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SUPPLEMENTARY DETAILED STAFF REPORTS
ON INTELLIGENCE ACTIVITIES AND THE
RIGHTS OF AMERICANS

BOOK III

FINAL REPORT
OF THE
SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS
WITH RESPECT TO
INTELLIGENCE ACTIVITIES
UNITED STATES SENATE



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

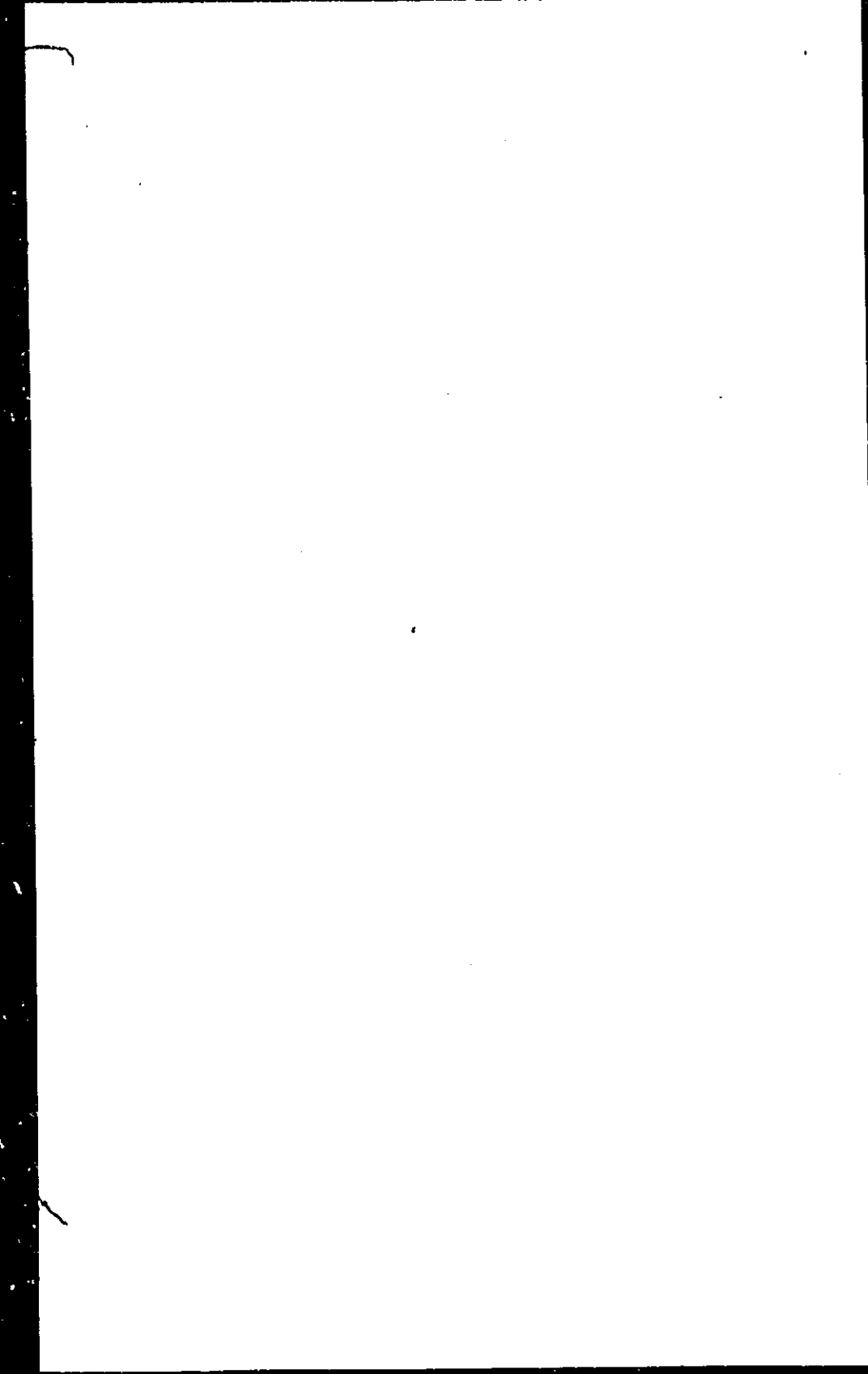
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CONTENTS

	Page.
Letter of Transmittal.....	v
COINTELPRO: The FBI's Covert Action Programs Against American Citizens.....	1
Dr. Martin Luther King, Jr., Case Study.....	79
The FBI's Covert Action Program To Destroy The Black Panther Party.....	185
The Use of Informants In FBI Intelligence Investigations.....	225
Warrantless FBI Electronic Surveillance.....	271
Warrantless Surreptitious Entries: FBI "Black Bag" Break-ins And Microphone Installations.....	353
The Development of FBI Domestic Intelligence Investigations.....	373
Domestic CIA and FBI Mail Opening.....	559
CIA Intelligence Collection About Americans: CHAOS Program And The Office of Security.....	679
National Security Agency Surveillance Affecting Americans.....	733
Improper Surveillance of Private Citizens By The Military.....	785
The Internal Revenue Service: An Intelligence Resource and Collector.....	815
National Security, Civil Liberties, And The Collection of Intelligence: A Report On The Huston Plan. --	921
Staff List.....	987



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 thirteen detailed staff reports, set forth in this volume, which supplement Book II of the Committee's final report entitled Intelligence Activities and the Rights of Americans. These staff reports present, in substantially greater detail, the results of the Committee's inquiry into various areas which were highlighted in the final report.

Once again I want to gratefully acknowledge the great effort, dedication, and talent of the Committee staff. The principal authors and editors of these reports are indicated in Appendix C of Book II of the final report.

Finally, I want to express the deep appreciation of the Committee to Senator Walter F. Mondale for his excellent supervision of the preparation of these reports as Chairman of the Domestic Intelligence Subcommittee.

FRANK CHURCH,
Chairman.

COINTELPRO: THE FBI'S COVERT ACTION PROGRAMS AGAINST AMERICAN CITIZENS

CONTENTS

	Page
I. Introduction and Summary.....	3
A. "Counterintelligence program": a misnomer for domestic covert action.....	4
B. Who were the targets?.....	4
1. The five targeted groups.....	4
2. Labels without meaning.....	4
C. What were the purposes of COINTELPRO?.....	5
1. Protecting national security.....	5
2. Preventing violence.....	6
3. Maintaining the existing social and political order.....	6
D. What techniques were used?.....	7
1. The techniques of wartime.....	7
2. Techniques carrying a serious risk of physical, emo- tional, or economic damage.....	9
E. Legal restrictions were ignored.....	10
F. Command and control.....	11
1. 1956-71.....	11
2. Post-1971.....	12
G. Termination.....	12
1. The grey area between counterintelligence and inves- tigation.....	12
2. Is COINTELPRO continuing?.....	13
3. The future of COINTELPRO.....	14
II. The Five Domestic Programs.....	15
A. Origins.....	15
B. The programs.....	16
1. CPUSA.....	16
2. The 1960 expansion.....	17
3. Socialist Workers Party.....	17
4. White hate.....	18
5. Black nationalist-hate groups.....	20
6. The Panther directives.....	22
7. New Left.....	23
8. New Left directives.....	24
III. The Goals of COINTELPRO: Preventing or Disrupting the Exer- cise of First Amendment Rights.....	27
A. Efforts to prevent speaking.....	28
B. Efforts to prevent teaching.....	29
C. Efforts to prevent writing and publishing.....	30
D. Efforts to prevent meeting.....	31
IV. COINTELPRO techniques.....	33
A. Propaganda.....	34
1. Reprint mailings.....	34
2. "Friendly" media.....	35
3. Bureau-authored pamphlets and fliers.....	37
B. Efforts to promote enmity and factionalism within groups or between groups.....	40
1. Encouraging violence between rival groups.....	40
2. Anonymous mailings.....	43
3. Interviews.....	44
4. Using informants to raise controversial issues.....	44
5. Fictitious organizations.....	45
6. Labeling targets as informants.....	46

	Page
IV. COINTELPRO Techniques—Continued	
C. Using hostile third parties against target groups.....	49
D. Disseminating derogatory information to family, friends, and associates.....	50
E. Contacts with employers.....	56
F. Use and abuse of Government processes.....	57
1. Selective law enforcement.....	57
2. Interference with judicial process.....	58
3. Candidates and political appointees.....	59
4. Investigating committees.....	60
G. Exposing "Communist infiltration" of groups.....	60
V. Command and Control: The Problem of Oversight.....	32
A. Within the Bureau.....	62
1. Internal administration.....	62
2. Coordination.....	62
3. Results.....	62
4. Blurred distinction between counterintelligence and investigation.....	63
5. Inspection.....	63
B. Outside the Bureau: 1956-71.....	64
1. Executive branch.....	65
2. The Cabinet.....	69
3. Legislative branch.....	70
C. Outside the Bureau: Post-1971.....	73
VI. Epilogue.....	76

COINTELPRO: THE FBI'S COVERT ACTION PROGRAMS AGAINST AMERICAN CITIZENS

I. INTRODUCTION AND SUMMARY

COINTELPRO is the FBI acronym for a series of covert action programs directed against domestic groups. In these programs, the Bureau went beyond the collection of intelligence to secret action designed to "disrupt" and "neutralize" target groups and individuals. The techniques were adopted wholesale from wartime counterintelligence, and ranged from the trivial (mailing reprints of *Reader's Digest* articles to college administrators) to the degrading (sending anonymous poison-pen letters intended to break up marriages) and the dangerous (encouraging gang warfare and falsely labeling members of a violent group as police informers).

This report is based on a staff study of more than 20,000 pages of Bureau documents, depositions of many of the Bureau agents involved in the programs, and interviews of several COINTELPRO targets. The examples selected for discussion necessarily represent a small percentage of the more than 2,000 approved COINTELPRO actions. Nevertheless, the cases demonstrate the consequences of a Government agency's decision to take the law into its own hands for the "greater good" of the country.

COINTELPRO began in 1956, in part because of frustration with Supreme Court rulings limiting the Government's power to proceed overtly against dissident groups; it ended in 1971 with the threat of public exposure.¹ In the intervening 15 years, the Bureau conducted a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association, on the theory that preventing the growth of dangerous groups and the propagation of dangerous ideas would protect the national security and deter violence.²

Many of the techniques used would be intolerable in a democratic society even if all of the targets had been involved in violent activity, but COINTELPRO went far beyond that. The unexpressed major premise of the programs was that a law enforcement agency has the duty to do whatever is necessary to combat perceived threats to the existing social and political order.

¹ On March 8, 1971, the FBI resident agency in Media, Pennsylvania, was broken into. Documents stolen in the break-in were widely circulated and published by the press. Since some documents carried a "COINTELPRO" caption—a word unknown outside the Bureau—Carl Stern, a reporter for *NBC*, commenced a Freedom of Information Act lawsuit to compel the Bureau to produce other documents relating to the programs. The Bureau decided because of "security reasons" to terminate them on April 27, 1971. (Memorandum from C. D. Brennan to W. C. Sullivan, 4/27/71; Letter from FBI headquarters to all SAC's, 4-28-71.)

² The Bureau's direct attacks on speaking, teaching, writing, and meeting are discussed at pp. 28-33, attempts to prevent the growth of groups are set forth at pp. 34-40.

A. "Counterintelligence Program": A Misnomer for Domestic Covert Action

COINTELPRO is an acronym for "counterintelligence program." Counterintelligence is defined as those actions by an intelligence agency intended to protect its own security and to undermine hostile intelligence operations. 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. The formal programs which incorporated these techniques were, therefore, also called "counterintelligence."²⁴

"Covert action" is, however, a more accurate term for the Bureau's programs directed against American citizens. "Covert action" is the label applied to clandestine activities intended to influence political choices and social values.²⁵

B. Who Were the Targets?

1. The Five Targeted Groups

The Bureau's covert action programs were aimed at five perceived threats to domestic tranquility: the "Communist Party, USA" program (1956-71); the "Socialist Workers Party" program (1961-69); the "White Hate Group" program (1964-71); the "Black Nationalist-Hate Group" program (1967-71); and the "New Left" program (1968-71).

2. Labels Without Meaning

The Bureau's titles for its programs should not be accepted uncritically. They imply a precision of definition and of targeting which did not exist.

Even the names of the later programs had no clear definition. 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."²⁶ Indeed, the nonviolent Southern Christian Leadership Conference was labeled as a Black Nationalist "Hate Group."²⁷ Nor could anyone at the Bureau even define "New Left," except as "more or less an attitude."²⁸

Furthermore, the actual targets were chosen from a far broader group than the names of the programs would imply. The CPUSA program targeted not only Party members but also sponsors of the

²⁴ For a discussion of U.S. intelligence activities against hostile foreign intelligence operations, see Report on Counterintelligence.

²⁵ See Senate Select Committee Report, "Alleged Assassination Plots Involving Foreign Leaders," and Staff Report: "Covert Action in Chile."

²⁶ Black Nationalist Supervisor deposition, 10/17/75, p. 12.

²⁷ Memorandum from FBI Headquarters to all SAC's, 8/25/67, p. 2.

²⁸ New Left Supervisor's deposition, 10/28/75, p. 8. The closest any Bureau document comes to a definition is found in an investigative directive: "The term 'New Left' does not refer to a definite organization, but to a movement which is providing ideologies or platforms alternate to those of existing communist and other basic revolutionary organizations, the so-called 'Old Left.' The New Left movement is a loosely-bound, free-wheeling, college-oriented movement spearheaded by the Students for a Democratic Society and includes the more extreme and militant anti-Vietnam war and anti-draft protest organizations." (Memorandum from FBI Headquarters to all SAC's, 10/28/68; Hearings, Vol. 6, Exhibit 61, p. 600.) Although this characterization is longer than that of the New Left Supervisor, it does not appear to be substantively different.

National Committee to Abolish the House Un-American Activities Committee" and civil rights leaders allegedly under Communist influence or simply not "anti-Communist."⁷ 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.⁸ The Black Nationalist program targeted a range of organizations from the Panthers to SNCC to the peaceful Southern Christian Leadership Conference,⁹ and included most black student groups.¹⁰ New Left targets ranged from the SDS¹¹ to the Interuniversity Committee for Debate on Foreign Policy,¹² from all of Antioch College ("vanguard of the New Left")¹³ to the New Mexico Free University¹⁴ and other "alternate" schools,¹⁵ and from underground newspapers¹⁶ to students protesting university censorship of a student publication by carrying signs with four-letter words on them.¹⁷

C. What Were the Purposes of COINTELPRO?

The breadth of targeting and lack of substantive content in the descriptive titles of the programs reflect the range of motivations for COINTELPRO activity: protecting national security, preventing violence, and maintaining the existing social and political order by "disrupting" and "neutralizing" groups and individuals perceived as threats.

1. Protecting National Security

The first COINTELPRO, against the CPUSA, was instituted to counter what the Bureau believed to be a threat to the national security. As the chief of the COINTELPRO unit explained it:

We were trying first to develop intelligence so we would know what they were doing [and] second, to contain the threat. . . .

To stop the spread of communism, to stop the effectiveness of the Communist Party as a vehicle of Soviet intelligence, propaganda and agitation.¹⁸

Had the Bureau stopped there, perhaps the term "counterintelligence" would have been an accurate label for the program. The ex-

⁷Memorandum from FBI Headquarters to Cleveland Field Office, 11/6/64.

⁸One civil rights leader, the subject of at least three separate counterintelligence actions under the CPUSA caption, was targeted because there was no "direct evidence" that he was a communist, "neither is there any substantial evidence that he is anti-communist." One of the actions utilized information gained from a wiretap; the other two involved dissemination of personal life information. (Memorandum from J.A. Sizoo to W.C. Sullivan, 2/4/64; Memorandum from New York Field Office to FBI Headquarters, 2/12/64; Memoranda from FBI Headquarters to New York Field Office, 3/26/64 and 4/10/64; Memorandum to New York Field Office from FBI Headquarters, 4/21/64; Memorandum from FBI Headquarters to Baltimore Field Office, 10/4/65.)

⁹Memorandum from FBI Headquarters to Cleveland Field Office, 11/29/68.

¹⁰FBI Headquarters memorandum, 8/25/67, p. 2.

¹¹Memorandum from FBI Headquarters to Jackson Field Office, 2/8/71, pp. 1-2.

¹²Memorandum from FBI Headquarters to San Antonio Field Office, 10/31/68.

¹³Memorandum from FBI Headquarters to Detroit Field Office, 10/26/66.

¹⁴Memorandum from FBI Headquarters to Cincinnati Field Office, 6/18/68.

¹⁵Memorandum from FBI Headquarters to Albuquerque Field Office, 3/1/69.

¹⁶Memorandum from FBI Headquarters to San Antonio Field Office, 7/23/69.

¹⁷Memorandum from FBI Headquarters to Pittsburgh Field Office, 11/14/69.

¹⁸Memorandum from FBI Headquarters to Minneapolis Field Office, 11/4/68.

¹⁹COINTELPRO Unit Chief deposition, 10/16/75, p. 14.

pansion of the CPUSA program to non-Communists, however, and the addition of subsequent programs, make it clear that other purposes were also at work.

2. Preventing Violence

One of these purposes was the prevention of violence. Every Bureau witness deposed stated that the purpose of the particular program or programs with which he was associated was to deter violent acts by the target groups, although the witnesses differed in their assessment of how successful the programs were in achieving that goal. The preventive function was not, however, intended to be a product of specific proposals directed at specific criminal acts. Rather, the programs were aimed at groups which the Bureau believed to be violent or to have the potential for violence.

The programs were to prevent violence by deterring membership in the target groups, even if neither the particular member nor the group was violent at the time. As the supervisor of the Black Nationalist COINTELPRO put it, "Obviously you are going to prevent violence or a greater amount of violence if you have smaller groups." (Black Nationalist supervisor deposition, 10/17/75, p. 24.) The COINTELPRO unit chief agreed: "We also made an effort to deter or counteract the propaganda . . . and 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."¹⁷ In short, the programs were to prevent violence indirectly, rather than directly, by preventing possibly violent citizens from joining or continuing to associate with possibly violent groups.¹⁸

The prevention of violence is clearly not, in itself, an improper purpose; preventing violence is the ultimate goal of most law enforcement. Prosecution and sentencing are intended to deter future criminal behavior, not only of the subject but also of others who might break the law. In that sense, law enforcement legitimately attempts the indirect prevention of possible violence and, if the methods used are proper, raises no constitutional issues. When the government goes beyond traditional law enforcement methods, however, and attacks group membership and advocacy, it treads on ground forbidden to it by the Constitution. In *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Supreme Court held that the government is not permitted to "forbid or proscribe advocacy of the use of force or law violation except where such advocacy is directed toward inciting or producing imminent lawless action and is likely to incite or produce such action." In the absence of such clear and present danger, the government cannot act against speech nor, presumably, against association.

3. Maintaining the Existing Social and Political Order

Protecting national security and preventing violence are the purposes advanced by the Bureau for COINTELPRO. There is another purpose for COINTELPRO which is not explicit but which offers

¹⁷ Unit Chief deposition, 10/10/75, p. 54.

¹⁸ "Possibly violent" did not necessarily mean likely to be violent. Concededly non-violent groups were targeted because they might someday change; Martin Luther King, Jr. was targeted because (among other things) he might "abandon his supposed 'obedience' to 'white, liberal doctrines' (non-violence) and embrace black nationalism." (Memorandum from FBI Headquarters to all SAC's, 3/4/68, p. 3.)

the only explanation for those actions which had no conceivable rational relationship to either national security or violent activity. The unexpressed major premise of much of COINTELPRO is that the Bureau has a role in maintaining the existing social order, and that its efforts should be aimed toward combating those who threaten that order.¹⁹

The "New Left" COINTELPRO presents the most striking example of this attitude. As discussed earlier, the Bureau did not define the term "New Left," and the range of targets went far beyond alleged "subversives" or "extremists." Thus, for example, two student participants in a "free speech" demonstration were targeted because they defended the use of the classic four-letter word. Significantly, they were made COINTELPRO subjects even though the demonstration "does not appear to be inspired by the New Left" because it "shows obvious disregard for decency and established morality."²⁰ In another case, reprints of a newspaper article entitled "Rabbi in Vietnam Says Withdrawal Not the Answer" were mailed to members of the Vietnam Day Committee "to convince [them] of the correctness of the U.S. foreign policy in Vietnam."²¹ Still another document inveighs against the "liberal press and the bleeding hearts and the forces on the left" which were "taking advantage of the situation in Chicago surrounding the Democratic National Convention to attack the police and organized law enforcement agencies."²² Upholding decency and established morality, defending the correctness of U.S. foreign policy, and attacking those who thought the Chicago police used undue force have no apparent connection with the expressed goals of protecting national security and preventing violence. These documents, among others examined, compel the conclusion that Federal law enforcement officers looked upon themselves as guardians of the status quo. The attitude should not be a surprise; the difficulty lies in the choice of weapons.

D. What Techniques Were Used?

1. The Techniques of Wartime

Under the COINTELPRO programs, the arsenal of techniques used against foreign espionage agents was transferred to domestic enemies. As William C. Sullivan, former Assistant to the Director, put it,

This is a rough, tough, dirty business, and dangerous. It was dangerous at times. No holds were barred. . . . We have used [these techniques] against Soviet agents. They have used [them] against us. . . . [The same methods were] brought home against any organization against which we were targeted. We did not differentiate. This is a rough, tough business.²³

Mr. Sullivan's description --rough, tough, and dirty-- is accurate. In the course of COINTELPRO's fifteen-year history, a number of in-

¹⁹ This attitude toward change is apparent in many of those Bureau activities investigated by the Committee. It played a large part in the Martin Luther King, Jr. case, which is the subject of a separate report.

²⁰ FBI Headquarters memorandum, 11/4/68.

²¹ Memorandum from FBI Headquarters to San Francisco Field Office, 11/1/65.

²² Memorandum from Cartha DeLoach to John Mohr, 8/29/64, pp. 1-8.

²³ William C. Sullivan testimony, 11/1/75, pp. 97-98.

dividual actions may have violated specific criminal statutes;²⁴ a number of individual actions involved risk of serious bodily injury or death to the targets (at least four assaults were reported as "results");²⁵ and a number of actions, while not illegal or dangerous, can only be described as "abhorrent in a free society."²⁶ On the other hand, many of the actions were more silly than repellent.

The Bureau approved 2,370 separate counterintelligence actions.²⁷ Their techniques ranged from anonymously mailing reprints of newspaper and magazine articles (sometimes Bureau-authored or planted) to group members or supporters to convince them of the error of their ways;²⁸ to mailing anonymous letters to a member's spouse accusing the target of infidelity;²⁹ from using informants to raise controversial issues at meetings in order to cause dissent,³⁰ to the "snitch jacket" (falsely labeling a group member as an informant),³¹ and encouraging street warfare between violent groups;³² from contacting members of a "legitimate group to expose the alleged subversive background of a fellow member,"³³ to contacting an employer to get a target fired;³⁴ from attempting to arrange for reporters to interview targets with planted questions,³⁵ to trying to stop targets from speaking at all;³⁶ from notifying state and local authorities of a target's criminal law violations,³⁷ to using the IRS to audit a professor, not just to collect any taxes owing, but to distract him from his political activities.³⁸

²⁴ A memorandum prepared for the Justice Department Committee which studied COINTELPRO in 1974 stated that COINTELPRO activities "may" have violated the Civil Rights statute, the mail and wire fraud statutes, and the prohibition against divulging information gained from wiretaps. (Memorandum to H. E. Petersen, 4/25/74.) Internal Bureau documents show that Bureau officials believed sending threats through the mail might violate federal extortion statutes. (See, e.g., Memorandum from FBI Headquarters to Newark Field Office, 2/19/71.) Such threats were mailed or telephoned on several occasions.

²⁵ Memorandum from FBI Headquarters to Chicago Field Office, 1/30/70.

²⁶ Hearing of the Subcommittee on Civil Rights and Constitutional Rights 11/20/74, p. 11. The Petersen Committee, composed of Department of Justice attorneys and Bureau agents, was formed in 1974 at the request of Attorney General Saxbe to investigate COINTELPRO. Its conclusions are discussed on pp. 73-70.

²⁷ 3,247 actions were proposed.

²⁸ E.g., Memorandum from FBI Headquarters to San Francisco Field Office, 11/1/65.

²⁹ E.g., Memorandum from FBI Headquarters to San Francisco Field Office, 11/26/68.

³⁰ E.g., Memorandum from Los Angeles Field Office to FBI Headquarters, 12/12/68.

³¹ E.g., Memorandum from Newark Field Office to FBI Headquarters, 7/3/69. The term "snitch jacket" is not part of Bureau jargon; it was used by those familiar with the Bureau's activities directed against the Black Panther Party in a staff interview.

³² E.g., Memorandum from Columbia Field Office to FBI Headquarters, 11/4/70.

³³ E.g., Memorandum from FBI Headquarters to Chicago Field Office, 8/2/68.

³⁴ E.g., Memorandum from FBI Headquarters to Cleveland and Boston Field Offices, 5/5/64.

³⁵ E.g., Memorandum from FBI Headquarters to Minneapolis Field Office, 11/18/69.

³⁶ E.g., Memorandum from FBI Headquarters to San Antonio Field Office, 4/6/70.

³⁷ E.g., Memorandum from FBI Headquarters to Minneapolis Field Office, 11/19/70.

³⁸ E.g., Memorandum from Midwest City Field Office to FBI Headquarters, 8/1/68.

2. Techniques Carrying A Serious Risk of Physical, Emotional, or Economic Damage.

The Bureau recognized that some techniques were more likely than others to cause serious physical, emotional, or economic damage to the targets. Any proposed use of those techniques 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.³⁹ 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?^{39a}

Similarly, with regard to the "snitch jacket" technique—falsely labeling a group member as a police 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.⁴⁰

Moore 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."⁴¹

It is thus clear that, as Sullivan said, "No holds were barred,"⁴² although some holds were weighed more carefully than others. When the willingness to use techniques which were concededly dangerous or harmful to the targets is combined with the range of purposes and criteria by which these targets were chosen, the result is neither "within bounds" nor "justified" in a free society.⁴³

* Mechanically, the Bureau's programs were administered at headquarters, but individual actions were proposed and usually carried out by the field. A field proposal under the COINTELPRO caption would be routed to a special agent supervising that particular program. During most of COINTELPRO's history that supervisor was a member of the section at the Domestic Intelligence Division with investigative responsibility for the subject of the proposal. The supervisor's recommendation then went up through the Bureau hierarchy. Proposals were rarely approved below the level of Assistant Director in charge of the Division, and often were approved by one of the top three men in the Bureau.

³⁹ New Left supervisor testimony, 10/28/75, pp. 72, 74.

^{39a} George C. Moore testimony, 11/3/75, p. 62.

⁴⁰ Moore, 11/3/75, p. 64.

⁴¹ Sullivan, 11/1/75, p. 97.

⁴² James B. Adams testimony, 11/19/75, Hearings, Vol. 6, pp. 73, 75.

E. Legal Restrictions Were Ignored

What happened to turn a law enforcement agency into a law violator? Why do those involved still believe their actions were not only defensible, but right?⁴⁴

The answers to these questions are found in a combination of factors: the availability of information showing the targets' vulnerability gathered through the unrestrained collection of domestic intelligence; the belief both within and without the Bureau that it could handle any problem; and frustration with the apparent inability of traditional law enforcement methods to solve the problems presented.

There is no doubt that Congress and the public looked to the Bureau for protection against domestic and foreign threats. As the COINTELPRO unit chief stated:

At this time [the mid-1950s] there was a general philosophy too, the general attitude of the public at this time was you did not have to worry about Communism because the FBI would take care of it, leave it to the FBI.

I hardly know an agent who would ever go to a social affair or something, if he were introduced as FBI, the comment would be, "we feel very good because we know you are handling the threat." We were handling the threat with what directives and statutes were available. There did not seem to be any strong interest of anybody to give us stronger or better defined statutes.⁴⁵

Not only was no one interested in giving the Bureau better statutes (indeed, for that matter, did the Bureau request them), but the Supreme Court drastically narrowed the scope of the statutes available. The Bureau personnel involved trace the institution of the first formal counterintelligence program to the Supreme Court reversal of the Smith Act convictions. The unit chief testified:

The Supreme Court rulings had rendered the Smith Act technically unenforceable. . . . It made it ineffective to prosecute Communist Party members, made it impossible to prosecute Communist Party members at the time.⁴⁶

This belief in the failure of law enforcement produced the subsequent COINTELPROs as well. The unit chief continued:

⁴⁴ The unit chief stated: "The Bureau people did not think that they were doing anything wrong and most of us to this day do not think we were doing anything wrong." (Unit chief, 10/16/75, p. 102.) Moore felt the same way: "I thought I did something very important during those days. I have no apologies to make for anything we did, really." (Moore 11/3/75, p. 25.)

⁴⁵ Unit chief, 10/16/75, pp. 11, 12, 14.

⁴⁶ Unit chief, 10/10/75, pp. 12-14. Deputy Associate Director Adams' testimony on COINTELPRO noted that "interpretations as to the constitutionality of [the Smith Act of 1940] leave us with a statute still on the books that proscribes certain actions, but yet the degree of proof necessary to operate under the few remaining areas is such that there was no satisfactory way to proceed." (Adams testimony, 11/19/75, Hearings, Vol. 6, p. 71.) In fact, the Smith Act decisions did not come down until 1957. Perhaps the witnesses were referring to *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115 (1956), which held that testimony by "tainted" Government witnesses required remanding the case to the Board.

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.⁴⁷

Every Bureau witness deposed agreed that his particular COINTELPRO was the result of tremendous pressure on the Bureau to do something about a perceived threat, coupled with the inability of law enforcement techniques to cope with the situation, either because there were no pertinent federal statutes,⁴⁸ or because local law enforcement efforts were stymied by indifference or the refusal of those in charge to call the police.

Outside pressure and law enforcement frustration do not, of course, fully explain COINTELPRO. Perhaps, after all, the best explanation was proffered by George C. Moore, the Racial Intelligence Section chief:

The FBI's counterintelligence program came up because there was a point—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.⁴⁹

F. Command and Control

1. 1956-71

While that "action-oriented group of people" was proceeding with fifteen years of COINTELPRO activities, where were those responsible for the supervision and control of the Bureau? Part of the answer lies in the definition of "covert action"—*clandestine* activities. No one outside the Bureau was supposed to know that COINTELPRO existed. Even within the Bureau, the programs were handled on a "need-to-know" basis.

Nevertheless, the Bureau has supplied the Committee with documents which support its contention that various Attorneys General, advisors to Presidents, members of the House Appropriations Subcommittee, and, in 1958, the Cabinet were at least put on notice of the existence of the CPUSA and White Hate COINTELPROs. The Bureau cannot support its claim that anyone outside the FBI was informed of the existence of the Socialist Workers Party, Black Nationalist, or New Left COINTELPROs, and even those letters or

⁴⁷ Unit chief, 10/16/75, p. 15.

⁴⁸ One witness also pointed out that while the federal antiriot and antibombing statutes were not passed until 1968, inadequate statutes were not the only problem. Statutes directed at specific criminal acts would only have served to allow prosecution after the crime; they would not have prevented the act in the first place. He also stated that he did not believe it would be possible to pass a statute which would have given the Bureau the tools necessary to prevent violence by disrupting the growth of violence-prone organizations—"because of something called the United States Constitution." When asked whether that answer implied that preventing the growth of an organization is unconstitutional, he answered, "I think so." (Black Nationalist supervisor, 10/1/75, pp. 25-26.) He was the only Bureau witness who had reservations about COINTELPRO's constitutionality. Another witness gave a more typical response. When asked whether anybody at any time during the course of the programs discussed their constitutionality or legal authority, he replied, "No, we never gave it a thought." (Moore, 11/3/75, p. 83.)

⁴⁹ Moore, 11/3/75, p. 70.

briefings which referred (usually indirectly) to the CPUSA and White Hate COINTELPROs failed to mention the use of techniques which risked physical, emotional, or economic damage to their targets. In any event, there is no record that any of these officials asked to know more, and none of them appears to have expressed disapproval based on the information they were given.

As the history of the Domestic Intelligence Division shows, the absence of disapproval has been interpreted by the Bureau as sufficient authorization to continue an activity (and occasionally, even express disapproval has not sufficed to stop a practice). Perhaps, however, the crux of the "command and control" problem lies in the testimony by one former Attorney General that he was too busy to know what the Bureau was doing,⁵⁰ and by another that, as a matter of political reality, he could not have stopped it anyway.⁵¹

2. Post-1971

Whether the Attorney General can control the Bureau is still an open question. The Petersen Committee, which was formed within the Justice Department to investigate COINTELPRO at Attorney General Saxbe's request, worked only with Bureau-prepared summaries of the COINTELPRO files.⁵² Further, the fact that the Department of Justice must work with the Bureau on a day-to-day basis may influence the Department's judgment on Bureau activities.⁵³

G. Termination

If COINTELPRO had been a short-lived aberration, the thorny problems of motivation, techniques, and control presented might be safely relegated to history. However, COINTELPRO existed for years on an "ad hoc" basis before the formal programs were instituted, and more significantly, COINTELPRO-type activities may continue today under the rubric of "investigation."

1. The Grey Area Between Counterintelligence and Investigation

The word "counterintelligence" had no fixed meaning even before the programs were terminated. The Bureau witnesses agreed that there is a large grey area between "counterintelligence" and "aggressive investigation," and that headquarters supervisors sometimes had difficulty in deciding which caption should go on certain proposals.⁵⁴

Aggressive investigation continues, and may be even more disruptive than covert action. An anonymous letter (COINTELPRO) can be ignored as the work of a crank; an overt approach by the Bureau

⁵⁰ Ramsey Clark testimony, 12/3/75, Hearings, Vol. 6, p. 249.

⁵¹ Nicholas deB. Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 217.

⁵² These summaries were the point of departure for the Select Committee's investigation but were deemed unsatisfactory for a complete inquiry.

⁵³ For instance, the Department is defending litigation commenced against the Bureau by COINTELPRO victims who happen to have received their files through Freedom of Information Act requests. More such litigation may arise as more targets learn of Bureau actions taken against them.

⁵⁴ The New Left supervisor stated, "[The COINTELPRO caption was] as much as it was anything else, and administrative device to channel the mail to the Bureau . . . we get back to this old argument between the supervisors - not argument, but discussion, between the supervisors, it falls on yours, no, it doesn't, it's yours." (New Left Supervisor, 10/28/75, p. 40.)

("investigation") is not so easily dismissed.⁵⁵ The line between information collection and harassment can be extremely thin.

