.

The Committee found that most improper investigations have been commenced merely on the basis of political advocacy or association, rather than on specific information about expected terrorist activity. The recommendations would preclude mere advocacy or association as a predicate for investigating Americans. In practice, however, that would simply require specific allegations that an unpopular dissident group was planning terrorist violence.

Of course, if the FBI receives a tip that John Jones may resort to bombing to protest American involvement in Vietnam, the Bureau should not be forced to sit on its hand until the blast. But our proposals would permit more than review of federal and local records on John Jones and interviews of his associates, even in a preliminary investigation. On the basis of an anonymous letter, with no supporting information—let alone any indication of the source's reliability—the FBI could conduct secret physical surveillance and ask existing informants about him for up to three months, with the Attorney General's approval.

The Committee was concerned about authorizing such extensive investigations before there is even a "reasonable basis of suspicion" the subject will engage in terrorism. The Report offers examples of how this recommendation would work, and indicates our desire to

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[1] In most of those cases warning came through informant penetration of local chapters of a national organization undertaken because some of the national leaders had indicated a willingness to use violent means. The Committee's guidelines preclude investigating an organization's entire membership throughout the country on the basis of specific information about some individuals.

In the most sinister terrorist conspiracies, only penetration of the inner circle is likely to provide advance warning of an assassination or kidnapping plot. Our record suggests that the only way for the FBI to have much chance to detect such plots in advance would be blanket penetration of every militant protest group in the country. And that would mean a return to precisely the kind of Big Brother government which was attempted in the past.

insulate lawful political activity from investigation of violent terrorism. But these very examples illustrate how inextricable the two may be at the outset of an inquiry into an allegation or ambiguous information. The task of finding out whether a dissident is contemplating violence or is only involved in vigorous protest inevitably requires investigation of his protest activities. In the process, the FBI could follow the organizers of a Washington peace rally for three months on the basis of an allegation they might also engage in violence.

The second major issue is the use of paid Government informants to spy upon Americans. The great majority of abuses uncovered in domestic intelligence involved the pervasive use of informants against dissident political groups. The Committee defers the question of whether judicial approval should be required for targeting informants, until review by the Attorney General alone has been tested.

In my view, control of informants and control of wiretapping can be distinguished only on the basis of present constitutional doctrine; the Supreme Court has not found the use of informants to violate Fourth Amendment guarantees against Government intrusion. However, in terms of the values underlying both the First and Fourth Amendments, our record shows that the use of informants can, if anything be even more intrusive and more easily abused than electronic surveillance. As a matter of policy, they should be stringently controlled.

From the prosecutor's viewpoint, a wiretap is more precise and reliable than an informant. The accuracy of an informant witness may be vulnerable to challenge. But as a source of intelligence, informants can be directed at all of the subject's associates. They can follow the subject from place to place and can even be asked to elicit information through specific questions. In effect, a well-placed informant can be a "walking, thinking 'bug'." The use of such informants is at the heart of the chilling effect which preventive intelligence has on political dissent.

Whether informant penetrations are to be approved by the Attorney General or by a judge, the Committee report recognizes the great dangers they pose.[2] We recommend a high standard for their use: Probable cause to believe the target soon will engage in terrorist activity. My concern is that, in an effort to accommodate the realities of preventive intelligence, our proposals may render this standard illusory.

The FBI argued that, in the case of tightly knit conspiracies, it could not meet that standard without the initial resort to informants.

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[2] Some of the "practical" reasons advanced against judicial warrants for informants do not bear close scrutiny. The Committee was told there is no fixed point when a potential source becomes an "informant," comparable to installation of a wiretap. It was also urged that full supervision of an informant requires day-to-day monitoring of his activities; and that the Attorney General could exercise more comprehensive control. But our proposals do identify a specific event, targeting the informant on particular persons, which requires a decision by the Attorney General. The basic wisdom of the Fourth Amendment is its insistence that a disinterested party apply the appropriate standard rather than the head of an investigative agency. The Attorney General's ongoing supervision of informant use could supplement the threshold decision of a neutral magistrate, just as it would for wiretaps. There is no need to choose between them.

Therefore, the Committee would permit "temporary" targeting of informants for up to five months. In effect, the FBI could bootstrap its investigation by employing informants to collect enough information to justify their use. The Committee does require that this use of informants be terminated if probable cause cannot be established within five months. But it is doubtful that such termination would be effective to provide the high standard of protection the Committee feels is necessary for the use of such an intrusive technique.[3]

To a great extent, our proposals for controlling preventive intelligence ultimately rely upon the Attorney General and congressional oversight committees. In view of the performances of the Congress and the Justice Department for the past two decades, it is not easy to have full confidence in their ability to prevent abuses of domestic intelligence without precise detailed statutory prohibitions.

Moreover, our task is not to fashion legislation which seems adequate for the present period of national calm and recent revelations of intelligence abuses. We do not need to draft safeguards for an Attorney General who makes clear—as Attorney General Levi has done—his determination to prevent abuse. We must legislate for the next periods of social turmoil and passionate dissent, when the current outrage has faded and those in power may again be tempted to investigate their critics in the name of national security.

In a time of crisis, acts of violence by a tiny minority of those engaged in political protest will again place intense pressures on officials in the Department of Justice to stretch any authority we provide to its limits. For these reasons we must be extremely careful not to build too much flexibility and discretion into a system of preventive intelligence which can be used against domestic dissidents. As the Supreme Court has wisely observed:

> The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government. (*DeJong* v. *Oregon*, 299 U.S. 353, 365.)

PHILIP A. HART.

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[3] The informant would still be in a position to report and the FBI could continue to ask him questions, as they could of any citizen. Indeed, he might volunteer information in order to re-establish a paying relationship. The only constraint is that the FBI could no longer give him direction. After five months, however, even the most unsophisticated informant would be aware of those subjects and targets in which the Bureau was interested.

ADDITIONAL STATEMENT OF SENATOR ROBERT MORGAN

In 1776 the citizens of a new America, in declaring their independence from a repressive government, set forth the goals, ideals and standards of their new government in the Declaration of Independence. As we prepare to celebrate the 200th anniversary of the birth of our country later this year, we will reaffirm the beliefs of our forefathers that America will be a free country, with a government of laws and not one of men. That the Senate Select Committee on Intelligence has completed its year-long investigation into the secret activities of this country's intelligence agencies and is releasing this Report is a great testament to the freedom for which America stands.

During the course of the past year, the Committee has discovered and revealed to the American people many actions of agencies of our government which were undertaken in complete disregard for the principles of our democratic society. The Committee's Report documents many of these abuses, basing its findings directly on the admissions of officials of the governmental agencies being investigated and upon information taken directly from the files of those agencies.

The Report also analyzes those findings and recommends guidelines and procedures designed to protect the rights of American citizens in the future, while at the same time ensuring that our intelligence agencies maintain the capability to function effectively. I fully support the findings, analyses and recommendations, and make this additional statement only for the purpose of sharing with the readers of this Report some of my personal thoughts on the significance of the Committee's work and where we go from here.

The Committee has approached the performance of its obligation mandated by Sen. Res. 21 with an abundance of caution. Many of the Committee's executive session hearings, because of the sensitive nature of the subject matter, were even restricted to Members and only those staff who were assigned specific duties relevant to the inquiry. Because of the dedication of the Members and staff to the seriousness of the undertaking, we are approaching the completion of our work with a remarkably clean record as far as leaks of classified material detrimental to the security of the country are concerned.

From the beginning of our work until the end, the Committee has gone beyond the dictates of normal congressional investigation to try to accommodate concerns of the agencies under investigation for the security of material requested by the Committee. To this end, long hours were spent negotiating over what material would be made available to the Committee in response to its requests and in what form that material would be given to the Committee once access to it had been acquired. Nevertheless, on many occasions the Committee received material from which significant details had been deleted, necessitating further negotiations with the responsible agencies and, in

some cases, severely hampering the Committee's inquiry into important and significant areas.

While it is understandable that executive agencies whose very operations are secret would be in some respect resistant to senatorial inquiry into their activities, I can only interpret the strong resistance to some Committee demands and inquiries as being symptomatic of the atmosphere within the agencies which contributed to the occurrence of abuse in the first instance—one of the basic distrusts of the actions of fellow American citizens who have as their goals the strengthening of this nation's ideals, of its moral fiber.

Just as the American citizen was denied the right to decide for himself what was or was not in the best interest of the country, or what actions of a foreign government or domestic dissident threatened the national security, the impression has been generated by some that the Congress cannot be trusted with the nation's crucial secrets. As the elected representative of the citizens of my state, I am entrusted with the right and duty to properly conduct the business of our government. Without knowledge of governmental actions or effective means of overseeing those actions, my efforts to fulfill the requirements of that obligation are, at least, severely hampered; at most, impossible, and the successful implementation of an adequate system of checks and balances, as set forth in our Constitution, is effectively negated.

The Committee's Report contains clear examples of the denial of the rights of American citizens to determine the course of American history. While the FBI's counterintelligence activities directed at American citizens on many occasions violated the rights of the targets of the programs, a greater abuse was the belief fostered that the ordinary American citizen was not competent enough to, independently of governmental actions, decide, given full knowledge of all facts, what was in his or her best interest or in the best interest of the country. The judicial process, to which we turn for settlement of our disputes and punishment of criminals, was also largely ignored. FBI action was based, for example, on the assumption that all Americans opposed to this country's participation in the Vietnam War might one day take to the streets in violent protest, thereby threatening our national security. It was assumed, for example, that right-wing, anti-communist groups in the 1960s would gain the sympathies of too many Americans thereby impeding policies of the then administration, so their taxes were checked. It was assumed, for example, that every black student on every college campus in America would resort to violence, so procedures were undertaken to establish files on all of them.