2. Is COINTELPRO Continuing?

COINTELPRO-type activities which are clearly not within the "grey area" between COINTELPRO and investigation have continued on at least three occasions. Although all COINTELPROs were officially terminated "for security reasons" on April 27, 1971, the documents discontinuing the program provided:

In exceptional circumstances where it is considered counter-intelligence action is warranted, recommendations should be submitted to the Bureau under the individual case caption to which it pertains. These recommendations will be considered on an individual basis.⁵⁶

The Committee requested that the Bureau provide it with a list of any "COINTELPRO-type" actions since April 28, 1971. The Bureau first advised the Committee that a review failed to develop any information indicating post-termination COINTELPRO activity. Subsequently, the Bureau located and furnished to the Committee two instances of COINTELPRO-type operations.⁵⁷ The Committee has discovered a third instance: four months after COINTELPRO was terminated, information on an attorney's political background was furnished to friendly newspaper sources under the so-called "Mass Media Program," intended to discredit both the attorney and his client.⁵⁸

The Committee has not been able to determine with any greater precision the extent to which COINTELPRO may be continuing. Any proposals to initiate COINTELPRO-type action would be filed under the individual case caption. The Bureau has over 500,000 case files, and each one would have to be searched. In this context, it should be

⁵⁵ The Bureau can and does reveal its interest in the subjects of investigation to employees, family members, and neighbors. The Black Nationalist supervisor explained, "Generally speaking, we should not be giving out information to somebody we are trying to get information from. As a practical matter sometimes we have to. The mere fact that you contact somebody about someone gives them the indication that the FBI is interested in that person." (Black Nationalist deposition, 10/17/75, p. 16). See also the statement of the Social Workers Party, 10/2/75, which details more than 200 incidents involving its members since COINTELPRO's termination. The SWP believes these to be as disruptive as the formal SWP COINTELPRO.

⁵⁶ Memorandum from Charles D. Brennan to William C. Sullivan, 4/27/71. Hearings, Vol. 6, Exhibit 55-3.

⁵⁷ In one instance, a field office was authorized to contact the editor of a Southern newspaper to suggest that he have reporters interview Klan members and write an article based on those interviews. The editor was also furnished information on Klan use of the polygraph to "weed out FBI informants." According to the Bureau, "subsequent publication of the Klan's activities resulted in a number of Klan officials ceasing their activities." (Letter from FBI to the Senate Select Committee 10/24/75.) The second case involved an anonymous letter and derogatory newspaper clipping which were sent to a Black Panther Party office in the Northeast to discredit a Panther leader's abilities. (Letter from FBI to the Senate Select Committee, 9/24/75.)

⁵⁸ It should be noted that Charles Colson spent seven months in jail for similar activity involving the client.

noted that a Bureau search of all field office COINTELPRO files revealed the existence of five operations in addition to those known to the Petersen committee.⁵⁹ A search of all investigative files might be similarly productive.

3. *The Future of COINTELPRO*

Attitudes within and without the Bureau demonstrate a continued belief by some that covert action against American citizens is permissible if the need for it is strong enough. When the Petersen Committee report on COINTELPRO was released, Director Kelley responded, "For the FBI to have done less under the circumstances would have been an abdication of its responsibilities to the American people." He also restated his "feeling that the FBI's counterintelligence programs had an impact on the crises of the time and, therefore, that they helped to bring about a favorable change in this country."⁶⁰ In his testimony before the Select Committee, Director Kelley continued to defend COINTELPRO, albeit with some reservations:

What I said then, in 1974, and what I believe today, is that the FBI employees involved in these programs did what they felt was expected of them by the President, the Attorney General, the Congress, and the people of the United States. . . .

Our concern over whatever abuses occurred in the Counterintelligence Programs, and there were some substantial ones, should not obscure the underlying purpose of those programs.

We must recognize that situations have occurred in the past and will arise in the future where the Government may well be expected to depart from its traditional role, in the FBI's case, as an investigative and intelligence-gathering agency, and take affirmative steps which are needed to meet an imminent threat to human life or property.⁶¹

Nor is the Director alone in his belief that faced with sufficient threat, covert disruption is justified. The Department of Justice promulgated tentative guidelines for the Bureau which would have permitted the Attorney General to authorize "preventive action" where

⁵⁹ Letter from Attorney General Edward H. Levi to the Senate Select Committee, 5/23/75. These included: (1) 37 actions authorized between 1960 and 1971 "aimed at militant groups which sought Puerto Rican independence;" (2) "Operation Hoodwink," from October 1966 to July 1968, "aimed at putting organized crime elements in competition with the Communist Party USA;" (3) a 1961 program targeted against "a foreign-dominated group;" (4) two actions taken between January 1969 and March 1971 against "a foreign nationality group in the United States;" and (5) seven actions between 1961 and 1968 against members, leaders, and factions of "a foreign communist party."

The FBI's operations against "a foreign communist party" indicate that the Bureau, as well as the CIA, has engaged in covert action abroad.

⁶⁰ Clarence M. Kelley testimony, House Civil Rights and Constitutional Rights Subcommittee hearings, 11/20/74, pp. 44-45. This statement appears to be an explicit recognition that one purpose of COINTELPRO was to influence political events.

⁶¹ Clarence M. Kelley testimony, 12/10/75, Hearings, Vol. 6, p. 283, 284. Affirmative legal steps to meet an imminent threat to life or property are, of course, quite proper. The difficulty with the Director's statement, juxtaposed as it was with a discussion of COINTELPRO, is that the threats COINTELPRO purported to meet were not imminent, the techniques used were sometimes illegal, and the purposes went far beyond the prevention of death or destruction.

there is a substantial possibility that violence will occur and "prosecution is impracticable." Although those guidelines have now been dropped, the principle has not been rejected.

II. THE FIVE DOMESTIC PROGRAMS

A. *Origins*

The origins of COINTELPRO are rooted in the Bureau's jurisdiction to investigate hostile foreign intelligence activities on American soil. Counterintelligence, of course, goes beyond investigation; it is affirmative action taken to neutralize hostile agents.

The Bureau believed its wartime counterattacks on foreign agents to be effective—and what works against one enemy will work against another. In the atmosphere of the Cold War, the American Communist Party was viewed as a deadly threat to national security.

In 1956, the Bureau decided that a formal counterintelligence program, coordinated from headquarters, would be an effective weapon in the fight against Communism. The first COINTELPRO was therefore initiated.⁶³

The CPUSA COINTELPRO accounted for more than half of all approved proposals.⁶⁴ The Bureau personnel involved believed that the success of the program—one action was described as "the most effective single blow ever dealt the organized communist movement"⁶⁵—made counterintelligence techniques the weapons of choice whenever the Bureau assessed a new and, in its view, equally serious threat to the country.

As noted earlier, law enforcement frustration also played a part in the origins of each COINTELPRO. In each case, Bureau witnesses testified that the lack of adequate statutes, uncooperative or ineffective local police, or restrictive court rulings had made it impossible to use traditional law enforcement methods against the targeted groups.

Additionally, a certain amount of empire building may have been at work. Under William C. Sullivan, the Domestic Intelligence Division greatly expanded its jurisdiction. Klan matters were transferred in 1964 to the Intelligence Division from the General Investigative Division; black nationalist groups were added in 1967; and, just as the Old Left appeared to be dying out,⁶⁶ the New Left was gradually added to the work of the Division's Internal Security Section in the late 1960s.

Finally, it is significant that the five domestic COINTELPROs were started against the five groups which were the subject of intensified investigative programs. Of course, the fact that such intensive investigative programs were started at all reflects the Bureau's process of threat assessment: the greater the threat, the more need to

⁶³ Memorandum from Alan Belmont to L. V. Boardman, 8/28/56, Hearings, vol. 6, exhibit 12.

⁶⁴ 1,388 of a total of 2,370.

⁶⁵ Excerpt from materials prepared for the FBI Director's briefing of the House Appropriations Subcommittee, FY 1966, p. 2.

⁶⁶ According to Sullivan, membership in the Communist Party declined steadily through the '60s. When the CPUSA membership dropped below a certain figure, Director Hoover ordered that the membership figures be classified. Sullivan believes that this was done to protect the Bureau's appropriations. (Sullivan, 11/1/75, pp. 33-34.)

know about it (intelligence) and the more impetus to counter it (covert action). More important, however, the mere existence of the additional information gained through the investigative programs inevitably demonstrated those particular organizational or personal weaknesses which were vulnerable to disruption. COINTELPRO demonstrates the dangers inherent in the overbroad collection of domestic intelligence; when information is available, it can be—and was—improperly used.

B. The Programs

Before examining each program in detail, some general observations may be useful. Each of the five domestic COINTELPROs had certain traits in common. As noted above, each program used techniques learned from the Bureau's wartime efforts against hostile foreign agents. Each sprang from frustration with the perceived inability of law enforcement to deal with what the Bureau believed to be a serious threat to the country. Each program depended on an intensive intelligence effort to provide the information used to disrupt the target groups.

The programs also differ to some extent. The White Hate program, for example, was very precisely targeted; each of the other programs spread to a number of groups which do not appear to fall within any clear parameters.⁶⁷ In fact, with each subsequent COINTELPRO, the targeting became more diffuse.

The White Hate COINTELPRO also used comparatively few techniques which carried a risk of serious physical, emotional, or economic damage to the targets, while the Black Nationalist COINTELPRO used such techniques extensively. The New Left COINTELPRO, on the other hand, had the highest proportion of proposals aimed at preventing the exercise of free speech. Like the progression in targeting, the use of dangerous, degrading, or blatantly unconstitutional techniques also appears to have become less restrained with each subsequent program.

1. *CPUSA*.—The first official COINTELPRO program, against the Communist Party, USA, was started in August 1956 with Director Hoover's approval. Although the formal program was instituted in 1956, COINTELPRO-type activities had gone on for years. The memorandum recommending the program refers to prior actions, constituting "harassment," which were generated by the field during the course of the Bureau's investigation of the Communist Party.⁶⁸ These prior actions were instituted on an *ad hoc* basis as the opportunity arose. As Sullivan testified, "[Before 1956] we were engaged in COINTELPRO tactics, divide, confuse, weaken in diverse ways, an organization. . . . [Before 1956] it was more sporadic. It depended on a given office. . . ."⁶⁹

In 1956, a series of field conferences was held to discuss the development of new security informants. The Smith Act trials and related proceedings had exposed over 100 informants, leaving the Bureau's

⁶⁷ For instance, the Southern Christian Leadership Conference was targeted as a "Black Nationalist-Hate Group." (Memorandum from FBI headquarters to all SAC's, 3/4/68, p. 4.)

⁶⁸ Memorandum from Alan Belmont to L. V. Boardman, 8/28/66, Hearings, Vol. 6, exhibit 12.

⁶⁹ Sullivan testimony, 11/1/75, pp. 42-43.

intelligence apparatus in some disarray. During the field conferences, a formal counterintelligence program was recommended, partly because of the gaps in the informant ranks.⁷⁰

Since the Bureau had evidence that until the late 1940s the CPUSA had been "blatantly" involved in Soviet espionage, and believed that the Soviets were continuing to use the Party for "political and intelligence purposes,"⁷¹ there was no clear line of demarcation in the Bureau's switch from foreign to domestic counterintelligence. The initial areas of concentration were the use of informants to capitalize on the conflicts within the Party over Nikita Khrushchev's denunciation of Stalin; to prevent the CP's efforts to take over (via a merger) a broad-based socialist group; to encourage the Socialist Workers Party in its attacks on the CP; and to use the IRS to investigate underground CP members who either failed to file, or filed under false names.

As the program proceeded, other targets and techniques were developed, but until 1960 the CPUSA targets were Party members, and the techniques were primarily aimed at the Party organization (factionalism, public exposure, etc.)

2. *The 1960 Expansion.*—In March 1960, CPUSA COINTELPRO field offices received a directive to intensify counterintelligence efforts to prevent Communist infiltration ("COMINFIL") of mass organizations, ranging from the NAACP⁷² to a local scout troop.⁷³ The usual technique would be to tell a leader of the organization about the alleged Communist in its midst, the target, of course, being the alleged Communist rather than the organization. In an increasing number of cases, however, both the alleged Communist and the organization were targeted, usually by planting a news article about Communists active in the organization. For example, a newsman was given information about Communist participation in a SANE march, with the express purpose being to discredit SANE as well as the participants, and another newspaper was alerted to plans of Bettina Aphelker to join a United Farm Workers picket line.⁷⁴ The 1960 "COMINFIL" memorandum marks the beginning of the slide from targeting CP members to those allegedly under CP "influence" (such civil rights leaders as Martin Luther King, Jr.) to "fellow travelers" (those taking positions supported by the Communists, such as school integration, increased minority hiring, and opposition to HUAC.)⁷⁵

3. *Socialist Workers Party.*—The Socialist Workers Party ("SWP") COINTELPRO program was initiated on October 12, 1961, by the headquarters supervisor handling the SWP desk (but with Hoover's concurrence) apparently on a theory of even-handed treat-

⁷⁰ As noted earlier, Bureau personnel also trace the decision to adopt counterintelligence methods to the Supreme Court decisions overturning the Smith Act convictions. As the unit chief put it, "The Supreme Court rulings had rendered the Smith Act technically unenforceable. . . . It made it ineffective to prosecute Communist Party members, made it impossible to prosecute Communist Party members at the time." (Unit chief, 10/16/75, p. 14).

⁷¹ Unit chief, 10/16/75, p. 10.

⁷² Memorandum from New Haven Field Office to FBI Headquarters, 5/23/60.

⁷³ Memorandum from Milwaukee Field Office to FBI Headquarters, 7/13/60, pp. 1-2.

⁷⁴ Memorandum from FBI Headquarters to San Francisco Field Office, 9/13/68.

⁷⁵ Sullivan, 11/1/75, p. 20.

ment: if the Bureau has a program against the CP, it was only fair to have one against the Trotskyites. (The COINTELPRO unit chief, in response to a question about why the Bureau targeted the SWP in view of the fact that the SWP's hostility to the Communist Party had been useful in disrupting the CPSUA, answered, "I do not think that the Bureau discriminates against subversive organizations.")⁷⁶

The program was not given high priority—only 45 actions were approved—and was discontinued in 1969, two years before the other four programs ended. (The SWP program was then subsumed in the New Left COINTELPRO.) Nevertheless, it marks an important departure from the CPUSA COINTELPRO: although the SWP had contacts with foreign Trotskyite groups, there was no evidence that the SWP was involved in espionage. These were, in C. D. Brennan's phrase, "home grown tomatoes."⁷⁷ The Bureau has conceded that the SWP has never been engaged in organizational violence, nor has it taken any criminal steps toward overthrowing the country.⁷⁸

Nor does the Bureau claim the SWP was engaged in revolutionary acts. The Party was targeted for its rhetoric; significantly, the originating letter points to the SWP's "open" espousal of its line "through running candidates for public office" and its direction and/or support of "such causes as Castro's Cuba and integration problems arising in the South." Further, the American people had to be alerted 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."⁷⁹

Like the CPUSA COINTELPRO, non-Party members were also targeted, particularly when the SWP and the Young Socialist Alliance (the SWP's youth group) started to co-sponsor antiwar marches.⁸⁰

4. *White Hate*.—The Klan COINTELPRO began on July 30, 1964, with the transfer of the "responsibility for development of informants and gathering of intelligence on the KKK and other hate groups" from the General Investigative Division to the Domestic Intelligence Division. The memorandum recommending the reorganization also suggested that "counterintelligence and disruption tactics be given further study by DID and appropriate recommendations made."⁸¹

⁷⁶ Unit chief, 10/16/75, p. 40.

⁷⁷ Charles D. Brennan testimony, Senate Select Committee on Campaign Activities, 6-13/73, p. 10.

⁷⁸ Robert Shackelford testimony, 2/6/70, pp. 88-89.

⁷⁹ Memorandum from FBI Headquarters.

⁸⁰ For example, anonymous letters were sent to the parents of two nonmember students participating in a hunger strike against the war at a midwest college. The fast was sponsored by the Young Socialist Alliance. The letters warned that the students' participation "could lead to injury to [their] health and damage [their] academic standing," and alerted them to their sons' "involvement in left wing activities." It was hoped that the parents would "protest to the college that the fast is being allowed" and that the Young Socialist Alliance was permitted on campus. (Memorandum from FBI headquarters to Cleveland Field Office, 11/29/68.)

⁸¹ Memorandum from J. H. Gale to Charles Tolsen, 7/30/64, p. 5. Opinion within the Division had been sharply divided on the merits of this transfer. Some saw it as an attempt to bring the Intelligence Division's expertise in penetrating secret organizations to bear on a problem—Klan involvement in the murder of civil rights workers—creating tremendous pressures on the Bureau to solve. Traditional law enforcement methods were insufficient because of a lack of

Accordingly, on September 2, 1964, a directive was sent to seventeen field offices instituting a COINTELPRO against Klan-type and hate organizations "to expose, disrupt, and otherwise neutralize the activities of the various Klans and hate organizations, their leadership, and adherents."⁵² Seventeen Klan organizations and nine "hate" organizations (e.g., American Nazi Party, National States Rights Party, etc.) were listed as targets. The field offices were also instructed specifically to consider "Action Groups"—"the relatively few individuals in each organization who use strong arm tactics and violent actions to achieve their ends."⁵³ However, counterintelligence proposals were not to be limited to these few, but were to include any influential member if the opportunity arose. As the unit chief stated:

The emphasis was on determining the identity and exposing and neutralizing the violence prone activities of "Action Groups," but also it was important to expose the unlawful activities of other Klan organizations. We also made an effort to deter or counteract the propaganda and to deter violence and 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.⁵⁴

The White Hate COINTELPRO appears to have been limited, with few exceptions,⁵⁵ to the original named targets. No "legitimate" right wing organizations were drawn into the program, in contrast with the earlier spread of the CPUSA and SWP programs to non members. This precision has been attributed by the Bureau to the superior intelligence on "hate" groups received by excellent informant penetration.

Bureau witnesses believe the Klan program to have been highly effective. The unit chief stated:

I think the Bureau got the job done. . . . I think that one reason we were able to get the job done was that we were able to use counterintelligence techniques. It is possible that we eventually could have done the job without counterintelligence techniques. I am not sure we could have done it as well or as quickly.⁵⁶

This view was shared by George C. Moore, Section Chief of the Racial Intelligence Section, which had responsibility for the White Hate and Black Nationalist COINTELPROs:

I think from what I have seen and what I have read, as far as the counterintelligence program on the Klan is concerned, that it was effective. I think it was one of the most effective

Federal statutes and the noncooperation of local law enforcement. Others thought that the Klan's activities were essentially a law enforcement problem, and that the transfer would dilute the Division's major internal security responsibility. Those who opposed the transfer lost, and trace many of the Division's subsequent difficulties to this "substantial enlargement" of the Division's responsibilities. (Unit chief, 10/16/75, pp. 45-47.)

⁵² Memorandum from FBI Headquarters to Atlanta Field Office, 9/2/64, p. 1.

⁵³ FBI Headquarters memorandum, 9/2/64, p. 3.

⁵⁴ Unit Chief, 10/14/75, p. 54.

⁵⁵ A few actions were approved against the "Minutemen," when it became known that members were stockpiling weapons.

⁵⁶ Unit Chief, 10/16/75, p. 48.

programs I have ever seen the Bureau handle as far as any group is concerned.⁸⁷

5. *Black Nationalist-Hate Groups.*⁸⁸—In marked contrast to prior COINTELPROs, which grew out of years of intensive intelligence investigation, the Black Nationalist COINTELPRO and the racial intelligence investigative section were set up at about the same time in 1967.

Prior to that time, the Division's investigation of "Negro matters" was limited to instances of alleged Communist infiltration of civil rights groups and to monitoring civil rights protest activity. However, the long, hot summer of 1967 led to intense pressure on the Bureau to do something to contain the problem, and once again, the Bureau heeded the call.

The originating letter was sent out to twenty-three field offices on August 25, 1967, describing the program's purpose as

... to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters, and to counter their propensity for violence and civil disorder. . . . Efforts of the various groups to consolidate their forces or to recruit new or youthful adherents must be frustrated.⁸⁹

Initial group targets for "intensified attention" were the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, Revolutionary Action Movement, Deacons for Defense and Justice, Congress of Racial Equality, and the Nation of Islam. Individuals named targets were Stokely Carmichael, H. "Rap" Brown, Elijah Muhammed, and Maxwell Stanford. The targets were chosen by conferring with Headquarters personnel supervising the racial cases; the list was not intended to exclude other groups known to the field.

According to the Black Nationalist supervisor, individuals and organizations were targeted because of their propensity for violence or their "radical or revolutionary rhetoric [and] actions":

Revolutionary would be [defined as] advocacy of the overthrow of the Government. . . . Radical [is] a loose term that might cover, for example, the separatist view of the Nation of Islam, the influence of a group called U.S. Incorporated. . . . Generally, they wanted a separate black nation. . . . They [the NOI] advocated formation of a separate black nation on the territory of five Southern states.⁹⁰

⁸⁷ Moore, 11/3/75, p. 31.

⁸⁸ Note that this characterization had no substantive meaning within the Bureau. See p. 4.

⁸⁹ Memorandum from FBI Headquarters to all SAC's, 8/25/67.

⁹⁰ Black Nationalist supervisor, 10/17/75, pp. 66-67. The supervisor stated that individual NOI members were involved with sporadic violence against police, but the organization was not itself involved in violence. (Black Nationalist supervisor, 10/17/75, p. 67.) Moore agreed that the NOI was not involved in organizational violence, adding that the Nation of Islam had been unjustly blamed for violence in the ghetto riots of 1967 and 1968: "We had a good informant coverage of the Nation of Islam. . . . We were able to take a very positive stand and tell the Department of Justice and tell everybody else who accused the Nation of

The letter went on to direct field offices to exploit conflicts within and between groups; to use news media contacts to disrupt, ridicule, or discredit groups; to preclude "violence-prone" or "rabble rouser" leaders of these groups from spreading their philosophy publicly; and to gather information on the "unsavory backgrounds"—immorality, subversive activity, and criminal activity—of group members.³¹

According to George C. Moore, the Southern Christian Leadership Conference was included because

... at that time it was still under investigation because of the communist infiltration. As far as I know, there were not any violent propensities, except that I note . . . in the cover memo [expanding the program] or somewhere, that they mentioned that if Martin Luther King decided to go a certain way, he could cause some trouble. . . . I cannot explain it satisfactorily . . . this is something the section inherited.³²

On March 4, 1968, the program was expanded from twenty-three to forty-one field offices.³³ The letter expanding the program lists five long-range goals for the program:

(1) to prevent the "coalition of militant black nationalist groups," which might be the first step toward a real "Mau Mau" in America;

(2) to prevent the rise of a "messiah" who could "unify, and electrify," the movement, naming specifically Martin Luther King, Stokely Carmichael, and Elijah Muhammed;

(3) to prevent violence on the part of black nationalist groups, by pinpointing "potential troublemakers" and neutralizing them "before they exercise their potential for violence;"

(4) to prevent groups and leaders from gaining "respectability" by discrediting them to the "responsible" Negro community, to the white community (both the responsible community and the "liberals"—the distinction is the Bureau's), and to Negro radicals; and

Islam . . . [that they] were not involved in any of the riots or disturbances. Elijah Muhammed kept them under control, and he did not have them on the streets at all during any of the riots." (Moore, 11/3/75, p. 36.)

When asked why, therefore, the NOI was included as a target, Mr. Moore answered: "Because of the potential, they did represent a potential . . . they were a paramilitary type. They had drills, the Fruit of Islam, they had the capability because they were a force to be reckoned with, with the snap of his finger Elijah Muhammed could bring them into any situation. So that there was a very definite potential, very definite potential." (Moore, 11/3/75, p. 37.)

³¹ The unit chief, who wrote the letter on instructions from his superiors concedes that the letter directed field offices to gather personal life information on targets, not for "scandalous reasons," but "to deter violence or neutralize the activities of violence-prone groups." (Unit chief, 10/16/75, p. 66.)

³² Moore, 11/3/75, pp. 37, 39, 46.

³³ Primary targets listed in this second letter are the Southern Christian Leadership Conference, the Student Nonviolent Coordinating Committee, Revolutionary Action Movement, Nation of Islam, Stokely Carmichael, H. "Rap" Brown, Martin Luther King, Maxwell Staufford, and Elijah Muhammed. CORE was dropped for reasons no witness was able to reconstruct. The agent who prepared the second letter disagreed with the inclusion of the SCLC, but lost. (Black Nationalist supervisor, 10/17/75, p. 14.)

(5) to prevent the long range growth of these organizations, especially among youth, by developing specific tactics to "prevent these groups from recruiting young people."⁹⁴

6. The Panther Directives.—The Black Panther Party ("BPP") was not included in the first two lists of primary targets (August 1967 and March 1968) because it had not attained national importance. By November 1968, apparently the BPP had become sufficiently active to be considered a primary target. A letter to certain field offices with BPP activity dated November 25, 1968, 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 the differences between the BPP and U.S. Inc. (Ron Karenga's group), which had reached such proportions that "it is taking on the aura of gang warfare with attendant threats of murder and reprisals."⁹⁵

On January 30, 1969, this program against the BPP was expanded to additional offices, noting that the BPP was attempting to create a better image. In line with this effort, Bobby Seale was conducting a "purge"⁹⁶ of the party, including expelling police informants. Recipient offices were instructed to take advantage of the opportunity to further plant the seeds of suspicion concerning disloyalty among ranking officials.⁹⁷

Bureau witnesses are not certain whether the Black Nationalist program was effective. Mr. Moore stated:

I know that the . . . overall results of the Klan [COINTELPRO] was much more effective from what I have been told than the Black Extremism [COINTELPRO] because of the number of informants in the Klan who could take action which would be more effective. In the Black Extremism Group . . . we got a late start because we did not have extremist activity [until] '67 and '68. Then we had to play catch-up. . . . It is not easy to measure effectiveness. . . . There were policemen killed in those days. There were bombs thrown. There were establishments burned with molotov cocktails. . . . We can measure that damage. You cannot measure over on the other side, what lives were saved because somebody did not leave the organization or suspicion was sown on his leadership and this organization gradually declined and [there was] suspicion within it, or this organization did not join with [that] organization as a result of a black power conference which was aimed towards consolidation efforts. All we know, either through their own ineptitude, maybe it emerged through counterintelligence, maybe, I think we like to think that that helped to do it, that there was not this development. . . . What part did counterintelligence [play?] We hope that it did play a part. Maybe we just gav. it a nudge."⁹⁸

⁹⁴ Memorandum from FBI headquarters to all SAC's, 3/4/68, pp. 3-4.

⁹⁵ Memorandum from FBI Headquarters to Baltimore Field Office, 11/25/68.

⁹⁶ Memorandum from FBI Headquarters to all SAC's, 1/30/69.

⁹⁷ This technique, the "switch jacket," was used in all COINTELPRO programs.

⁹⁸ Moore, 11/3/75, pp. 34, 50-52.

7. *New Left*.—The Internal Security Section had undergone a slow transition from concentrating on the "Old Left"—the CPUSA and SWP—to focusing primarily on the activities of the "New Left"—a term which had no precise definition within the Bureau.⁹⁹ Some agents defined "New Left" functionally, by connection with protests. Others defined it by philosophy, particularly antiwar philosophy.

On October 28, 1968, the fifth and final COINTELPRO was started against this undefined group. The program was triggered in part by the Columbia campus disturbance. Once again, law enforcement methods had broken down, largely (in the Bureau's opinion) because college administrators refused to call the police on campus to deal with student demonstrations. The atmosphere at the time was described by the Headquarters agent who supervised the New Left COINTELPRO:

During that particular time, there was considerable public, Administration—I mean governmental Administration—[and] news media interest in the protest movement to the extent that some groups, I don't recall any specifics, but some groups were calling for something to be done to blunt or reduce the protest movements that were disrupting campuses. I can't classify it as exactly an hysteria, but there was considerable interest [and concern]. That was the framework that we were working with. . . . It would be my impression that as a result of this hysteria, some governmental leaders were looking to the Bureau.¹⁰⁰

And, once again, the combination of perceived threat, public outcry, and law enforcement frustration produced a COINTELPRO.

According to the initiating letter, the counterintelligence program's purpose was to "expose, disrupt, and otherwise neutralize" the activities of the various New Left organizations, their leadership, and adherents, with particular attention to Key Activists, "the moving forces behind the New Left." The final paragraph contains an exhortation to a "forward look, enthusiasm, and interest" because of the Bureau's concern that "the anarchist activities of a few can paralyze institutions of learning, induction centers, cripple traffic, and tie the arms of law enforcement officials all to the detriment of our society." The internal memorandum recommending the program further sets forth the Bureau's concerns:

Our Nation is undergoing an era of disruption and violence caused to a large extent by various individuals generally connected with the New Left. Some of these activists urge revolution in America and call for the defeat of the United States in Vietnam. They continually and falsely allege police bru-

⁹⁹ As the New Left supervisor put it, "I cannot recall any document that was written defining New Left as such. It is my impression that the characterization of New Left groups rather than being defined at any specific time by document, if more or less grew. . . . Agreeing it was a very amorphous term, he added: "It has never been strictly defined, as far as I know. . . . It is more or less an attitude, I would think." (New Left supervisor, 10/28/75, pp. 7-8.)

¹⁰⁰ New Left supervisor, 10/28/75, pp. 21-22.

tality and do not hesitate to utilize unlawful acts to further their so-called causes.

The document continues:

The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigation of it and to drive us off the college campuses.¹⁰¹

Based on those factors, the Bureau decided to institute a new COINTELPRO.

8. *New Left Directives.*—The Bureau's concern with "tying the hands of law enforcement officers," and with the perceived weakness of college administrators in refusing to call police onto the campus, led to a May 23, 1968, directive to all participating field offices to gather information on three categories of New Left activities:

(1) false allegations of police brutality, to "counter the wide-spread charges of police brutality that invariably arise following student-police encounters";

(2) immorality, depicting the "scurrilous and depraved nature of many of the characters, activities, habits, and living conditions representative of New Left adherents"; and

(3) action by college administrators, "to show the value of college administrators and school officials taking a firm stand," and pointing out "whether and to what extent faculty members rendered aid and encouragement."

The letter continues, "Every avenue of possible embarrassment must be vigorously and enthusiastically explored. It cannot be expected that information of this type will be easily obtained, and an imaginative approach by your personnel is imperative to its success."¹⁰²

The order to furnish information on "immorality" was not carried out with sufficient enthusiasm. On October 9, 1968, headquarters sent another letter to all offices, taking them to task for their failure to "remain alert for and to seek specific data depicting the depraved nature and moral looseness of the New Left" and to "use this material in a vigorous and enthusiastic approach to neutralizing them."¹⁰³ Recipient offices were again instructed to be "particularly alert for this type of data"¹⁰⁴ and told:

¹⁰¹ Memorandum from Charles D. Brennan to William C. Sullivan, 5/9/68.

¹⁰² Memorandum from FBI headquarters to all SAC's, 5/23/68.

¹⁰³ Memorandum from FBI headquarters to all SAC's, 10/9/68.

¹⁰⁴ This time the field offices got the message. One example of information furnished under the "Immorality" caption comes from the Boston field office:

"[Informant] who has provided reliable information in the past concerning the activities of the New Left in the Metropolitan Boston area, has advised that numerous meetings concerning anti-Vietnam and/or draft activity are conducted by members sitting around the table or a living room, completely in the nude. These same individuals, both male and female, live and sleep together regularly and it is not unusual to have these people take up residence with a different partner after a six or seven month period.

"According to the informant, the living conditions and habits of some of the New Left adherents are appalling in that certain individuals have been known to wear the same clothes for an estimated period of weeks and in some instances

As the current school year commences, it can be expected that the New Left with its anti-war and anti-draft entourage will make every effort to confront college authorities, stifle military recruiting, and frustrate the Selective Service System. Each office will be expected, therefore, to afford this program continuous effective attention in order that no opportunity will be missed to destroy this insidious movement.¹⁰⁶

As to the police brutality and "college administrator" categories, the Bureau's belief that getting tough with students and demonstrators would solve the problem, and that any injuries which resulted were deserved, is reflected in the Bureau's reaction to allegations of police brutality following the Chicago Democratic Convention.

On August 28, 1968, a letter was sent to the Chicago field office instructing it to "obtain all possible evidence that would disprove these charges" [that the Chicago police used undue force] and to "consider measures by which cooperative news media may be used to counteract these allegations." The administrative "note" (for the file) states:

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.¹⁰⁷

In the same vein, on September 9, 1968, an instruction was sent to all offices which had sent informants to the Chicago convention demonstrations, ordering them to debrief the informants for information "indicating incidents were staged to show police reacted with undue force and any information that authorities were baited by militants into using force."¹⁰⁸ The offices were also to obtain evidence of possible violations of anti-riot laws.¹⁰⁹

The originating New Left letter had asked all recipient offices to respond with suggestions for counterintelligence action. Those re-

for months. Personal hygiene and eating habits are equally neglected by these people, the informant said.

"The informant has noted that those individuals who most recently joined the movement are in most instances the worst offenders as far as moral and personal habits are concerned. However, if these individuals remain in the movement for any length of time, their appearance and personal habits appear to improve somewhat." (Memorandum from Boston Field Office to FBI Headquarters, 6/13/68.)

¹⁰⁶ Memorandum from FBI Headquarters to all SAC's, 10/9/68.

¹⁰⁷ Memorandum from FBI Headquarters to Chicago Field Office, 8/28/68.

¹⁰⁸ Memorandum from FBI Headquarters to all SAC's, 9/9/68.

¹⁰⁹ Note 11. There was no attempt to determine whether the allegations were true. Ramsey Clark, Attorney General at the time, testified that he did not know that either directive had been issued and that "they are highly improper." He also noted that the Bureau's close working relationship with state and local police forces had made it necessary to "preempt the FBI" in cases involving the investigation of police misconduct; "we found it necessary to use the Civil Rights Division, and that is basically what we did." (Clark, 12/3/75, Hearings Vol. 6, pp. 254-255.)

sponses were analyzed and a letter sent to all offices on July 6, 1968, setting forth twelve suggestions for counterintelligence action which could be utilized by all offices. Briefly the techniques are:

(1) preparing leaflets designed to discredit student demonstrators, using photographs of New Left leadership at the respective universities. "Naturally, the most obnoxious pictures should be used";

(2) instigating "personal conflicts or animosities" between New Left leaders;

(3) creating the impression that leaders are "informants for the Bureau or other law enforcement agencies";

(4) sending articles from student newspapers or the "underground press" which show the depravity of the New Left to university officials, donors, legislators, and parents. "Articles showing advocacy of the use of narcotics and free sex are ideal";

(5) having members arrested on marijuana charges;

(6) sending anonymous letters about a student's activities to parents, neighbors, and the parents' employers. "This could have the effect of forcing the parents to take action";

(7) sending anonymous letters or leaflets describing the "activities and associations" of New Left faculty members and graduate assistants to university officials, legislators, Boards of Regents, and the press. "These letters should be signed 'A Concerned Alumni,' or 'A Concerned Taxpayer'";

(8) using "cooperative press contacts" to emphasize that the "disruptive elements" constitute a "minority" of the students. "The press should demand an immediate referendum on the issue in question";

(9) exploiting the "hostility" among the SDS and other New Left groups toward the SWP, YSA, and Progressive Labor Party;

(10) using "friendly news media" and law enforcement officials to disrupt New Left coffeehouses near military bases which are attempting to "influence members of the Armed Forces";

(11) using cartoons, photographs, and anonymous letters to "ridicule" the New Left; and

(12) using "misinformation" to "confuse and disrupt" New Left activities, such as by notifying members that events have been cancelled.¹¹²

As noted earlier, the lack of any Bureau definition of "New Left" resulted in targeting almost every anti-war group,¹¹³ and spread to students demonstrating against anything. One notable example is a proposal targeting a student who carried an "obscene" sign in a demonstration protesting administration censorship of the school newspaper,

¹¹² Memorandum from FBI Headquarters to all SAC's, 7-6-68.