All of these actions deny Americans the right to decide for themselves what will not be tolerated in a free society. Justice Douglas, defending the freedom of speech in his dissenting opinion in *Dennis* v. *U.S.*, 341 U.S. 494, spoke words which vividly reflect the necessity that we, to remain free, must hold high this basic right of self-determination which has enabled us to attain the strength and prosperity that we as a nation now enjoy. Justice Douglas wrote,

> Full and free discussion has indeed been the first article of our faith. We have founded our political system on it. It has been the safeguard of every religious, political, philosophical, economic, and racial group amongst us. We have counted on

> it to keep us from embracing what is cheap and false; *we have trusted the common sense of our people to choose the doctrine true to our genius and to reject the rest. This has been the outstanding tenet that has made our institutions the symbol of freedom and equality.* We have deemed it more costly to liberty to suppress a despised minority than to let them vent their spleen. We have above all else feared the political censor. We have wanted a land where our people can be exposed to all the diverse creeds and cultures of the world. [Emphasis added.]

Furthermore, just as the American citizen must be given the right to validly assess the significance and merit of political change sought by others, the elected representatives of the people must have knowledge of governmental action to properly determine which perceived threats to our way of life are real, Justice Brandeis, in *Olmstead* v. *U.S.*, 277 U.S. 438, said, "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

The continued existence of our democracy demands that we zealously protect the inherent right of all Americans to be free from unwarranted intrustion into their lives by governmental action. History has demonstrated, from the time of the founding of Christianity through the founding of these United States, through today, that there is a place for differences of opinion among our citizenry; for new, bold and innovative ideas. Thomas Jefferson wrote that "the republican is the only form of government which is not eternally at open or secret war with the rights of mankind." To maintain our Republic, we must be willing to tolerate the right of every American citizen to, within the confines of the law, be different.

Throughout the existence of the Committee, I have often said that while the occurrence of the events which gave rise to the investigation were unfortunate and are, in many instances, embarrassing to our country and some of its agencies, public disclosure was necessary in order to clear the air so that the agencies could devote their full attention to properly carrying out their important duties. I feel the Committee as a whole shares this view and has attempted to enhance the performance of the functions of the agencies by making specific recommendations which, when implemented and coupled with the establishment of an effective oversight committee, will guarantee that our country will not be subverted, nor subvert its ideals in the name of national security or other improperly perceived threats. It is my sincere hope that our citizens will view this Report as one of the many expressions of freedom we will make this year and that it will rekindle in each of us the belief that perhaps our greatest strength lies in our ability to deal frankly, openly, and honestly with the problems of our government.

ROBERT MORGAN.

INTRODUCTION TO SEPARATE VIEWS OF SENATORS JOHN TOWER, HOWARD H. BAKER, JR., AND BARRY M. GOLDWATER

Our mutual concern that certain remedial measures proposed by this Committee threaten to impose undue restrictions upon vital and legitimate intelligence functions prevents us, in varying degrees, from rendering an unqualified endorsement to this Committee's findings and recommendations in their entirety. We also perceive a need to emphasize areas of common agreement such as our unanimous endorsement of intelligence reforms heretofore outlined by the President.

Therefore, we have elected to articulate our common concerns and observations, as viewed from our individual perspectives, in separate views which follow.

JOHN TOWER, *Vice Chairman.*
HOWARD H. BAKER, JR.
BARRY M. GOLDWATER.

SEPARATE VIEWS OF SENATOR JOHN G. TOWER, VICE CHAIRMAN

When the Senate mandated this Committee to conduct an investigation and study of activities of our Nation's intelligence community, it recognized the need for congressional participation in decisions which impact virtually every aspect of American life. The gravamen of our charge was to examine the Nation's intelligence needs and the performance of agencies charged with intelligence responsibilities, and to make such assessments and recommendations as in our judgment are necessary to maintain the delicate balance between individual liberties and national security. I do not believe the Committee's reports and accompanying staff studies comply fully with the charge to maintain that balance. The Committee's recommendations make significant departures from an overriding lesson of the American experience—the right of American citizens to be free is inextricably bound to their right to be secure.

I do not question the existence of intelligence excesses—the abuses of power, both foreign and domestic, are well documented in the Committee's report.

Nor do I question the need for expanded legislative, executive, and judicial involvement in intelligence policy and practices—the "uncertainties as to the authority of United States intelligence and related agencies" were explicitly recognized by Senate Resolution 21.

Nevertheless, I question, and take exception to, the Committee's report to the extent that its recommendations are either unsupported by the factual record or unduly restrict attainment of valid intelligence objectives.

I believe that the 183 separate recommendations proposing new detailed statutes and reporting procedures not only exceed the number and scope of documented abuses, but represent over-reaction. If adopted in their totality, they would unnecessarily limit the effectiveness of the Nation's intelligence community.

In the area of foreign intelligence, the Committee was specifically mandated to prevent ". . . disclosure, outside the Select Committee, of any information which would adversely affect the intelligence activities . . . of the Federal Government." In his separate view, Senator Barry Goldwater clearly points up the damage to our efforts in Latin America occasioned by release of the "staff report" on covert action in Chile. I objected to releasing the Chile report and fully support Senator Goldwater's assessment of the adverse impact of this "ironic" and ill-advised disclosure.

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Another unfortunate aspect of the Committee's foreign report is its response to incidents of lack of accountability and control by recommending the imposition of a layering of Executive Branch reviews at operational levels and needless bifurcation of the decisionmaking process. The President's reorganization which centralizes foreign intelligence operations and provides for constant review and oversight, is termed "ambiguous." Yet the Committee's recommended statutory changes would [in addition to duplication and multiplication of decisions] add little except to insure that the existing functions set up by the President's program were "explicitly empowered," "reaffirmed" or provided with "adequate staff." By concentration upon such details as which cabinet officer should chair the various review groups or speak for the President, the Committee's approach unnecessarily restricts Presidential discretion, without enhancing efficiency, control, or accountability. The President's reorganization is a thorough, comprehensive response to a long-standing problem. It should be supported, not pilloried with statutory amendments amounting to little more than alternative management techniques. It is far more appropriate for the Congress to place primary legislative emphasis on establishing a structure for Congressional Oversight which is compatible with the Executive reorganization while eliminating the present proliferation of committees and subcommittee's asserting jurisdiction over intelligence activities.

Another area in which I am unable to agree with the Committee's approach is covert action. It would be a mistake to attempt to require that the Congress receive prior notification of *all* covert activities. Senator Howard Baker repeatedly urged the Committee to adopt the more realistic approach of obligating the Executive to keep the Congress "fully and currently informed". I believe any attempt by the legislative branch to impose a strict prior notification requirement upon the Executive's foreign policy initiatives is neither feasible nor consistent with our constitutionally mandated separation of powers.

On the domestic front the Committee has documented flagrant abuses. Of particular concern were the political misuses of such agencies as the Federal Bureau of Investigation and the Internal Revenue Service. However, while thoroughly probing these reprehensible activities and recommending needed changes in accountability mechanisms, the Committee's "corrective" focus is almost exclusively on prohibitions or limitations of agency practices. I hope this approach to remedial action will not be read as broad criticism of the overall performance of the intelligence community or a minimization of the Committee's own finding that ". . . a fair assessment must place a major part of the blame upon the failures of senior executive officials and Congress." In fact, I am persuaded that the failure of high officials to investigate these abuses or to terminate them when they learned of them was almost as reprehensible as the abuses themselves.

A further objectionable aspect of the Committee's approach is the scope of the proposed limitations on the use of electronic surveillance and informants as investigative techniques. With respect to electronic surveillance of Americans suspected of intelligence activities inimical to the national interest, the Committee would limit authority for such probes to violations of specific criminal statutes. This proposal fails to address the real problem of utilizing electronic surveillance against myriad forms of espionage. A majority of the Committee recommended this narrow standard while acknowledging that existing statutes offer inadequate coverage of "modern forms of espionage." The Committee took no testimony on revision of the espionage laws and simply proposed that another committee "explore the necessity for amendments." To prohibit electronic surveillance in these cases pending such revision is to sanction an unnecessary risk to the national security. In adopting this position the Committee not only ignores the fact that appellate courts in two federal circuits have upheld the Executive's inherent authority to conduct such surveillance, but also fails to endorse the Attorney General's comprehensive proposal to remedy objection to current practices. The proposed safeguards, which include requirements for the Attorney General's certification of hostile foreign intelligence involvement and issuance of a judicial warrant as a condition precedent to electronic surveillance, represent a significant expansion of civil liberties protections. The proposal enjoys bi-partisan support in Congress and I join those members urging prompt enactment.

I am also opposed to the methods and means proposed by the Committee to regulate the use of informants. Informants have been in the past and will remain in the future a vital tool of law enforcement. To adopt the Committee's position and impose stringent, mechanical time limits on the use of informants—particularly regarding their use against terrorist or hostile foreign intelligence activities in the United States—would be to place our faith in standards which are not only illusory, but unworkable.

In its overly broad approach to eliminating intelligence abuses, the Committee report urges departure from the Congress' role as a partner in national security policy and comes dangerously close to being a blueprint for authorizing Congressional management of the day-to-day affairs of the intelligence community. Whether this management is attempted through prior notification of a shopping list of prohibitive statutes and regulations, it is a task for which the legislative branch of government is ill-suited. I believe the adverse impact which would be occasioned by enactment of all the Committee recommendations would be substantial.

Substantial segments of the Committee's work product will assist this Congress in proceeding with the task of insuring the conduct of necessary intelligence activities in a manner consistent with our obligation to safeguard the rights of American citizens. However, we must now step back from the klieg lights and abuse-dominated atmosphere, and balance our findings and recommendations with a recognition that our intelligence agencies and the men and women who serve therein have been and will always be essential to the existence of our nation.

This Committee was asked to provide a constitutionally acceptable framework for Congress to assist in that mission. We were not mandated to render our intelligence systems so constrained as to be fit for employment only in an ideal world.

In addition to the above remarks I generally endorse the positions set forth in Senator Baker's individual views. I specifically endorse:

His views stating the need for legislation making it a criminal offense to publish the name of a United States intelligence officer stationed abroad under cover.

His position that there must be a system of greater accountability by our intelligence operations to the United States Congress and the American people.

His concern that the Congress exercise caution to insure that a proper predicate exists before any recommendations for permanent reforms are enacted into law.

His view that there be careful study before endorsing the Committee's far reaching recommendations calling for an alteration of the intelligence community structure. I also support the individual views of Senator Goldwater.

Further, I specifically endorse:

His assessment that only a small segment of the American public has ever doubted the integrity of our Nation's intelligence agencies.

His opinion that an intelligence system, however secret, does not place undue strain on our nation's constitutional government.

His excellent statement concerning covert action as an essential tool of the President's foreign policy arsenal.

His opposition to the publication of an annual aggregate figure for United States intelligence and his reasons therefor.

His views and comments on the Committee's recommendations regard the National Security Council and the Office of the President. Specifically, comments number 12, 13 and 14.

His views challenging the proposed limitations concerning the recruitment of foreigners by the Central Intelligence Agency.

His views and general comments concerning the right of every American, including academics, clergymen, businessmen and others, to cooperate with his government in its lawful pursuits.

For the reasons stated above, I regret that I am unable to sign the final report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities.

JOHN G. TOWER,
Vice Chairman.

SEPARATE VIEWS OF SENATOR HOWARD H. BAKER, JR.

At the close of the Senate Watergate Committee, I felt that there was a compelling need to conduct a thorough examination of our intelligence agencies, particularly the CIA and the FBI. Congress never had taken a close look at the structure or programs of either the CIA or the FBI, since their inception in 1947 and 1924, respectively.[1]

Moreover, there never had been a congressional review of the intelligence community as a whole. Therefore, I felt strongly that this Committee's investigation was necessary. Its time had come. Like the Watergate investigation, however, for me it was not a pleasant assignment. I say that because our investigation uncovered many actions by agents of the FBI and of the CIA that I would previously have not thought possible (*e.g.*, crude FBI letters to break up marriages or cause strife between Black groups and the CIA assassination plots) in our excellent intelligence and law enforcement institutions. Despite these unsavory actions, however, I do not view either the FBI or CIA as evil or even basically bad. Both agencies have a long and distinguished record of excellent service to our government. With the exception of the worst of the abuses, the agents involved truly believed they were acting in the best interest of the country. Nevertheless, the abuses uncovered can not be condoned and should have been investigated long ago.

I am hopeful, now that all these abuses have been fully aired to the American people through the Committee's Hearings and Report, that this investigation will have had a cathartic effect; that the FBI and CIA will now be able to grow rather than decline. Such growth with a healthy respect for the rule of law should be our goal; a goal which I am confident can be attained. It is important for the future of this country that the FBI and CIA not be cast as destroyers of our constitutional rights but rather as protectors of those rights. With the abuses behind us this can be accomplished.

Long-Term Improvement of Intelligence Community

On balance, I think the Committee carried out its task responsibly and thoroughly. The Committee's report on both the Foreign and Domestic areas are the result of extensive study and deliberation, as well as bipartisan cooperation in its drafting. The Report identifies many of the problems in the intelligence field and contains positive suggestions for reform. I support many of the proposed reforms, while differing, at times, with the means we should adopt to attain those reforms. In all candor, however, one must recognize that an investigation such as this one, of necessity, will cause some short-term damage to our intelligence apparatus. A responsible inquiry, as this has been, will in the long run result in a stronger and more efficient intelligence community. As my colleague Senator Morgan recently noted at a Committee meeting, such short-term injury will be outweighed by long-term benefits gained from the re-structuring of the intelligence com-

[1] Upon the expiration of the Watergate Committee in September 1974, I had the privilege to consponsor with Senator Weicker, S. 4019, which would have created a joint committee on Congress to oversee all intelligence activities.

munity with more efficient utilization of our intelligence resources. Former Director William Colby captured this sentiment recently in a New York Times article:

> Intelligence has traditionally existed in a shadowy field outside the law. This year's excitement has made clear that the rule of law applies to all parts of the American Government, including intelligence. In fact, this will strengthen American intelligence. Its secrets will be understood to be necessary ones for the protection of our democracy in tomorrow's world, not covers for mistake or misdeed. The guidelines within which it should and should not operate will be clarified for those in intelligence and those concerned about it. Improved supervision will ensure that the intelligence agencies will remain within the new guidelines.
>
> The American people will understand and support their intelligence services and press their representatives to give intelligence and its officers better protection from irresponsible exposure and harassment. The costs of the past year were high, but they will be exceeded by the value of this strengthening of what was already the best intelligence service in the world.[2]

The Committee's investigation, as former Director Colby points out, has probed areas in which reforms are needed not to prevent abuses, but to better protect and strengthen the intelligence services. For example, it is now clear that legislation is needed to make it a criminal offense to publish the name of a United States intelligence officer stationed abroad.[3] Moreover, the Committee's investigation convinced me that the State Department should revise its publication of lists from which intelligence officers overseas predictably and often easily can be identified.

Yet we have not been able, in a year's time, to examine carefully all facets of the United States' incredibly important and complex intelligence community.[4] We have established that in some areas problems exist which need intensive long-term study. Often these most important and complex problems are not ones which lend themselves to quick or easy solutions. As Ambassador Helms noted in his testimony during the Committee's public hearings:

> . . . I would certainly agree that in view of the statements made by all of you distinguished gentlemen, that some result from this has got to bring about a system of accountability that is going to be satisfactory to the U.S. Congress and to the American people.

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[2] New York Times, Jan. 26, 1976.

[3] I intend to propose an amendment to S. 400 to make it a criminal offense to publish the name of a United States intelligence officer who is operating in a cover capacity overseas.

[4] For many months, the Committee thoroughly and exhaustively investigated the so-called "assassination plots" which culminated with the filing of our report on November 18, 1975. This investigation was vitally important in order to clear the air and set the record straight. And, it was instructive as to how "sensitive" operations are conducted within our intelligence structure. But, it necessarily shortened the time available to the Committee to investigate the intelligence community as a whole.

Now, exactly how you work out that accountability in a secret intelligence organization, I think, is obviously going to take a good deal of thought and a good deal of work and I do not have any easy ready answer to it because I assure you it is not an easy answer. In other words, there is no quick fix. (Hearings, Vol. I, 9/17/75, p. 124).

Thorough Study Necessary in Several Areas

The areas which concern me the most are those on which we as a Committee have been able to spend only a limited amount of time,[5] i.e., espionage, counterintelligence, covert action, use of informants, and electronic surveillance. It is in these areas that I am concerned that the Committee be extremely careful to ensure that the proper thorough investigatory predicate exist before any permanent reform recommendations be enacted into law.

Our investigation, however, has provided a solid base of evidence from which a permanent oversight committee can and should launch a lengthy and thorough inquiry into the best way to achieve permanent restructuring in these particularly sensitive areas. It is my view that such a study is necessary before I am able to endorse some of the Committee's recommendations which suggest a far reaching alteration of the structure of some of the most important facets of our intelligence system.

Therefore, while I support many of the Committee's major recommendations, I find myself unable to agree with all the Committee's findings and recommendations in both the foreign and domestic areas. Nor am I able to endorse every inference, suggestion, or nuance contained in the findings and supporting individual reports which together total in the thousands of pages. I do, however, fully support all of the factual revelations which our report contains concerning the many abuses in the intelligence field. It is important to disclose to the American people all of the instances of wrongdoing we discovered. With such full disclosure, it is my hope that we can turn the corner and devote our attention in the future to improving our intelligence gathering capability. We must have reform, but we must accomplish it by improving, not limiting, our intelligence productivity. I am confident this can be done.

Cumulative Effect of Recommendations

With regard to the totality of the Committee's recommendations, I am afraid that the cumulative effect of the numerous restrictions which the report proposes to place on our intelligence community may be damaging to our intelligence effort. I am troubled by the fact that some of the Committee's recommendations dip too deeply into many of the operational areas of our intelligence agencies. To do so, I am afraid, will cause practical problems. The totality of the proposals may decrease instead of increase our intelligence product. And, there

[5] The Committee's mandate from Congress dictated that the abuses at home and abroad be given detailed attention. And, there are only a finite number of important problems which can be examined and answered conclusively in a year's time.

may be serious ramifications of some proposals which will, I fear, spawn problems which are as yet unknown. I am unconvinced that the uncertain world of intelligence can be regulated with the use of rigid or inflexible standards.