¹¹³ The New Left supervisor confirmed what the documents reveal: "legitimate" (nonviolent) antiwar groups were targeted because they were "lending aid and comfort" to more disruptive groups. According to the New Left supervisor:

"This [nonviolent groups protesting against the war] was the type of thing that the New Left, the violent portion, would seize upon. They could use the legitimacy of an accepted college group or outside group to further their interests." (New Left supervisor, 10/28/75, p. 30)

Nonviolent groups were thus disrupted so there would be less opportunity for a violent group to make use of them and their respectability. Professors active in "New Left matters," whether involved in violence or just in general protest, were targeted for "using [their] good offices to lend aid and comfort to the entire protest movement or to help disrupt the school through [their] programs." (New Left supervisor, 10/28/75, p. 60.)

and another student who sent a letter to that paper defending the demonstration.¹¹² In another article regarding "free love" on a university campus was anonymously mailed to college administrators and state officials since free love allows "an atmosphere to build up on campus that will be a fertile field for the New Left."¹¹³

None of the Bureau witnesses deposed believes the New Left COINTELPRO was generally effective, in part because of the imprecise targeting.

III. THE GOALS OF COINTELPRO: PREVENTING OR DISRUPTING THE EXERCISE OF FIRST AMENDMENT RIGHTS

The origins of COINTELPRO demonstrate that the Bureau adopted extralegal methods to counter perceived threats to national security and public order because the ordinary legal processes were believed to be insufficient to do the job. In essence, the Bureau took the law into its own hands, conducting a sophisticated vigilante operation against domestic enemies.

The risks inherent in setting aside the laws, even though the purpose seems compelling at the time, were described by Tom Charles Huston in his testimony before the Committee:¹¹⁴

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.¹¹⁵

The description is apt. Certainly, COINTELPRO took in a staggering range of targets. As noted earlier, the choice of individuals and organizations to be neutralized and disrupted ranged from the violent elements of the Black Panther Party to Martin Luther King, Jr., who the Bureau concedes was an advocate of nonviolence; from the Communist Party to the Ku Klux Klan; and from the advocates of violent revolution such as the Weathermen, to the supporters of peaceful social change, including the Southern Christian Leadership Conference and the Inter-University Committee for Debate on Foreign Policy.

The breadth of targeting springs partly from a lack of definition for the categories involved, and partly from the Bureau's belief that dissident speech and association should be prevented because they were incipient steps toward the possible ultimate commission of an act which might be criminal. Thus, the Bureau's self-imposed role as protector of the existing political and social order blurred the line be-

¹¹² Memorandum from FBI Headquarters, Minneapolis Field Office, 11/4/68.

¹¹³ Memorandum from FBI Headquarters to San Antonio Field Office, 8/27/68.

¹¹⁴ Huston was the Presidential assistant who coordinated the 1970 recommendations by an interagency committee for expanded domestic intelligence, including concededly illegal activity. The so-called "Huston Plan" is the subject of a separate report.

¹¹⁵ Tom Charles Huston testimony, 0/23/75. Hearings, Vol. 2, p. 45.

tween targeting criminal activity and constitutionally protected acts and advocacy.

The clearest example of actions directly aimed at the exercise of constitutional rights are those targeting speakers, teachers, writers or publications, and meetings or peaceful demonstrations.¹⁰⁸ Approximately 18 percent of all approved COINTELPRO proposals fell into these categories.¹⁰⁹

The cases include attempts (sometimes successful) to get university and high school teachers fired; to prevent targets from speaking on campus; to stop chapters of target groups from being formed; to prevent the distribution of books, newspapers, or periodicals; to disrupt news conferences; to disrupt peaceful demonstrations, including the SCLC's Washington Spring Project and Poor People's Campaign, and most of the large antiwar marches; and to deny facilities for meetings or conferences.

A. Efforts to Prevent Speaking

An illustrative example of attacks on speaking concerns the plans of a dissident stockholders' group to protest a large corporation's war production at the annual stockholders meeting.¹¹⁰ The field office was authorized to furnish information about the group's plans (obtained from paid informants in the group) to a confidential source in the company's management. The Bureau's purpose was not only to "circumvent efforts to disrupt the corporate meeting," but also to prevent any attempt to "obtain publicity or embarrass" corporate officials.¹¹¹

In another case,¹¹² anonymous telephone calls were made to the editorial desks of three newspapers in a Midwestern city, advising them that a lecture to be given on a university campus was actually being sponsored by a Communist-front organization. The university had recently lifted its ban on Communist speakers on campus and was experiencing some political difficulty over this decision. The express purpose of the phone calls was to prevent a Communist-sponsored speaker from appearing on campus and, for a time, it appeared to have worked. One of the newspapers contacted the director of the university's conference center. He in turn discussed the meeting with the president of

¹⁰⁸The usual constitutional inquiry is whether the government is "chilling" First Amendment rights by indirectly discouraging a protected activity while pursuing an otherwise legitimate purpose. In the case of COINTELPRO, the Bureau was not attempting indirectly to chill free speech or association; it was squarely attacking their exercise.

¹⁰⁹The percentage is derived from a cross-indexed tabulation of the Petersen Committee summaries. Interestingly, these categories account for 30 percent of the approved "New Left" proposals, which reflects both the close connection between antiwar activities and the campuses, and the "aid and comfort" theory of targeting, in which teachers were targeted for advocating an end to the war through nonviolent means.

¹¹⁰The group was composed largely of university teachers and clergymen who had bought shares in order to attend the meeting. (Memorandum from Minneapolis Field Office to FBI headquarters, 4/1/70.)

¹¹¹Memorandum from FBI Headquarters to Minneapolis Field Office, 4-23-70; memorandum from Minneapolis Field Office to FBI Headquarters, 4-1-70.

¹¹²Memorandum from Detroit Field Office to FBI Headquarters, 10-26-60; Memoranda from FBI Headquarters to Detroit Field Office, 10-27-60, 10-28-60, 10/31/60; Memorandum from F. J. Baumgardner to Alan H. Belmont, 10/20/60.

the university who decided to cancel the meeting.¹²¹ The sponsoring organization, supported by the ACLU, took the case to court, and won a ruling that the university could not bar the speaker. (Bureau headquarters then ordered the field office to furnish information on the judge.) Although the lecture went ahead as scheduled, headquarters commended the field office for the affirmative results of its suggestion: the sponsoring organization had been forced to incur additional expense and attorneys' fees, and had received newspaper exposure of its "true communist character."

B. Efforts to Prevent Teaching

Teachers were targeted because the Bureau believed that they were in a unique position to "plant the seeds of communism [or whatever ideology was under attack] in the minds of unsuspecting youth." Further, as noted earlier, it was believed that a teacher's position gave respectability to whatever cause he supported. In one case, a high school 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. This invitation led to an investigation by the local police, which in turn provoked sharp criticism from the ACLU. The field office was authorized to send anonymous letters to two local newspapers, to the city Board of Education, and to the high school administration, suggesting that the ACLU should not criticize the police for probing into high school activities, "but should rather have focused attention on [the teacher] who has been a convicted draft dodger." The letter continued, "[the teacher] is the assault on academic freedom and not the local police." The purpose of the letter, according to Bureau documents, was "to highlight [the teacher's] antidraft activities at the local high school" and to "discourage any efforts" he may make there. The letter was also intended to "show support for the local police against obvious attempts by the New Left to agitate in the high schools."¹²² No results were reported.

In another case,¹²³ a university professor who was "an active participant in New Left demonstrations" had publicly surrendered his draft card and had been arrested twice (but not convicted) in antiwar demonstrations. The Bureau decided that the professor should be "removed from his position" at the university. The field office was authorized to contact a "confidential source" at a foundation which contributed substantial funds to the university, and "discreetly suggest that the [foundation] may desire to call to the attention of the University administration questions concerning the advisability of [the professor's] continuing his position there." The foundation official was told by the university that the professor's contract would not be renewed, but in fact the professor did continue to teach. The following

¹²¹ It is interesting to note that after the anonymous calls to the newspapers giving information on the "communist nature" of the sponsor, the conference center director called the local FBI office to ask for information on the speaker. He was informed that Bureau records are confidential and that the Bureau could not make any comment.

¹²² Memorandum from FBI Headquarters to Pittsburgh Field Office, 6/19/69.

¹²³ Memorandum from FBI Headquarters to Pittsburgh Field Office, 5/1/70.

academic year, therefore, the field office was authorized to furnish additional information to the foundation official on the professor's arrest and conviction (with a suspended sentence) in another demonstration. No results were reported.

In a third instance, the Bureau attempted to "discredit and neutralize" a university professor and the Inter-University Committee for Debate on Foreign Policy, in which he was active. The field office was authorized to send a fictitious-name letter to influential state political figures, the mass media, university administrators, and the Board of Regents, accusing the professor and "his protesting cohorts" of "giving aid and comfort to the enemy," and wondering "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." No results were reported.¹²⁴

C. Efforts to Prevent Writing and Publishing

The Bureau's purpose in targeting attempts to speak was explicitly to prevent the "propagation" of a target's philosophy and to deter "recruitment" of new members. Publications and writers appear to have been targeted for the same reasons. In one example,¹²⁵ two university instructors were targeted solely because they were influential in the publication of and contributed financial support to a student "underground" newspaper whose editorial policy was described as "left-of-center, anti-establishment, and opposed [to] the University administration." The Bureau believed that if the two instructors were forced to withdraw their support of the newspaper, it would "fold and cease publication. . . . This would eliminate what voice the New Left has in the area." Accordingly, the field office was authorized to send an anonymous letter to a university official furnishing information concerning the instructors' association with the newspaper, with a warning that if the university did not persuade the instructors to cease their support, the letter's author would be forced to expose their activities publicly. The field office reported that as a result of this technique, both teachers were placed on probation by the university president, which would prevent them from getting any raises.

Newspapers were a common target. The Black Panther Party paper was the subject of a number of actions, both because of its contents and because it was a source of income for the Party.¹²⁶ Other examples include contacting the landlord of premises rented by two "New Left" newspapers in an attempt to get them evicted;¹²⁷ an anonymous letter to a state legislator protesting the distribution on campus of an underground newspaper "representative of the type of mentality that is fol-

¹²⁴ Memorandum from Detroit Field Office to FBI Headquarters, 10/11/66; memorandum from FBI Headquarters to Detroit Field Office, 10/20/66.

¹²⁵ Memorandum from Mobile Field Office to FBI Headquarters, 12/9/70; memorandum from FBI Headquarters to Mobile Field Office, 12/31/70; memorandum from Mobile Field Office to FBI Headquarters, 2/3/71.

¹²⁶ In one example, a letter signed "A Black Parent" was sent to the mayor, the Superintendent of Schools, the Commander of the American Legion, and two newspapers in a northeastern city protesting a high school's subscription to the BPP newspaper. The letter was also intended to focus attention on the teacher who entered the subscription "so as to deter him from implementing black extremist literature and philosophy into the Black History curriculum" of the school system. (Memorandum from Buffalo Field Office to FBI Headquarters, 2/5/70.)

¹²⁷ Memorandum from Los Angeles Field Office to FBI Headquarters, 9/9/68; memorandum from FBI Headquarters to SAC, Los Angeles Field Office, 9/23/68.

lowing the New Left theory of immorality on certain college campuses¹²⁸; ¹²⁹ a letter signed "Disgusted Taxpayer and Patron" to advertisers in a student newspaper intended to "increase pressure on the student newspaper to discontinue the type of journalism that had been employed" (an article had quoted a demonstrator's "vulgar language"); ¹³⁰ and proposals (which, according to the Bureau's response to a staff inquiry, were never carried out) to physically disrupt printing plants.¹³⁰

D. Efforts to Prevent Meeting

The Bureau also attempted to prevent target groups from meeting. Frequently used techniques include contacting the owner of meeting facilities in order to have him refuse to rent to the group; ¹³¹ trying to have a group's charter revoked; ¹³² using the press to disrupt a "closed" meeting by arriving unannounced; ¹³³ and attempting to persuade sponsors to withdraw funds.¹³⁴ The most striking examples of attacks on meeting, however, involve the use of "disinformation."¹³⁵

In one "disinformation" case, the Chicago Field Office duplicated blank forms prepared by the National Mobilization Committee to End the War in Vietnam ("NMC") soliciting housing for demonstrators coming to Chicago for the Democratic National Convention. Chicago filled out 217 of these forms with fictitious names and addresses and sent them to the NMC, which provided them to demonstrators who made "long and useless journeys to locate these addresses." The NMC then decided to discard all replies received on the housing forms rather than have out-of-town demonstrators try to locate nonexistent addresses.¹³⁶ (The same program was carried out when the Washington Mobilization Committee distributed housing forms for demonstrators coming to Washington for the 1969 Presidential inaugural ceremonies.)¹³⁷

In another case, during the demonstrations accompanying inauguration ceremonies, the Washington Field Office discovered that NMC marshals were using walkie-talkies to coordinate their movements and

¹²⁸ Memorandum from Newark Field Office to FBI Headquarters, 5/23/69; memorandum from FBI Headquarters to Newark Field Office, 6/4/69.

¹²⁹ Memorandum from Detroit Field Office to FBI Headquarters, 2/28/69; memorandum from FBI Headquarters to Detroit Field Office, 3/27/69.

¹³⁰ For example, one proposal requested that the FBI Lab prepare a quart of solution "capable of duplicating a scent of the most foul smelling feces available," along with a dispenser capable of squirting a narrow stream for a distance of approximately three feet. The proposed targets were the physical plant of a New Left publisher and BPP publications prior to their distribution. Headquarters instructed the field office to furnish more information about the purpose for the material's use and the manner and security with which it would be used. The idea was then apparently dropped. (Memorandum from Detroit Field Office to FBI Headquarters, 10/13/70; memorandum from FBI Headquarters to Detroit Field Office, 10/23/70.)

¹³¹ Memorandum from FBI Headquarters to Los Angeles Field Office, 9/23/68.

¹³² Memorandum from FBI Headquarters to San Antonio Field Office, 5/13/69.

¹³³ Memorandum from FBI Headquarters to Indianapolis Field Office, 6/17/68.

¹³⁴ Memorandum from FBI Headquarters to all SAC's, 12/30/68.

¹³⁵ One of the 12 standard techniques referred to in the New Left memorandum, discussed at pp. 25-26, disinformation bridges the line between "counter-intelligence" and sabotage.

¹³⁶ Memorandum from Chicago Field Office to FBI Headquarters, 9/9/68;

memorandum from Charles Brennan to William C. Sullivan, 8/15/68.

¹³⁷ Memorandum from Washington Field Office to FBI Headquarters, 1/21/69.

activities. WFO used the same citizen band to supply the marshals with misinformation and, pretending to be an NMC unit, countermanded NMC orders.¹³⁵

In a third case¹³⁹ a midwest field office disrupted arrangements for state university students to attend the 1969 inaugural demonstrations by making a series of anonymous telephone calls to the transportation company. The calls were designed to confuse both the transportation company and the SDS leaders as to the cost of transportation and the time and place for leaving and returning. This office also placed confusing leaflets around the campus to show different times and places for demonstration-planning meetings, as well as conflicting times and dates for traveling to Washington.

In a fourth instance, the "East Village Other" planned to bomb the Pentagon with flowers during the 1967 NMC rally in Washington. The New York office answered the ad for a pilot, and kept up the pretense right to the point at which the publisher showed up at the airport with 200 pounds of flowers, with no one to fly the plane. Thus, the Bureau was able to prevent this "agitational-propaganda activity as relates to dropping flowers over Washington."¹⁴⁰

The cases discussed above are just a few examples of the Bureau's direct attack on speaking, teaching, writing and meeting. Other instances include targeting the New Mexico Free University for teaching, among other things, "confrontation politics" and "draft counseling training."¹⁴¹ In another case, an editorial cartoonist for a northeast newspaper was asked to prepare a cartoon which would "ridicule and discredit" a group of antiwar activists who traveled to North Vietnam to inspect conditions there; the cartoon was intended to "depict [the individuals] as traitors to their country for traveling to North Vietnam and making utterances against the foreign policy of the United States."¹⁴² A professor was targeted for being the faculty advisor to a college group which circulated "The Student As Nigger"

¹³⁵ Egil Krogh has stated to the Committee staff that he was in charge of coordinating D.C. law enforcement efforts during demonstrations, and gained the cooperation of NMC marshals to ensure an orderly demonstration. This law enforcement/NMC coordination was effected through the same walk-talkie system the Bureau was disrupting. (Memorandum from FBI Headquarters to Washington Field Office, 1/10/69; staff summary of Egil Krogh interview, 5/23/75.)

¹³⁹ Memorandum from Cincinnati Field Office to FBI Headquarters, 12/20/68; memorandum from FBI Headquarters to Cincinnati Field Office, 12/20/68.

¹⁴⁰ Memoranda from New York Field Office to FBI Headquarters, 9/15/67, 9/26/67, and 10/17/67; memorandum from FBI Headquarters to New York Field Office, 9/29/67. By letter of January 14, 1970, the Bureau submitted specific instances of "action, other than arrest and prosecution, to prevent any stage of [a] crime or violent acts from being initiated" which had been taken. The examples were intended to aid in developing "preventive action" guidelines.

One of the examples was the prevention of the publisher's plan to drop flowers over the Pentagon: "A plan was thus thwarted which could well have resulted in tragedy had another pilot accepted such a dangerous flying mission and violated Federal or local regulations in flying low over the Pentagon; which is also in the heavy traffic pattern of the Washington National Airport." The letter does not explain why it was necessary to act covertly in this case. If flying over the Pentagon violates Federal regulations, the Bureau could have arrested those involved when they arrived at the airport. No informant was involved; the newspaper had advertised openly for a pilot.

¹⁴¹ Memorandum from FBI Headquarters to Albuquerque Field Office, 3/10/66.

¹⁴² Memorandum from Boston Field Office to FBI Headquarters, 1/22/66.

on campus.¹⁴³ A professor conducting a study on the effect and social costs of McCarthyism was targeted because he sought information and help from the American Institute of Marxist Studies.¹⁴⁴ Contacts were made with three separate law schools in an attempt to keep a teaching candidate from being hired, or once hired, from getting his contract renewed.¹⁴⁵

The attacks on speaking, teaching, writing, and meeting have been examined in some detail because they present, in their purist form, the consequences of acting outside the legal process. Perhaps the Bureau was correct in its assumption that words lead to deeds, and that larger group membership produces a greater risk of violence. Nevertheless, the law draws the line between criminal acts and constitutionally protected activity, and that line must be kept.¹⁴⁶ As Justice Brandeis declared in a different context fifty years ago:

Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people, by its example. Crime is contagious. If the Government becomes a law-breaker, it breeds contempt for law: it invites every man to become a law unto himself. To declare that in the administration of the criminal law the end justifies the means—to declare that the Government may commit crimes in order to secure the conviction of the private criminal—would bring terrible retribution. Against the pernicious doctrine this Court should resolutely set its face. *Olmstead v. U.S.*, 277 U.S. 439, 485 (1927)

IV. COINTELPRO TECHNIQUES

The techniques used in COINTELPRO were—and are—used against hostile foreign intelligence agents. Sullivan's testimony that the "rough, tough, dirty business"¹⁴⁷ of foreign counterintelligence was brought home against domestic enemies was corroborated by George Moore, whose Racial Intelligence Section supervised the White Hate and Black Nationalist COINTELPROs:

You can trace [the origins] 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

¹⁴³ Memorandum from FBI Headquarters to El Paso Field Office, 12/4/68.

¹⁴⁴ Memorandum from FBI Headquarters to New York Field Office, 3/19/65.

¹⁴⁵ Memorandum from FBI Headquarters to Cleveland and Boston Field Offices, 5/5/64.

¹⁴⁶ Mr. Huston learned that lesson as well:

"We went from this kind of sincere intention, honest intention, to develop a series of justifications and rationalizations based upon this . . . distorted view of inherent executive power and from that, whether it was direct . . . or was indirect or inevitable, as I tend to think it is, you went down the road to where you ended up, with these people going into the Watergate.

"And so that has convinced me that you have just got to draw the line at the top of the totem pole, and that we would then have to take the risk—it is not a risk-free choice, but it is one that, I am afraid, in my judgment, that we do not have any alternative but to take." (Huston, 9/23/75, p. 45.)

¹⁴⁷ Sullivan, 11/1/75, pp. 97-98.

know what it's going to do, you can seed distrust, sow misinformation. The same technique is used in the foreign field. 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.¹⁴⁸

The arsenal of techniques used in the Bureau's secret war against domestic enemies ranged from the trivial to the life-endangering. Slightly more than a quarter of all approved actions were intended to promote factionalization within groups and between groups; a roughly equal number of actions involved the creation and dissemination of propaganda.¹⁴⁹ Other techniques involved the use of federal, state, and local agencies in selective law enforcement, and other use (and abuse) of government processes; disseminating derogatory information to family, friends, and associates; contacting employers; exposing "communist infiltration" or support of target groups; and using organizations which were hostile to target groups to disrupt meetings or otherwise attack the targets.

A. Propaganda

The Bureau's COINTELPRO propaganda efforts stem from the same basic premise as the attacks on speaking, teaching, writing and meeting: propaganda works. Certain ideas are dangerous, and if their expression cannot be prevented, they should be countered with Bureau-approved views. Three basic techniques were used: (1) mailing reprints of newspaper and magazine articles to group members or potential supporters intended to convince them of the error of their ways; (2) writing articles for or furnishing information to "friendly" media sources to "expose" target groups;¹⁵⁰ and (3) writing, printing, and disseminating pamphlets and fliers without identifying the Bureau as the source.

1. Reprint Mailings

The documents contain case after case of articles and newspaper clippings being mailed (anonymously, of course) to group members. The Jewish members of the Communist Party appear to have been inundated with clippings dealing with Soviet mistreatment of Jews. Similarly, Jewish supporters of the Black Panther Party received articles from the BPP newspaper containing anti-Semitic statements. College administrators received reprints of a *Leader's Digest* article¹⁵¹ and a *Barron's* article on campus disturbances intended to persuade them to "get tough."¹⁵²

Perhaps only one example need be examined in detail, and that only because it clearly sets forth the purpose of propaganda reprint mailings. Fifty copies of an article entitled "Rabbi in Vietnam Says With-

¹⁴⁸ Moore, 11/3/75, pp. 32-33.

¹⁴⁹ The percentages used in this section are derived from a staff tabulation of the Petersen Committee summaries. The numbers are approximate because it was occasionally difficult to determine from the summary what the purpose of the technique was.

¹⁵⁰ The resulting articles could then be used in the reprint mailing program.

¹⁵¹ Memorandum from FBI Headquarters to Minneapolis Field Office, 11/4/69.

¹⁵² Memorandum from FBI Headquarters to Boston Field Office, 9/12/68.

drawal Not the Answer," described as "an excellent article in support of United States foreign policy in Vietnam," were mailed to certain unnamed professors and members of the Vietnam Day Committee "who have no other subversive organizational affiliations." The purpose of the mailing was "to convince [the recipients] of the correctness of the U.S. foreign policy in Vietnam."¹⁵³

Reprint mailings would seem to fall under Attorney General Levi's characterization of much of COINTELPRO as "foolishness."¹⁵⁴ They violate no one's civil rights, but should the Bureau be in the anonymous propaganda business?

2. "Friendly" Media

Much of the Bureau's propaganda efforts involved giving information or articles to "friendly" media sources who could be relied upon not to reveal the Bureau's interests.¹⁵⁵ The Crime Records Division of the Bureau was responsible for public relations, including all headquarters contacts with the media. In the course of its work (most of which had nothing to do with COINTELPRO) the Division assembled a list of "friendly" news media sources—those who wrote pro-Bureau stories.¹⁵⁶ Field offices also had "confidential sources" (unpaid Bureau informants) in the media, and were able to ensure their cooperation.

The Bureau's use of the news media took two different forms: placing unfavorable articles and documentaries about targeted groups, and leaking derogatory information intended to discredit individuals.¹⁵⁷

A typical example of media propaganda is the headquarters letter authorizing the Boston Field Office to furnish "derogatory information about the Nation of Islam (NOI) to established source [name excised]":¹⁵⁸

¹⁵³ Memorandum from FBI Headquarters to San Francisco Field Office, 11/1/65.

¹⁵⁴ Levi 12/11/75, Hearings, Vol. 6, p. 318.

¹⁵⁵ "Name checks" were apparently run on all reporters proposed for use in the program, to make sure they were reliable. In one case, a check of Bureau files showed that a television reporter proposed as the recipient of information on the SDS had the same name as someone who had served in the Abraham Lincoln Brigade. The field office was asked to determine whether the "Individuals" were "identical." The field office obtained the reporter's credit records, voting registration, and local police records, and determined that his credit rating was satisfactory, that he had no arrest record, that he "stated a preference for one of the two major political parties"—and that he was not, in fact, the man who fought in the Spanish Civil War. Accordingly, the information was furnished. (Memorandum from Pittsburgh Field Office to FBI Headquarters, 12/26/68; memorandum from FBI Headquarters to Pittsburgh Field Office, 1/23/69.)

¹⁵⁶ The Bureau also noted, for its files, those who criticized its work or its Director, and the Division maintained a "not-to-contact" list which included the names of some reporters and authors. One proposal to leak information to the *Boston Globe* was turned down because both the newspaper and one of its reporters "have made unfounded criticisms of the FBI in the past." The Boston Field Office was advised to resubmit the suggestion using another newspaper. (Memorandum from FBI Headquarters to Boston Field Office, 2/8/68.)

¹⁵⁷ Leaking derogatory information is discussed at p. 50.

¹⁵⁸ The Committee's agreement with the Bureau governing document production provided that the Bureau could excise the names of "confidential sources" when the documents were delivered to the Committee. Although the staff was permitted to see the excised names at Bureau headquarters, it was also agreed that the names not be used.

Your suggestions concerning material to furnish [name] are good. Emphasize to him that the NOI predilection for violence,¹⁵⁹ 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].¹⁶⁰

In another case, information on the Junta of Militant Organizations ("JOMO", a Black Nationalist target) was furnished to a source at a Tampa television station.¹⁶¹ Ironically, the station manager, who had no knowledge of the Bureau's involvement, invited the Special Agent in Charge, his assistant, and other agents to a preview of the half-hour film which resulted. The SAC complimented the station manager on his product, and suggested that it be made available to civic groups.¹⁶²

A Miami television station made four separate documentaries (on the Klan, Black Nationalist groups, and the New Left) with materials secretly supplied by the Bureau. One of the documentaries, which had played to an estimated audience of 200,000, was the subject of an internal memorandum "to advise of highly successful results of counterintelligence exposing the black extremist Nation of Islam."

[Excised] was elated at the response. The station received more favorable telephone calls from viewers than the switchboard could handle. Community leaders have commented favorably on the program, three civic organizations have asked to show the film to their members as a public service, and the Broward County Sheriff's Office plans to show the film to its officers and in connection with its community service program.

This expose showed that NOI leaders are of questionable character and live in luxury through a large amount of money taken as contributions from their members. The extreme nature of NOI teachings was underscored. Miami sources advised the expose has caused considerable concern to local NOI leaders who have attempted to rebut the program at each open meeting of the NOI since the program was presented. Local NOI leaders plan a rebuttal in the NOI newspaper. Attendance by visitors at weekly NOI meetings has dropped 50%. This shows the value of carefully planned counterintelligence action.¹⁶³

The Bureau also planted derogatory articles about the Poor People's Campaign, the Institute for Policy Studies, the Southern Students Organizing Committee, the National Mobilization Committee, and a host of other organizations it believed needed to be seen in their "true light."

¹⁵⁹ Note that Bureau witnesses testified that the NOI was not, in fact, involved in organization violence. See pp. 20-21.

¹⁶⁰ Memorandum from FBI Headquarters to Boston Field Office, 2/27/68.

¹⁶¹ Memorandum from Tampa Field Office to FBI Headquarters, 8/5/68.

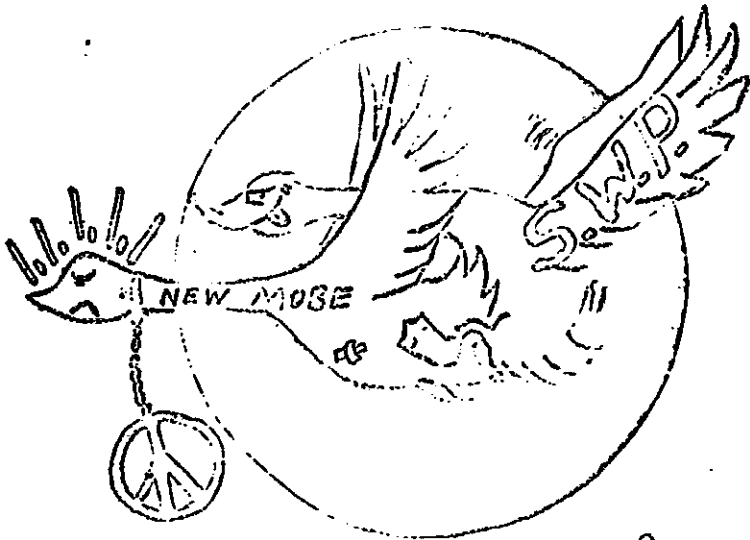
¹⁶² Memorandum from Tampa Field Office to FBI Headquarters, 2/7/69.

¹⁶³ Memorandum from G. C. Moore to William C. Sullivan, 10/21/69.

3. Bureau-Authored Pamphlets and Fliers.

The Bureau occasionally drafted, printed, and distributed its own propaganda. These pieces were usually intended to ridicule their targets, rather than offer "straight" propaganda on the issue. Four of these fliers are reproduced in the following pages.

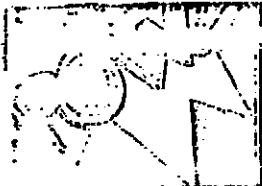
FLY UNITED?



BALLS!

Dig, it. It's time to pull the chain, brothers and sisters. If the peace movement in America is to survive, the crap influence of the Socialist Workers Party and its bastard youth group - Young Socialist Alliance - must be flushed from New Moose once and for all. Stagnant morcs like Freddie Halstead and Harry Ring, both members of the SWP Nat'l Committee, must be dumped. Let's get rid of the Carol Lipmans, Gus Horowitz and the Jeanne Hinkins along with other SWP shits! DEMAND AN END TO SWP BIDDING! Write New Moose today at Suite 903, 1059 Vermont Ave., N.W., Washington, D.C.

NOTE: Memorandum from New York Field Office to FBI Headquarters, 1/14/70; memorandum from FBI Headquarters to New York Field Office, 1/20/70.



THE GRAND PRIZE PICK THE TAG CONTEST IS HERE!

- 50¢ Fabulous Prizes!
- Nothing To Buy!
- YOU can win!
- Hurry! Hurry!



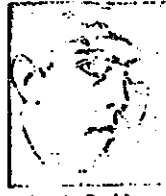
CONTEST RULES: Simply pick the tagget from the following photos. Print your choice on the entry blank at the bottom of this page and pop it into the mail. YOU COULD EASILY WIN!



Dave Dellinger



Che Guervaras



Mark Rudd



Herbert Marcuse

CHECK THESE COLLOSSAL PRIZES!

- GRAND PRIZE..... Seven full days in Hanoi - Expenses paid!
- SECOND PRIZE..... Fourteen full days in Hanoi!
- THIRD PRIZE..... A weekend with Josie fake in a genuine fire-damaged Columbia University dormitory!
- FOURTH PRIZE..... Two weekends with tubby little Josie!
- ADDITIONAL PRIZES..... 500 rolls of red toilet tissue, each sheet bearing the picture of Chairman Mao in living color!

*****MAIL TODAY*****

FAG CONTEST,
Post Office Box 220, Old Chelsea Station,
New York, New York (10011)

The REAL Tag pictured above is.....

Name.....Address.....Zip.....

(*Note: Che, unfortunately, was disconnected from the world last year.)

NOTE: Memorandum from New York Field Office to FBI Headquarters, 2/7/69; memorandum from FBI Headquarters to New York Field Office, 2/14/69.

FLASHFLASHFLASHFLASHFLASHFLASH

DESPERATE DAVE DANGLES DINGUS

Murderously Mangles MCEB

Washington, D. C. Jan. 20 - Speaking in his usual high pitched voice, Dave Dellinger, National Chairman of the National Mobilization Committee (MCEB), today claimed that the anti-inaugural demonstrations called by his organization had been responsible in getting the Paris peace talks going again.

Dellinger made this startling disclosure before an audience of newsmen in the dingy Hawthorne School which housed many of his followers. A cluster of the latter stood behind their Guru sniffing and fidgeting with wilted flowers. Dellinger, looking pale - more fairy-like than ever - tried to control the squeaks in his voice to no avail. "How many demonstrators did MCEB bring to the inaugural?", he was asked.

"At least 10,000," he answered.

"Bullshit", was heard in several sections of the room.

Dellinger shuffled his notes. "Let's make that 5,000."

"Bullshit".

"Would you believe 3,000?" Silence. Dave rolled his eyes at the ceiling. "I'm not going to play at numbers," he chirped. "What matters is that MCEB accomplished so much. We did get the peace talks going. We did break some windows in the National Geographic Society building. Despite police brutality, our brave people managed to throw cans and sticks at the President." His voice went higher - sounding like glass bells in a soft summer breeze. "We shook the establishment, gentlemen."

Associated Press stood up. "We understand MCEB is broke. That you lost control of the thing. That SDS and many other organizations in the peace movement refused to back you. That you have no idea how MCEB funds were spent."

Dellinger put a finger in his mouth and sucked it reflectively. Some minutes passed before he spoke. "MOBE is solvent, boys. As of this morning, we have \$1.5M in the treasury. The price of peace is high." He tried to look grim. "SDS, of course, is just a bunch of dirty college kids with grass for brains. We didn't want them or need them." He formed his lips into a cute boy. "I must go now. We're hitching a ride back to New York today unless we can raise bus fare."

He shoved four fingers into his mouth and was led slowly from the room humming "We Shall Overcome."

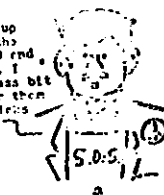
NOTE: Memorandum from New York Field Office to FBI Headquarters, 1/21/68; memorandum from FBI Headquarters to New York Field Office, 1/24/68.

S.S.'s - The American Komrats

My folks busted their humps to send me to college



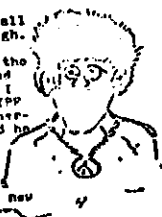
But I took up with S.S., the Third World and Revolution. I dug the grass bit and ballin' them radical chiefs



I blew my mind on Mao, Che and Khrushchev. Man, it was revolution all over the scene. We even burned the library, not to mention flags and draft cards



It wasn't all easy, though. I got the slip from the chicks, and last fall I called a nigger a nigger-fucker and he broke my front teeth. My folks send bread for new choppers



In May, I hit a capitalist with a bottle and the bastard broke my nose. Our chief acid head, Mark Rudd, told us to struggle up to our black brothers so



I went to a Panther rally and they broke my new teeth and the other arm. I got 30 days for being a bum. Well, S.S. is dead now. The Panthers hate our guts and the Army won't have me. I wonder if the folks still live in the same old place?