Specifically, I am not convinced that the answers to all our problems are found by establishing myriad Executive Branch boards, committees, and subcommittees to manage the day-to-day operations of the intelligence community. We must take care to avoid creating a Rube Goldberg maze of review procedures which might result in a bureaucratic morass which would further increase the burden on our already heavily overburdened tax dollar.

We should not over-reform in response to the abuses uncovered. This is not to say that we do not need new controls, because we do. But, it is to say that the controls we impose should be well reasoned and add to, not detract from the efficiency of our intelligence gathering system.

Increased Executive Branch controls are only one-half of the solution. Congress for too long has neglected its role in monitoring the intelligence community. That role should be significant but not all-encompassing. Congress has a great many powers which in the past it has not exercised. We must now do our share but, at the same time, we must be careful, in reacting to the abuses uncovered, that we not swing the pendulum back too far in the direction of Congress. Both wisdom and the constitutional doctrine of separation of powers dictate that Congress not place itself in the position of trying to manage and control the day-to-day business of the intelligence operations of the Executive Branch. Vigorous oversight is needed, but it should be carefully structured in a new powerful oversight committee. I believe this can be achieved if we work together to attain it.

In moving toward improving our intelligence capability, we must also streamline it. It is in this approach that my thoughts are somewhat conceptually different from the approach the Committee is recommending. I am concerned that we not overreact to the past by creating a plethora of rigid "thou shalt not" statutes, which, while prohibiting the specific hypothetical abuse postured in the Report, cast a wide net which will catch and eliminate many valuable intelligence programs as well.

The Committee Report recommends the passage of a large number of new statutes to define the functions of and further regulate the intelligence community. I am troubled by how much detail should be used in spelling out the functions and limitations of our intelligence agencies for all the world to see. Do we want to outline for our adversaries just how far our intelligence agencies can go? Do we want to define publicly down to the last detail what they can and cannot do? I am not sure we do. I rather think the answer is found in establishing carefully structured charters for the intelligence agencies with accountability and responsibility in the Executive Branch and vigilant oversight within the Legislative Branch.

President's Program

It is my view that we need to take both a moderate and efficient course in reforming our intelligence gathering system. In that regard, I think President Ford's recent restructuring of the intelligence community was an extraordinarily good response to the problems of the past. The President's program effected a massive reorganization of our entire intelligence community. It was a massive reaction to a massive problem which did not lend itself to easy solution. I am pleased that many of the Committee's recommendations for intelligence reform mirror the President's program in format. Centralizing the command and control of the intelligence community, as the President's program does, is the best way to ensure total accountability and yet not compromise our intelligence gathering capability.

Therefore, I endorse the basic framework of intelligence reform, outlined by President Ford, as embodying: (1) a single permanent oversight committee in Congress, with strong and aggressive staff, to oversee the intelligence community;[6] (2) the Committee on Foreign Intelligence to manage the day-to-day operation of the intelligence community; (3) the re-constituted Operations Advisory Group to review and pass upon all significant covert actions projects;[7] and (4) the Intelligence Oversight Board to monitor any possible abuses in the future, coordinating the activities and reports of what I am confident will be the considerably strengthened offices of General Counsel and Inspector General. This framework will accomplish the accountability and responsibility we seek in the intelligence community with both thoroughness and efficiency. Within this framework, Attorney General Levi's new guidelines in the Domestic Security area will drastically alter this previously sparsely supervised field. These guidelines will centralize responsibility for domestic intelligence within the Department of Justice and will preclude abuses such as COINTELPRO from ever reoccurring.[8]

Specific Reforms

Within this basic framework, we must look to how we are going to devise a system that can both effectively oversee the intelligence community and yet not impose strictures which will eliminate its productivity. It is to this end that I suggest we move in the following direction:

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[6] My original support for a single joint committee of Congress has evolved, somewhat as affected by the events of this past year's House Intelligence Committee investigation, to support for a single Senate committee. However, I also favor the mandate of the new committee including, as does the present S. 400, a charge to consider the future option of merging into a permanent joint committee upon consultation with and action by the House of Representatives. The moment for meaningful reform is now and we must not lose it by waiting for a joint committee to be approved by both Houses of Congress.

[7] I think a rule of reason should apply here. All significant projects certainly should receive careful attention from the Group. On the other hand, I would not require a formal meeting with a written record to authorize the payment of 2 sources in X country at $50 per month to be changed to the payment of 3 sources in X country at $40 per month.

[8] I applaud the detailed guidelines issued by the Attorney General to reform the Department's entire domestic intelligence program. I think he is moving in the right direction by requiring the FBI to meet a specific and stringent standard for opening an intelligence investigation, i.e., the *Terry* v. *Ohio* standard.

(1) Demand responsibility and accountability from the Executive Branch by requiring all major policy decisions and all major intelligence action decisions be in writing, and therefore retrievable.[9]

(2) I recommend, as I have previously, that Congress enact a variation of S. 400, which I had the privilege to cosponsor. S. 400 is the Government Operations Committee bill which would create a permanent oversight committee to review the intelligence community. The existing Congressional oversight system has provided infrequent and ineffectual review. And, many of the abuses revealed might have been prevented had Congress been doing its job. The jurisdiction of the new committee should include both the CIA and the FBI, and the committee should be required to review and report periodically to the Senate on all aspects of the intelligence community's operations. In particular, I recommend that the Committee give specific careful attention to how we might improve as well as control our intelligence capability in the counterintelligence and espionage areas.

(3) Simultaneously with the creation of a permanent oversight committee, Congress should amend the Hughes-Ryan Amendment to the 1974 Foreign Assistance Act, § 662, which now requires the intelligence community to brief 6 committees of the Congress on each and every major intelligence action. Former Director Colby strikes a responsive chord when he complains that the present system will lead to leaking of vital intelligence information. We must put a stop to this. This can be done by allowing the intelligence community to report only to a single secure committee.

(4) Concomitantly with improved oversight, we in Congress must adopt stringent procedures to prevent leaks of intelligence information. In this regard, I recommend we create a regular remedy to prevent the extraordinary remedy of a single member of Congress disclosing the existence of a covert intelligence operation with which he does not agree. Such a remedy could take the form of an appeal procedure within the Congress so that a single member, not satisfied with a Committee's determination that a particular program is in the national interest, will be provided with an avenue of relief. This procedure, however, must be coupled with stringent penalties for any member of Congress who disregards it and discloses classified information anyway. I intend to offer an amendment to institute such a remedy when S. 400 reaches the Senate floor.[10]

(5) The positions of General Counsel and Inspector General in the intelligence agencies should be elevated in importance and given increased powers. I feel that it is extraordinarily important that these

[9] Never again should we be faced with the dilemma we faced in the assassination investigation. We climbed the ladder of authority only to reach a point where there were no more written rungs. Responsibility ceased; accountability ceased; and, in the end, we could not say whether some of the most drastic actions our intelligence community or certain components of it had ever taken against a foreign country or foreign leader were approved of or even known of by the President who was in office at the time.

[10] I would favor a procedure, within the Congress, which would in effect create an avenue of appeal for a member dissatisfied with a Committee determination on a classification issue. Perhaps an appeal committee made up of the Majority and Minority leaders and other appointed members would be appropriate. Leaving the mechanics aside, however, I believe the concept is important and can be implemented.

positions, particularly that of General Counsel, be upgraded. For that reason, I think that it is a good idea to have the General Counsel, to both the FBI and the CIA, subject to Senate confirmation. This adds another check and balance which will result in an overall improvement of the system.[12] Additionally, I feel that it is equally important to provide both the General Counsel and Inspector General with unrestricted access to all raw files within their respective agencies.[12a] This was not always done in the past and will be a healthy addition to the intra-agency system of checks and balances.

(6) I am in favor of making public the aggregate figure for the budget of the entire intelligence community. I believe the people of the United States have the right to know that figure.[13] The citizens of this country have a right to know how much of their money we are spending on intelligence production. But, they also want to get their money's worth out of that tax dollar. They do not want to spend that money for intelligence production which is going to be handicapped; which is going to produce poor or inaccurate intelligence. Therefore, I am opposed to any further specific delineation of the intelligence community budget. Specifically, I am opposed to the publication of the CIA's budget or the NSA's budget. It seems to me we are dealing with the world of the unknown in predicting what a foreign intelligence service can or cannot extrapolate from these budget figures. We received no testimony which guaranteed that, if Congress were to publish the budget figure for the CIA itself, a hostile intelligence organization could not extrapolate from that figure and determine much more accurately what the CIA capabilities are in any number of vital areas. Without such testimony, I am not prepared to go that far. The public's right to know must be balanced with the efficiency and integrity of our intelligence operations. I think we can accomplish both by taking the middle road; publishing the aggregate figure for the entire intelligence community. It is this proposal that I have voted in favor of.

There are a number of other specific findings and recommendations, supported by a majority of the Committee, which require additional brief comment.

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[12] I differ with the Committee in that I would not have the General Counsel and Inspector General file reports and/or complaints concerning possible abuses with the Attorney General. Rather, I think the more appropriate interface in a new oversight system would be for both to take complaints to the Intelligence Oversight Board and the new congressional oversight committee. The Attorney General would remain the recipient of any and all complaints regarding possible violations of law.

[12a] I support the Committee's recommendation that agency employees report any irregularities directly to the Inspector General without going through the chain of command, i.e. through the particular division chief involved.

[13] I do not feel that, despite my personal view that the aggregate budget figure should be disclosed to the public, only six to eleven members of the Senate have the right to release unilaterally the actual budget figures. A majority of both Houses of Congress should be necessary to release such information. And, while I would cast my vote in favor of the release of the aggregate budget figure, I am troubled that there may be no such vote. I am not sure the "right" result, justifies the "wrong" procedures, because the next time the wrong procedure can just as easily be utilized to reach the wrong result.

Foreign Intelligence Recommendations

(1) COVERT ACTION

I believe the covert action capability of our intelligence community is vital to the United States. We must maintain our strength in this capacity, but, we must also control it. The key and difficult question, of course, is how we can control it without destroying or damaging its effectiveness. In my view, the best way to both maintain strength and yet insure accountability is to have strict control of the covert action programs through the Operations Advisory Group, with parallel control and supervision by the proposed permanent congressional oversight committee.

Covert action is a complex United States intelligence capability. Covert action provides the United States with the ability to react to changing situations. It is built up over a long period of time. Potential assets are painstakingly recruited all over the world. Having reviewed the history of covert action since its inception, I do not look upon the intelligence agents involved in covert action as a modern day group of bandits who travel the world murdering and kidnapping people. Rather, a vast majority of covert action programs are not only valuable but well thought approaches through media placement and agents of influence which produce positive results.

Covert action programs cannot be mounted instantly upon a crisis. It is naive to think that our intelligence community will be able to address a crisis without working years in advance to establish sources in the various countries in which a crisis might occur. These sources provide what is referred to as the "infrastructure," which must necessarily be in place throughout the world so that the United States can *predict* and *prevent* actions abroad which are inimical to our national interest.[14] I believe that, were we to completely abolish covert action or attempt to remove it from the CIA and place it in a new separate agency, these sources would dry up; and, when a crisis did come, our intelligence community would not be able to meet it effectively. Not only do I question the effectiveness a new separate agency for covert action would have, but such a re-structuring would unnecessarily increase our already burgeoning bureaucracy.

I think that it is important to realize that covert action cannot be conducted in public. We cannot take a Gallup Poll to determine whether we should secretly aid the democratic forces in a particular country. I do not defend some of the covert action which has taken place in Chile. But, the fact remains that we cannot discuss publicly the many successes, both major and minor, which the United States has achieved through the careful use of covert action programs. Many individuals occupy positions of power in the world today as a direct result of aid given through a covert action program. Unfortunately, we cannot boast of or even mention these significant achievements. In short, we cannot approach covert action from a public relations point of view. We should not forget that we must deal with the world as it is today—with our adversaries employing their equivalent of covert

[14] For example, testimony before the Committee established that the CIA's failure to act more positively in Portugal was a direct result of an absence of sufficient clandestine infrastructure. William E. Colby testimony, 10/23/75; William Nelson testimony, 11/7/75.

action. We must either say that the intelligence community should have the power to address world problems in this manner, under the strict control of the President and Congress, or we should take away that power completley. I cannot subscribe to the latter.

Finally, the issue remains as to how we can best control covert action through statutory reform. First, I believe the Executive Branch can and should carefully review each significant covert action proposal. This will be accomplished through the Operations Advisory Group under the program outlined by President Ford.

Second, Congress can control covert action by passing legislation requiring that the new oversight committee be kept "fully and currently informed." This, I believe, is the appropriate statutory language to apply to covert action . I do not agree with the Committee's recommendation that "prior notice" be given to Congress for each and every covert action project. As a matter of practice, the important and significant covert action programs will be discussed with the oversight committee in a form of partnership ; and this is the way it should be. "Fully and currently informed" is language which has served us well in the atomic energy area. It has an already existing body of precedent that may be used as a guide for the future. It is flexible, like the Constitution, and provides a strong, broad base to work from. I am not prepared to say, however, that in the years ahead there may not be some vitally sensitive situation of which Congress and the oversight committee should not be told in advance. While the likelihood of this occurring is not great, we should never foreclose with rigid statutory language possibilities which cannot be foreseen today. Our statutory language must be flexible enough to encompass a variety of problems and potential problems, yet rigid enough to ensure total accountability. "Fully and currently informed" accomplishes both purposes.

(2) CIA PUBLISHING RESTRICTIONS

In the area of restrictions on the CIA's publishing of various materials, I am in complete agreement that anything published in the United States by the CIA, or even sponsored indirectly by the CIA through a proprietary, front, or any other means, must be identified as coming from the CIA. Publications overseas are another matter. We should allow the Agency the flexibility, as we have in our recommendations, to publish whatever they want to overseas and to publish under whatever subterfuge is necessary and thought advisable.[15]

Domestic Intelligence Recommendations

While the Committee's Domestic Intelligence Report represents an excellent discussion of the problems attendant to that field of intelligence, I feel several of the recommendations may present practical problems. Although our objective of achieving domestic intelligence reforms is the same, I differ with the majority of the Committee in how best to approach the achievement of this goal.

[15] I do not view the "domestic fallout" as a real problem. To be sure, some publications by the CIA abroad will find their way back to the United States. However, to try to impose severe restrictions to prevent such fallout would cause unnecessary damage to the CIA's valid production of propaganda and other publications abroad.

(1) INVESTIGATIVE STANDARDS

Scope of Domestic Security Investigations

At the outset, I note that most of my concern with the standards for investigations in the domestic security area stem from the fact that "domestic security" is defined by the Committee to include both the "terrorism" and "espionage" areas of investigation. Severe limitations, proscribing the investigation of student groups, are more readily acceptable when they do not also apply to terrorist groups and foreign and domestic agents involved in espionage against the United States. To include these disparate elements within the same "domestic security" rubric, it seems to me, will create unnecessary problems when it comes to the practical application of the theoretical principles enunciated in the Committee's recommendations.

(a) *Preventive intelligence investigations*—The Committee's recommendations limit the FBI's permissible investigations in these critical areas of terrorism and espionage under standards for what the Committee delineates as preventive intelligence investigations. Under these standards the FBI can only investigate where:

> it has a specific allegation or specific or substantiated information that (an) American or foreigner *will soon engage* in terrorist activity or hostile foreign intelligence activity [emphasis added.] [16]

In am not convinced that this is the best way to approach the real problem of limiting domestic intelligence investigations. While in theoretical terms the standards of the recommendations may seem appropriate, I fear the inherent practical consequences of their application to the cold, real world of terrorism and espionage. The establishment of an imminency requirement by not permitting *any* investigation by the FBI unless the allegation or information received establishes that the person or group will "soon engage" in certain activity might prohibit any number of legitimate and necessary FBI investigations. For example, an allegation of an assassination attempt on a public figure at an unspecified date in the future could be precluded from investigation; or, vague information received by the FBI that there was a plan to obtain some nuclear components, but no indication of when or how, could also be prohibited from investigation. Surely, matters such as these should be the valid subjects of investigation—no matter how vague or piecemeal the information is.[17]

(b) *Time limits*—The Committee's recommendations would limit any preliminary FBI investigation of an allegation of wrongdoing in the Domestic Security area to 30 days from the receipt of the information, unless the Attorney General "finds" [18] that the investigation need be extended for an additional 60 days. The FBI investigation may continue beyond 90 days only if the investigatory efforts establish "reasonable suspicion" that the person or group "will soon engage in"

[16] Committee Domestic Report, p. 320.

[17] My experience dictates that many investigations are begun with very limited or sketchy information. FBI agents and investigators in general are not always or even often immediately presented with information which constitutes probable cause of a crime. Probable cause is often established only through painstaking investigation; putting bits and pieces together. I think we must take this into consideration when formulating threshold investigatory standards.

[18] It is unclear what standard is to be the predicate for any such finding.

terrorist or foreign espionage activities.[19] And, even a full preventive intelligence investigation is not permitted to continue beyond "one year," except upon a finding by the Attorney General of "compelling circumstances." [20]

While well-intentioned, I am not persuaded that these are workable standards. I just don't think we can categorize all investigations into these rigid time frames. Investigations just are not conducted that way. Thirty days, for example, is probably not even enough time to obtain a license check return from some states. Moreover, limiting an investigation to one year may not be realistic when it applies to investigating a violence prone group like the SLA or a Soviet Union espionage ring. These investigations are not easily or quickly accomplished. I do not believe that the creation of artificial time limits is the best way to approach the real concern of the Committee, which is that we establish institutional controls on domestic security investigations. I would prefer approaching the control and accountability problems by providing periodic Department of Justice reviews of *all* categories of domestic intelligence investigations; not by imposing specific time limits upon all investigations.