STUDENTS FOR A DEMOCRATIC SOCIETY

NOTE: Memorandum from New York Field Office to FBI Headquarters, 8/5/69; memorandum from FBI Headquarters to New York Field Office, 8/11/69.

B. Effects to Promote Enmity and Factionalism Within Groups or Between Groups

Approximately 28% of the Bureau's COINTELPRO efforts were designed to weaken groups by setting members against each other, or to separate groups which might otherwise be allies, and convert them into mutual enemies. The techniques used included anonymous mailings (reprints, Bureau-authored articles and letters) to group members criticizing a leader or an allied group;¹⁰¹ using informants to raise controversial issues; forming a "notional"—a Bureau-run splinter group—to draw away membership from the target organization; encouraging hostility up to and including gang warfare, between rival groups; and the "snitch jacket."

1. Encouraging Violence Between Rival Groups

The Bureau's attempts to capitalize on active hostility between target groups carried with them the risk of serious physical injury to the targets. As the Black Nationalist supervisor put it:

It is not easy [to judge the risks inherent in this technique]. You make the best judgment you can based on all the circumstances and you always have an element of doubt where you are dealing with individuals that I think most people would characterize as having a degree of instability.¹⁰²

The Bureau took that risk. The Panther directive instructing recipient officers to encourage the differences between the Panthers and

¹⁰¹ This technique was also used in disseminating propaganda. The distinction lies in the purpose for which the letter, article or flier was mailed.

¹⁰² Black Nationalist supervisor, 10/17/75, p. 40.

U.S., Inc. which were "taking on the aura of gang warfare with attendant threats of murder and reprisals,"¹⁶⁶ is just one example.

A separate report on disruptive efforts aimed at the Panthers will examine in detail the Bureau's attempts to foment violence. These efforts included anonymously distributing cartoons which pictured the U.S. organization gloating over the corpses of two murdered Panthers, and suggested that other BPP members would be next,¹⁶⁷ and sending a New Jersey Panther leader the following letter which purported to be from an SDS member:¹⁶⁸

"To Former Comrade [name]

"As one of 'those little bourgeois, snooty nose'—'little schoolboys'—'little sissies' Dave Hilliard spoke of in the 'Guardian' of 8/16/69, I would like to say that you and the rest of you black racists can go to hell. I stood shoulder to shoulder with Carl Nichols last year in Military Park in Newark and got my a— whipped by a Newark pig all for the cause of the wincheads like you and the rest of the black pussycats that call themselves Panthers. Big deal: you have to have a three hour educational session just to teach those . . . (you all know what that means don't you! It's the first word your handkerchief head mamma teaches you) how to spell it.

"Who the hell set you and the Panthers up as the vanguard of the revolutionary and disciplinary group. You can tell all those wincheads you associate with that you'll kick no one's . . . a—, because you'd have to take a three year course in spelling to know what an a— is and three more years to be taught where it's located.

"Julius Lester called the BPP the vanguard (that's leader) organization so international whore Cleaver calls him racist, now when full allegiance is not given to the Panthers, again racist. What the hell do you want? Are you getting this? Are you lost? If you're not digging then you're really hopeless.

"Oh yes! We are not concerned about Hilliard's threats.

"Brains will win over brawn. The way the Panthers have retaliated against US is another indication. The score: US-6: Panthers-0.

"Why, I read an article in the Panther paper where a California Panther sat in his car and watched his friend get shot by Karenga's group and what did he do? He run back and write a full page story about how tough the Panthers are and what they're going to do. Ha Ha—B—S—.

"Goodbye [name] baby—and watch out. Karenga's coming.

¹⁶⁶ Memorandum from FBI Headquarters to Baltimore Field Office, 11/25/68.

¹⁶⁷ Memorandum from San Diego Field Office to FBI Headquarters, 2/20/69; memorandum from San Diego Field Office to FBI Headquarters, 3/27/69; memorandum from FBI Headquarters to San Diego Field Office, 4/4/69.

¹⁶⁸ Memorandum from Newark Field Office to FBI Headquarters, 8/25/69. According to the proposal, the letter would not be typed by the field office stenographic pool because of the language. The field office also used asterisks in its communication with headquarters which "refer to that colloquial phrase . . . which implies an unnatural physical relationship with a maternal parent." Presumably the phrase was used in the letter when it was sent to the Panthers.

“‘Right On’ as they say.”

An anonymous letter was also sent to the leader of the Blackstone Rangers, a Chicago gang “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.”¹⁶⁹

Error:

What’s with this bull—— SDS outfit? I’ll tell you what they has finally showed there true color White. They are just like the commies and all the other white radical groups that suck up to the blacks and use us. We voted at our meeting in Oakland for community control over the pigs but SDS says no. Well we can do with out them mothers. We can do it by ourselves.

OFF THE PIGS POWER TO THE PEOPLE

Soul Brother Jake

In another case, the Bureau tried to promote violence, not between violent groups, but between a possibly violent person and another target. The field office was given permission to arrange a meeting between an SCLC officer and the leader of a small group described as “anti-Vietnam black nationalist [veterans] organization.” The leader of the veterans’ group was known to be upset because he was not receiving funds from the SCLC. He was also known to be on leave from a mental hospital, and the Bureau had been advised that he would be recommitted if he were arrested on any charge. It was believed that “if the confrontation occurs at SCLC headquarters,” the veterans’ group leader “will lose his temper, start a fight,” and the “police will be called in.” The purpose was to “neutralize” the leader by causing his commitment to a mental hospital, and to gain “unfavorable publicity for the SCLC.”¹⁷⁰

At least four assaults—two of them on women—were reported as “results” of Bureau actions. The San Diego field office claimed credit for three of them. In one case, US members “broke into” a BPP meeting and “roughed up” a woman member.¹⁷¹

In the second instance, a critical newspaper article in the Black Panther paper was sent to the US leader. The field office noted that “the possibility exists that some sort of retaliatory actions will be taken against the BPP.”¹⁷² The prediction proved correct; the field office reported that as a result of this mailing, members of US assaulted a Panther newspaper vendor.¹⁷³ The third assault occurred after the

¹⁶⁹ Memorandum from Chicago Field Office to FBI Headquarters, 1/12/69; memorandum from FBI Headquarters to Chicago Field Office, 1/30/69.

¹⁷⁰ Memorandum from Philadelphia Field Office to FBI Headquarters, 11/25/68; memorandum from FBI Headquarters to Philadelphia Field Office, 12/9/68.

¹⁷¹ Memorandum from San Diego Field Office to FBI Headquarters, 4/10/69.

p. 4.

¹⁷² Memorandum from San Diego Field Office to FBI Headquarters, 11/12/69.

¹⁷³ Memorandum from San Diego Field Office to FBI Headquarters, 11/12/69.

San Diego Police Department, acting on a tip from the Bureau that "sex orgies" were taking place at Panther headquarters, raided the premises. (The police department conducted a "research project," discovered two outstanding traffic warrants for a BPP member, and used the warrants to gain entry.) The field office reported that as a "direct result" of the raid, the woman who allowed the officers into the BPP headquarters had been "severely beaten up" by other members.¹⁷⁴

In the fourth case, the New Haven field office reported that an informant had joined in a "heated conversation" between several group members and sided with one of the parties "in order to increase the tension." The argument ended with members hitting each other. The informant "departed the premises at this point, since he felt that he had been successful, causing a flammable situation to erupt into a fight."¹⁷⁵

2. Anonymous Mailings

The Bureau's use of anonymous mailings to promote factionalism range from the relatively bland mailing of reprints or fliers criticizing a group's leaders for living ostentatiously or being ineffective speakers, to reporting a chapter's infractions to the group's headquarters intended to cause censure or disciplinary action.

Critical letters were also sent to one group purporting to be from another, or from a member of the group registering a protest over a proposed alliance.

For instance, the Bureau was particularly concerned with the alliance between the SDS and the Black Panther Party. A typical example of anonymous mailing intended to separate these groups is a letter sent to the Black Panther newspaper:¹⁷⁶

In a similar vein, is a letter mailed to Black Panther and New Left leaders.¹⁷⁷

Dear Brothers and Sisters,

Since when do us Blacks have to swallow the dictates of the honky SDS? Doing this only hinders the Party progress in gaining Black control over Black people. We've been ----- over by the white facists pigs and the Man's control over our destiny. We're sick and tired of being severely brutalized, denied our rights and treated like animals by the white pigs. We say to hell with the SDS and its honky intellectual approaches which only perpetuate control of Black people by the honkies.

The Black Panther Party theory for community control is the only answer to our problems and that is to be followed and enforced by all means necessary to insure control by Blacks over all police departments regardless of whether they are run by honkies or uncle toms.

The damn SDS is a paper organization with a severe case of diarrhea of the mouth which has done nothing but feed us

¹⁷⁴ Memorandum from San Diego Field Office to FBI Headquarters, 12/3/69.

¹⁷⁵ Memorandum from New Haven Field Office to FBI Headquarters, 2/18/70.

¹⁷⁶ Memorandum from San Francisco Field Office to FBI Headquarters, 8/27/69; memorandum from FBI Headquarters to San Francisco Field Office, 9/5/69.

¹⁷⁷ Memorandum from Detroit Field Office to FBI Headquarters, 2/10/70; memorandum from FBI Headquarters to Detroit Field Office, 3/3/70.

lip service. Those few idiots calling themselves weathermen run around like kids on halloween. A good example is their "militant" activities at the Northland Shopping Center a couple of weeks ago. They call themselves revolutionaries but take a look at who they are. Most of them come from well heeled families even by honky standards. They think they're helping us Blacks but their futile, misguided and above all white efforts only muddy the revolutionary waters.

The time has come for an absolute break with any non-Black group and especially those ——— SDS and a return to our pursuit of a pure black revolution by Blacks for Blacks.

Power!

Off the Pigs!!!!

These examples are not, of course, exclusive, but they do give the flavor of the anonymous mailings effort.

3. Interviews

Interviewing group members or supporters was an overt "investigative" technique sometimes used for the covert purpose of disruption. For example, one field office noted that "other [BPP] weaknesses that have been capitalized on include interviews of members wherein jealousy among the members has been stimulated and at the same time has caused a number of persons to fall under suspicion and be purged from the Party."¹⁷⁸

In another case, fourteen field offices were instructed to conduct simultaneous interviews of individuals known to have been contacted by members of the Revolutionary Union. The purpose of the coordinated interviews was "to make possible affiliates of the RU believe that the organization is infiltrated by informants on a high level."¹⁷⁹

In a third instance, a "black nationalist" target attempted to organize a youth group in Mississippi. The field office used informants to determine "the identities of leaders of this group and in interviewing these leaders, expressed to them [the target's] background and his true intentions regarding organizing Negro youth groups." Agents also interviewed the target's landlords and "advised them of certain aspects of [his] past activities and his reputation in the Jackson vicinity as being a Negro extremist." Three of the landlords asked the target to move.¹⁸⁰ The same field office reported that it had interviewed members of "the Tougaloo College Political Action Committee, an "SNCC affiliated" student group. The members were interviewed while they were home on summer vacation. "Sources report that these interviews had a very upsetting effect on the PAC organization and they felt they have been betrayed by someone at Tougaloo College. Many of the members have limited their participation in PAC affairs since their interview by Agents during the summer of 1968."¹⁸¹

4. Using Informants To Raise Controversial Issues

The Bureau's use of informants generally is the subject of a separate report. It is worth noting here, however, that the use of inform-

¹⁷⁸ Memorandum from Indianapolis Field Office to FBI Headquarters, 9/23/69.

¹⁷⁹ Memorandum from FBI Headquarters to all SAC's, 10/28/70.

¹⁸⁰ Memorandum from Jackson Field Office to FBI Headquarters, 11/27/68.

¹⁸¹ *Ibid.*

ants to take advantage of ideological splits in an organization dates back to the first COINTELPRO. The originating CUPSA document refers to the use of informants to capitalize on the discussion within the Party following Khrushchev's denunciation of Stalin.¹⁵²

Informants were also used to widen rifts in other organizations. For instance, an informant was instructed to imply that the head of one faction of the SDS was using group funds for his drug habit, and that a second leader embezzled funds at another school. The field office reported that "as a result of actions taken by this informant, there have been fist fights and acts of name calling at several of the recent SDS meetings." In addition, members of one faction "have made early morning telephone calls" to other SDS members and "have threatened them and attempted to discourage them from attending SDS meetings."¹⁵³

In another case, an informant was used to "raise the question" among his associates that an unmarried, 30-year old group leader "may be either a bisexual or a homosexual." The field office believed that the question would "rapidly become a rumor" and "could have serious results concerning the ability and effectiveness of [the target's] leadership."¹⁵⁴

5. Fictitious Organizations

There are basically three kinds of "notional" or fictitious organizations. All three were used in COINTELPRO attempts to factionalize.

The first kind of "notional" was the organization whose members were all Bureau informants. Because of the Committee's agreement with the Bureau not to reveal the identities of informants, the only example which can be discussed publicly is a proposal which, although approved, was never implemented. That proposal involved setting up a chapter of the W.E.B. DuBois Club in a Southern city which would be composed entirely of Bureau informants and fictitious persons. The initial purpose of the chapter was to cause the CPUSA expense by sending organizers into the area, cause the Party to fund Bureau coverage of out-of-town CP meetings by paying the informants' expenses, and receive literature and instructions. Later, the chapter was to begin to engage in deviation from the Party line so that it would be expelled from the main organization "and then they could claim to be the victim of a Stalinist type purge." It was anticipated that the entire operation would take no more than 18 months.¹⁵⁵

The second kind of "notional" was the fictitious organization with some unsuspecting (non-informant) members. For example, Bureau informants set up a Klan organization intended to attract membership away from the United Klans of America. The Bureau paid the informant's personal expenses in setting up the new organization, which had, at its height, 250 members.¹⁵⁶

The third type of "notional" was the wholly fictitious organization, with no actual members, which was used as a pseudonym for mailing

¹⁵² Memorandum from FBI Headquarters to New York Field Office, 9/4/50.

¹⁵³ Memorandum from Los Angeles Field Office to FBI Headquarters, 12/12/68.

p. 2.

¹⁵⁴ Memorandum from San Diego Field Office to FBI Headquarters, 2/2/70.

¹⁵⁵ Memorandum from New York Field Office to FBI Headquarters, 7/9/64.

¹⁵⁶ Memorandum from C. D. Brennan to W. C. Sullivan, 8/28/67.

letters or pamphlets. For instance, the Bureau sent out newsletters from something called "The Committee for Expansion of Socialist Thought in America," which attacked the CPUSA from the "Marxist right" for at least two years.¹⁸⁷

6. Labeling Targets As Informants

The "snitch jacket" technique—neutralizing a target by labeling him a "snitch" or informant, so that he would no longer be trusted—was used in all COINTELPROs. The methods utilized ranged from having an authentic informant start a rumor about the target member,¹⁸⁸ to anonymous letters or phone calls,⁸⁹ to faked informants' reports.¹⁹⁰

When the technique was used against a member of a nonviolent group, the result was often alienation from the group. For example, a San Diego man was targeted because he was active in draft counseling at the city's Message Information Center. He had, coincidentally, been present at the arrest of a Selective Service violator, and had been at a "crash pad" just prior to the arrest of a second violator. The Bureau used a real informant to suggest at a Center meeting that it was "strange" that the two men had been arrested by federal agents shortly after the target became aware of their locations. The field office reported that the target had been "completely ostracized by members of the Message Information Center and all of the other individuals throughout the area . . . associated with this and/or related groups."¹⁹¹

In another case, a local police officer was used to "jacket" the head of the Student Mobilization Committee at the University of South Carolina. The police officer picked up two members of the Committee on the pretext of interviewing them concerning narcotics. By pre-arranged signal, he had his radio operator call him with the message, "[name of target] just called. Wants you to contact her. Said you have her number."¹⁹² No results were reported.

The "snitch jacket" is a particularly nasty technique even when used in peaceful groups. It gains an added dimension of danger when it is used—as, indeed, it was—in groups known to have murdered informers.¹⁹³

For instance, a Black Panther leader was arrested by the local police with four other members of the BPP. The others were released, but the leader remained in custody. Headquarters authorized the field office to circulate the rumor that the leader "is the last to be released" because "he is cooperating with and has made a deal with the Los Angeles Police Department to furnish them information concerning the BPP."

¹⁸⁷ Memorandum from F. J. Baumgardner to W. C. Sullivan, 1/5/65.

¹⁸⁸ Memorandum from FBI Headquarters to San Diego Field Office, 2/14/69.

¹⁸⁹ Memorandum from FBI Headquarters to Jackson Field Office, 11/15/68.

¹⁹⁰ Memorandum from FBI Headquarters to New York Field Office, 2/9/69.

¹⁹¹ Memorandum from San Diego Field Office to FBI Headquarters, 2/17/69;

memorandum from FBI Headquarters to San Diego Field Office, 3/6/69;

memorandum from San Diego Field Office to FBI Headquarters 4/30/69.

¹⁹² Memorandum from San Diego Field Office to FBI Headquarters, 1/31/69;

memorandum from FBI Headquarters to San Diego Field Office, 2/14/69.

¹⁹³ One Bureau document stated that the Black Panther Party "has murdered two members it suspected of being police informants." (Memorandum from FBI Headquarters to Cincinnati Field Office, 2/18/71.)

The target of the first proposal then received an anonymous phone call stating that his own arrest was caused by a rival leader.¹⁹⁴

In another case, the Bureau learned that the chairman of the New York BPP chapter was under suspicion as an informant because of the arrest of another member for weapons possession. In order to "cast further suspicion on him" the Bureau sent anonymous letters to BPP headquarters in the state, the wife of the arrested member, and a local member of CORE, saying "Danger-Beware-Black Brothers, [name of target] is the fink who told the pigs [that [arrested members] were carrying guns." The letter also gave the target's address.¹⁹⁵

In a third instance, the Bureau learned through electronic surveillance of the BPP the whereabouts of a fugitive. After his arrest, the Bureau sent a letter in a "purposely somewhat illiterate type scrawl" to the fugitive's half-brother:

Brother:

Jimmie was sold out by Sister [name—the BPP leader who made the phone call picked up by the tap] for some pig money to pay her rent. When she don't get it that way she takes Panther money. How come her kid sells the paper in his school and no one bothers him. How come Tyler got busted up by the pigs and her kid didn't. How come the FBI pig fascists knew where to bust Lonnie and Minnie way out where they were.

—Think baby.¹⁹⁶

In another example, the chairman of the Kansas City BPP chapter went to Washington in an attempt to testify before a Senate subcommittee about information he allegedly possessed about the transfer of firearms from the Kansas City Police Department to a retired Army General. The attempt did not succeed; the committee chairman adjourned the hearing and then asked the BPP member to present his information to an aide. The Bureau then authorized an anonymous phone call to BPP headquarters "to the effect that [the target] was paid by the committee to testify, that he has cooperated fully with this committee, and that he intends to return at a later date to furnish additional testimony which will include complete details of the BPP operation in Kansas City."¹⁹⁷

In the fifth case, the Bureau had so successfully disrupted the San Diego BPP that it no longer existed. One of the former members, however, was "politicking" for the position of local leader if the group is ever reorganized." Headquarters authorized the San Diego field office to send anonymous notes to "selected individuals within the black community of San Diego" to "initiate the rumor that [the target],

¹⁹⁴ Memorandum from San Diego Field Office to FBI Headquarters, 2/11/69; memorandum to San Diego Field Office from FBI Headquarters, 2/10/69.

¹⁹⁵ Memorandum from New York Field Office to FBI Headquarters, 2/14/69; memorandum from FBI Headquarters to New York Field Office, 3/10/69.

¹⁹⁶ Memorandum to FBI Headquarters from SAC, Newark, 7/3/69; memorandum to Newark Field Office from FBI Headquarters, 7/14/69.

¹⁹⁷ Memorandum from Kansas City Field Office to FBI Headquarters, 10/10/69; memorandum from FBI Headquarters to San Francisco Field Office, 11/3/69.

who has aspirations of becoming the local Black Panther Party Captain, is a police informant."¹⁹⁸

In a sixth case, a letter alleging that a Washington, D.C., BPP leader was a police informant was sent "as part of our continuing effort to foment internal dissension within ranks of Black Panther Party."¹⁹⁹

Brother:

I recently read in the Black Panther newspaper about that low dog Gaines down in Texas who betrayed his people to the pigs and it reminded me of a recent incident that I should tell you about. Around the first part of Feb. I was locked up at the local pigpen when the pigs brought in this dude who told me he was a Panther. This dude who said his name was [deleted] said he was vamped on by six pigs and was brutalized by them. This dude talked real bad and said he had killed pigs and was going to get more when he got out, so I thought he probably was one of you. The morning after [name] was brought in a couple of other dudes in suits came to see him and called him out of the cell and he was gone a couple of hours. Later on these dudes came back again to see him. [Name] told me the dudes were his lawyers but they smelled like pig to me. It seems to me that you might want to look into this because I know you don't want anymore low-life dogs helping the pigs brutalize the people. You don't know me and I'm not a Panther but I want to help with the cause when I can.

A lumpen brother

In a seventh case, the "most influential BPP activist in North Carolina" had been photographed outside a house where a "shoot out" with local police had taken place. The photograph, which appeared in the local newspaper, showed the target talking to a policeman. The photograph and an accompanying article were sent to BPP headquarters in Oakland, California, with a handwritten note, supposedly from a female BPP member known to be "disenchanted" with the target, saying, "I think this is two pigs oinking."²⁰⁰

Although Bureau witnesses stated that they did not authorize a "snitch jacket" when they had information that the group was *at that time* actually killing suspected informants,²⁰¹ they admitted that the risk was there whenever the technique was used.

¹⁹⁸ Memorandum to FBI Headquarters from San Diego Field Office, 3/6/70; memorandum from FBI Headquarters to San Diego Field Office, 3/6/70.

¹⁹⁹ Memorandum from Charlotte Field Office to FBI Headquarters, 3/23/71; memorandum from FBI Headquarters to Charlotte Field Office, 3/31/71.

²⁰⁰ Memorandum from Charlotte Field Office to FBI Headquarters 3/28/71; memorandum FBI Headquarters to Charlotte Field Office, 3/31/71.

²⁰¹ In fact, some proposals were turned down for that reason. See, e.g., letter from FBI Headquarters to Cincinnati Field Office, 2/18/71, in which a proposal that an imprisoned BPP member be labeled a "pig informer" was rejected because it was possible it would result in the target's death. But note that just one month later, two similar proposals were approved. Letter from FBI Headquarters to Washington Field Office, 3/19/71, and letter from FBI Headquarters to Charlotte Field Office, 3/31/71.

It would be fair to say there was an element of risk there which we tried to examine on a case by case basis.²⁰²

Moore added, "I am not aware of any time we ever labeled anybody as an informant, that anything [violent] ever happened as a result, and that is something that could be measured." When asked whether that was luck or lack of planning, he responded, "Oh, it just happened that way, I am sure."²⁰³

C. Using Hostile Third Parties Against Target Groups

The Bureau's factionalism efforts were intended to separate individuals or groups which might otherwise be allies. Another set of actions is a variant of that technique: organizations already opposed to the target groups were used to attack them.

The American Legion and the Veterans of Foreign Wars, for example, printed and distributed under their own names Bureau-authored pamphlets condemning the SDS and the DuBois Clubs.

In another case, a confidential source who headed an anti-Communist organization in Cleveland, and who published a "self-described conservative weekly newspaper," the *Cleveland Times*, was anonymously mailed information on the Unitarian Society of Cleveland's sponsorship of efforts to abolish the House Committee on Un-American Activities. The source had "embarrassed" the Unitarian minister with questions about the alleged Communist connections of other cosponsors "at public meetings."²⁰⁴

It was anticipated that the source would publish a critical article in her newspaper, which "may very well have the result of alerting the more responsible people in the community" to the nature of the movement and "stifle it before it gets started."²⁰⁵

The source newspaper did publish an article entitled "Locals to Aid Red Line," which named the Minister, among others, as a local sponsor of what it termed a "Communist dominated plot" to abolish the House Committee.²⁰⁶

One group, described as a "militant anticommunist right wing organization, more of an activist group than is the more well known John Birch Society," was used on at least four separate occasions. The Bureau developed a long-range program to use the organization in "counterintelligence activity" by establishing a fictitious person named "Lester Johnson" who sent letters, made phone calls, offered financial support, and suggested action:

In view of the activist nature of this organization, and their lack of experience and knowledge concerning the interior workings of the [local] CP, [the field office proposes] that efforts be made to take over their activities and use them in such a manner as would be best calculated by this office to

²⁰² Black Nationalist supervisor, 10/17/75, p. 39.

²⁰³ Moore, 11/3/15, p. 64.

²⁰⁴ The minister has given the Select Committee an affidavit which states that there was an organized attempt by the Bureau's source to disrupt the Church's meetings, including " fist fights." Affidavit of Rev. Dennis G. Kuby, 10/19/75.

²⁰⁵ Memorandum from Cleveland Field Office to FBI Headquarters, 10/28/64; memorandum from FBI Headquarters to Cleveland Field Office, 11/6/64.

²⁰⁶ Memorandum from FBI Headquarters to Cleveland Field Office, 11/6/64.

completely disrupt and neutralize the [local] CP, all without [the organization] becoming aware of the Bureau's interest in its operation.²⁰⁷

"Lester Johnson" used the organization to distribute fliers and letters opposing the candidacy of a lawyer running for a judgeship²⁰⁸ and to disrupt a dinner at which an alleged Communist was to speak.²⁰⁹ "Johnson" also congratulated the organization on disrupting an anti-draft meeting at a Methodist Church, furnishing further information about a speaker at the meeting,²¹⁰ and suggested that members picket the home of a local "communist functionary."²¹¹

Another case is slightly different from the usual "hostile third party" actions, in that both organizations were Bureau targets. "Operation Hoodwink" was intended to be a long-range program to disrupt both La Cosa Nostra (which was not otherwise a COINTELPRO target) and the Communist Party by "having them expend their energies attacking each other." The initial project was to prepare and send a leaflet, which purported to be from a Communist Party leader to a member of a New York "family" attacking working conditions at a business owned by the family member.²¹²

D. Disseminating Derogatory Information to Family, Friends, and Associates

Although this technique was used in relatively few cases it accounts for some of the most distressing of all COINTELPRO actions. Personal life information, some of which was gathered expressly to be used in the programs, was then disseminated, either directly to the target's family through an anonymous letter or telephone call, or indirectly, by giving the information to the media.

²⁰⁷ Memorandum from Detroit Field Office to FBI Headquarters, 10/18/66, p. 2.

²⁰⁸ Memorandum from Detroit Field Office to FBI Headquarters, 1/19/67.

The lawyer was targeted, along with his law firm J, because the firm "has a long history of providing services for individual communists and communist organizations," and because he belonged to the National Lawyers Guild.

²⁰⁹ Memorandum from FBI Headquarters to Detroit Field Office, 1/16/67.

²¹⁰ Memorandum from FBI Headquarters to Detroit Field Office, 1/10/67.

²¹¹ Memorandum from FBI Headquarters to Detroit Field Office, 11/3/66.

²¹² Memorandum from F. J. Baumgardner to William C. Sullivan, 10/4/66; memorandum from FBI Headquarters to New York Field Office, 10/5/66.

A similar proposal attempted "to cause dissension between Negro numbers operators and the Italian hoodlum element" in Detroit. The Bureau had information that black "numbers men" were contributing money to the local "black power movement." An anonymous letter containing a black hand and the words "watch out" was sent a minister who was "the best known black militant in Detroit." The letter was intended to achieve two objectives. First, the minister was expected to assume that "the Italian hoodlum element was responsible for this letter, report this to the Negro numbers operators, and thereby cause them to further resent the Italian hoodlum element." Second, it is also possible that [the minister] may become extremely frightened upon receipt of this letter and sever his contact with the Negro numbers men in Detroit and might even restrict his black nationalist activity or leave Detroit. (Memorandum from the Detroit Field Office to FBI Headquarters, 6/14/68; Memorandum from FBI Headquarters to Detroit Field Office, 6/28/68.)

Several letters were sent to spouses; three examples follow.²¹³ The names have been deleted for privacy reasons.

The first letter was sent to the wife of a Grand Dragon of the United Klans of America ("Mrs. A"). It was to be "typed on plain paper in an amateurish fashion."²¹⁴

"My Dear Mrs. (A),

"I write this letter to you only after a long period of praying to God. I must cleanse my soul of these thoughts. I certainly do not want to create problems inside a family but I owe a duty to the klans and its principles as well as to my own menfolk who have cast their divine lot with the klans.

"Your husband came to [deleted] about a year ago and my menfolk blindly followed his leadership, believing him to be the savior of this country. They never believed the "stories that he stole money from the klans in [deleted] or that he is now making over \$25,000 a year. They never believed the stories that your house in [deleted] has a new refrigerator, washer, dryer and yet one year ago, was threadbare. They refuse to believe that your husband now owns three cars and a truck, including the new white car. But I believe all these things and I can forgive them for a man wants to do for his family in the best way he can.

"I don't have any of these things and I don't grudge you any of them neither. But your husband has been committing the greatest of the sins of our Lord for many years. He has taken the flesh of another unto himself.

"Yes, Mrs. A, he has been committing adultery. My menfolk say they don't believe this but I think they do. I feel like crying. I saw her with my own eyes. They call her Ruby. Her last name is something like [deleted] and she lives in the 700 block of [deleted] Street in [deleted.] I know this. I saw her strut around at a rally with her lustfilled eyes and smart aleck figure.

"I cannot stand for this. I will not let my husband and two brothers stand side by side with your husband and this woman in the glorious robes of the klan. I am typing this because I am going to send coyps to Mr. Shelton and some of the klans leaders that I have faith in. I will not stop until your husband is driven from [deleted] and back into the flesh-pots from wherein he came.

²¹³ Letters were also sent to parents informing them that their children were in communes, or with a roommate of the opposite sex; information on an actress' pregnancy by a Black Panther was sent to a gossip columnist; and information about a partner's affair with another partner's wife was sent to the members of a law firm as well as the injured spouses.

Personal life information was not the only kind of derogatory information disseminated; information on the "subversive back-ground" of a target (or family member) was also used, as were arrest records.

²¹⁴ Memorandum from Richmond Field Office to FBI Headquarters, 8/26-66.

"I am a loyal klanswoman and a good churchgoer. I feel this problem affects the future of our great country. I hope I do not cause you harm by this and if you believe in the Good Book as I do, you may soon receive your husband back into the fold. I pray for you and your beautiful little children and only wish I could tell you who I am. I will soon, but I am afraid my own men would be harmed if I do."

"A God-fearing klanswoman"

The second letter was sent to the husband ("Mr. B") of a woman who had the distinction of being both a New Left and Black Nationalist target; she was a leader in the local branch of the Women's International League for Peace and Freedom, "which group is active in draft resistance, antiwar rallies and New Left activities," and an officer in ACTION, a biracial group which broke off from the local chapter of the Congress of Racial Equality and which "engaged in numerous acts of civil disruption and disobedience."²¹⁵

Two informants reported that Mr. B had been making suspicious inquiries about his wife's relationship with the Black males in ACTION. The local field office proposed an anonymous letter to the husband which would confirm his suspicions, although the informants did not know whether the allegations of misconduct were true. It was hoped that the "resulting marital tampest" would "result in ACTION losing their [officer] and the WILPF losing a valuable leader, thus striking a major blow against both organizations."²¹⁶

Accordingly, the following letter,^{216a} written in black ink, was sent to the husband:

²¹⁵ Memorandum from St. Louis Field Office to FBI Headquarters, 1/30/70.

²¹⁶ Memorandum from St. Louis Field Office to FBI Headquarters, 1/30/70.

Note that there is no allegation that ACTION was engaged in violence. When the target was interviewed by the staff, she was asked whether ACTION ever took part in violent activities. She replied that someone once spat in a communion cup during a church sit-in and that members sometimes used four letter words, which was considered violent in her city. The staff member then asked about more conventionally violent acts, such as throwing bricks or burning buildings. Her response was a shocked, "Oh, no! I'm a pacifist—I wouldn't be involved in an organization like that." (Staff interview of a COINTELPRO target.)

^{216a} Memorandum from St. Louis Field Office to FBI Headquarters, 1/30/70.

Dear Mr. B

Look man I guess your old lady
 doesn't get enough at home or
 she wouldn't be shucking and
 giving with our Black Men in
 ACTION, you dig? Like all she
 wants to intergrate is the bed room
~~and~~ our Black Sisters aint gonna
 take no second best from our
 men. So lay it on her, man -
 or get her the hell off Newstead.
 A Soul Sister

A letter from the field office to headquarters four months later reported as a "tangible result" of the letter that the target and her husband had recently separated, following a series of marital arguments:

This matrimonial stress and strain should cause her to function much less effectively in ACTION. While the letter sent by the [field office] was probably not the sole cause of this separation, it certainly contributed very strongly.²¹⁷

The third letter was sent to the wife of a leader of the Black Liberators ("Mrs. C"). She was living in their home town with their two daughters while he worked in the city. Bureau documents describe Mrs. C. as a "faithful, loving wife, who is apparently convinced that her husband is performing a vital service to the Black world. . . . She is to all indications an intelligent, respectable young mother, who is active in the AME Methodist Church."²¹⁸

The letter was "prepared from a penmanship, spelling style to imitate that of the average Black Liberator member. It contains several accusations which should cause [X's] wife great concern." It was expressly intended to produce "ill feeling and possibly a lasting distrust" between X and his wife; it was hoped that the "concern over what to do about it" would "detract from his time spent in the plots and plans of his organization."²¹⁹

The letter was addressed to "Sister C":

²¹⁷ Memorandum from St. Louis Field Office to FBI Headquarters, 6/17/70

²¹⁸ Memorandum from St. Louis Field Office to FBI Headquarters, 2/14/69, p. 1.

²¹⁹ Memorandum from St. Louis Field Office to FBI Headquarters, 2/14/ 69, pp. 2-3.

~~Letter~~

The Black Liberator are turned to
 respect Black Women and special are wives
 and girls. Brother C keeps telling
 the Brothers this but he don't treat you
 that way. I only been in the organization
 2 months but C. been make it here with
 Sister Marva Bass & Sister Tony and then he gives
 this fine bout their better in bed than you
 and how he keeps you off his back
 if send you a little dough now an then.
 He says he gotta send you money
 the Draft board gonna smack him in the army
 sometime. This ain't rite and ever sayen that
 is treaten you wrong -
 of Black Liberation

The Petersen Committee said that some COINTELPRO actions were "abhorrent in a free society." This technique surely falls within that condemnation.²²⁰

²²⁰ House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, Hearings, 11/20/74, p. 11.

E. Contacts with Employers

The Bureau often tried to get targets fired, with some success.²²¹ If the target was a teacher, the intent was usually to deprive him of a forum and to remove what the Bureau believed to be the added prestige given a political cause by educators. In other employer contacts, the purpose was either to eliminate a source of funds for the individual or (if the target was a donor) the group, or to have the employer apply pressure on the target to stop his activities.