(2) INFORMANTS

The Committee recommends broad new restrictions on the use of informants by the FBI. While our investigation has established that, in the domestic intelligence field, there have been numerous abuses in the use of informants, I do not think that the proposed recommendations are the best vehicles to achieve the needed reform. I cannot subscribe to recommendaitons limiting the use of informants to stringent time standards.[21] To limit use of informants to periods of "90 days" [22] unless the Attorney General finds "probable cause" that an American will "soon" engage in terrorist or hostile foreign intelligence activity is impractical and unworkable. When groups such as the SLA attempt to rob, kill, or blow up buildings, it is clearly necessary to cultivate informants who may provide some advance warning. I am concerned that the Committee's recommendations will preclude this vital function of the FBI. Moreover, specific time limits, it seems to me, will prove to be impractical. For example, at the end of the prescribed time, with not enough evidence for arrests, will informant X be terminated and replaced by informant Y who starts anew, or are informants thereafter banned from penetrating the particular group—even if violence prone or involved in espionage?

It should be remembered that informants are the single most important tool of the FBI, and local police for that matter, in the fight against terrorism and espionage, as well as organized crime, narcotics, and even the ever pervasive street crimes of murder, rape, and robbery. Indeed, they are the very lifeblood of such investigations. Moreover, informants are involved in a wide spectrum of activities

[19] Committee Domestic Report, pp. 320–323.

[20] Compelling circumstances is not further defined, so it is unclear what standards should be applied in making such a determination.

[21] My concerns here parallel those I have with respect to the general investigatory standards recommended.

[22] The Committee allows an additional 60 days if the Attorney General finds "compelling circumstances."

from attending public meetings to actual penetration attempts. I am concerned that theoretical and abstract restrictions designed only for "domestic intelligence", if enacted, would soon limit our legitimate law enforcement efforts in many other fields as well. People and actions do not always fit nicely in neat little boxes labeled "domestic intelligence," particularly in the terrorist and espionage areas to which the proposed restrictions on informants would apply. Congress should carefully consider the scope and ramifications of any recommendations with respect to informants.

It is my view that the better way to approach the problems encountered in the use of informants is to put their use under strict supervision of the Department of Justice. Creation of a special staff or committee for this purpose, centralized in the Department of Justice, would provide effective controls over the potential abuses in the use of informants, yet not hamstring their legitimate and valuable use.[23]

(3) ELECTRONIC SURVEILLANCE

I wholeheartedly support S. 3197, the new electronic surveillance bill sent to the Congress by President Ford.[24] It needs consolidated bipartisan support because it represents a significant advance from existing practice. For the first time, it will bring all governmental electronic surveillance under the scrutiny of judicial warrant procedures. I commend the efforts of President Ford in taking this extraordinary step forward in the regulation of electronic surveillance.

In supporting S. 3197, I do not regard the existing wiretaps presently maintained under the direction and control of Attorney General Levi as being in violation of the Constitution. The present practice of electronic surveillance authorization and implementation rests upon a long-standing body of precedent which provides a firm constitutional base for their continued maintenance. The President's approach is to move from the present practice toward better practices and procedures for authorization. The abuses of electronic surveillance of the past clearly dictate a need for a system of judicial warrant approval. Under the President's proposal the American people will be able to rest easy—assured that electronic surveillance will be employed carefully, yet when needed to combat serious criminal and espionage activity.

I differ with a majority of the Committee insofar as they recommend that before a judge can issue a warrant for electronic surveillance he must find *more* than that an American is a conscious agent of a foreign power engaged in clandestine intelligence activities. The Committee would require that probable cause be established for "criminal activity" before a wiretap can be authorized. I think this departure from the S. 3197 standard would be a dangerous one because it would eliminate certain areas of espionage, particularly industrial espionage,

[23] Attorney General Levi is in the process of establishing guidelines to regulate the use of informants. I recommend, however, that these guidelines be enforced through some appropriate form of Department of Justice review of the FBI's use of informants.

[24] The bill enjoyed a bipartisan co-sponsorship of Senators.

from electronic surveillance. Many areas of espionage do not involve clearly criminal activity. Indeed, forms of espionage may not constitute a criminal offense, but should be the valid target of an espionage investigation. For example, a situation such as American oil company executives providing unclassified but important oil reserve information to a Soviet agent might not be a permissible subject of electronic surveillance if "criminal activity," rather than hostile foreign intelligence, were the standard.[25] I think the Committee proposed standard would harm the FBI's espionage efforts and would therefore be a mistake.

(4) CIVIL REMEDIES STATUTE

I oppose any broad new civil remedies statute in the field of domestic intelligence as both dangerous and unnecessary. It is dangerous because it could easily open the flood gates for numerous lawsuits filed seeking injunctive relief in the courts to thwart legitimate investigations. It is unnecessary because any substantial actions are already permitted under present Supreme Court decisions, such as *Bivens* v. *United States*, for violation of constitutional rights. There is simply no valid reason to carve out a broad new category of lawsuits for those not only injured by domestic intelligence methods but "threatened with injury." [26] No such statutory provisions are available for "victims" in any other specific category of activity. The present avenues of relief provided by law today are clearly sufficient to address any future abuses in the domestic intelligence field. I note that we have not had the benefit of any sworn testimony from the many constitutional and criminal law experts in the country, either pro or con such a proposal. Without the benefit of an adequate record and with my concern about the practical results of such a statute, I cannot support its enactment.

(5) CIVIL DISORDERS

A final recommendation which requires brief comment in the Committee's proposed standards permitting the FBI to assist "federal, state, and local officials in connection with a civil disorder." The Committee's recommendation will not allow any investigation by the F.B.I., not even preliminary in nature, unless the Attorney General finds in writing that "there is a clear and immediate threat of domestic violence" which will require the use of Federal troops.

My reservation about this recommendation is that I think it deprives the Attorney General of the necessary flexibility in dealing with

[25] Those involved in the obtaining of information about our industrial processes, vital to our national security, for our adversaries should be the legitimate subject of electronic surveillance, notwithstanding that no criminal statute is violated. I do not think we can afford to wait for exhaustive reform of our espionage laws. I note that the section of the proposed S.1 dealing with espionage reform has presented great difficulty to the drafters. Indeed, drafting espionage into a criminal statute presents some of the same overbreadth problems that the Committee has been concerned with in the domestic intelligence area.

[26] For example, would a cause of action exist simply because X notices a federal agent following him in an automobile, notwithstanding the nature or status of the particular investigation?

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these delicate matters (i.e., civil disturbances) and might tend to exacerbate a possibly explosive situation. If the Attorney General is not allowed to dispatch FBI agents to the scene of disorders it seems to me that we deprive him of the very means he needs to make the extraordinarily important decision as to whether Federal troops are likely to be used.

I believe the better practice would be to permit preliminary investigation by the FBI of potentially volatile situations so that the Attorney General might make the most reasoned decision possible with respect to what I consider the drastic step of deploying Federal troops to quell a civil disorder in one of our cities.

WATERGATE-RELATED INQUIRY

Finally, I wish to address briefly an area of the Committee's investigation which I pursued for the most part independently. At the close of the Senate Watergate investigation I filed a report as part of my individual views [27] which outlined remaining areas of investigation with respect to the relationships between the Central Intelligence Agency and the former CIA employees who participated in the Watergate break-in.[28] By virtue of my membership on this Select Committee, I have been able to pursue a further inquiry into these matters, and wish to thank the Chairman and the Vice Chairman for the staff assistance and latitude provided me to pursue this area of investigation.

Many of the concerns raised in the Watergate Committee investigation have been overtaken by time and events. For example, the reported references to illegal CIA domestic activities have now been confirmed, as described in detail in the Committee's Report. The reference to the CIA maintaining a file on Jack Anderson [29] proved to be part of a lengthy investigation and physical surveillance of Anderson by the CIA during a "leak" inquiry. Similarly, the detailing of Howard Hunt's post-retirement contacts with the CIA has been supplemented with still more such contacts.[30] Since July 1974, we have witnessed a variety of other disclosures relative to the CIA's domestic activities; indeed, the creation of our Senate Select Committee on Intelligence Activities was due in part to the continuing public concern about these matters.

Unlike the Watergate Committee investigation of CIA activities, which largely was terminated because of the refusal of the CIA to turn over documents,[31] this investigation was conducted in an atmosphere of cooperation. After some initial difficulties, which the Committee en-

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[27] Senate Watergate Committee Final Report, S. Res. 93–981, pp. 1105–1165.

[28] The "Action Required" section of the report, at pages 1150–1157, enumerated unresolved matters and identified materials not provided to the Watergate Committee by the CIA.

[29] Senate Watergate Committee Final Report, p. 1128.

[30] For example this disclosure of personal correspondence (detailing certain of Hunt's activities in 1971 and 1972) between Hunt and the CIA secretary stationed in Paris whom Hunt sought to have reassigned to work for him at the White House.

[31] By letter of March 7, 1974, former Director Colby informed the Senate Watergate Committee that certain items of requested information would not be made available to that committee. Such a withholding of timely information, including that which was totally exculpatory, unnecessarily focused an aura of suspicion and guilt.

countered in a variety of areas, the cooperation afforded by the CIA was exemplary. In particular, I especially want to express my appreciation to former Director William Colby and present Director George Bush for cooperating to the fullest extent in this investigation. I also want to thank Ambassador Richard Helms and former Counterintelligence Chief James Angleton for their patience and extensive assistance in numerous conferences, in trying to reconstruct the elusive details of this significant period.