For example, an Episcopal minister furnished "financial and other" assistance to the Black Panther Party in his city. The Bureau sent an anonymous letter to his bishop so that the church would exert pressure on the minister to "refrain from assistance to the Black Panther Party."²²² Similarly, a priest who allowed the Black Panther Party to use his church for its breakfast program was targeted; his bishop received both an anonymous letter and three anonymous phone calls. The priest was transferred shortly thereafter.²²³

In another case, a black county employee was targeted because he had attended a fund raiser for the Mississippi Summer Project and, on another occasion, a presentation of a Negro History Week program. Both functions had been supported by "clandestine CP members." The employee, according to the documents, had no record of subversive activities; "he and his wife appear to be genuinely interested in the welfare of Negroes and other minority groups and are being taken in by the communists." The Bureau chose a curiously indirect way to inform the target of his friends' Party membership; a local law enforcement official was used to contact the County Administrator in the expectation that the employee would be "called in and questioned about his left-wing associates."²²⁴

The Bureau made several attempts to stop outside sources from funding target operations.²²⁵ For example, the Bureau learned that SNCC was trying to obtain funds from the Episcopal Church for a "liberation school." Two carefully spaced letters were sent to the Church which falsely alleged that SNCC was engaged in a "fraudulent scheme" involving the anticipated funds. The letters purported to be from local businessmen approached by SNCC to place fictitious orders for school supplies and divide the money when the Church paid the bills.²²⁶ Similar letters were sent to the Interreligious Foundation for Community Organizing, from which SNCC had requested a grant for its "Agrarian Reform Plan." This time, the letters alleged kickback approaches in the sale of farm equipment and real estate.²²⁷

Other targets include an employee of the Urban League, who was fired because the Bureau contacted a confidential source in a foundation which funded the League;²²⁸ a lawyer known for his representation

²²¹ There were 84 contacts with employers or 3 percent of the total.

²²² Memorandum from New Haven Field Office to FBI Headquarters, 11/12/69.

²²³ Memorandum from FBI Headquarters to San Diego Field Office, 9/11/69.

²²⁴ Memorandum from FBI Headquarters to San Francisco Field Office, 9/20/64.

²²⁵ The FBI also used a "confidential source" in a foundation to gain funding for a "moderate" civil rights organization. (Memorandum from G. C. Moore to W. C. Sullivan, 10/28/68.)

²²⁶ Memorandum from New York Field Office to FBI Headquarters, 6/18/70.

²²⁷ Memorandum from New York Field Office to FBI Headquarters, 8/19/70.

²²⁸ Memoranda from FBI Headquarters to Pittsburgh Field Office, 3/3/69 and 4/3/69.

of "subversives," whose nonmovement client received an anonymous letter advising it not to employ a "well-known Communist Party apologist";²²⁹ and a television commentator who was transferred after his station and superiors received an anonymous protest letter. The commentator, who had a weekly religious program, had expressed admiration for a black nationalist leader and criticized the United States' defense policy.²³⁰

F. Use and Abuse of Government Processes

This category, which comprises 9 percent of all approved proposals includes selective law enforcement (using Federal, state, or local authorities to arrest, audit, raid, inspect, deport, etc.); interference with judicial proceedings, including targeting lawyers who represent "subversives"; interference with candidates or political appointees; and using politicians and investigating committees, sometimes without their knowledge, to take action against targets.

1. Selective Law Enforcement

Bureau documents often state that notifying law enforcement agencies of violations committed by COINTELPRO targets is not counterintelligence, but part of normal Bureau responsibility. Other documents, however, make it clear that "counterintelligence" was precisely the purpose. "Be alert to have them arrested," reads a New Left COINTELPRO directive to all participating field offices.²³¹ Further, there is clearly a difference between notifying other agencies of information that the Bureau happened across in an investigation—in plain view, so to speak—and instructing field offices to find evidence of violations—any violations—to "get" a target. As George Moore stated:

Ordinarily, we would not be interested in health violations because it is not my jurisdiction, we would not waste our time. But under this program, we would tell our informants perhaps to be alert to any health violations or other licensing requirements or things of that nature, whether there were violations and we would see that they were reported.²³²

State and local agencies were frequently informed of alleged statutory violations which would come within their jurisdiction.²³³ As noted above, this was not always normal Bureau procedure.

A typical example of the attempted use of local authorities to disrupt targeted activities is the Bureau's attempt to have a Democratic Party fund raiser raided by the state Alcoholic Beverage Control Commis-

²²⁹ Memorandum from FBI Headquarters to New York Field Office, 7/2/64.

²³⁰ Memorandum from FBI Headquarters to Cincinnati Field Office, 3/28/68.

²³¹ Memorandum from FBI Headquarters to all SAC's, 10/9/68.

²³² Moore, 11/3/75, p. 47.

²³³ Federal agencies were also used. For instance, a foreign-born professor active in the New Left was deported by the Immigration and Naturalization Service at the Bureau's instigation. (Memorandum from FBI Headquarters to San Diego Field Office, 9/6/68.) The Bureau's use of the IRS in COINTELPRO is included in a separate report. Among other actions, the Bureau obtained an activist professor's tax returns and then used a source in a regional IRS office to arrange an audit. The audit was intended to be timed to interfere with the professor's meetings to plan protest demonstrations in the 1968 Democratic convention.

sion.²³⁴ The function was to be held at a private house: the admission charge included "refreshments." It was anticipated that alcoholic beverages would be served. A confidential source in the ABC Commission agreed to send an agent to the fund raiser to determine if liquor was being served and then to conduct a raid.²³⁵ (In fact, the raid was cancelled for reasons beyond the Bureau's control. A prior raid on the local fire department's fund raiser had given rise to considerable criticism and the District Attorney issued an advisory opinion that such affair did not violate state law. The confidential source advised the field office that the ABC would not, after all, raid the Democrats because of "political ramifications.")²³⁶

In the second case, the target was a "key figure" Communist. He had a history of homosexuality and was known to frequent a local hotel. The Bureau requested that the local police have him arrested for homosexuality; it was then intended to publicize the arrest to "embarrass the Party." Interestingly, the Bureau withdrew its request when the target stopped working actively for the Party because it would no longer cause the intended disruption.²³⁷ This would appear to rebut the Bureau's contention that turning over evidence of violations to local authorities was not really COINTELPRO at all, but just part of its job.

2. Interference With Judicial Process

The Bureau's attempts to interfere with judicial processes affecting targets are particularly disturbing because they violate a fundamental principle of our system of government. Justice is supposed to be blind. Nevertheless, when a target appeared before a judge, a jury, or a probation board, he sometimes carried an unknown burden; the Bureau had gotten there first.

Three examples should be sufficient. A university student who was a leader of the Afro American Action Committee had been arrested in a demonstration at the university. The Bureau sent an anonymous letter to the county prosecutor intended to discredit her by exposing her "subversive connections"; her adoptive father was described as a Communist Party member. The Bureau believed that the letter might aid the prosecutor in his case against the student. Another anonymous letter containing the same information was mailed to a local radio announcer who had an "open mike" program critical of

²³⁴ 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. (Memorandum from FBI Headquarters to San Francisco Field Office, 10/21/68.)

²³⁵ Memorandum from FBI Headquarters to San Francisco Field Office, 11/14/68.

²³⁶ *Ibid.*

²³⁷ Memorandum from New York Field Office to FBI Headquarters, 2/28/60; memorandum from FBI Headquarters to New York Field Office, 3/11/60; memorandum from New York Field Office to FBI Headquarters, 11/10/60; memorandum from FBI Headquarters to New York Field Office, 11/17/60.

local "leftist" activity. The letter was intended to further publicize the "connection" between the student and the Communist Party.²³⁹

In the second example, a Klan leader who had been convicted on a weapons charge was out on bail pending appeal. He spoke at a Klan rally, and the Bureau arranged to have newsmen present. The resulting stories and photographs were then delivered to the appellate judges considering his case.²⁴⁰

The third instance involved a real estate speculator's bequest of over a million dollars to the three representatives of the Communist Party who were expected to turn it over to the Party. The Bureau interviewed the probate judge sitting on the case, who was "very cooperative" and promised to look the case over carefully. The judge asked the Bureau to determine whether the widow would be willing to "take any action designed to keep the Communist Party from getting the money." The Bureau's efforts to gain the widow's help in contesting the will proved unsuccessful.²⁴¹

3. Candidates and Political Appointees

The Bureau apparently did not trust the American people to make the proper choices in the voting booth. Candidates who, in the Bureau's opinion, should not be elected were therefore targeted. The case of the Democratic fundraiser discussed earlier was just one example.

Socialist Workers Party candidates were routinely selected for counterintelligence, although they had never come close to winning an election. In one case, a SWP candidate for state office inadvertently protected herself from action by announcing at a news conference that she had no objections to premarital sex; a field office thereupon withdrew its previously approved proposal to publicize her common law marriage.²⁴²

Other candidates were also targeted. A Midwest lawyer whose firm represented "subversives" (defendants in the Smith Act trials) ran for City Council. The lawyer had been active in the civil rights movement in the South, and the John Birch Society in his city had recently mailed a book called "It's Very Simple—The True Story of Civil Rights" to various ministers, priests, and rabbis. The Bureau received a copy of the mailing list from a source in the Birch Society and sent an anonymous follow-up letter to the book's recipients noting the pages on which the candidate had been mentioned and calling their attention to the "Communist background" of this "charlatan."²⁴² The

²³⁹ Memorandum from FBI Headquarters to Minneapolis Field Office, 7/22/60; memorandum from FBI Headquarters to Minneapolis Field Office, 4/0/60. Charles Colson spent seven months in jail for violating the civil rights of a defendant in a criminal case through the deliberate creation of prejudicial pre-trial publicity.

²⁴⁰ Memorandum from FBI Headquarters to Miami Field Office, 6/23/66; memorandum from Miami Field Office to FBI Headquarters, 9/30/66.

²⁴¹ Memorandum from New York Field Office to FBI Headquarters, 4/5/67. The Bureau also obtained legal advice from a probate attorney on how the will could be attacked; contacted other relatives of the deceased; leaked information about the will to a city newspaper; and solicited the efforts of the IRS and state taxing authorities to deplete the estate as much as possible.

²⁴² Memorandum from Atlanta Field Office to FBI Headquarters, 7/13/70.

²⁴³ Memorandum from Detroit Field Office to FBI Headquarters, 9/15/65; memorandum from FBI Headquarters to Detroit Field Office, 9/22/65.

Bureau also sent a fictitious-name letter to a television station on which the candidate was to appear, enclosing a series of informative questions it believed should be asked.²⁴³ The candidate was defeated. He subsequently ran (successfully, as it happened) for a judgeship.

Political appointees were also targeted. One target was a member of the board of the NAACP and the Democratic State Central Committee. His brother, according to the documents, was a communist, and the target had participated in some Party youth group activities fifteen years earlier. The target's appointment as secretary of a city transportation board elicited an anonymous letter to the Mayor, with carbons to two newspapers, protesting the use of "us taxpayers' money" in the appointment of a "known Communist" to a highly paid job; more anonymous letters to various politicians, the American Legion, and the county prosecutor in the same vein; and a pseudonymous letter to the members of the transportation board, stating that the Mayor had "saddled them with a Commie secretary because he thinks it will get him a few Negro votes."²⁴⁴

4. Investigating Committees

State and Federal legislative investigating committees were occasionally used to attack a target, since the committees' interests usually marched with the Bureau's.

Perhaps the most elaborate use of an investigating committee was the framing of a complicated "snitch jacket." In October 1959, a legislative committee held hearings in Philadelphia, "ostensibly" to show a resurgence of CP activity in the area.²⁴⁵ The Bureau's target was subpoenaed to appear before the committee but was not actually called to testify. The field office proposed that local CP leaders be contacted to raise the question of "how it was possible for [the target] to escape testifying" before the committee; this "might place suspicion on him as being cooperative" with the investigators and "raise sufficient doubt in the minds of the leaders regarding [the target] to force him out of the CP or at least to isolate and neutralize him." Strangely enough, the target was not a bona fide CP member; he was an undercover infiltrator for a private anti-Communist group who had been a source of trouble for the FBI because he kept getting in their way.

A more typical example of the use of a legislative committee is a series of anonymous letters sent to the chairman of a state investigating committee that was designated to look into New Left activities on the state's college campuses. The target was an activist professor, and the letters detailed his "subversive background."

G. Exposing "Communist Infiltration" of Groups

This technique was used in approximately 4 percent of all approved proposals. The most common method involved anonymously notify-

²⁴³ Memorandum from FBI Headquarters to Detroit Field Office, 10/1/65.

²⁴⁴ Memorandum from Detroit Field Office to FBI Headquarters, 10/24/60; memorandum from FBI Headquarters to Detroit Field Office, 11/3/60.

²⁴⁵ According to the documents, "operating under the direction of New York headquarters," a document was placed in the record by the Committee which according to the "presiding officer," indicated that the CP planned to hold its national convention in Philadelphia. The field office added, "This office is not aware of any such plan of the CP." Memorandum from Philadelphia Field Office to FBI Headquarters, 11/3/50; memorandum from FBI Headquarters to Philadelphia Field Office, 11/12/50.

ing the group (civil rights organization, PTA, Boy Scouts, etc.) that one or more of its members was a "Communist,"²⁴⁶ so that it could take whatever action it deemed appropriate. Occasionally, however, the group itself was the COINTELPRO target. In those cases, the information went to the media, and the intent was to link the group to the Communist Party.

For example, one target was a Western professor who was the immediate past president of a local peace center, "a coalition of anti-Vietnam and antidraft groups." He had resigned to become chairman of the state's McCarthy campaign organization, but it was anticipated that he would return to the peace center after the election. According to the documents, the professor's wife had been a Communist Party member in the early 1950s. This information was furnished to a newspaper editor who had written an editorial branding the SDS and various black power groups as "professional revolutionists." The information was intended to "expose these people at this time when they are receiving considerable publicity to not only educate the public to their character, but disrupt the members" of the peace organization.²⁴⁷

In another case, the Bureau learned through electronic surveillance of a civil rights leader's plans to attend a reception at the Soviet Mission to the United Nations. (The reception was to honor a Soviet author.) The civil rights leader was active in a school boycott which had been previously targeted; the Bureau arranged to have news photographers at the scene to photograph him entering the Soviet mission.²⁴⁸

Other instances include furnishing information to the media on the participation of the Communist Party Presidential candidate in a United Farm Workers' picket line;²⁴⁹ "confidentially" telling established sources of three Northern California newspapers that the San Francisco County CP Committee had stated that the Bay area civil rights groups would "begin working" on the area's large newspapers "in an effort to secure greater employment of Negroes;"²⁵⁰ and furnishing information on Socialist Workers Party participation in the Spring Mobilization Committee to End the War in Vietnam to "discredit" the antiwar group by tying it "into the subversive movement."²⁵¹

²⁴⁶ Note that the "Communist" label was loosely applied, and might mean only that an informant reported that a target had attended meetings of a "front" group some years earlier. As noted earlier, none of the COINTELPRO labels were precise.

²⁴⁷ Memorandum from FBI Headquarters to Phoenix Field Office, 6/11/68.

²⁴⁸ Memorandum from William C. Sullivan, 2/4/64; memorandum from FBI Headquarters to New York Field Office, 2/12/64.

²⁴⁹ 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, 9/18/68.

²⁵⁰ Memorandum from San Francisco Field Office to FBI Headquarters, 4/16/64.

²⁵¹ Memorandum from San Francisco Field Office to FBI Headquarters, 3/10/67; memorandum from FBI Headquarters to San Francisco Field Office, 3/14/67.

V. COMMAND AND CONTROL: THE PROBLEM OF OVERSIGHT

A. *Within the Bureau*1. *Internal Administration*

The Bureau attempted to exercise stringent internal controls over COINTELPRO. All counterintelligence proposals had to be approved by headquarters. Every originating COINTELPRO document contains a strong warning to the field that "no counterintelligence action may be initiated by the field without specific Bureau authorization." The field would send a proposal under the COINTELPRO caption to the Seat of Government—the Bureau term for headquarters—where it would be routed to the Section Chief of the section handling the particular COINTELPRO program.²⁵⁷

The recommendation would then be attached to the proposal, beginning the process of administrative review. The lowest level on which a proposal could be approved was the Assistant Director, Domestic Intelligence Division, to whom the Section Chief reported *via* the Branch Chief. More often, the proposal would go through the Assistant to the Director and often to the Director himself.

2. *Coordination*

The Counterintelligence programs were coordinated with the rest of the section's work primarily through informal contacts, but also through section meetings and the Section Chief's knowledge of the work of his entire section.

Further, although the initial COINTELPRO was an effort to centralize what had been an *ad hoc* series of field actions, the programs continued to be essentially field-oriented with little target selection by headquarters. However, the Section Chief would attempt to make sure targets were being effectively chosen by occasionally sending out directives to field offices to intensify the investigation of a particular individual or group and to consider the subject for counterintelligence action.²⁵⁸

3. *Results*

Participating field offices were required to send in status letters (usually every ninety days) reporting any tangible results. They were instructed to resolve any doubts as to whether a counterintelligence action caused the observed result in their favor. Nevertheless, results were reported in only 527 cases, or 22 percent, of the approved actions. When a "good" result was reported, the field office or agent involved frequently received a letter of commendation or incentive award.²⁵⁹

²⁵⁷ The CPUSA, SWP, and New Left programs were handled in the Internal Security Section; the White Hate program was first handled in a short-lived three-man "COINTELPRO unit" which, during the three years of its existence, supervised the CP and SWP programs as well, and then was transferred to the Extremists Section; the Black Nationalist program was supervised by the Racial Intelligence Section. The Section Chief would then route the proposal to the COINTELPRO supervisor for each program. Occasionally the Section Chief made a recommendation as to the proposal; more often the supervisor made the initial decision to approve or deny.

²⁵⁸ No control file was maintained of these directives. Since these directives were sent out under the investigative caption, the first time the COINTELPRO caption would be used was on the field proposal which responded to the directives.

²⁵⁹ (Unit chief, 10/10/75, p. 107.) There is no central file of such awards, so the number is retrievable only by searching each agent's personnel file.

4. Blurred Distinction Between Counterintelligence and Investigation

It is possible that some actions did not receive headquarters scrutiny simply because the field offices were never told precisely what "counterintelligence" was. Although Bureau procedures strictly required COINTELPRO proposals to be approved at headquarters and a control file to be maintained both in the field and at headquarters, the field offices had no way to determine with any certainty just what was counterintelligence and what was investigation. Many of the techniques overlap: contacts with employers, contacts with family members, contacts with local law enforcement, even straight interviewing, are all investigative techniques which were used in COINTELPRO actions.²⁵⁵ More importantly, actions in the Rev. Martin Luther King case which cannot, by any stretch of the language, be called "investigative" were *not* called COINTELPRO, but were carried under the investigative caption.²⁵⁶

The Bureau witnesses agree that COINTELPRO has no fixed definition, and that there is a large grey area between what is counterintelligence and what is aggressive investigation. As the Black Nationalist supervisor put it, "Basically actions taken to neutralize an individual or disrupt an organization would be COINTELPRO; actions which were primarily investigative would have been handled by the investigative desks," even though the investigative action had disruptive effects.^{256a} Aggressive investigation continues, and in many cases may be as disruptive as COINTELPRO, because in an investigation the Bureau can and does reveal its interest. An anonymous letter (COINTELPRO) can be discarded as the work of a crank; but if the local FBI agent says the subject of an investigation is a subversive an employer or family member pays attention.

5. Inspection

The Inspection Division attempted to ensure that standard procedures were being followed. The Inspectors focused on two things: field office participation, and the mechanics of headquarters approval. However, the Inspection Division did not exercise oversight, in the sense of looking for wrongdoing. Rather, it was an active participant in COINTELPRO by attempting to make sure that it was being efficiently and enthusiastically conducted.²⁵⁷

²⁵⁵ According to Moore, even the "switch jacker"—labeling a group member as an informant when he is not—is not solely a counterintelligence technique, but may be used, in an ordinary investigation, to protect a real informant, "Maybe . . . you had an informant whose life was at stake because somebody suspected him and the degree of response . . . might be the degree that you would have to use in order to sow enough suspicion on other people to take it away from your informant." (Moore, 11/3/75, p. 70)

²⁵⁶ See Dr. Martin Luther King Report.

^{256a} Black Nationalist deposition, 10/17/75, p. 15.

²⁵⁷ As Moore put it, "This was a program, and whenever the Bureau had a program, you had to produce results because it was scrutinized by the inspectors, not only during your own inspection on a yearly basis, but also scrutinized in the field during field inspections." (Moore, 11/3/75, p. 43.) The New Left supervisor, who received copies of the inspection reports, stated that "It would be an innocuous type report in every instance I can recall." (New Left supervisor, 10/28/75, p. 72)

For example, one Domestic Intelligence Division inspection report on the "White Hate" programs noted under "Accomplishments" that the decline in Klan organizations is attributable to "hard-hitting investigations, counterintelligence

(Continued)

As the Assistant Director then in charge of the Inspection Division testified, the "propriety" of COINTELPRO was not investigated. He agreed that his job was to "determine whether the program was being pursued effectively as opposed to whether it was proper," and added, "There was no instruction to me, nor do I believe there is any instruction in the Inspector's manual that the Inspector should be on the alert to see that constitutional values are being protected."²⁵⁸

B. Outside the Bureau: 1956-1971

There is no clear answer to the question whether anyone outside the Bureau knew about COINTELPRO. One of the hallmarks of COINTELPRO was its secrecy. No one outside the Bureau was to know it existed.²⁵⁹ A characteristic instruction appeared in the Black Nationalist originating letter:

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.²⁶⁰

Thus, for example, 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 under investigative pretext. In approving or denying any proposal, the primary consideration was preventing "embarrassment to the Bureau." Embarrassment is a term of art. It means both public relations embarrassment—criticism—and any revelation of the Bureau's investigative interest to the subject, which may then be expected to take countermeasures.²⁶¹

(Continued)

programs directed at them, and penetration . . . by our racial informants." The report then lists several specific actions, including the defeat of a candidate with Klan affiliations; the removal from office of a high Klan official; and the issuance of a derogatory press release. (Inspection, Domestic Intelligence Division, 1/8-26/71, pp. 15, 17-19.)

²⁵⁸ Mark Felt testimony, 2/3/76, pp. 56, 65.

²⁵⁹ For security reasons, no instructions were printed in the Manual. In service training for intelligence agents did contain an hour on COINTELPRO, so it may be assumed that most agents knew something about the programs.

For instances in which Attorneys General, the Cabinet, and the House Subcommittee on Appropriations were allegedly informed of the existence of the CPUSA and Klan COINTELPROs.

²⁶⁰ Memorandum from FBI Headquarters to all SAC's, 8/25/67.

²⁶¹ One example of the lengths to which the Bureau went in maintaining secrecy may be instructive. The Bureau sent a letter to Klan members purporting to be from the "National Intelligence Committee"—a super-secret Klan disciplinary body. The letter fired the North Carolina Grand Dragon and suspended the Imperial Wizard, Robert Shelton. Shelton complained to both the local postal inspector and the FBI resident agency (which solemnly assured him that his complaint was not within the Bureau's jurisdiction). The Bureau had intended to mail a second "NIC" letter, but the plans were held in abeyance until it could be learned whether the postal inspector intended to act on Shelton's complaint. The Bureau, therefore, contacted the local postal inspector, using their investigation of Shelton's complaint as a pretext, to see what the inspector intended to do. The field office reported that the local inspector had forwarded the complaint to regional headquarters, which in turn referred it to a Chief Postal Inspector in Washington, D.C. The Bureau's liaison agent was then sent to that office to determine what action the postal authorities planned to take. He returned with the information that the Post Office had referred the matter to the Fraud Section of the Department of Justice's Criminal Division, under a cover

This secrecy has an obvious impact on the oversight process. There is some question whether anyone with oversight responsibility outside the Bureau was informed of COINTELPRO. In response to the Committee's request, the Bureau has assembled all documents available in its files which indicate that members of the executive and legislative branches were so informed.²⁶²

1. Executive Branch

On May 8, 1958, Director Hoover sent two letters, one to the Honorable Robert Cutler, Special Assistant to President Eisenhower, and the other to Attorney General William Rogers, containing the same information. The Attorney General's letter is captioned "COMMUNIST PARTY, USA-INTERNAL SECURITY." The letters are fairly explicit notification of the CPUSA COINTELPRO:

In August of 1956, this Bureau initiated a program designed to promote disruption within the ranks of the Communist Party (CP) USA . . . Several techniques have been utilized to accomplish our objectives.²⁶³

The letters go on to detail use of informants to engage in controversial discussions, after which "acrimonious debates ensued, suspicions were aroused, and jealousies fomented"; and anonymous mailings of anti-communist material, both reprinted and Bureau-prepared, to active CP members.²⁶⁴ (Two examples of the Bureau's product were enclosed.) "Tangible accomplishments" achieved by the program were "disillusionment and defection among Party members and increased factionalism at all levels."²⁶⁵ However, the only techniques disclosed were use of informants and anonymous propaganda mailings. There is no record of any reply to these letters.

letter stating that since Shelton's allegations "appear to involve an internal struggle" for Klan control, and "since the evidence of mail fraud was somewhat tenuous in nature," the Post Office did not contemplate any investigation. Neither, apparently, did the Department. The Bureau did not inform either the Postal Inspector or the Criminal Division that it had authored the letter under review. Instead, when it appeared the FBI's role would not be discovered, the Bureau prepared to send out the second letter—a plan which was discontinued when the Klan "notion" was proposed.

Memorandum from Charlotte Field Office to FBI Headquarters, 5/9/67; memorandum from FBI Headquarters to Charlotte Field Office, 5/24/67; memorandum from Charlotte Field Office to FBI Headquarters, 5/31/67; memorandum from Atlanta Field Office to FBI Headquarters, 6/7/67; memorandum from Atlanta Field Office to FBI Headquarters, 6/13/67; memorandum from Birmingham Field Office to FBI Headquarters, 6/14/67; memorandum from Charlotte Field Office to FBI Headquarters, 6/28/67; memorandum from FBI Headquarters to Atlanta and Charlotte Field Offices, 6/29/67; memorandum from Atlanta Field Office to FBI Headquarters, 6/27/67; memorandum from Bernard Rachner to Charles Brennan, 7/11/67; memorandum from Charlotte Field Office to FBI Headquarters, 8/22/67; memorandum from FBI Headquarters to Charlotte Field Office, 8/21/67.

²⁶² These documents were also made available to the Petersen Committee. The Petersen Committee twice asked the Bureau for documents showing outside knowledge, and twice was told there were none. Only as the Petersen report was ready to go to press did the Bureau find the documents delivered. (Staff interview with Henry Petersen.)

²⁶³ Memorandum from Director, FBI to the Attorney General, 5/8/58.

²⁶⁴ Memorandum from Director, FBI to the Attorney General, 5/8/58.

²⁶⁵ Memorandum from Director, FBI to the Attorney General, 5/8/58.

On January 10, 1961, letters from the Director were sent to Dean Rusk, Robert Kennedy, and Byron R. White, who were about to take office as Secretary of State, Attorney General, and Deputy Attorney General, respectively. The letters enclosed a top secret summary memorandum setting forth the overall activities of the Communist Party, USA, and stated, "Our responsibilities in the internal security field and our counterattack against the CPUSA are also set out in this memorandum."²⁶⁶

The five-page memorandum contains one section entitled "FBI Counterattack." This section details penetration of the Party at all levels with security informants; use of various techniques to keep the Party off-balance and disillusioned; infiltration by informants; intensive investigation of Party members; and prosecution. Only one paragraph of that report appears as all related to the Bureau's claim that the CPUSA COINTELPRO was disclosed:

As an adjunct to our regular investigative operations, we carry on a carefully planned program of counterattack against the CPUSA which keeps it off balance. Our primary purpose in this program is to bring about disillusionment on the part of individual members which is carried on from both inside and outside the Party organization. [Sentence on use of informants to disrupt excised for security reasons.]

In certain instances we have been successful in preventing communists from seizing control of legitimate mass organizations and have discredited others who were secretly operating inside such organizations. For example, during 1959 we were able to prevent the CPUSA from seizing control of the 20,000-member branch of the National Association for the Advancement of Colored People in Chicago, Illinois.²⁶⁷

The only techniques disclosed were use of informants and COMINFIL exposure. There is no record of any replies to these letters.

On September 2, 1965, letters were sent to the Honorable Marvin Watson, Special Assistant to President Johnson and Attorney General Katzenbach (whose letter was captioned "PENETRATION AND DISRUPTION OF KLAN ORGANIZATIONS—RACIAL MATTERS"). These two-page letters refer to the Bureau's success in solving a number of cases involving racial violence in the South. They then detail the development of a large number of informants and the value of the information received from them.

One paragraph deals with "disruption":

We also are seizing every opportunity to disrupt the activities of Klan organizations. Typical is the manner in which we exposed and thwarted a "kick back" scheme a Klan group was using in one southern state to help finance its activities. One member of the group was selling insurance to other Klan members and would deposit a generous portion of the premium refunds in the Klan treasury. As a result of action we took, the insurance company learned of the scheme and cancelled all the policies held by Klan members, thereby cutting off a siz-

²⁶⁶ Memorandum from Director, FBI to the Attorney General, 1/10/61.

²⁶⁷ Memorandum from Director, FBI to the Attorney General, 1/10/61, p. 4.

able source of revenue which had been used to finance Klan activities.²⁶⁸

Notifying an insurance company of a kick back scheme involving its premiums is not a "typical" COINTELPRO technique. It falls within that grey area between counterintelligence and ordinary Bureau responsibilities. Nevertheless, the statement that the Bureau is "seizing every opportunity to disrupt the activities of Klan organizations" is considered by the Bureau to be notification of the White Hate COINTELPRO, even though it does not distinguish between the inevitable and sometimes proper disruption of intensive investigation and the intended disruption of covert action.

On September 3, 1965, Mr. Katzenbach replied to the Director's letter with a two-paragraph memorandum captioned "Re: Your memorandum of September 2, regarding penetration and disruption of Klan organizations." The body of the memorandum makes no reference to disruption, but praises the accomplishments of the Bureau in the area of Klan penetration and congratulates Director Hoover on the development of his informant system and the results obtained through it. The letter concludes:

It is unfortunate that the value of these activities would in most cases be lost if too extensive publicity were given to them; however, perhaps at some point it may be possible to place these achievements on the public record, so that the Bureau can receive its due credit.²⁶⁹

The Bureau interpreted this letter as approval and praise of its White Hate COINTELPRO. Mr. Katzenbach has said that he has no memory of this document, nor of the response. He testified that during his term in the Department he had never heard the terms "COINTEL" or COINTELPRO, and that while he was familiar with the Klan investigation, he was not aware of any improper activities such as letters to wires.²⁷⁰ Mr. Katzenbach added:

It never occurred to me that the Bureau would engage in the sort of sustained improper activity which it apparently did. Moreover, given these excesses, I am not surprised that I and others were unaware of them. Would it have made sense for the FBI to seek approval for activities of this nature—especially from Attorneys General who did not share Mr. Hoover's political views, who would not have been in sympathy with the purpose of these attacks, and who would not have condoned the methods?²⁷¹

The files do not reveal any response from Mr. Watson.

On December 19, 1967, Director Hoover sent a letter to Attorney General Ramsey Clark, with a copy to Deputy Attorney General Warren Christopher, captioned "KLU KLUX KLAN INVESTIGATIONS—FBI ACCOMPLISHMENTS" and attaching a ten-page memorandum with the same caption and a list of statements and pub-

²⁶⁸ Memorandum from Director, FBI to the Attorney General, 9/2/65, p. 2.

²⁶⁹ Memorandum from Nicholas deB. Katzenbach to J. Edgar Hoover, 9/3/65.

²⁷⁰ Nicholas deB. Katzenbach testimony, 12/3/75, Hearings, Vol. 6, pp. 206-207.

²⁷¹ Katzenbach, 12/3/75, Hearing, Vol. 6, p. 217.

lications regarding the Ku Klux Klan "and the FBI's role in investigating Klan matters." The memorandum was prepared "pursuant to your conversation with Cartha DeLoach of this Bureau concerning FBI coverage and penetration of the Ku Klux Klan."²⁷²

The memo is divided into eleven sections: Background, Present Status, FBI Responsibility, Major Cases, Informants, Special Projects, Liaison With Local Authorities, Klan Infiltration of Law Enforcement, Acquisition of Weapons and Dynamite of the Ku Klux Klan, Interviews of Klansmen, and Recent Developments.

The first statement in the memorandum which might conceivably relate to the White Hate COINTELPRO appears under the heading "FBI Responsibility":

... We conduct intelligence investigations with the view toward infiltrating the Ku Klux Klan with informants, neutralizing it as a terrorist organization, and deterring violence.²⁷³

The Bureau considers the word "neutralize" to be a COINTELPRO key word.

Some specific activities which were carried out within the Bureau under the COINTELPRO caption are then detailed under the heading "Special Projects." The use of Bureau informants to effect the removal of Klan officers is set forth under the subheadings "Florida," "Mississippi," and "Louisiana." More significantly, the "Florida" paragraph includes the statement that, "We have found that by the removal of top Klan officers and provoking scandal within the state Klan organization through our informants, the Klan in a particular area can be rendered ineffective."²⁷⁴ This sentence, although somewhat buried should, if focused upon, have alerted the recipients to actions going beyond normal investigative activity. Other references are more vague, referring only to "containing the growth" or "controlling the expansion" of state Klans.²⁷⁵ There is no record of any reply to this letter, which Clark does not remember receiving:

Did [these phrases in the letter] put me on notice? No. Why? I either did not read them, or if I did read them, didn't read them carefully. . . . I think I didn't read this. I think perhaps I had asked for it for someone else, and either bucked it on to them or never saw it.²⁷⁶

²⁷² Memorandum from Director, FBI to the Attorney General, 12/19/67, p. 1.

²⁷³ Memorandum from Director, FBI to the Attorney General, 2/19/67, p. 4.

²⁷⁴ Memorandum from Director, FBI to the Attorney General, 12/19/67, p. 8.

²⁷⁵ The paragraph under the subheading "Tennessee" includes the statement that, through a highly placed Bureau informant, "we were able to control the expansion of the Klan." The paragraphs under the subheading "Virginia" states that, after the United Klans of America began an intensive organizational effort in the state, "We immediately began an all-out effort to penetrate the Virginia Klan, contain its growth, and deter violence." The specific examples given, however, are *not* COINTELPRO actions, but liaison with state and local authorities, prosecution, cooperation with the Governor, and warning a civil rights worker of a plot against his life. The paragraph under the subheading "Illinois" contains nothing relating to COINTELPRO activities, but refers to cooperation with state authorities in the prosecution of a Klan official for a series of bombings. (Memorandum from Director, FBI, to the Attorney General, 12/19/67, pp. 8-10.)

²⁷⁶ Clark, 12/3/75, Hearings, Vol. 6, p. 285.

He added, "I think that any disruptive activities, such as those you reveal, regarding the COINTEL program and the Ku Klux Klan, should be absolutely prohibited and subjected to criminal prosecution."²⁷⁷

Finally, on September 17, 1969, a letter was sent to Attorney General Mitchell, with copies to the Deputy Attorney General and the Assistant Attorneys General of the Criminal Division, Internal Security Division, and Civil Division, captioned "INVESTIGATION OF KLAN ORGANIZATIONS—RACIAL MATTERS (KLAN)," which informs the recipients of the "significant progress we have recently made in our investigation of the Ku Klux Klan." The one page letter states that, "during the last several months,²⁷⁸ while various national and state leaders of the United Klan of America remain in prison, we have attempted to negate the activities of the temporary leaders of the Ku Klux Klan."²⁷⁹

The only example given is the "careful use and instruction of selected racial informants" to "initiate a split within the United Klans of America." This split was evidenced by a Klan rally during which "approximately 150 Klan membership cards were tacked to a cross and burned to signify this breach."²⁸⁰

The letter concludes, "We will continue to give full attention to our responsibilities in an effort to accomplish the maximum possible neutralization of the Klan."²⁸¹ There is no record of any replies to these letters.

While the only documentary evidence that members of the executive branch were informed of the existence of any COINTELPRO has been set forth above, the COINTELPRO unit chief stated that he was certain that Director Hoover orally briefed every Attorney General and President, since he wrote "squibs" for the Director to use in such briefings. He could not, however, remember the dates or subject matter of the briefings, and the Bureau was unable to produce any such "squibs" (which would not, in any case, have been routinely saved). Cartha DeLoach, former Assistant to the Director, testified that he "distinctly" recalled briefing Attorney General Clark, "generally . . . concerning COINTELPRO."²⁸² Clark denied that DeLoach's testimony was either true or accurate, adding "I do not believe that he briefed me on anything even, as he says, generally concerning COINTELPRO, whatever that means."²⁸³ The Bureau has failed to produce any memoranda of such oral briefings, although it was the habit of both Director Hoover and DeLoach to write memoranda for the files in such situations.²⁸⁴

2. The Cabinet

The Bureau has furnished the Committee a portion of a briefing paper prepared for Director Hoover for his briefing of the Cabinet,

²⁷⁷ Clark, 12/3/75, Hearings, p. 221.

²⁷⁸ The White Hate COINTELPRO had been going on for five years.

²⁷⁹ Memorandum from Director, FBI to the Attorney General, 9/17/69.

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

²⁸² DeLoach, 12/8/75, Hearings, Vol. 6, p. 183.

²⁸³ Clark, 12/3/75, Hearings, Vol. 6, p. 232.

²⁸⁴ Unit Chief, 10/14/75, p. 180; and 10/21/75, p. 42.

presided over by President Eisenhower, dated November 6, 1958. There is no transcript of the actual briefing. The briefing as a whole apparently dealt with, among other things, seven programs which are "part of our overall counterintelligence operations" and which are "specific answers to specific problems which have arisen within our investigative jurisdiction." Six of the programs apparently related to espionage. The seventh deals with the CPUSA:

To counteract a resurgence of Communist Party influence in the United States, we have a seventh program designed to intensify any confusion and dissatisfaction among its members. During the past few years, this program has been most effective. Selective informants were briefed and trained to raise controversial issues within the Party. In the process, many were able to advance themselves to higher positions. The Internal Revenue Service was furnished the names and addresses of Party functionaries who had been active in the underground apparatus. Based on this information, investigations were instituted in 262 possible income tax evasion cases. Anticomunist literature and simulated Party documents were mailed anonymously to carefully chosen members.²⁸⁵

This statement, although concise, would appear to be a fairly explicit notification of the existence of the CPUSA COINTELPRO. There are no documents reflecting any response.

3. Legislative Branch

The Bureau has furnished excerpts from briefing papers prepared for the Director in his annual appearances before the House Appropriations Subcommittee. During the hearings pertaining to fiscal years 1958, 1959, 1960, 1961, 1963, 1966, and 1967,²⁸⁶ these briefing papers were given to the Director to be used in top secret, off-the-record testimony relating to the CPUSA and White Hate COINTELPROs. No transcripts are available of the actual briefings, and it is, therefore, not possible to determine whether the briefing papers were used at all, or, conversely, whether the Director went beyond them to give additional information. Additionally, portions of the briefing papers are underlined by hand and portions have been crossed out, also by hand. Some sections are both underlined and crossed out. The Bureau has not been able to explain the meaning of the underlining or cross marks. However, if the briefing papers were used as written, the Subcommittee was informed of the existence of the CPUSA and Klan COINTELPROs.

The FY 1958 briefing paper is in outline form. Under the heading "auxiliary measures directed against Communist Party-USA" is a paragraph entitled "FBI counterintelligence program to exploit Party 'split':"

The Bureau also recently inaugurated a newly devised counterintelligence program which is designed to capitalize upon

²⁸⁵ Excerpt from FBI Director's briefing to the President and his cabinet, 11/6/58, pp. 35-36.

²⁸⁶ The actual dates of the hearings would be 1957, 1958, 1959, 1960, 1962, 1965, and 1966.

the "split" presently existing in the leadership of the Communist Party-USA. Among other objectives, efforts are being made by the Bureau, through informants and other techniques, to keep these rifts open, and to otherwise weaken the party where possible to do so in an anonymous manner. The Internal Revenue Service has been given the names of 336 communist underground subjects, so that the agency may be able to entertain prosecutions for filing of false income tax returns or other violations within the jurisdiction of that Service.

The FY 1959 briefing paper on the CPUSA deals primarily with informant penetration, but includes the statement that "to counteract [CPUSA] activities the FBI for years has had a planned intensive program designed to infiltrate, penetrate, disorganize, and disrupt the Communist Party, USA."²⁸⁷ In covering informant activities, the paper includes the statement "they [informants] have likewise worked to excellent advantage as a disruptive tactic."²⁸⁸ The one specific example cited has been deleted by the Bureau because it tends to identify an informant.

The FY 1960 briefing paper is even more explicit. The pertinent section is entitled "FBI's Anti-Communist Counterintelligence Program." It details use of informants to engage in controversial discussions "to promote dissension, factionalism and defections" which "have been extremely successful from a disruptive standpoint."²⁸⁹ One paragraph deals with propaganda mailings "carefully concealing the identity of the FBI as its source";²⁹⁰ another paragraph states that "Communist Party leaders are considerably concerned over this anonymous dissemination of literature."²⁹¹

The FY 1961 briefing paper, again titled "FBI's Counterintelligence Program", states that the program was devised "to promote dissension, factionalism and defections within the communist cause."²⁹² The only technique discussed (but at some length) is anonymous propaganda mailings. The effectiveness of the technique, according to the paper, was proven from the mouth of the enemy that the mailings "appear to be the greatest danger to the Communist Party, USA."²⁹³

The FY 1963 briefing paper, captioned "Counterintelligence Program," is extraordinarily explicit. It reveals that:

Since August, 1956, we have augmented our regular investigative operations against the Communist Party-USA with a "counterintelligence program" which involves the applica-

²⁸⁷ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1959, p. 54.

²⁸⁸ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1959, p. 58.

²⁸⁹ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1960, p. 76.

²⁹⁰ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1960, p. 76.

²⁹¹ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1960, p. 77.

²⁹² Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1961, p. 80.

²⁹³ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1961, p. 81.

tion of disruptive techniques and psychological warfare directed at discrediting and disrupting the operations of the Party, and causing disillusionment and defections within the communist ranks. The tangible results we are obtaining through these covert and extremely sensitive operations speak for themselves.²⁹¹

The paper goes on to set forth such techniques as disrupting meetings, rallies, and press conferences through causing the last-minute cancellation of the rental of the hall, packing the audience with anti-communists, arranging adverse publicity in the press, and giving friendly reporters "embarrassing questions" for Communists they interviewed. The briefing paper also mentions the use of newsmen to take photographs which show the close relationship between the leaders of the CPUSA and officials of the Soviet Union, using informants to sow discord and factionalism, exposing and discrediting Communists in such "legitimate organizations" as the YMCA and the Boy Scouts, and mailing anonymous propaganda.²⁹²

The briefing paper for FY 1966 again refers to "counterintelligence action:" "We have since 1956 carried on a sensitive program for the purpose of disrupting, exposing, discrediting, and otherwise neutralizing the Communist Party-USA and related organizations."²⁹³ The paper cites two examples. The first is an operation conducted against a Communist Party functionary who arrived in a (deleted) city to conduct a secret two-week Party school for local youth. The Bureau arranged for him to be greeted at the airport by local television newsmen. The functionary lost his temper, pushing the reporter away and swinging his briefcase at the cameraman, who was busily filming the entire incident. The film was later televised nationally. The second technique is described as "the most effective single blow ever dealt the organized communist movement." The description has been deleted "as it tends to reveal a highly sensitive technique."²⁹⁴ The COINTELPRO unit chief also stated that this one single action succeeded in causing a "radical decrease" in CPUSA membership, but refused to tell the Committee staff what that action was because it involved foreign counterintelligence.²⁹⁵

The final briefing paper, for FY 1967, refers to the CPUSA program and its expansion in 1964 to include "Klan and hate-type organizations and their memberships." It continues, "counterintelligence action today is a valuable adjunct to investigative responsibilities and the techniques used complement our investigations. All information related to the targeted organizations, their leadership and members, which is developed from a variety of sources, is carefully reviewed for its potential for use under this program."²⁹⁶

²⁹¹ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1963.

²⁹² Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1963.

²⁹³ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1966, p. 62. This is the first time the targeting of non-Party members can be inferred.

²⁹⁴ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1966, p. 63.

²⁹⁵ Unit chief, 10/10/76, p. 113.

²⁹⁶ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1967, p. 71.

Examples cited are the Bureau's preparation of a leaflet on the W.E.B. DuBois Clubs entitled "Target ... American Youth!" sponsored by the VFW; alerting owners of meeting locations to their use by Communists; alerting the Veterans Administration to a Klan member's full-time employment in order to reduce his pension, and the IRS to the fact that he failed to file tax returns; exposing the insurance kick back scheme also referred to in the 1965 letters to Watson and Katzenbach; and increasing informant coverage by duplicating a Klan business card given to prospective members.³⁰⁰

C. Outside the Bureau: Post-1971.

In the fall of 1973, the Department of Justice released certain COINTELPRO documents which had been requested by NBC reporter Carl Stern in a Freedom of Information Act request following the Media, Pennsylvania, break-in. In January 1974, Attorney General Saxbe asked Assistant Attorney General Henry Petersen to form an intra-departmental committee to study COINTELPRO and report back to him.³⁰¹ The committee was composed of both Department attorneys and Bureau agents. The Department lawyers did not work directly with Bureau documents; instead the Bureau prepared summaries of the documents in the COINTELPRO control file, which did not include the identities or affiliations of the targets, and the Department members were allowed to do a sample comparison to verify the accuracy of the summaries.

A revised and shortened version of the report of the Petersen Committee was made public in November 1974. The public report was prefaced by a statement from Attorney General Saxbe which stated that while "in a small number of instances, some of these programs involved what we consider today to be improper activities," most of the activities "were legitimate."³⁰² The public version did not examine the purposes or legality of the programs or the techniques, although it did state some COINTELPRO activities involved "isolated instances" of practices that "can only be considered abhorrent in a free society."³⁰²

The confidential report to Attorney General Saxbe examined the legal issues at some length. It emphasized that many COINTELPRO activities "were entirely proper and appropriate law enforcement procedures."³⁰³ These included the following:

notifying other Government authorities of civil and criminal violations of group members; interviewing such group members; disseminating public source material on such individuals and groups to media representatives; encouraging informants to argue against the use of violence by such groups; and issuing general public comment on the activities, policies

³⁰⁰ Excerpt from FBI Director's briefing of the House Appropriations Subcommittee, FY 1967, pp. 72-73.

³⁰¹ Although portions of the Committee's report were made public in April 1974, Petersen has testified that the purpose of the report was simply to inform the Attorney General. The inquiry was not intended to be conclusive and certainly was not an adversary proceeding. "We were doing a survey rather than conducting an investigation." (Henry Petersen testimony, 12/11/75, Hearing, Vol. 6, p. 271.)

³⁰² William Saxbe statement, Civil Rights and Constitutional Rights Subcommittee of the House Committee on the Judiciary, 11/20/74, p. 9.

³⁰³ Petersen committee report, CRRC Hearings, 11/20/74, p. 11.

³⁰⁴ Petersen committee report, CRRC, Hearings, 11/20/74, p. 26.

and objectives of such groups through testimony at legislative hearings and in other formal reports.³⁰⁴

On the other hand, the report concluded that many other COINTEL PRO activities designed to expose, disrupt, and neutralize domestic groups "exceeded the Bureau's investigative authority and may be said to constitute an unwarranted interference with First Amendment rights of free speech and associations of the target individuals and organizations."³⁰⁵

Department attorneys prepared two legal memoranda, one viewing COINTELPRO as a conspiracy to deprive persons of First Amendment rights under 18 U.S.C. 241, and the other rejecting that view.³⁰⁶ The committee itself reached the following conclusion:

While as a matter of pure legal theory it is arguable that these programs resulted in Section 241 violations, it is the view of the committee that any decision as to whether prosecution should be undertaken must also take into account several other important factors which bear upon the events in question. These factors are: first, the historical context in which the programs were conceived and executed by the Bureau in response to public and even Congressional demands for action to neutralize the self-proclaimed revolutionary aims and violence prone activities of extremist groups which posed a threat to the peace and tranquility of our cities in the mid and late sixties; second, the fact that each of the COINTEL PRO programs was personally approved and supported by the late Director of the FBI; and third, the fact that the interferences with First Amendment rights resulting from individual implemented program actions were insubstantial. Under these circumstances, it is the view of the committee that the opening of a criminal investigation of these matters is not warranted.³⁰⁷

The report also concluded that there were "substantial questions" as to the liability of various former and present officials to civil suit "under tort theories of defamation of interference with contract rights."³⁰⁸

The Departmental committee's crucial conclusion was that the interferences with First Amendment rights were "insubstantial." It appears to have reached that conclusion by ignoring the declared goals of the programs: cutting down group membership and preventing the "propagation" of a group's philosophy. Further, the committee brushed over dangerous or degrading techniques by breaking down the categories of actions into very small percentages, and then concluded that, if only 1 percent of the actions involved poison pen letters to spouses, then the activity was "insubstantial" as compared to the entirety of COINTEL proposals, even though, as to the individuals in that category, the invasion might be very substantial indeed.

³⁰⁴ Petersen Committee Report, pp. 20-27.

³⁰⁵ Petersen Committee Report, p. 27.

³⁰⁶ Petersen Committee Report, p. 21.

³⁰⁷ Petersen Committee Report, pp. 21-22.

³⁰⁸ Petersen Committee Report, p. 22.

Another weakness in the Petersen committee report is its characterization as legitimate of such techniques as "leaking" public source material to the media, interviewing group members, and notifying other government authorities of civil and criminal violations. The term "public source material" is misleading, since the FBI's files contain a large amount of so-called public source data (such as arrest records, outdated or inaccurate news stories) which should not be "leaked" outside the Bureau to discredit an individual.³⁰⁹ Interviews can be conducted in such an intrusive and persistent manner as to constitute harassment. Minor technical law violations can be magnified when uncovered and reported by the FBI to another agency for the purpose of disruption rather than objective law enforcement.³¹⁰ Claims that a technique is legitimate *per se* should not be accepted without examining the actual purpose and effect of the activity.

Although the Petersen committee's report concluded that "the opening of a criminal investigation of these matters is not warranted,"³¹¹ the Committee did recommend broad changes in Bureau procedures. First, the report urged that "a sharp distinction . . . be made between FBI activities in the area of foreign counterintelligence and those in the domestic field."³¹² The committee proposed that the Attorney General issue a directive to the FBI:

prohibiting it from instituting any counterintelligence program such as COINTELPRO without his prior knowledge and approval. Specifically, this directive should make it unmistakably clear that no disruptive action should be taken by the FBI in connection with its investigative responsibilities involving domestic based organizations, except those

³⁰⁹ For instance, the 20-years-past "Communist" activities of a target professor's wife were found in "public source material," as were the arrest records of a prominent civil rights leader. Both were leaked to "friendly" media on condition that the Bureau's interest not be revealed.

³¹⁰ See, e.g., the attempt to get an agent on the Alcohol Beverage Control Board to raid a Democratic Party fundraiser.

³¹¹ The Civil Rights Division refused to endorse this conclusion, although it was under heavy pressure from top Department executives to do so. Assistant Attorney General J. Stanley Pottinger was first informed of the Petersen committee report a week before its public release; and no official of the Civil Rights Division had previously examined any of the COINTELPRO materials or summaries. After the report's release, the Civil Rights Division was permitted a short time to review some of the materials. (Staff summary of interview with Assistant Attorney General Pottinger, 4/21/76.)

Under these restrictions the Civil Rights Division was not able to review "everything in the voluminous files," but rather conducted only a "general survey of the program unrelated to specific allegations of criminal violations." Assistant Attorney General Pottinger advised Attorney General Saxbe, upon the completion of this brief examination of COINTELPRO, that the Division found "no basis for making criminal charges against particular individuals or involving particular incidents." Although some of the acts reviewed appeared "to amount to technical violations," the Division concluded that "without more" information, prosecutive action would not be justified under its "normal criteria." However, Pottinger stressed that a "different prosecution judgment would be indicated if specific acts, more fully known and developed, could be evaluated in a complete factual context." (Memorandum from J. Stanley Pottinger, Assistant Attorney General, to Attorney General Saxbe, 12/13/74.)

³¹² Petersen Committee Report, Subcommittee on Civil and Constitutional Rights, Hearings, 11/20/74, p. 25.

which are sanctioned by rule of law, procedure, or judicially recognized and accepted police practices, and which are not in violation of state or federal law. The FBI should also be charged that in any event where a proposed action may be perceived, with reason, to unfairly affect the rights of citizens, it is the responsibility of the FBI as an institution and of FBI agents as individuals to seek legal advice from the Attorney General or his authorized representative.³¹³

Attorney General Saxbe did not issue such a directive, and the matter is still pending before Attorney General Levi.³¹⁴

VI. EPILOGUE

On April 1, 1976, Attorney General Levi announced the establishment of a special review committee within the Department of Justice to notify COINTELPRO victims that they were the subjects of FBI activities directed against them. Notification will be made "in those instances where the specific COINTELPRO activity was improper, actual harm may have occurred, and the subjects are not already aware that they were the targets of COINTELPRO activities."³¹⁵

The review committee has established guidelines for determining which COINTELPRO activities were "improper," but it will be difficult to make that determination without giving an official imprimatur to questionable activities which do not meet the notification criteria. For example, there is little point in notifying all recipients of anonymous reprint mailings that they received their copy of a *Reader's Digest* article from the FBI, but the Department should not suggest that the activity itself is a proper Bureau function. Other acts which fall within the "grey area" between COINTELPRO and aggressive investigation present similar problems.³¹⁶

Nevertheless, a Departmental notification program is an important step toward redressing the wrongs done, and carries with it some

³¹³ Petersen Committee Report, Subcommittee on Civil and Constitutional Rights hearings, 11/20/74, p. 28.

³¹⁴ Attorney General Levi has proposed a series of guidelines on domestic intelligence. A set of "preventive action" guidelines was prepared which would have authorized the Bureau to take "nonviolent emergency measures" to "obstruct or prevent" the use of force or violence upon the Attorney General's authorization. These guidelines have now been abandoned because the Attorney General determined that it was not possible to frame general language which would permit proper (and indeed ordinary) law enforcement measures such as increased guards around building or traffic control during a demonstration while preventing COINTELPRO type activity.

³¹⁵ Department of Justice release, 4/1/76.

³¹⁶ The notification guidelines read as follows:

1. The review of the COINTELPRO files should be conducted by the existing Shaheen committee.
2. An individual should be notified in those instances where an action directed against him was improper and, in addition, there is reason to believe he may have been caused actual harm. In making this determination in doubtful cases, the committee should resolve the question in favor of notification.
3. Excluded from notification should be those individuals who are known to be aware that they were the subjects of COINTELPRO activities.
4. An advisory group will be created to pass upon those instances where the committee is uncertain as to whether notification should be given, and otherwise to advise the committee as requested.
5. The manner of notification should be determined in each case to protect rights to privacy.

additional benefits. For the first time, Departmental attorneys will review the original files, rather than relying on Bureau-prepared summaries. Further, the Department will have acknowledged—finally—that COINTELPRO was wrong. Official repudiation of the programs is long overdue.

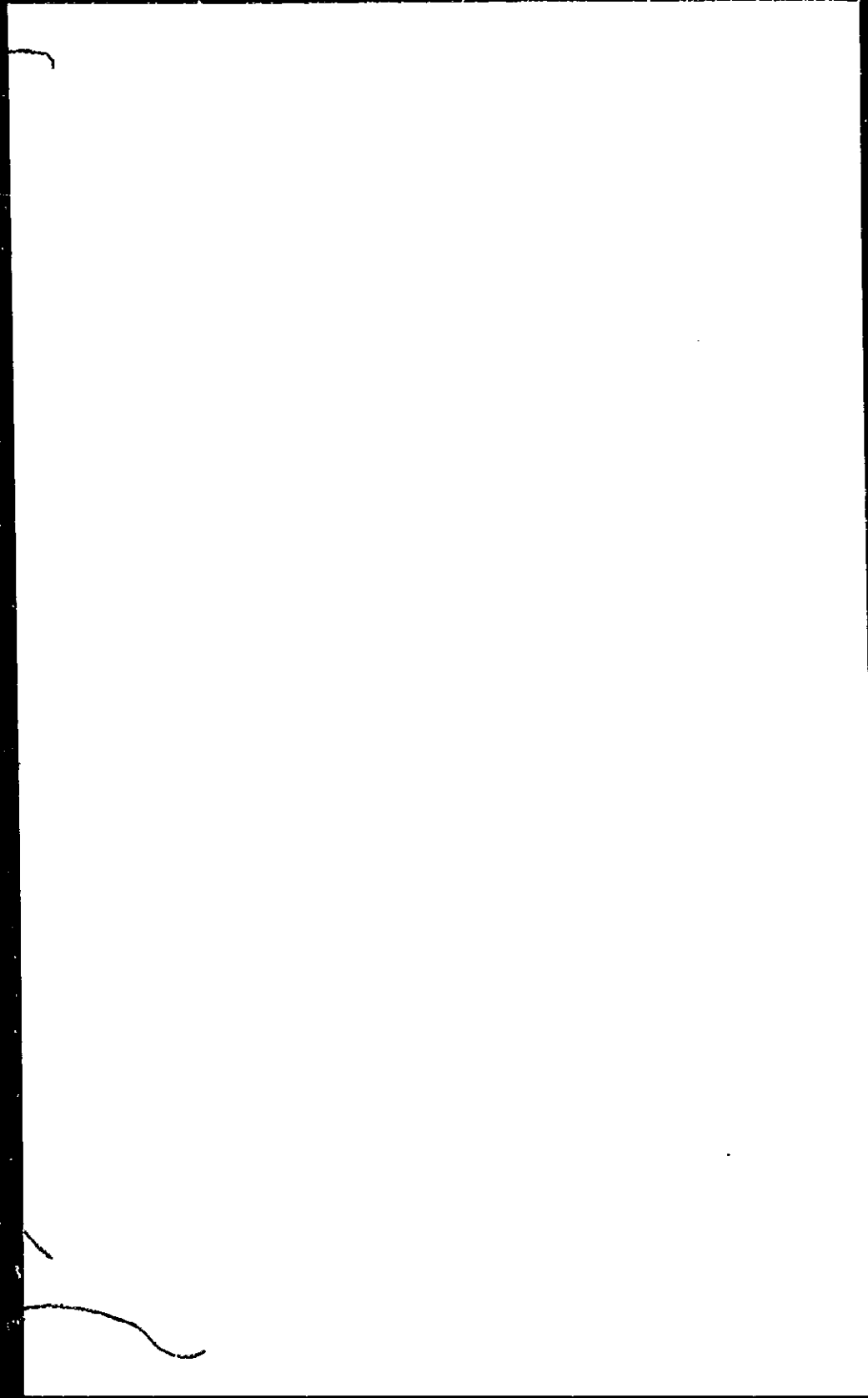
The American people need to be assured that never again will an agency of the government be permitted to conduct a secret war against those citizens it considers threats to the established order. Only a combination of legislative prohibition and Departmental control can guarantee that COINTELPRO will not happen again. The notification program is an auspicious beginning.

6. Notification should be given as the work of the committee proceeds, without waiting for the entire review to be completed.

7. In the event that the committee determines in the process of review that conduct suggests disciplinary action or referral of a matter to the Criminal or Civil Rights Divisions, the appropriate referral should be made.

8. No departure from these instructions will be made without the express approval of the Attorney General. The committee may request such departure only through and with the recommendation of the advisory group.

(Letter from Department of Justice to the Select Committee, 4/23/76.)



DR. MARTIN LUTHER KING, JR., CASE STUDY

CONTENTS

	Page
I. Introduction.....	81
II. The COMINFIL Investigation.....	86
III. Concern Increases in the FBI and the Kennedy Administration Over Allegations of Communist Influence in the Civil Rights Movement and the FBI Intensifies the Investigation: January 1962-October 1963: Introduction and Summary.....	94
A. The Justice Department warns Dr. King about advisers A and B: January 1962-June 1963.....	95
B. Allegations about Dr. King during hearings on the public accommodations bill and the administration's response: July 1963.....	98
C. The Attorney General considers a wiretap of Dr. King and rejects the idea: July 1963.....	100
D. The Attorney General voices concern over continuing FBI reports about Dr. King: July-August 1963.....	102
E. The FBI intensifies its investigation of alleged Communist influence in the civil rights movement: July-September 1963.....	104
IV. Electronic Surveillance of Dr. Martin Luther King and the Southern Christian Leadership Conference: Introduction and Summary....	111
A. Legal standards governing the FBI's duty to inform the Justice Department of wiretaps and microphones during the period of the Martin Luther King investigation.....	112
B. Wiretap surveillance of Dr. King and the SCLC: October 1963-June 1966.....	115
C. Microphone surveillance of Dr. King: January 1964-No- vember 1965.....	120
1. Reasons for the FBI's microphone surveillance of Dr. King.....	120
2. Evidence bearing on whether the Attorneys General authorized or knew about the microphone sur- veillance of Dr. King.....	123
a. Attorney General Robert F. Kennedy.....	124
b. Attorney General Nicholas deB. Katzenbach.....	126
V. The FBI's Effort to Discredit Dr. Martin Luther King, 1964: Intro- duction and Summary.....	131
A. The FBI disseminates the first King "Monograph" and At- torney General Kennedy orders it recalled: October 1963..	131
B. The FBI plans its campaign to discredit Dr. King: Decem- ber 23, 1963.....	133
C. William Sullivan proposes a plan to promote a new Negro leader: January 1964.....	135
D. FBI Headquarters orders the field offices to intensify efforts to discredit Dr. King: April-August 1964.....	137
E. Steps taken by the FBI in 1964 to discredit Dr. King....	140
1. Attempts to discredit Dr. King with the White House.....	140
2. Attempts to discredit Dr. King with the Congress..	140
3. Attempts to discredit Dr. King with universities.....	141
4. Attempts to discredit Dr. King with churches.....	142
5. Attempts to discredit Dr. King with the Pope.....	142
6. The attempt to discredit Dr. King during his receipt of the Nobel Peace Prize.....	143
7. Attempts to block Dr. King's publications.....	144
8. Attempt to undermine the National Science Founda- tion's cooperation with the SCLC.....	145
9. Unsuccessful FBI attempts to locate financial improprieties.....	145
F. The question of whether Government officials outside of the FBI were aware of the FBI's effort to discredit Dr. King..	146

	Page.
VI. The Hoover-King Controversy Becomes Public and a Truce is Called: April-December 1964: Summary.....	154
A. First steps in the public controversy: April-November 1964.....	155
B. Tapes are mailed to Dr. King: November 21, 1964.....	158
C. Attempts by the FBI to "leak" to reporters tape recordings embarrassing to Dr. King.....	161
D. Roy Wilkins of NAACP meets with DeLoach to disperse allegations about Dr. King: November 27, 1964.....	162
E. Dr. King and Director Hoover meet: December 1, 1964.....	163
F. Civil rights leaders attempt to dissuade the FBI from discrediting Dr. King: December 1964-May 1965.....	168
1. Farmer-DeLoach meeting: December 1, 1964.....	168
2. Young-Abernathy-DeLoach meeting: January 8, 1965.....	169
3. Carey-DeLoach meeting: May 19, 1965.....	171
VII. The FBI Program Against Dr. King: 1965-68:	
A. Major efforts to discredit Dr. King: 1965-68.....	172
1. Attempts to discredit Dr. King with churches.....	172
2. Attempts to discredit Dr. King with heads of Government agencies.....	173
3. Attempts to discredit Dr. King by using the press.....	174
4. Attempts to discredit Dr. King with major political and financial leaders.....	177
5. Attempts to discredit Dr. King with congressional leaders.....	178
B. COINTELPRO operations against Dr. King.....	179
C. The FBI's efforts to discredit Dr. King during his last months.....	180
D. Attempts to discredit Dr. King's reputation after his death.....	183
VIII. Conclusion.....	183

DR. MARTIN LUTHER KING, JR., CASE STUDY

I. INTRODUCTION

From December 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. We have used [similar] techniques against Soviet agents. [The same methods were] brought home against any organization against which we were targeted. We did not differentiate. This is a rough, tough business.¹

The FBI collected information about Dr. King's plans and activities through an extensive surveillance program, employing nearly every intelligence-gathering technique at the Bureau's disposal. Wiretaps, which were initially approved by Attorney General Robert F. Kennedy, were maintained on Dr. King's home telephone from October 1963 until mid-1965; the SCLC headquarters telephones were covered by wiretaps for an even longer period. Phones in the homes and offices of some of Dr. King's close advisers were also wiretapped. The FBI has acknowledged 16 occasions on which microphones were hidden in Dr. King's hotel and motel rooms in an "attempt" to obtain information about the "private activities of King and his advisers" for use to "completely discredit" them.²

FBI informants in the civil rights movement and reports from field offices kept the Bureau's headquarters informed of developments in the civil rights field. The FBI's presence was so intrusive that one major figure in the civil rights movement testified that his colleagues referred to themselves as members of "the FBI's golden record club."³

The FBI's formal program to discredit Dr. King with Government officials began with the distribution of a "monograph" which the FBI realized could "be regarded as a personal attack on Martin Luther King,"⁴ and which was subsequently described by a Justice Department official as "a personal diatribe . . . a personal attack without evidentiary support."⁵

Congressional leaders were warned "off the record" about alleged dangers posed by Reverend King. The FBI responded to Dr. King's receipt of the Nobel Peace Prize by attempting to undermine his reception by foreign heads of state and American ambassadors in the countries that he planned to visit. When Dr. King returned to the

¹ William Sullivan testimony, 11/1/75, p. 97.

² Memorandum from Frederick Baumgardner to William Sullivan, 1/28/64.

³ Andrew Young testimony, 2/19/70, p. 55.

⁴ Memorandum from Alan Belmont to Clyde Tolson, 10/17/68.

⁵ Burke Marshall testimony, 3/3/70, p. 32.

United States, steps were taken to reduce support for a huge banquet and a special "day" that were being planned in his honor.

The FBI's program to destroy Dr. King as the leader of the civil rights movement entailed attempts to discredit him with churches, universities, and the press. Steps were taken to convince the National Council of Churches, the Baptist World Alliance, and leading Protestant ministers to halt financial support of the Southern Christian Leadership Conference (SCLC), and to persuade them that "Negro leaders should completely isolate King and remove him from the role he is now occupying in civil rights activities."⁶ When the FBI learned that Dr. King intended to visit the Pope, an agent was dispatched to persuade Francis Cardinal Spellman to warn the Pope about "the likely embarrassment that may result to the Pope should he grant King an audience."⁷ The FBI sought to influence universities to withhold honorary degrees from Dr. King. Attempts were made to prevent the publication of articles favorable to Dr. King and to find "friendly" news sources that would print unfavorable articles. The FBI offered to play for reporters tape recordings allegedly made from microphone surveillance of Dr. King's hotel rooms.

The FBI mailed Dr. King a tape recording made from its microphone coverage. According to the Chief of the FBI's Domestic Intelligence Division, the tape was intended to precipitate a separation between Dr. King and his wife in the belief that the separation would reduce Dr. King's stature.⁸ The tape recording was accompanied by a note which Dr. King and his advisers interpreted as a threat to release the tape recording unless Dr. King committed suicide. The FBI also made preparations to promote someone "to assume the role of leadership of the Negro people when King has been completely discredited."⁹

The campaign against Dr. King included attempts to destroy the Southern Christian Leadership Conference by cutting off its sources of funds. The FBI considered, and on some occasions executed, plans to cut off the support of some of the SCLC's major contributors, including religious organizations, a labor union, and donors of grants such as the Ford Foundation. One FBI field office recommended that the FBI send letters to the SCLC's donors over Dr. King's forged signature warning them that the SCLC was under investigation by the Internal Revenue Service. The IRS files on Dr. King and the SCLC were carefully scrutinized for financial irregularities. For over a year, the FBI unsuccessfully attempted to establish that Dr. King had a secret foreign bank account in which he was sequestering funds.

The FBI campaign to discredit and destroy Dr. King was marked by extreme personal vindictiveness. As early as 1962, Director Hoover penned on an FBI memorandum, "King is no good."¹⁰ 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

⁶ Memorandum from William Sullivan to Alan Belmont, 12/16/64.

⁷ Memorandum from Frederick Baumgardner to William Sullivan, 3/31/64, p. 1.

⁸ William Sullivan testimony, 11/1/75, pp. 104-105.

⁹ Memorandum from William Sullivan to Alan Belmont, 1/8/64.

¹⁰ Memorandum from James Bland to William Sullivan, 2/3/62.

God almighty, I'm free at last.'"¹⁰ The FBI's Domestic Intelligence Division described this "demagogic speech" as yet more evidence that Dr. King was "the most dangerous and effective Negro leader in the country."¹¹ Shortly afterward, *Time* magazine chose Dr. King as the "Man of the Year," an honor which elicited Director Hoover's comment that "they had to dig deep in the garbage to come up with this one."¹² Hoover wrote "astounding" across the memorandum informing him that Dr. King had been granted an audience with the Pope despite the FBI's efforts to prevent such a meeting. The depth of Director Hoover's bitterness toward Dr. King, a bitterness which he had effectively communicated to his subordinates in the FBI, was apparent from the FBI's attempts to sully Dr. King's reputation long after his death. Plans were made to "brief" congressional leaders in 1969 to prevent the passage of a "Martin Luther King Day." In 1970, Director Hoover told reporters that Dr. King was the "last one in the world who should ever have received" the Nobel Peace Prize.¹³

The extent to which Government officials outside of the FBI must bear responsibility for the FBI's campaign to discredit Dr. King is not clear. Government officials outside of the FBI were not aware of most of the specific FBI actions to discredit Dr. King. Officials in the Justice Department and White House were aware, however, that the FBI was conducting an intelligence investigation, not a criminal investigation, of Dr. King; that the FBI had written authorization from the Attorney General to wiretap Dr. King and the SCLC offices in New York and Washington; and that the FBI reports on Dr. King contained considerable information of a political and personal nature which was "irrelevant and spurious" to the stated reasons for the investigation.¹⁴ Those high executive branch officials were also aware that the FBI was disseminating vicious characterizations of Dr. King within the Government; that the FBI had tape recordings embarrassing to Dr. King which it had offered to play to a White House official and to reporters; and that the FBI had offered to "leak" to reporters highly damaging accusations about some of Dr. King's advisers were communists. Although some of those officials did ask top FBI officials about these charges, they did not inquire further after receiving false denials. In light of what those officials did know about the FBI's conduct toward Dr. King, they were remiss in failing to take appropriate steps to curb the Bureau's behavior. To the extent that their neglect permitted the Bureau's activities to go on unchecked, those officials must share responsibility for what occurred.