In pursuing this area of inquiry, the Committee staff examined a great volume of highly sensitive material, much of which contained speculative matters and a multitude of information of marginal relevance. This information, which had not been made available in large part to the Separate Watergate Committee, was examined in raw form and without sanitization deletions. Because of the sensitivity of the material, it was reviewed on the Central Intelligence Agency premises. Thus, it was in a spirit of cooperation that this examination was accommodated; and, this experience indicates that the Congress and the intelligence community can cooperate in an investigation without incurring unauthorized disclosure of sensitive information.[32]

At the close of this Committee's examination of the available record, I wish to state my belief that the sum total of the evidence does not substantiate a conclusion that the CIA per se was involved in the range of events and circumstances known as Watergate.[33] However, there was considerable evidence that for much of the post-Watergate period the CIA itself was uncertain of the ramifications of the various involvements, witting or otherwise, between members of the Watergate burglary team and members or components of the Agency. Indeed, the CIA was apparently at times as perplexed as Congressional investigators.[34] It should be noted that the Agency undertook an extensive internal inquiry in an effort to resolve these uncertainties.

The investigation of Watergate and the possible relationship of the Central Intelligence Agency thereto, produced a panoply of puzzlement. While the available information leaves nagging questions and contains bits and pieces of intriguing evidence, fairness dictates that an assessment be rendered on the basis of the present record. An impartial evaluation of that record compels the conclusion that the CIA, as an institution, was not involved in the Watergate break-in.

HOWARD H. BAKER, JR.

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[32] For example, the staff was given access to the Martinez contact reports (to which access was refused during the Watergate Committee investigation) in their entirety. This review was accomplished in secure facilities at the CIA, and no notes were taken of sensitive information contained in the reports not related to Hunt or in some other way relevant to the Committee's inquiry. I cite this as an example of how a Congressional investigation can be thorough and yet not threaten the integrity of CIA secret documentation, containing names of officers and other highly classified information.

[33] I am filing with the Committee the detailed results of this investigation in the form of classified memoranda. These memoranda will be turned over to the successor permanent oversight committee to be kept in its secure files. No useful purpose would be served in further publicizing the contents, because much of it is fragmentary and its sum total reinforces the findings stated herein.

[34] For example, a Colby to Helms letter of 28 January, 1974, references seven to nine communications from Hunt while he was at the White House to Helms' secretary, with the query: "Can you give us some idea as to what they were about?"

INDIVIDUAL VIEWS OF SENATOR GOLDWATER

For over a year the Senate Select Committee on Intelligence Activities has been conducting hearings and taking testimony. Almost six months of this time was frittered away in an unproductive investigation into alleged assassinations (see my individual views accompanying the foreign section of this report).

Thanks to extensive and often sensationalized public hearings, the deficiencies of our domestic intelligence agencies have now been exposed, labelled, and largely admitted to. In response, the individual agencies have undertaken substantial reforms and the Administration itself has piloted corrections by a thoughtful and detailed Executive Order 11905, 2/18/76.

Not satisfied, however, the Select Committee's Report sets forth a voluminous and rambling treatise which pillories the nation's domestic intelligence agencies, fixes individual culpability, ignores agency efforts at reform, and urges the adoption of recommendations and findings unsubstantiated by fact.

The Report sets forth frequent and unfounded criticism of "executive power." Ignoring both past and present efforts by the Executive to provide guidance and reform, the Report voices theoretical objection to the conduct of intelligence activities by the "Chief Executive and his surrogates." Unhappily, the sweeping dissatisfaction of theoreticians and academicians is not reflected in the record of the Select Committee's proceedings and is almost wholly unsupported by testimony. The pronouncements within the Report deal in a high-handed manner with matters that received little or no attention by the Committee and are, consequently, utterly devoid of an adequate record.

The free-wheeling, self-righteous, and frequently moralizing thrust of the Report therefore assures recommendations which are bottomed in wish and speculation rather than in fact or testimony. Recommendations, for example, that civil remedies be expanded to cover parties alleging "injuries" from domestic intelligence activity; that statutes be enacted to create a cause of action for those allegedly so aggrieved; that criminal sanctions be enacted for willful violation of recommended statutes; and that the Smith and Voorhis Acts be repealed or amended, are all glibly presented without so much as a shred of evidence having been entered into the record in their support.

Although the Report has flatly assured its readers that "the scope of our recommendations coincides with the scope of our investigation", such assurances are clearly hollow when, for instance, the Report affirms in preamble to certain recommendations that the President has no inherent power to conduct a wiretap without a warrant. Repeatedly and without qualification, the Report reiterates such a proposition, without referring to the unsettled state of the case law, the views of legal scholars, or the relative silence of the Supreme Court on the matter. When, further, the Report counsels restrictions on, say, the use of

informants or the surveillance of foreign intelligence activities, it goes beyond restrictions already in the Attorney General's Guidelines with scant attention to the effectiveness of the guidelines or their application.

Again and again the Report makes far-reaching recommendations which are unsubstantiated by the evidence. Thus the Report urges that the FBI not attempt frustration of hostile foreign intelligence activities by "specialized" techniques unless approved by the Attorney General upon advice of the Secretary of State. What the Report omits, however, is any showing that the Attorney General or the Secretary of State is available, capable, or prepared, to undertake such a role.

In similar fashion, the Report's Recommendations are frequently critical of the Executive Order's determination to repose all domestic oversight in a Board rather than vest it exclusively or principally with the Attorney General. The apparent basis for the Report's preference (and hence its criticism of the Administration's Executive Order) is the brief and fairly bald conclusion that the Attorney General is the "most appropriate official charged with ensuring that the intelligence agencies of the United States conduct their activities in accordance with the law." No examination of feasibility, organization, or jurisdiction, buttresses the Report's conclusion in this respect.

The Report likewise recommends almost wholesale enactment of legislation to prevent recurrence of abuses and repetition of improprieties in the domestic area. In this respect the Report exhibits a decidedly hasty and almost exclusive preference for statute where Order, Rule, or Regulation would provide more expeditious, more particularized, and more flexible remedies. In view of the tentative and even halting nature of so many of the Committee's conclusions, the clamor for statutes is premature and ill-advised. To urge the quick enactment of criminal provisions is even more injudicious, and, in some cases, verges on the fatuous.

To be precise: the Select Committee has endorsed Recommendation 52, which reads: "All non-consensual electronic surveillance should be conducted pursuant to warrants issued under authority of Title III of the Omnibus Crime Control and Safe Streets Act of 1968." At the same time, however, the Select Committee admits that "industrial espionage and other modern forms of espionage (are) not presently covered" by the criminal law, and that "there may be serious deficiencies in the Federal Espionage Statute (18 U.S.C. 792 et seq.)." In fact, the Report is constrained to admit that it "took no testimony on this subject." Nonetheless, in the very teeth of its own admission, the Select Committee endorses a Recommendation that would restrict *all* electronic surveillance to the narrow and exclusive confines of the criminal law. At Select Committee direction, our counter-intelligence efforts would be forbidden by law to avail themselves of electronic surveillance in the as yet undefined, but admittedly vital, areas of economic, technological, and industrial espionage. With virtual impunity an American could pass, deliver, or sell to the agent of a hostile foreign power any and all secrets of industry or technology—however important to the nation's economy or well-being—while the FBI would be effectively precluded from action. As criminal sanctions do not attach—and, in fact, may very well be incapable of attaching—to "industrial espionage", electronic surveillance would be denied the nation's

intelligence agencies in any effort to forestall, prevent or even monitor, hostile foreign intelligence activity in the economic or technological sphere. While the Report blithely recommends that the espionage laws be modernized to include technological or industrial espionage, it nowhere confronts the massive practical difficulties in such a suggestion.

Federal Bureau of Investigation

During the last decade or so of Mr. Hoover's tenure abuses crept into the operations of the Bureau. Because these are thoroughly ventilated, if not overdrawn, in the Majority Report, I shall not dwell on them here, with one exception: at times, suggestions from the White House or the conjectures of Presidential aides directly sparked eavesdropping and interference with the political process.

Almost invariably, however, Bureau impropriety can be attributed—whether directly or by implication—to higher authority. As in the foreign sector, the record of domestic abuse and excess is a commentary on improper or deficient guidance. While particular programs or personnel cannot be spared their proportionate share of responsibility for impropriety, ultimate accountability for Bureau excesses must rest with a negligent Executive and an inattentive Congress.

While I concur in the general objectives of the Committee to insure no repetition of abuses of which the FBI may have been guilty in the past, I strongly disagree with certain specific recommendations in the Committee's report.

I do not feel the best interests of this country would be served by imposing extraordinary curbs on the FBI or by opening additional channels through which political influence could flow into the inner workings of the FBI. And to a certain extent, the recommendations I find objectionable would tend to accomplish exactly that.

I refer specifically to Recommendation 85, which encourages the Attorney General to exercise his authority to appoint executives in the FBI at the level of Assistant Director.

The Attorneys General, with rare exceptions, have historically been political supporters of the President and his party. By exhorting an Attorney General to by-pass the Director of the FBI and appoint Assistant Directors, we run the risk of further extending White House intrusion into the daily operations of the FBI. FBI Assistant Directors take part in administrative decisions and policy-making, and they exercise day-to-day authority over the operations of their respective divisions. Traditionally, they have been professionals who advanced through the ranks of the FBI. Their law enforcement expertise, combined with administrative ability, are qualities needed by the Director of the FBI in discharging his duties. Moreover, any chief executive officer of a line agency should have flexibility in choosing his principal assistants.