The FBI now agrees that its efforts to discredit Dr. King were unjustified. The present Deputy Associate Director (Investigation) testified:

Mr. ADAMS. There were approximately twenty-five incidents of actions taken [to discredit Dr. King] . . . I see no statutory basis or no basis of justification for the activity.

The CHAIRMAN. Was Dr. King, in his advocacy of equal

¹⁰ Speech delivered by Dr. Martin Luther King during the March on Washington, 8/28/63.

¹¹ Memorandum from William Sullivan to Alan Belmont, 8/30/63, p. 1.

¹² Hoover note on United Press International release, 12/20/63.

¹³ *Time* magazine, 12/14/70.

¹⁴ Bill Moyers testimony, 7/2/70, pp. 17-18.

rights for black citizens, advocating a course of action that in the opinion of the FBI constituted a crime?

Mr. ADAMS. No, sir.

The CHAIRMAN. He was preaching non-violence was he not, as a method of achieving equal rights for black citizens?

Mr. ADAMS. That's right . . . Now as far as the activities which you are asking about, the discrediting, I know of no basis for that and I will not attempt to justify it.¹⁵

The FBI conducted its investigation of Dr. King and the SCLC under an FBI manual provision—called COMINFIL—permitting the investigation of legitimate noncommunist organizations, suspected by the FBI of having been infiltrated by communists, to determine the extent, if any, of communist influence. The FBI's investigation was based on its concern that Dr. King was being influenced by two persons—hereinafter referred to as Adviser A and Adviser B—that the Bureau believed were members of the Communist Party.

Officials in the Justice Department relied on the FBI's representations that both of these advisers were communists, that they were in a position to influence Dr. King, and that Adviser A in fact exercised some influence in preparing Dr. King's speeches and publications. Burke Marshall, Assistant Attorney General for Civil Rights from 1961–1965, testified that he “never had any reason to doubt [the FBI's] allegations concerning [Adviser A].” He recalled that the charges about Adviser A were “grave and serious,” and said that he believed Attorney General Kennedy had permitted the investigation to proceed because:

Stopping the investigation in light of those circumstances would have run the risk that there would have been a lot of complaints that the Bureau had been blocked for political reasons from investigating serious charges about communist infiltration in the civil rights movement.¹⁷

Edwin Guthman, Press Secretary for the Justice Department from 1961 through 1964, testified that Attorney General Robert Kennedy “viewed this as a serious matter,” that he did not recall “that any of us doubted that the FBI knew what it was talking about,” and that although the question of whether Adviser A was influencing Dr. King was never fully answered “we accepted pretty much what the FBI reported as being accurate.”¹⁸

We have been unable to reach a conclusion concerning the accuracy of the FBI's charges that the two Advisers were members of the Communist Party, USA or under the control of the Party during the FBI's COMINFIL investigation. However, FBI files do contain information that Adviser A and Adviser B had been members of the Communist Party at some point prior to the opening of the COMINFIL investigation in October 1962. FBI documents provided to the Committee to support the Bureau's claim that both men were members of the Communist Party at the time the COMINFIL investigation was opened are inconclusive. Moreover, the FBI has stated that it cannot

¹⁵ James Adams testimony, 11/19/76, Hearings, Vol. 6, p. 65.

¹⁶ Marshall, 3/3/70, p. 55.

¹⁷ Edwin Guthman testimony, 3/10/70, p. 10.

provide the Committee with the full factual basis for its charges on the grounds that to do so would compromise informants of continuing use to the Bureau.

Without access to the factual evidence, we are unable to conclude whether either of those two Advisers was connected with the Communist Party when the "case" was opened in 1962, or at any time thereafter. We have seen no evidence establishing that either of those Advisers attempted to exploit the civil rights movement to carry out the plans of the Communist Party.

In any event, the FBI has stated that at no time did it have any evidence that Dr. King himself was a communist or connected with the Communist Party. Dr. King repeatedly criticized Marxist philosophies in his writing and speeches. The present Deputy Associate Director of the FBI's Domestic Intelligence Division, when asked by the Committee if the FBI ever concluded that Dr. King was a communist, testified, "No, sir, we did not."²⁰

The FBI's COMINFIL investigation appears to have centered almost entirely on discussions among Dr. King and his advisers about proposed civil rights activities rather than on whether those advisers were in fact agents of the Communist Party. Although the FBI conducted disruptive programs—COINTELPROs—against alleged communists whom it believed were attempting to influence civil rights organizations, the Bureau did not undertake to discredit the individual whom it considered Dr. King's most "dangerous" adviser until more than four years after opening the COMINFIL investigation.²¹ Moreover, when a field office reported to FBI headquarters in 1964 that the Adviser was not then under the influence and control of the Communist Party, the FBI did not curtail either its investigations or discrediting program against Dr. King, and we have no indication that the Bureau informed the Justice Department of this finding.²² Rather than trying to discredit the alleged communists it believed were attempting to influence Dr. King, the Bureau adopted the curious tactic of trying to discredit the supposed target of Communist Party interest—Dr. King himself.

Allegations of communist influence on Dr. King's organization must not divert attention from the fact that, as the FBI now states, its activities were unjustified and improper. In light of the Bureau's remarks about Dr. King, its reactions to his criticisms, the viciousness of its campaign to destroy him, and its failure to take comparable measures against the Advisers that it believed were communists, it is highly questionable whether the FBI's stated motivation was valid. It was certainly not justification for continuing the investigation of Dr. King for over six years, or for carrying out the attempts to destroy him.

Our investigation indicates that FBI officials believed that some of Dr. King's personal conduct was improper. Part of the FBI's efforts to undermine Dr. King's reputation involved attempts to persuade Government officials that Dr. King's personal behavior would be an embarrassment to them. The Committee did not investigate Dr. King's

²⁰ Adm. r. 11/10/76. Hearings, Vol. 6, p. 60.

²¹ Airtel from FBI Director to New York Office, 3/18/66.

²² Memorandum from SAC, New York to Director, FBI, 4/14/64.

personal life, since such a subject has no proper place in our investigation. Moreover, in order to preclude any further dissemination of information obtained during the electronic surveillances of Dr. King, the Committee requested the FBI to excise from all documents submitted to the Committee any information which was so obtained. We raise the issue of Dr. King's private life here only because it may have played a part in forming the attitudes of certain FBI and administration officials toward Dr. King.

Many documents which we examined contained allegations about the political affiliations and morality of numerous individuals. We have attempted to be sensitive to the privacy interests of those individuals, and have taken care not to advance the effort to discredit them. We have excised many of the Bureau's characterizations from the documents quoted in this report. In some cases, however, in order fully to explain the story, it was judged necessary to quote extensively from Bureau reports, even though they contain unsupported allegations. We caution the reader not to accept these allegations on their face, but rather to read them as part of a shameful chapter in the nation's history.

The reader is also reminded that we did not conduct an investigation into the assassination of Dr. King. In the course of investigating the FBI's attempts to discredit Dr. King, we came across no indication that the FBI was in any way involved in the assassination.

II. THE COMINFIL INVESTIGATION

In October 1962 the FBI opened its investigation of the Southern Christian Leadership Conference and of its president, Dr. Martin Luther King, Jr. The investigation was conducted under an FBI manual provision captioned "COMINFIL"—an acronym for communist infiltration—which authorized investigations of legitimate noncommunist organizations which the FBI believed to be influenced by communist party members in order to determine the extent of the alleged communist influence.²³ These wide-ranging investigations were

²³ FBI Manual Section 87e. The Section in effect at the time the FBI initiated its investigation of Dr. King and the SCLC was captioned, "Legitimate Noncommunist Organizations that are Communist Infiltrated," and provided in part:

"(1) No investigation should be conducted without prior Bureau approval.
 "(2) Investigations should be handled most discreetly by experienced agents.
 "Advise Bureau promptly under caption 'COMINFIL (name of organization)' when one of the following exists and include your recommendation for instituting an investigation.

"(a) The Communist Party has specifically instructed its members to infiltrate the organization.

"(b) Communist Party members have infiltrated the organization in sufficient strength to influence or control the organization.

"(7) Data concerning following topics should be fully developed and reported on:

"(a) Basis for investigation and fact that our investigation is directed solely toward establishing extent of Communist Party infiltration, or that organization is specific target for infiltration, and that Bureau is not investigating legitimate activities of organization.

"(b) Address of organization.

"(c) Brief characterization of organization, including total membership.

"(d) Principal officers of organization.

conducted with the knowledge of the Attorney General and were predicated on vague executive directives and broad statutes.²⁴

The FBI kept close watch on Dr. King and the SCLC long before opening its formal investigation. FBI Director J. Edgar Hoover reacted to the formation of the SCLC in 1957 by reminding agents in the field of the need for vigilance:

In the absence of any indication that the Communist Party has attempted, or is attempting, to infiltrate this organization you should conduct no investigation in this matter. However, in view of the stated purpose of the organization, you should remain alert for public source information concerning it in connection with the racial situation.²⁵

In May 1962 the FBI had included Dr. King on "Section A of the Reserve Index" as a person to be rounded up and detained in the event of a "national emergency."²⁶ During this same period the FBI

"(e) Communist Party program to infiltrate this organization and influence its policy.

"(f) Results of this program, including Communist Party affiliations of officers and members."

Clarence Kelley, the present Director of the FBI, was asked by the Committee:

"Taking the current manual and trying to understand its applicability laid against the facts in the Martin Luther King case, under section 87 permission is granted to open investigations of the influence of non-subversive groups, and the first sentence reads: 'When information is received indicating that a subversive group is seeking to systematically infiltrate and control a non-subversive group or organization, an investigation can be opened.'"

"Now, I take it that is the same standard that was used in opening the investigation of the Southern Christian Leadership Conference in the 1960's. so that investigation could still be opened today under the current FBI manual?"

Mr. KELLEY. "I think so."

(Clarence Kelley testimony, 12/10/75, Hearings, Vol. 6, p. 308.)

²⁴ See Report on the Development of FBI Domestic Investigations, p. 470.

²⁵ Memorandum from Director, FBI to Special Agent in Charge, Atlanta, 9/20/57. The "stated purpose" of the SCLC was to organize a register-and-vote campaign among Negroes in the South. (Trezza Anderson, *Pittsburgh Courier*, 8/17/57.) Considerable "public source" information was recorded in FBI files both before and after this date.

²⁶ The action memorandum stated that Dr. King's name "should be placed in Section A of the Reserve Index and tabbed communist." (Memorandum from Director, FBI, to SAC, Atlanta, 5/11/62.) Persons to be listed in Section A of the Reserve Index were described by the FBI as people "who in time of national emergency, are in a position to influence others against the national interest or are likely to furnish material financial aid to subversive elements due to their subversive associations and ideology." The types of persons to be listed in Section A included:

"(a) Professors, teachers or leaders;

"(b) Labor union organizers or leaders;

"(c) Writers, lecturers, newsmen, entertainers, and others in the mass media field;

"(d) Lawyers, doctors, and scientists;

"(e) Other potentially influential persons on a local or national level;

"(f) Individuals who could potentially furnish material financial aid." See Committee staff report on Development of FBI Domestic Intelligence Investigations.

Dr. King was placed on the Reserve Index despite the fact that as late as November 1961 the Atlanta Field Office had advised FBI Headquarters that there was "no information on which to base a security matter inquiry." (Airtel from SAC, Atlanta, to Director, FBI, 11/21/61.)

ordered its field offices to review their files for "subversive" information about Dr. King and to submit that information to FBI headquarters in reports "suitable for dissemination."²⁷

The Bureau had apparently also been engaged in an extensive surveillance of Dr. King's civil rights activities since the late 1950s under an FBI program called "Racial Matters." This program, which was unrelated to COMINFIL, required the collection of "all pertinent information" about the "proposed or actual activities" of individuals and organizations "in the racial field."²⁸ Surveillance of Dr. King's civil rights activities continued under the Racial Matters program after the COMINFIL case was opened. Indeed, the October 1962 memorandum which authorized the COMINFIL case specifically provided that "any information developed concerning the integration or racial activities of the SCLC must [also] be reported [under a] Racial Matters caption."²⁹

The first FBI allegations that the Communist Party was attempting to infiltrate the SCLC appeared in a report from the FBI to Attorney General Robert F. Kennedy, dated January 8, 1962.³⁰ The report stated that one of Dr. King's advisers—hereinafter referred to as "Adviser A"—was a "member of the Communist Party, USA."³¹ Within a few months FBI reports were describing another of Dr. King's associates—hereinafter referred to as "Adviser B"—as a "member of the National Committee of the Communist Party."³² The allegations concerning these two individuals formed the basis for opening the COMINFIL investigation in October 1962.

It is unclear why the FBI waited nine months to open the COMINFIL investigation.³³ The Bureau might have been hoping to acquire new information from microphone and wiretap surveillance of Adviser A's office, which was initiated in March 1962.³⁴ However, it does

²⁷ Memorandum from Director, FBI to SAC, Atlanta, 2/27/62. The instructions did not define what was meant by "subversive." Reports from field offices during the ensuing months considered as "subversive" such information as the fact that Dr. King had been one of 350 signers of a petition to abolish the House Committee on Un-American Activities. (FBI Report, New York, 4/13/62.) These instructions to the field were issued on the first day of Dr. King's trial in which he and seven hundred other civil rights demonstrators were charged in Albany, Georgia, with parading without a permit. (Atlanta Constitution, 2/28/62, p. 1.)

²⁸ FBI Manual Section 122, p. 5. This policy was later interpreted as requiring "coverage" of demonstrations, meetings, "or any other pertinent information concerning racial activity." (Memorandum from Director, FBI to SAC, Atlanta, 6/27/63.)

²⁹ Memorandum from Director, FBI, to SAC, Atlanta, 10/23/62, p. 2.

³⁰ On the same day the Southern Regional Counsel—a respected civil rights study group—issued a report criticizing the Bureau's inaction during civil rights demonstrations that were then occurring in Albany, Georgia. This report is discussed at pp. 89-90.

³¹ Memorandum from Director, FBI, to Attorney General, 1/5/62.

³² Memorandum from Frederick Baumgardner to William Sullivan, 10/22/62.

³³ FBI headquarters first requested the field offices for recommendations concerning whether a COMINFIL investigation should be opened on July 20, 1962. This was the same day on which officials in Albany, Georgia, sought a judicial ban against demonstrations led by Dr. King, alleging that Negroes had been endangering the lives of police officers "and agents of the Federal Bureau of Investigation." (New York Times, 7/22/62.)

³⁴ A microphone was installed in Adviser A's office on March 10, 1962 (Airtel from SAC, New York to Director, FBI, 3/10/62) and a wiretap was installed on his office telephone on 3/20/62 (Airtel from SAC, New York to Director, FBI, 3/20/62). The wiretap was authorized by the Attorney General (Memorandum from Director, FBI to Attorney General, 3/6/62). The microphone was approved

not appear that these surveillances collected any additional information bearing on the FBI's characterization of Adviser A as a "communist."

Despite the goals and procedures outlined in the COMINFIL section of the FBI Manual, the Bureau's investigation of Dr. King did not focus on whether any of his advisers were acting under Communist Party discipline and control or were working to enable the Communist Party to influence or control the SCLC.³⁵ The microphone which had been installed in Adviser A's office in March 1962 was discontinued before the COMINFIL investigation began,³⁶ and, although wiretap coverage of Adviser A continued—and even intensified³⁷—the information obtained appears to have related solely to his advice to Dr. King concerning the civil rights movement and not at all to the alleged Communist Party origins of that advice.³⁸ Two FBI reports prepared in succeeding years which summarize the FBI's information about Adviser A do not contain evidence substantiating his purported relationship with the Communist Party.³⁹

Without full access to the Bureau's files, the Committee cannot determine whether the FBI's decision to initiate a COMINFIL investigation was motivated solely by sincere concerns about alleged communist infiltration, or whether it was in part influenced by Director Hoover's animosity toward Dr. King. The FBI Director's sensitivity to criticism and his attitude toward Dr. King are documented in several events which occurred during the period when the FBI was considering initiating the COMINFIL investigation.

As early as February 1962, Director Hoover wrote on a memorandum that Dr. King was "no good."⁴⁰

In January 1962 an organization called the Southern Regional Council issued a report criticizing the Bureau's inaction during civil rights demonstrations in Albany, Georgia.⁴¹ An updated version of that report was released in November 1962. A section entitled "Where was the Federal Government" made the following observations about the FBI:

only at the FBI division level (Memorandum from James Bland to William Sullivan, 3/2/62).

³⁵ FBI Manual Section 97, pp. 12-13, 83-85. Former Assistant Director Sullivan testified: "If a man is not under the discipline and control of the Communist Party, ipso facto he is not really a member of the Communist Party. The Party demands the man's complete discipline, the right of complete discipline over a Party member. That is why they have the graduations, you see, the fellow traveler, not a Party member, because he would not accept the entire discipline of the Party. The sympathizer, another graduation of it, what we call the dupe, the victim of Communist fronts and so forth. The key—I am glad you raised this question—the key to membership is does this man accept completely the Party discipline. If he does not, he is not regarded as a genuine member." (Sullivan, 11/1/75, p. 18.)

³⁶ It was discontinued on August 10, 1962. See Airtels from SAC, New York to Director, FBI, 8/10/62 and 11/15/62, and Memorandum from Director, FBI to SAC, New York, 11/23/62.

³⁷ The Attorney General authorized a wiretap on Adviser A's home telephone in November 1962 (Memorandum from Director, FBI to Attorney General, 11/20/62).

³⁸ E.g., Memorandum from Director, FBI, to Attorney General Kennedy.

³⁹ Indeed, in April 1964 a field office reported that Adviser A was not under the influence of the Communist Party. Memorandum from SAC New York to Director, FBI, 4/14/64.

⁴⁰ Memorandum from James Bland to William Sullivan, 2/8/62.

⁴¹ Special Report, Southern Regional Council, 1/8/62.

—There is a considerable amount of distrust among Albany Negroes for local members of the Federal Bureau of Investigation.

—With all the clear violations by local police of constitutional rights, with undisputed evidence of beatings by sheriffs and deputy sheriffs, the FBI has not made a single arrest on behalf of Negro citizens.

—The FBI has [taken] dozens of affidavits from Negro citizens complaining that their constitutional rights had been violated by city and county officials. But eight months later, there was no sign of action on these charges.

—The FBI is most effective in solving ordinary crimes, and perhaps it should stick to that.⁴²

Newspaper coverage of the report's allegations were forwarded to Bureau headquarters by the Atlantic office. Although Bureau rules required prompt investigation of allegations such as those in the Southern Regional Council's Report, no investigation was undertaken.⁴³ Before even receiving the full report, Bureau officials were describing it as "slanted and biased," and were searching their files for information about the report's author.⁴⁴

Shortly after the Report was issued, newspapers quoted Dr. King as saying that he agreed with the Report's conclusions that the FBI had not vigorously investigated civil rights violations in Albany. Dr. King reportedly stated:

One of the great problems we face with the FBI in the South is that the agents are white Southerners who have been influenced by the mores of the community. To maintain their status, they have to be friendly with the local police and people who are promoting segregation.

Every time I saw FBI men in Albany, they were with the local police force.⁴⁵

FBI headquarters was immediately notified of Dr. King's remarks.⁴⁶ After noting that Dr. King's comments "would appear to dovetail with information . . . indicating that King's advisors are Communist Party (CP) members and he is under the domination of

⁴² "Albany, A Study of Racial Responsibility," Southern Regional Council, 11/14/62.

⁴³ Item #17, FBI Response to Senate Select Committee, 10/15/75. FBI rules provided that allegations about Bureau misconduct had to be investigated and that "every logical lead which will establish the true facts should be completely run out unless such action would embarrass the Bureau. . . ."

⁴⁴ Memorandum from Alex Resca to Alan Belmont, 11/15/62. The updated report was received at headquarters on December 5, 1962. (Memorandum from SAC, Atlanta to Director, FBI, 12/4/62.)

⁴⁵ *Atlanta Constitution*, 11/19/62, p. 1b. In 1961 a report issued by the U.S. Commission on Civil Rights, entitled "Justice," had addressed the problem of FBI agents investigating local law enforcement officials and reached a similar conclusion, including mistrust of the FBI by southern Blacks.

⁴⁶ Memorandum from SAC, Atlanta, to Director, FBI, 11/10/62.

the CP," "Bureau officials decided to contact Dr. King in an effort to "set him straight."⁴⁸

The FBI's effort to contact Dr. King consisted of a telephone call to the SCLC office in Atlanta by Cartha D. DeLoach, head of the FBI's Crime Records Division, and one by the Atlanta Special Agent in Charge. Both calls were answered by secretaries who promised to ask Dr. King to return the calls. When Dr. King did not respond, DeLoach observed:

It would appear obvious that Rev. King does not desire to be told the true facts. He obviously used deceit, lies, and treachery as propaganda to further his own causes . . . I see no further need to contacting Rev. King as he obviously does not desire to be given the truth. The fact that he is a vicious liar is amply demonstrated in the fact he constantly associates with and takes instructions from [a] . . . member of the Communist Party.⁴⁹

Two years later—in late 1964—the Director was refusing to meet with Dr. King because "I gave him that opportunity once and he ignored it."⁵⁰

William Sullivan, who was head of the Domestic Intelligence Division during the investigation of Dr. King, testified:

[Director Hoover] was very upset about the criticism that King made publicly about our failure to protect the Negro in the South against violations of the Negro civil liberties, and King on a number of occasions soundly criticized the Director. . . . Mr. Hoover was very distraught over these criticisms and so that would figure in it. . . . I think behind it all was the racial bias, the dislike of Negroes, the dislike of the civil rights movement. . . . I do not think he could rise above that.⁵¹

⁴⁸ Memorandum from Alex Rosen to Alan Belmont, 11/20/62.

⁴⁹ Memorandum from Alan Belmont to Clyde Tolson, 11/26/62. A decision was made that Dr. King should be contacted by both Assistant Director DeLoach and Assistant Director William Sullivan "in order that there will be a witness and there can be no charge of provincialism inasmuch as Cartha D. DeLoach comes from the South and Mr. Sullivan comes from the North." (*Ibid.*)

⁵⁰ Memorandum from Cartha DeLoach to John Mohr, 1/15/63. FBI officials also "interviewed" or otherwise contacted various newspaper publishers to set [them] straight" about Dr. King's remarks. (Memorandum from Alex Rosen to Alan Belmont, 1/17/63.) One of the publishers contacted was described as "impressed with the Director" and as being on the "Special Correspondents List." (Letter from Cartha DeLoach to one of the publishers, 11/29/62, p. 8.)

The FBI also took steps to "point out" the "evasive conduct of King" to the Attorney General and Civil Rights Commission. (Letter, FBI Director to Attorney General, 1/18/63; Letter, FBI to Staff Director—Commission on Civil Rights, 1/18/63.)

⁵¹ Note on memorandum from Frederick Baumgardner to William Sullivan, 11/20/64.

⁵² William Sullivan testimony, 11/1/75, p. 62. Sullivan's assessment must be viewed in light of the feud that subsequently developed between Sullivan and Hoover and which ultimately led to Sullivan's dismissal from the FBI. That feud is discussed in the committee's final report.

The FBI sent frequent reports about Dr. King's plans and activities to officials in both the Justice Department and the White House from the initiation of the COMINFIL investigation until Dr. King's death in 1968. Despite the fact that the investigation of Dr. King failed to produce evidence that Dr. King was a communist, or that he was being influenced to act in a way inimical to American interests, no responsible Government official ever asked the FBI to terminate the investigation. Their inaction appears to have stemmed from a belief that it was safer to permit the FBI to conduct the investigation than to stop the Bureau and run the risk of charges that the FBI was being muzzled for political reasons.

Burke Marshall testified that the "charges" made by the Bureau against Adviser A "were grave and serious." The Kennedy Administration had been outspoken in its support of Dr. King, and ordering the FBI to terminate its investigation would, in Marshall's opinion, "have run the risk" that there would have been a lot of complaints that the Bureau had been blocked for political reasons from investigating serious charges about communist infiltration in the civil rights movement.⁵²

Edwin O. Guthman, Press Chief for the Justice Department under Attorney General Kennedy, testified that Robert Kennedy viewed the charges about Adviser A:

as a serious matter and not in the interest of the country and not in the interest of the civil rights movement. . . . The question of whether he was influencing King and his contacts with King, that was a matter which was not fully decided, but in those days we accepted pretty much what the FBI reported as being accurate.⁵³

Guthman testified that he was told by Kennedy in 1968 that Kennedy had approved wiretap coverage of Dr. King's home and of two SCLC offices in October 1966 because "he felt that if he did not do it, Mr. Hoover would move to impede or block the passage of the Civil Rights Bill . . . and that he felt that he might as well settle the matter as to whether [Adviser A] did have the influence on King that the FBI contended. . . ." ⁵⁴ Attorney General Kennedy's reasons for approving the wiretaps are discussed at length in a subsequent chapter.⁵⁵ Of relevance here is the support which Guthman's observations lend to Marshall's recollection that Attorney General Kennedy permitted the COMINFIL investigation to continue from concern about the truth of the FBI's charges and about the political consequences of terminating the investigation.

The Johnson Administration's willingness to permit the FBI to continue its investigation of Dr. King also appears to have involved political considerations. Bill Moyers, President Johnson's assistant, testified that sometime around the spring of 1965 President Johnson "seemed satisfied that these allegations about Martin Luther King were not founded." Yet President Johnson did not order the investigation terminated. When asked the reason, Moyers explained that President Johnson:

⁵² Marshall, 8/8/70, p. 55.

⁵³ Edwin Guthman testimony, 8/10/76, p. 10.

⁵⁴ Guthman, 8/10/76, p. 5.

⁵⁵ See pp. 115-116

was very concerned that his embracing the civil rights movement and Martin Luther King personally would not backfire politically. He didn't want to have a southern racist Senator produce something that would be politically embarrassing to the President and to the civil rights movement. We had lots of conversations about that. . . . Johnson, as everybody knows, bordered on paranoia about his enemies or about being trapped by other people's activities over which he had no responsibility.⁵⁶

Intelligence reports submitted by the Bureau to the White House and the Justice Department contained considerable intelligence of potential political value to the Kennedy and Johnson Administrations. The Attorneys General were informed of meetings between Dr. King and his advisers, including the details of advice that Dr. King received, the strategies of the civil rights movement, and the attitude of civil rights leaders toward the Administrations and their policies.⁵⁷ The implications of this inside knowledge were graphically described by one of Dr. King's legal advisers, Harry Wachtel:

The easiest example I can give is that that if I'm an attorney representing one side, negotiating and trying to achieve something, and if the Attorney on the other side had information about what my client was thinking and what we were talking about, it would become a devastatingly important impediment to our negotiation, our freedom of action.⁵⁸

Burke Marshall, however, described the Bureau's reports about Dr. King and the SCLC as "of no use: it was stupid information." He elaborated:

I was in touch with Martin King all the time about all kinds of information that went way beyond what was reported by the Bureau about what he was going to do, where he was going to be, the wisdom of what he was going to do, who he was going to do it with, what the political situation was. The Southern Christian Leadership Conference and Dr. King were in some sense close associates of mine. [Information of the type included in FBI reports] was all information that I would have had any way.⁵⁹

⁵⁶ Bill Moyers testimony, 8/2/76, p. 22.

⁵⁷ The FBI files are replete with examples of politically valuable intelligence about Dr. King that was sent to the Justice Department and the White House. For instance, in May 1968, at a critical point in the Congressional debate over the public accommodations bill, Hoover informed the Attorney General of a discussion between Dr. King and an adviser "concerning a conference which Reverend King reportedly has requested with you and the President." The discussion was reported to have centered on the Administration's sensitivity over its inability to control the racial situation and on the need to maintain the pace of civil rights activities "so that the President will have to look for an alternative." Dr. King was said to believe that the President would then be receptive to ideas from Dr. King which would provide a solution to "his problem, [his] fear of violence . . ." Dr. King was said to have stated that if a conference with the President could not be worked out, then the movement would have to be "enlarged," and that "he would like to put so much pressure on the President that he would have to sign an Executive Order making segregation unconstitutional." (Memorandum from Director, FBI to Attorney General, 5/81/68.)

⁵⁸ Harry Wachtel testimony, 2/27/70, p. 12.

⁵⁹ Burke Marshall, 8/8/76, p. 54; 56-57.

III. CONCERN INCREASES IN THE FBI AND THE KENNEDY ADMINISTRATION OVER ALLEGATIONS OF COMMUNIST INFLUENCE IN THE CIVIL RIGHTS MOVEMENT, AND THE FBI INTENSIFIES THE INVESTIGATION: JANUARY 1962-OCTOBER 1963

Introduction and Summary

This chapter explores developments in the Martin Luther King case from the period preceding the FBI's opening of the COMINFIL investigation in October 1962 through the FBI's decision to intensify its investigation of suspected communist influence in the civil rights movement in October 1963. Particular emphasis is placed on the internal reasons for the FBI's intensification of its investigation of Dr. King and on the interplay between the Justice Department and the FBI during this period.

In summary, the evidence described in this chapter establishes that the FBI barraged the Justice Department with a stream of memoranda concerning the Communist Party's interest in the civil rights movement and Dr. King's association with two individuals, referred to in this report as Advisers A and B, who were alleged to have strong ties to the Party.⁶⁰ In response to the Bureau's warnings, the Justice Department endeavored to convince Dr. King to sever his relations with those individuals, but met with only mixed success. Dr. King continued to turn to Adviser A for advice; Adviser B, whose association with Dr. King and allegedly with the Communist Party had been picked up by the press in late 1962, publicly announced his resignation from the SCLC in early July 1963, although he apparently continued to associate with Dr. King on an informal basis.

During hearings over the administration's proposed public accommodations bill in July 1963, critics of the bill charged that the civil rights movement, and Dr. King in particular, were influenced by Communists. Dr. King's plans for a civil rights march on Washington in August were receiving increasing publicity. On July 16, the Attorney General raised with the FBI's Justice Department liaison, Courtney Evans, the possibility of a wiretap on Dr. King and one of his legal advisers.

The following day the FBI sent an analysis of its COMINFIL information to the Justice Department. The administration decided to continue its public support of Dr. King. During the ensuing week, the President informed the press that there was no evidence that civil rights demonstrations were Communist-inspired; the Attorney General announced that the FBI had no evidence that any civil rights leaders were controlled by Communists; and the Attorney General rejected the FBI's request for authority to wiretap Dr. King.

In August 1963, the Justice Department received a report from the FBI which apparently contained allegations extremely unfavorable to Dr. King. The Attorney General told Courtney Evans that he faced impeachment if the report was "leaked," and demanded that it be resubmitted with a cover memorandum detailing the factual basis for the allegation. The memorandum submitted in response to that request contained no information concerning Dr. King that had not already been known to the Attorney General in July, but the Attorney General permitted the investigation to proceed.

⁶⁰ The memoranda also contained information about the civil rights movement of considerable political value to the administration.

In late July 1963, the FBI opened a file entitled "Communist Influence in Racial Matters," and closely monitored preparations for the August 28 Civil Rights March on Washington. The FBI's Domestic Intelligence Division informed Director Hoover shortly before the March that Communist influence in the civil rights movement was negligible. The Director disagreed. The head of the Domestic Intelligence Division, William Sullivan, responded by recommending more intense FBI surveillance of the civil rights movement.

A. The Justice Department Warns Dr. King About Advisers A and B: January 1962-June 1963

The Kennedy administration's concern over FBI allegations that Communists were influencing the civil rights movement led the Justice Department to make several attempts to persuade Dr. King to sever his relations with Advisers A and B. In January 1962, Hoover first warned Attorney General Kennedy that Adviser A, a member of the Communist Party, U.S.A., "is allegedly a close adviser to the Reverend Martin Luther King."⁶² Shortly afterwards, Assistant Attorney General Burke Marshall of the Justice Department's Civil Rights Division told Dr. King that the Bureau claimed Adviser A was a communist and advised that they break off relations.⁶³ According to an FBI memorandum, Deputy Attorney General Byron R. White also considered speaking with Dr. King about Adviser A, but decided against doing so when told by the FBI that revealing too much of the FBI's information might tip off Dr. King or Adviser A to the identity of certain FBI informants.⁶⁴

Dr. King gave no indication of breaking off relations with Adviser A, who was a close friend and trusted advisor. He did, however, apparently consider the adverse effects on the civil rights movement that his association with Adviser B might cause.⁶⁵ In June 1962 the FBI intercepted a conversation⁶⁶ in which Adviser A recommended that Dr. King informally use Adviser B as his executive assistant, noting that "as long as Adviser B did not have the title of Executive Director, there would not be as much lightning flashing around him." Dr. King was reported to have agreed, remarking that "no matter what a man was, if he could stand up now and say he is not connected, then as far as I am concerned, he is eligible to work for me."⁶⁷

On October 8, 1962, the FBI's Domestic Intelligence Division prepared a memorandum summarizing accounts that had previously appeared in newspapers concerning Adviser B's alleged Communist background and his association with Dr. King. The Division forwarded the memorandum to Cartha D. DeLoach, head of the Crime Records Division, the FBI's public relations arm, for "possible use by his contacts in the news media field in such Southern states as Alabama where Dr. King has announced that the next targets for

⁶² Memorandum from Director, FBI to Attorney General 1/8/62.

⁶³ Burke Marshall testimony, 3/31/76, p. 10.

⁶⁴ Memorandum from Courtney Evans to Alan Belmont, 2/6/62.

⁶⁵ Allegations concerning Adviser B's membership in the Communist Party had received wide publicity in the newspapers. There were no such press allegations about Adviser A.

⁶⁶ Adviser A's phones were covered by FBI wiretaps. See p. 88.

⁶⁷ Memorandum from New York Field Office to FBI Headquarters, 8/21/62, p. 6.

integration of universities are located." DeLoach's signature and the notation, "handled, Augusta (illegible), Atlanta, 1-/19" appear on the recommendation.⁶⁸

The article was apparently disseminated, because an October 25, 1962, article in the *Augusta Chronicle* described Adviser B as a member of the CPUSA's National Committee who was serving as Dr. King's "Acting Executive Director." Dr. King publicly responded, on October 30, that "no person of known Communist affiliation" could serve on the staff of the SCLC and denied any knowledge that Adviser B had Communist affiliations. Dr. King also announced Adviser B's temporary resignation from the SCLC pending an SCLC investigation of the allegations.