The Office of the General Counsel of the FBI is a career position; and the person who occupies that office has traditionally been selected by the Director. No valid reasons have been given to require his nomination by the President and confirmation by the Senate. As a general rule, the Director or Administrator of a bureau or agency is permitted to choose his own General Counsel.

Personal integrity cannot be assured through such measures as Recommendation 85. Proper supervision by the Attorney General and effective Congressional oversight can, and should, however, serve to discourage abuses of the sort that concern all of us.

I take exception, also, to Recommendations 45, 55–A and 55–B, that impose constraints on preventive intelligence investigations and use of informants. The work of the FBI in this area is far too vital to the security of the American people to impose such stringently restrictive requirements and time limitations on its investigative efforts.

With domestic terrorism burgeoning in this country, I submit it is very risky to forbid the FBI to conduct preliminary investigations of foreigners or citizens unless there is a "specific allegation" or proof that such individuals "will soon engage in terrorist activity or hostile foreign intelligence activity." Here, again, as in some of the foreign recommendations we seem to be saying, "Don't put out the fire while it is small; wait until it becomes a conflagration."

Hostile forces at home and abroad are bound by no such chains. And, I don't want to be party in hamstringing the FBI so that it cannot effectively frustrate those who would espouse the bomb and the gun to impose their evil will on America.

How in the world is the FBI to substantiate information that terrorists and enemy agents will act against Americans without at least preliminary investigation? To require them to have such proof in hand before even initiating investigation seems unrealistic and is potentially injurious to our security.

The recommendation also states that such preliminary investigation must be concluded within 30 days, unless the Attorney General or his designee finds that the facts warrant additional investigation up to 60 days.

Are we truly prepared to say to the FBI: you must conclude your preventive intelligence investigations within 30 or 90 days unless you establish "reasonable suspicion" that individuals *will in fact* commit a terrorist act or engage in hostile foreign intelligence activity?

And, even then, a time limit of one year is recommended for a full preventive intelligence investigation, barring a finding of "compelling circumstances" by the Attorney General. Can we be assured that our enemies will be so obliging as to commit an act within the time span we prescribe?

And I question the effectiveness of the recommended measures in preventing abuses of Americans' privacy or in assuring non-violent dissenters in our country that they will not be inhibited by FBI actions.

I submit that effective and proper Congressional oversight and supervision by the Attorney General obviates the necessity of stringent standards and time limitations where a quick response by the FBI may be needed to avert disaster.

While I tend to agree with the motives and objectives of my colleagues on the Committee on Recommendations 55–A and B, I maintain the requirements and limitations imposed on the FBI's use of informants go beyond what is necessary.

How can we possibly expect the FBI to develop instant security informants, use them for 90 days, and then turn them off like a light switch?

Are we truly qualified to dictate to a professional law enforcement agency under what circumstances it can use security informants and for how long? The value of such informants has been demonstrated over and over again. Good, stable, effective informants with proved credibility are not easy to come by.

The fact is that their cooperation must be cultivated. Their credibility must be tested. Their stability must be evaluated. Time and patience are essential. Does it make sense to state exactly under what circumstances and for how long a period the FBI will be permitted to accomplish these aims?

The stakes are too high to risk imposing unworkable or cumbersome restrictions—the stakes being human lives and the security of our country.

I have misgivings regarding Recommendation 90–B, which provides a new civil action recourse to Americans who feel that their Constitutional rights have suffered actual or even *threatened* violation by Federal officers or agents in intelligence investigations. This provision would have the effect of injecting the courts into the investigative process, even at early stages of investigations when attempts are being made to substantiate or disprove specific allegations of actions requiring legitimate investigation.

We would open the way for individuals and agents hostile to our country and its lawful government to impede and tie up in prolonged litigation investigations required to preserve national security and prevent violence.

Turmoil, upheaval, and readjustment have taken their toll of the FBI. Fortunately for the nation, the many high-caliber and patriotic men and women who are the FBI have continued to serve with dedication and loyalty.

Internal Revenue Service

Nowhere has the perversion of domestic intelligence been more vividly demonstrated than in the Select Committee's investigation of the Internal Revenue Service. With much relish but no excuse, IRS functionaries have pried and spied on countless organizations and activities. Intelligence components of the IRS have indiscriminately investigated hundreds of thousands of taxpayers and have amassed reams of information wholly irrelevant to the IRS's narrow responsibility for collecting the taxes. IRS agents have for decades conducted intrusive campaigns of snooping virtually without let or hindrance, and certainly without justification in fact or in law.

In 1961, for instance, the IRS initiated a program to conduct a test audit of various "right-wing" organizations. Termed the "Ideological Organizations Audit Program," the project attempted intensive investigation of 10,000 tax-exempt organizations that was far removed from even-handed enforcement of the internal revenue laws. Precedent having been established, a Special Services Staff was organized in 1969 to conduct audits of "activist" and "ideological" taxpayers. Audits were run without reference to established tax criteria and the "special service" rendered the nation was the unwarranted targeting of 18,000 individuals and 3,000 groups. Its insatiable appetite

still unsatisfied, the IRS next established an "Information Gathering and Retrieval System" (IGRS) in order to garner still more general intelligence. IGRS was hatched in 1973, and, during its two years of life, proceeded to gather and store information in voracious fashion. Some 465,442 individuals or organizations were examined before the program was terminated in 1975.

Operating secretly and without standards or safeguards, IGRS was typical of the arrogance of the tax collectors. Abuses uncovered in connection with the IRS's Operation Leprechaun (1969–1972) merely represent the expected and logical extension of policies which are as profoundly contemptuous of the American taxpayer as they are characteristic of the IRS's perennial efforts to transform itself into a repository of domestic intelligence.

I have refused to sign the final report of the Select Committee on Intelligence Operations in the belief that it can cause severe embarrassment, if not grave harm, to the Nation's foreign policy. The domestic part of the report has a strong dose of 20–20 hindsight. It will raise more questions than it answers. Reputations will suffer and little will have been gained.

When the resolution creating the Select Committee was presented to the Senate, I endorsed it because I felt it was necessary to conduct such an investigation into any possible abuses on the privacy of American citizens. I thoroughly expected that the Committee would concentrate its efforts in this particular field, but very little work was done on it. Not much can be gained from reading the report as a result of this, and I am, frankly, disappointed that we don't know more today than we did a year and a half ago about questions raised on this subject.

BARRY GOLDWATER.

Supplemental Views of Senator Charles McC. Mathias, Jr.

I fully support the Final Report and the Findings and Recommendations of the Select Committee on Intelligence.

The reaffirmation of Constitutional government requires more than rhetoric. It involves, at a minimum, the rendering of accounts by those who have held public trust. It also demands that we renew those principles that are at the center of our democracy. In my view, the Select Committee's Report is a critical contribution to the process of Constitutional government.

Those who won our independence 200 years ago understood the need to ensure "domestic tranquility" and to "provide for the common defense." Our intelligence services have played a valuable role in the attainment of those goals.

The Founders of our Nation also understood the need to place governmental power under the rule of law. They knew that power carried with it the seed of abuse. In framing the Constitution, they created a system of checks and balances that would preclude the exercise of arbitrary power. For they recognized that the exercise of power by individuals must be constrained. As Jefferson wrote, "In questions of power, let no more be heard of confidence in man, but bind him down by the chains of the Constitution."

When Senator Mansfield and I first proposed the creation of a Select Committee on Intelligence in the wake of Watergate, we were not seeking to weaken the nation's intelligence service but to strengthen it. Effective government rests on the confidence of the people. In the aftermath of Watergate and charges of domestic spying and misuse of the intelligence agencies, that confidence was severely strained. And in the face of excessive claims of presidential prerogative, Congress had abdicated its Constitutional responsibilities to oversee and check the exercise of executive power in the intelligence operations of the government.

Secrecy and democratic government are uneasy partners. Intelligence operations are in essence secret operations. But that does not mean that they can be immune from the rule of law and the standards our system of government places on all government operations.

If we can lose our liberties from a too-powerful Government intruding into our lives through burdensome taxes or an excess of regulations, we can surely lose them from government agencies that collect vast amounts of information on the lawful activities of citizens in the interest of "domestic intelligence." The excessive breadth of domestic intelligence operations investigated by the Committee and many of the techniques used against Americans can severely chill First Amendment rights and deeply infringe upon personal privacy.

The Framers of our Constitution recognized that the vitality of our civil life depends on free discussion. They also recognized that the right of privacy is fundamental to the sanctity of the individual. That is why we have the First and Fourth Amendments. Speech and political ideas are often unsettling. But it is only through free debate and

the free exchange of ideas that the people can inform themselves and make their government responsive. And it is through the protection of privacy that we nourish the individual spirit. These are the characteristics that set us apart from totalitarian regimes.

In this, our Bicentennial year, Americans have a special opportunity to reaffirm the values of our forebears. We have emerged from the dangers of the post-war era and the trauma of the last decade not by forsaking those values but by adhering to them. To be worthy of our forebears and ourselves, we need only have the courage to keep to the course. By bringing the intelligence arm of the government within our constitutional system, correcting abuses, and checking excesses, we will enable the proper range of intelligence activity to go forward under law in the service of the country.

CHARLES McC. MATHIAS, Jr.

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