A stream of memoranda from the FBI, however, warned the Justice Department that Adviser B continued as an associate of Dr. King despite his apparent resignation from the SCLC. In December, Director Hoover was cautioning the Attorney General that Adviser B continued to "represent himself as being affiliated with the New York Office of the SCLC and, during late November and early December 1962, was actively engaged in the work of this organization."⁶⁹ A few days later, the Attorney General was informed that Advisers A and B were planning a "closeted . . . critical review" with Dr. King concerning the direction of the civil rights movement. Kennedy penned on the memorandum: "Burke—this is not getting any better."⁷⁰

In early February 1963, Dr. King asked the Justice Department for a briefing on Adviser B's background, apparently in response to newspaper articles about Adviser B resulting from the Bureau's campaign to publicize Adviser B's relationship with Dr. King. Assistant Attorney General Marshall noted in a memorandum that he had "been in touch with the Attorney General on this matter and is anxious to have it handled as soon as possible."⁷¹ Sometime later in February, Marshall spoke with Dr. King about severing his association with Advisers A and B. Memoranda from Director Hoover to the Justice Department during the ensuing months, however, emphasized that Dr. King was maintaining a close relationship with both men. Those memoranda to the Justice Department contained no new information substantiating the charges that either was a member of the Communist Party, or that either was carrying out the Party's policies.⁷²

⁶⁸ Memorandum from F. J. Baumgardner to William Sullivan, 10/8/62, p. 2. The memorandum bears the caption "Communist Party, USA, COINTELPRO." This is the first indication of a counterintelligence program directed against Adviser B. Adviser A became the subject of such a program in 1963. For a discussion of the FBI's COINTELPRO effort, see staff report on COINTELPRO.

⁶⁹ Memorandum from Director, FBI to Attorney General, 1/28/63, p. 1.

⁷⁰ Memorandum from Director, FBI to Attorney General, 1/10/63. The Attorney General was subsequently told that Adviser B, Dr. King, and Adviser A conferred with other members of the SCLC on January 10 and 11. (Memorandum from Director, FBI to Burke Marshall, 1/31/63.)

⁷¹ Memorandum from Alex Rosen to Alan Belmont, 2/4/63.

⁷² On March 10 the Attorney General was informed that Adviser A and Dr. King had engaged in a lengthy conversation concerning an article that Dr. King was preparing for *The Nation*. (Memorandum from Director, FBI to Attorney General, 3/12/63.) On June 8, the Director sent the Attorney General a nine-page "concise summary" of information about Adviser A, emphasizing his role as Dr. King's adviser. (Memorandum from Director, FBI to Attorney General, 6/8/63.) An FBI memorandum in early June reported a discussion between

The Attorney General's concern over Dr. King's association with the two advisers continued. A memorandum by Hoover states that on June 17, 1963:

The Attorney General called and advised he would like to have Assistant Attorney General Burke Marshall talk to Martin Luther King and tell Dr. King he has to get rid of [Advisers A and B], that he should not have any contact with them directly or indirectly.

I pointed out that if Dr. King continues this association, he is going to hurt his own cause as there are more and more Communists trying to take advantage of [the] movement and bigots down South who are against integration are beginning to charge Dr. King is tied in with Communists. I stated I thought Marshall could very definitely say this association is rather widely known and, with things crystalizing for them now, nothing could be worse than for Dr. King to be associated with it.⁷⁵

Marshall subsequently spoke with Dr. King about Advisers A and B.⁷⁴ In a follow-up memorandum written several months later Marshall stated:

... I brought the matter to the attention of Dr. King very explicitly in my office on the morning of June 22 prior to a scheduled meeting which Dr. King had with the President. This was done at the direction of the Attorney General, and the President separately [and] strongly urged Dr. King that there should be no further connection between Adviser B and the Southern Christian Leadership Conference. Dr. King stated that the connection would be ended.⁷⁵

Dr. King later told one of his associates that the President had told him "there was an attempt (by the FBI) to smear the movement on the basis of Communist influence. The President also said, 'I assume you know you're under very close surveillance.'" ⁷⁶

Adviser A and Dr. King concerning whether Dr. King would appear on a television program in connection with a projected article in the *Saturday Evening Post*. Dr. King accepted Adviser A's recommendation that he read the article before committing himself because the reporter "raised a lot of questions about [Adviser B] and that kind of thing." (Memorandum from Director, FBI to Attorney General, 6/7/63.)

⁷⁴ Memorandum from J. Edgar Hoover to Clyde Tolson, Alan Belmont, Cartha DeLoach, Alex Rosen, William Sullivan, 6/17/63. During this period the Attorney General requested a report from the Internal Security Division concerning Dr. King. The reply, dated June 28, cited Advisers A and B as the chief sources of alleged Communist influence on Dr. King. (Memorandum from J. Walter Yeagley to the Attorney General, 6/28/63.)

⁷⁵ Andrew Young, who was present at the meeting with Burke Marshall, testified that Marshall had said that the Bureau had informed the Justice Department that there was in fact Communist influence in the civil rights movement, and had explicitly mentioned Adviser A. When Young asked Marshall for proof, he said that he had none, and that he "couldn't get anything out of the Bureau." Young recalled that Marshall had said, "We ask (the Bureau) for things and we get these big memos, but they don't ever really say anything." Young testified that Marshall "was asking us to disassociate ourselves from [Adviser A] altogether." (Andrew Young testimony, 2/10/70, pp. 40-44)

⁷⁶ Memorandum from Burke Marshall to J. Edgar Hoover, 9/12/63.

⁷⁷ Young, 2/10/70, p. 40.

Marshall's and the President's warnings did not go unheeded. On July 3, 1963, Dr. King sent the Attorney General a copy of a letter to Adviser B bearing that date.⁷⁸ In that letter, Dr. King stated that an investigation by the SCLC had proven the charges concerning Adviser B's association with the Communist Party groundless, but that his permanent resignation was necessary because "the situation in our country is such that . . . any allusion to the left brings forth an emotional response which would seem to indicate that SCLC and the Southern Freedom Movement are Communist inspired."⁷⁹

B. Allegations About Dr. King During Hearings on the Public Accommodations Bill and the Administration's Response: July 1963

Allegations of Communist influence in the civil rights movement were widely publicized in the summer of 1963 by opponents of the administration's proposed public accommodations bill. On July 12, 1963, Governor Ross E. Barnett of Mississippi testified before the Senate Commerce Committee that civil rights legislation was "a part of the world Communist conspiracy to divide and conquer our country from within."⁸⁰ Barnett displayed a photograph entitled "Martin Luther King at Communist Training School" taken by an informant for the Georgia Commission of Education, which showed Dr. King at a 1957 Labor Day Weekend seminar at the Highlander Folk School in Monteagle, Tennessee with three individuals whom he alleged were communists. When Senator Mike Monroney challenged the accuracy of this characterization, Barnett stated that he had not checked the allegations with the FBI and suggested that the Commerce Committee do so. The FBI subsequently concluded that the charges were false.⁸⁰

Later that day, Senator Monroney asked Director Hoover for his views on whether Dr. King and the leaders of other civil rights organizations had Communist affiliations.⁸¹ Senator Warren G. Magnuson also asked Hoover about the authenticity of the photograph, the status of the Georgia Commission on Education, and the nature of the Highlander Folk School.⁸² Director Hoover forwarded these requests and similar inquiries from other Senators to the Justice

⁷⁸ Letter from Martin Luther King, Jr. to Adviser B, 7/3/63.

⁷⁹ King letter, 7/3/63, which concluded: "We certainly appreciate the years of unselfish service which you have put into our New York Office and regret the necessity of your departure. Certainly yours is a significant sacrifice commensurate with the sufferings in jail and through loss of jobs under racist intimidation. We all pray for the day when our nation may be truly the land of the free. May God bless you and continue to inspire you in the service of your fellowman."

⁸⁰ Ross Barnett testimony, Senate Commerce Committee, 7/12/63, p. 1.

⁸¹ The FBI informed the Justice Department that none of those individuals were Communist Party members, and that there was no evidence supporting the charge that the school was a Communist training center. (Memorandum from Milton Jones to Cartha DeLoach, 7/16/63, p. 2).

⁸² Congressman Andrew Young, then an adviser to Dr. King, testified that the Highlander Folk School photograph had been frequently used to smear Dr. King in the South. Congressman Young's testimony that the School was not a Communist institution was consistent with the FBI's conclusion (Andrew Young testimony, 2/18/76, p. 53).

⁸³ Letter from Senator Mike Monroney to J. Edgar Hoover, 7/12/63.

⁸⁴ Letter from Senator Warren G. Magnuson to J. Edgar Hoover, 7/10/63.

Department⁸³ with a memorandum summarizing the COMINFIL information about SCLC:

In substance, the Communist Party, USA, is not able to assume a role of leadership in the racial unrest at this time. However, the Party is *attempting* to exploit the current racial situation through propaganda and participation in demonstrations and other activities whenever possible. Through these tactics, the Party *hopes* ultimately to progress from its current supporting role to a position of active leadership. [Emphasis added.]

In the same memorandum, Director Hoover brought up the subject of Advisers A and B's alleged Communist affiliations. He claimed that the Communist Party had pinned its hopes on Adviser A, and that although Adviser B had resigned from the SCLC, he continued to associate with Dr. King.⁸⁴

On July 15, Governor George C. Wallace of Alabama testified before the Senate Commerce Committee in opposition to the Civil Rights bill, berating officials for "fawning and pawing over such people as Martin Luther King and his pro-Communist friends and associates." Wallace referred to the picture displayed by Governor Barnett three days before and added:

Recently Martin Luther King publicly professed to have fired a known Communist, [Adviser B], who had been on his payroll. But as discovered by a member of the US Congress, the public profession was a lie, and Adviser B had remained on King's payroll.⁸⁵

On July 17, the President announced at a news conference:

We have no evidence that any of the leaders of the civil rights movement in the United States are Communists. We have no evidence that the demonstrations are Communist-inspired. There may be occasions when a Communist takes part in a demonstration. We can't prevent that. But I think it is a convenient scapegoat to suggest that all of the difficulties are Communist and that if the Communist movement would only disappear that we would end this.⁸⁶

⁸³ Tolson urged Hoover to let the Attorney General respond to these reports; otherwise, Hoover might be called before the Committee to testify concerning "current racial agitation." The Director noted on the bottom of the memorandum, "I share Tolson's views." Memorandum from Clyde Tolson to the Director, 7/16/63.

⁸⁴ Memorandum from Director, FBI to Attorney General, 7/17/63.

⁸⁵ Wallace introduced into the record a copy of an article from the *Birmingham News*, "King's SCLC Pays [Adviser B.] Despite Denial," June 30, 1963. The article stated that Dr. King had told reporters that Adviser B had not been associated with the SCLC since December 1962, but that a "highly authorized source" revealed that Dr. King was continuing to accept Adviser B's services and to pay his expenses. The article also reported allegations about Adviser B's association with the Communist Party.

⁸⁶ Public Papers of the Presidents, John F. Kennedy, p. 574.

On July 23, Robert Kennedy sent to the Commerce Committee the Justice Department's response to the queries of Senators Monroney and Magnuson:

Based on all available evidence from the FBI and other sources, we have no evidence that any of the top leaders of the major civil rights groups are Communists, or Communist controlled. This is true as to Dr. Martin Luther King, Jr., about whom particular accusations were made, as well as other leaders.

It is natural and inevitable that Communists have made efforts to infiltrate the civil rights groups and to exploit the current racial situation. In view of the real injustices that exist and the resentment against them, these efforts have been remarkably unsuccessful.⁶⁸

Burke Marshall, who aided in formulating these responses for the Justice Department, told the Committee that rumors of communist infiltration in the civil rights movement had caused the Administration considerable concern.

At that point, in some sense the business was a political problem, not from the point of view of the support that the civil rights movement was giving the administration or anything like that, but how to be honest with the Senators with this problem facing us and at the same time not to give ammunition to people who for substantive reasons were opposed to civil rights legislation.

Generally, for years the civil rights movement in the South and to some extent in some quarters in the North . . . were constantly referred to as communist infiltrated, communist inspired, radical movements. . . . So that the political problem that I would identify with this whole situation would be that and not a question of whether or not there was support given the Administration by civil rights groups in the South.⁶⁹

C. The Attorney General Considers a Wiretap of Dr. King and Rejects the Idea: July 1963

On July 16, 1963, the day after Governor Wallace's charges that Dr. King was dominated by Communists and the day before the President's denial of Communist influence in the civil rights movement, the Attorney General raised with Courtney Evans the possibility of wiretap coverage of Dr. King. According to Evans' memorandum about this meeting:

The AG was contacted at his request late this afternoon. He said that . . . a New York attorney who has had close association with Martin Luther King, and with [Adviser A] had been to see Burke Marshall about the racial situation. Ac-

⁶⁸ Senator Richard Russell of Georgia, who had also inquired of the FBI about Dr. King, was orally briefed by Nicholas Katzenbach and Courtney Evans on November 1, 1963. According to a memorandum by Evans, the Attorney General had made several attempts to draft a reply to Senator Russell's inquiries, and had finally settled on an "innocuous" written reply and an oral briefing. (DeLoach to Mohr, 2/6/70).

⁶⁹ Burke Marshall testimony, 3/3/70, p. 13.

According to the AG, [the attorney] had indicated he had some reservations about talking with [Adviser A] on the phone. Marshall thought he might have been referring to a possible phone tap, and passed it off by telling [the New York attorney] this was something he would have to take up with [Adviser A.]

The purpose of the AG's contact was that this brought to his attention the possibility of effecting technical coverage on both [the New York attorney] and Martin Luther King. I told the AG that I was not at all acquainted with [the New York attorney], but that, in so far as Dr. King was concerned, it was obvious from the reports that he was in a travel status practically all the time, and it was, therefore, doubtful that a technical surveillance on his office or home would be very productive. I also raised the question as to the repercussions if it should ever become known that such a surveillance had been put on Dr. King.

The AG said this did not concern him at all, that in view of the possible Communist influence in the racial situation, he thought it advisable to have as complete coverage as possible. I told him, under the circumstances, that we would check into the matter to see if coverage was feasible, and, if so, would submit an appropriate recommendation to him.⁹⁰

Reports from the FBI offices indicated that wiretaps were feasible,⁹¹ and Director Hoover requested the Attorney General to approve wiretaps on phones in Dr. King's home, SCLC offices,⁹² and the New York attorney's home and law office.⁹³

On July 24, the day after his letter to the Commerce Committee exonerating Dr. King, the Attorney General informed Evans that he had decided against technical surveillance of Dr. King but had approved surveillance of the New York Attorney.⁹⁴

The Attorney General informed me today that he had been considering the request he made on July 16, 1963, for a technical surveillance on Martin Luther King at his home and office and was now of the opinion that those would be ill-advised.

At the time the Attorney General initially asked for such a surveillance, he was told there was considerable doubt that the productivity of such surveillance would be worth the risk because King travels most of the time and that there might be serious repercussions should it ever become known

⁹⁰ Memorandum from Courtney Evans to Alan Belmont, 7/10/63. The New York attorney was described by the FBI as a counsel to Dr. King, and an activist in civil rights matters. (Memorandum from J. Edgar Hoover to the Attorney General, 7/22/63.)

⁹¹ Airtel, from SAC Atlantic to Director FBI, 7/24/63: "Technical surveillance feasible with full security."

⁹² Memorandum from J. Edgar Hoover to Attorney General, 7/23/63.

⁹³ Memorandum, J. Edgar Hoover to Attorney General, 7/22/63.

⁹⁴ The only evidence of communist ties of the New York attorney that the FBI appears to have given the Attorney General was an informant's allegation that in 1953 and 1954 he had been an active member of the Labor Youth League, an organization which had been cited as "subversive" under Executive Order 10450 (Memorandum from J. Edgar Hoover to the Attorney General).

the Government had instituted this coverage. These were the very thoughts that the Attorney General expressed today in withdrawing his request.

With reference to the other technical surveillance requested at the same time, namely, the one on [the New York attorney], the Attorney General felt this was in a different category and we should go forward with this coverage. It is noted that this was previously approved in writing by the Attorney General.

... We will take no further action to effect technical coverage on Martin Luther King, either at his home or at his office at the Southern Christian Leadership Conference, in the absence of a further request from the Attorney General.⁶⁵

In June 1969, Director Hoover told a reporter for the Washington Evening Star that Attorney General Kennedy had "requested that the telephones of Dr. King be covered by electronic devices and was persuaded by our people not to do it in view of the possible repercussions," and because Dr. King's constant traveling made a wiretap impractical.⁶⁶ When the Committee asked Courtney Evans whether the idea of installing a wiretap originated with the Attorney General, he testified:

No, this is not clear in my mind at all. The record that has been exhibited to me really doesn't establish this definitely, although that inference can be drawn from some of the memoranda. But it is my recollection, without the benefit of any specifics, that there was much more to it than this. And I have the feeling that there were pressures existing in time to develop more specific information that may have had a bearing here.

Q. Pressures emanating from where and upon whom?

A. I think from both sides, the Bureau wanted to get more specific information, and the Department wanted resolved the rather indefinite information that had been received indicating the possibility of Communist influence on the Dr. King movement.⁶⁷

D. The Attorney General Voices Concern Over Continuing FBI Reports About King: July-August 1963

Following the appearance of an article on July 25, 1963, in the *Atlanta Constitution*, titled "One-time Communist Organizer Heads Rev. King's Office in N.Y.," Dr. King announced that an SCLC investigation of Adviser B indicated that he had "no present connection with the CP nor any sympathy with its philosophy." Dr. King explained that Adviser B had been on the SCLC staff on a temporary basis since his resignation in December 1962, but that he had left the SCLC on June 26, 1963, by "mutual agreement" because of concern

⁶⁵ Memorandum from Courtney Evans to Alan Belmont, 7/25/69.

⁶⁶ Jeremiah O'Leary, *The Evening Star*, 6/10/69; Hoover memorandum for record, 6/19/69.

⁶⁷ Courtney Evans testimony, 12/1/76, pp. 7-8.

that his affiliation with the integration movement would be used against it by "segregationists and race baiters."

The Justice Department, however, continued to receive reports from the FBI that Dr. King was continuing his association with Advisers A and B.⁹⁹ Shortly after Attorney General Kennedy's July 28 response to the Commerce Committee, Courtney Evans:

Advisor B, [deleted].

pointed out to Marshall the undesirability of making the specific comments . . . as to giving complete clearance to Martin Luther King as Marshall had had the full details as to King's association with [Advisor A] and [Advisor B].

Marshall said that he was most appreciative of our warning him about these pitfalls and he would be guided accordingly in any future statements. He added that he would also appreciate our continuing to highlight for him any information concerning communist activity in the Negro movement."¹⁰⁰

On July 29, Director Hoover sent the Justice Department a report from the New York Office entitled "Martin Luther King, Jr.: Affiliation with the Communist Movement."¹⁰¹ The entry under the caption, "Evidence of Communist Party Sympathies," has been deleted by the FBI from copies of the report given to the Committee on the grounds that it might compromise informants. It was a general characterization and ran for only one and one-half lines. A memorandum from Courtney Evans described Attorney General Kennedy's reaction:

The Attorney General stated that if this report got up to the Hill at this time, he would be impeached. He noted if this report got out, it would be alleged the FBI said King was [excised by the FBI].

The Attorney General went on to say that the report had been reviewed in detail by Assistant Attorney General Burke Marshall who had told him there wasn't anything new here concerning King's alleged communist sympathies but that it was the timing of the report and its possible misuse that concerned him. The Attorney General went on to say that he didn't feel he could fully trust everyone in the Internal Security Division of the Department.

I pointed out to the Attorney General that first of all this report was classified secret and was just a summary report to bring our files and that of the Department's up to date. He said that while this was undoubtedly true, the submission of the report at this time in this form presented definite hazards. He therefore asked that the report be resubmitted to him with a cover memorandum setting forth the exact evidence avail-

⁹⁹ On July 17, in the midst of publicity concerning Dr. King's association with Adviser B, Director Hoover informed the Attorney General that although Adviser B had formally resigned from the SCLC, he was continuing his association with Dr. King. (Memorandum from Director, FBI, to Attorney General, 7/17/68.)

¹⁰⁰ Memorandum from Courtney Evans to Alan Belmont, 7/29/68.

¹⁰¹ Report of Special Agent: *Martin Luther King, Jr.: Affiliation with the Communist Movement*, 7/22/68.

able to support the statement that King has been described [excised by the FBI].¹⁰²

The reason for Attorney General Kennedy's reaction is unclear.¹⁰³ It may be that he feared a "leak" of the FBI's allegations concerning communist influence over Dr. King would be particularly embarrassing in light of the Administration's recent statements in support of Dr. King. The Attorney General's insistence on a supplemental memorandum detailing the underlying evidence, coupled with the tone of the memorandum, also suggests that he was anxious to get to the bottom of the charges.

Hoover resubmitted the report with a cover letter stating in part:

In this connection, your attention is invited to my letter of February 14, 1962, in captioned matter and to my letter of July 17, 1963, captioned "Request from Senator Monroney Concerning Current Racial Agitation," both of which contain information to the effect that Adviser A has characterized King [deleted by FBI].¹⁰⁴

The relevant portions of the February 14, 1962, memorandum and the July 17, 1963, memorandum have been deleted from copies supplied to the Committee. It is clear, however, that the Attorney General had been aware of whatever information those memoranda contained when he had decided not to approve the King wiretaps the previous month.

Despite the FBI's failure to produce any new evidence to substantiate its apparently unfavorable characterization of Dr. King, the question of whether Advisers A and B continued to influence Dr. King remained a matter of concern to the Justice Department. On August 20, 1963, Evans reported:

Today the Attorney General asked if we would continue to keep him closely informed of information received relative to Advisers B's contact with Martin Luther King. He had specific reference to our letter of August 2, 1963.

It appears that the Attorney General is receiving conflicting advice within the Department proper as to whether there is sufficient evidence of a continuing contact between King and Adviser B to justify some action. The Civil Rights Division has expressed the thought that nothing need be done by the Department. On the other hand, Andrew Oehmann, the Attorney General's Executive Assistant, has counseled him that in his judgment there is ample evidence there is a continuing relationship which Martin Luther King is trying to conceal.¹⁰⁵

E. The FBI Intensifies Its Investigation of Alleged Communist Influence in the Civil Rights Movement: July-September 1963

On July 18, 1963, in response to intelligence reports that the Communist Party was encouraging its members to participate actively in

¹⁰² Memorandum from Courtney Evans to Alan Belmont, 8/1/63.

¹⁰³ Burke Marshall testified that he could not recall this incident. Burke Marshall testimony, 8/8/76, p. 25.

¹⁰⁴ Memorandum from Director, FBI to Attorney General, 8/2/63.

¹⁰⁵ Memorandum from Courtney Evans to Alan Belmont, 8/20/63.

the forthcoming March on Washington, the FBI opened a file captioned "Communist Influence in Racial Matters." Field offices were advised:

it is reasonable to assume that the future will witness a strong effort on the part of the CPUSA to inject itself into and to exploit the struggle for equal rights for Negroes. Therefore, during the investigation of the CPUSA, each recipient office should be extremely alert to data indicating interest, plans, or actual involvement of the Party in the current Negro movement. This matter should be given close attention and the Bureau kept currently advised.¹⁰⁵

The results of voluminous reports from field offices around the country concerning the plans of the Communist Party and "other subversive groups" were summarized by the Domestic Intelligence Division in a report dated August 22, 1963.¹⁰⁷ That report concluded that there was no evidence that the March "was actually initiated by or is controlled by the CP,"¹⁰⁸ although the Party had publicly endorsed the March and had urged members to "clandestinely participate" in order to "foster the illusion that the CP is a humanitarian group acting in the interest of the Negro." The Party's tactics were summarized:

CP leaders have stressed the fact that the March is not to be all and end all in itself. Events which subsequently flow from the March will be of utmost importance, such as following up in contacts now being made by CP members working in support of the demonstration. Utilizing the March, the Party has three basic general objectives:

- (1) Participation by CP members through legitimate organizations.
- (2) Attempt to get the Party line into the hands of sympathizers and supporters of the March through distribution of "The Worker" and Party pamphlets.
- (3) Utilize the March as a steppingstone for future Party activity through contacts now being made by Party members involved in the March.¹⁰⁹

The next day the Domestic Intelligence Division submitted to the Director a 67-page Brief detailing the CPUSA's efforts to exploit the American Negro, and finding virtually no successes in these efforts. A synopsis observed:

- (1) "The 19 million Negroes in the United States today constitute the largest and most important racial target of the Communist Party, USA. Since 1919, communist leaders have devised countless tactics and programs designed to penetrate and control Negro population." The "colossal efforts" focused around "equal opportunity," and efforts were presently being

¹⁰⁵ Memorandum from Director, FBI to Special Agents in Charge, 7/18/63, p. 2.

¹⁰⁷ Memorandum from Frederick Baumgardner to William Sullivan, 8/22/63,

p. 1.

¹⁰⁸ Baumgardner memorandum, 8/22/63, p. 1. The report noted that Adviser A was critical of the Party's role in the civil rights movement and that he had said he did not consider himself under the control of the Party in his dealings with Dr. King.

¹⁰⁹ Baumgardner memorandum, 8/22/63, p. 2.

made with "limited degrees of success" to infiltrate legitimate Negro organizations. "[T]here is no known substantial implementation of Communist Party aims and policies among Negroes in the labor field."

(2) "While not the instigator and presently unable to direct or control the coming Negro August 28 March on Washington, D.C., communist officials are planning to do all possible to advance communist aims in a supporting role."

(3) "Despite tremendous sums of money and time spent by the Communist Party, USA, on the American Negro during the past 44 years, the Party has failed to reach its goal with the Negroes."

(4) "There has been an obvious failure of the Communist Party of the United States to appreciably infiltrate, influence, or control large numbers of American Negroes in this country . . . The Communist Party in the next few years may fail dismally with the American Negro as it has in the past. On the other hand, it may make prodigious strides and great success with the American Negroes, to the serious detriment of our national security. Time alone will tell."¹⁰

William Sullivan, who then headed the Domestic Intelligence Division of the FBI, testified that this "Brief" precipitated a dispute between Director Hoover and the Domestic Intelligence Division over the extent of communist influence in the civil rights movement, and that the resulting "intensification" was part of an attempt by the Intelligence Division to regain Hoover's approval.¹¹ The documentary evidence bearing on the internal FBI dispute is set forth below, with Sullivan's explanation of what occurred. Sullivan's comments, however, should be considered in light of the intense personal feud that subsequently developed between Sullivan and Director Hoover, and which ultimately led to Sullivan's dismissal from the Bureau. While Sullivan testified that the intensified investigation of the SCLC was the product of Director Hoover's prodding the Domestic Intelligence Division to conform its evidence to his preconceptions, the documentary evidence may also be read as indicating that the Domestic Intelligence Division was manipulating the Director in a subtle bureaucratic battle to gain approval for expanded programs.

Sullivan testified that a careful review of the files in preparation for writing the "Brief" revealed no evidence of "marked or substantial" Communist infiltration of the movement, and that he had instructed his assistant to "state the facts just as they are" and "then let the storm break."¹² Sullivan said he had known that Hoover would be displeased with his conclusions because Hoover was convinced the civil rights movement was strongly influenced by communists. Sullivan's prediction was borne out by Hoover's observations, scrawled across the bottom of the memorandum:

This memo reminds me vividly of those I received when Castro took over Cuba. You contended then that Castro and his cohorts were not communists and not influenced by com-

¹⁰ Memorandum from Frederick Baumgardner to William Sullivan, 8/28/68, p. 1 (Emphasis added).

¹¹ William Sullivan testimony, 11/1/75, p. 12.

¹² Sullivan, 11/1/76, p. 18.

munists. Time alone proved you wrong. I for one can't ignore the memoes . . . re King, Advisers A and B . . . et al. as having only an infinitesimal effect on the efforts to exploit the American Negro by the Communists.¹¹³

Sullivan recalled:

This [memorandum] set me at odds with Hoover . . . A few months went by before he would speak to me. Everything was conducted by exchange of written communications. It was evident that we had to change our ways or we would all be out on the street.¹¹⁴

The Director penned sarcastic notes on subsequent memoranda from the Domestic Intelligence Division. In the margin of a report that over 100 Communist Party members were planning to participate in the March on Washington, the Director wrote, "just infinitesimal!"¹¹⁵ A preliminary report on possible communist influence on the March noted that Party functionaries were pleased with the March, believed it would impress Congress, and that a "rally of similar proportions on the subject of automation could advance the cause of socialism in the United States." Director Hoover remarked, "I assume CP functionary claims are all frivolous."¹¹⁶ Sullivan testified:

the men and I discussed how to get out of trouble. To be in trouble with Mr. Hoover was a serious matter. These men were trying to buy homes, mortgages on homes, children in school. They lived in fear of getting transferred, losing money on their homes, as they usually did. In those days the market was not soaring, and children in school, so they wanted another memorandum written to get us out of this trouble we were in. I said I would write the memorandum this time. The onus always falls on the person who writes a memorandum.¹¹⁷

On August 30, Sullivan wrote his apologetic reply:

The Director is correct. We were completely wrong about believing the evidence was not sufficient to determine some years ago that Fidel Castro was not a communist or under communist influence. On investigating and writing about communism and the American Negro, we had better remember this and profit by the lesson it should teach us.

. . . Personally, I believe in the light of King's powerful demagogic speech yesterday¹¹⁸ he stands head and shoulders over all other Negro leaders put together when it comes to

¹¹³ Baumgardner memorandum, 8/23/63, p. 3.

¹¹⁴ Sullivan, 11/1/75, p. 20.

¹¹⁵ Memorandum from Frederick Baumgardner to William Sullivan, 8/20/63, p. 1.

¹¹⁶ Memorandum from Frederick Baumgardner to William Sullivan, 8/20/63, p. 3.

¹¹⁷ Sullivan, 11/1/75, p. 22.

¹¹⁸ The "demagogic speech" was Dr. King's "I have a dream" speech. When shown this entry by the Committee, Sullivan testified:

"I do not apologize for this tactic. You either had to use this tactic or you did not exist. I put in this memorandum what Hoover wanted to hear. He was so damn mad at us." (Sullivan, 11/1/75, p. 20)

influencing great masses of Negroes. We must mark him now, if we have not done so before, as the most dangerous Negro of the future in this Nation from the standpoint of communism, the Negro and national security.

. . . [I]t may be unrealistic to limit ourselves as we have been doing to legalistic proofs or definitely conclusive evidence that would stand up in testimony in court or before Congressional Committees that the Communist Party, U.S.A. does wield substantial influence over Negroes which one day could become decisive.

We regret greatly that the memorandum did not measure up to what the Director has a right to expect from our analysis.¹¹⁹

Sullivan testified concerning this memorandum:

Here again we had to engage in a lot of nonsense which we ourselves really did not believe in. We either had to do that or we would be finished.¹²⁰

The memorandum stated that "The history of the Communist Party, U.S.A., is replete with its attempts to exploit, influence and recruit the Negro." After reading this entry, Sullivan testified:

These are words that are very significant to me because I know what they mean. We build this thing . . . and say all this is a clear indication that the Party's favorite target is the Negro today. When you analyze it, what does it mean? How often has it been able to hit the target? . . . We did not discuss that because we would have to say they did not hit the target, hardly at all.¹²¹

In an apparent further effort to please the Director, Sullivan recommended, on September 16, 1963, "increased coverage of communist influence on the Negro." His memorandum noted that "all indications" pointed toward increasing "attempts" by the Party to exploit racial unrest. The field was to "intensify" coverage of communist influence on Negroes by giving "fullest consideration to the use of all possible investigative techniques."

Further, we are stressing the urgent need for imaginative and aggressive tactics to be utilized through our Counter-intelligence Program—these designed to attempt to neutralize or disrupt the Party's activities in the Negro field.¹²²

Hoover rejected this proposal with the remarks:

No. I can't understand how you can so agilely switch your thinking and evaluation. Just a few weeks ago you contended that the Communist influence in the racial movement was ineffective and infinitesimal. This—notwithstanding many memos of specific instances of infiltration. Now you want to load the Field down with more coverage in spite of your re-

¹¹⁹ Memorandum from William Sullivan to Alan Belmont, 8/30/63, p. 1.

¹²⁰ Sullivan, 11/1/75, p. 30.

¹²¹ Sullivan testimony, 11/1/75, p. 41.

¹²² Memorandum from Frederick Baumgardner to William Sullivan, 9/10/63.

cent memo depreciating C.P. influence in racial movement. I don't intend to waste time and money until you can make up your minds what the situation really is.¹²³

Sullivan testified that he had interpreted Hoover's note to mean that the Director was:

egging us on, to come back and say, "Mr. Hoover, you are right, we are wrong. There is communist infiltration of the American Negro. We think we should go ahead and carry on an intensified program against it." He knew when he wrote this, he knew precisely what kind of reply he was going to get.¹²⁴

Sullivan responded in a memorandum to the Deputy Associate Director, Alan Belmont:

On returning from a few days leave I have been advised of the Director's continued dissatisfaction with the manner in which we prepared a Brief on [communist influence in racial matters] and subsequent memoranda on the same subject matter. This situation is very disturbing to those of us in the Domestic Intelligence Division and we certainly want to do everything possible to correct our shortcomings. . . . The Director indicated he would not approve our last SAC letter until there was a clarification and a meeting of minds relative to the question of the extent of communist influence over Negroes and their leaders

As we know, facts by themselves are not too meaningful, for they are somewhat like stones tossed in a heap as contrasted to the same stones put in the form of a sound edifice. It is obvious that *we did not put the proper interpretation upon the facts which we gave to the Director.* [Emphasis added.]

As previously stated, we are in complete agreement with the Director that communist influence is being exerted on Martin Luther King, Jr., and that King is the strongest of the Negro leaders . . . [w]e regard Martin Luther King to be the most dangerous and effective Negro leader in the country.

May I repeat that our failure to measure up to what the Director expected of us in the area of Communist-Negro relations is a subject of very deep concern to us in the Domestic Intelligence Division. We are disturbed by this and ought to be. I want him to know that we will do everything that is humanly possible to develop all facts nationwide relative to

¹²³ Director Hoover's note on Baumgardner memorandum, 9/16/68, p. 2. Hoover commented on the transmittal slip:

"I have certainly been misled by previous memos which clearly showed communist penetration of the racial movement. The attached is contradictory of all that. We are wasting manpower and money investigating CP effort in racial matter if the attached is correct. (Memorandum from Clyde Tolson to the Director, 9/18/68.)

¹²⁴ Sullivan, 11/1/75, p. 46.

communist penetration and influence over Negro leaders and their organizations.¹²⁶

Sullivan resubmitted his proposed intensification instructions to the field. This time the Director agreed.

The intensification was put into effect by an SAC letter dated October 1, 1963, which contained the usual allusion to "efforts" and "attempts" by the Communist Party to influence the civil rights movement, but which said nothing about the absence of results:

The history of the Communist Party, USA (CPUSA), is replete with its *attempts to exploit, influence and recruit* the Negro. The March on Washington, August 28, 1963, was a striking example as Party leaders early put into motion *efforts* to accrue gains for the CPUSA from the March. The presence at the March of around 200 Party members, ranging from several national functionaries headed by CPUSA General Secretary Gus Hall to many rank-and-file members, is clear indication of the Party's favorite target (the Negro) today.

All indications are that the March was not the "end of the line" and that the Party will *step up its efforts* to exploit racial unrest and in every possible way claim credit for itself relating to any "gains" achieved by the Negro. A clear-cut indication of the Party's *designs* is revealed in secret information obtained from a most sensitive source that the Party plans to hold a highly secretive leadership meeting in November, 1963, which will deal primarily with the Negro situation. The Party has closely guarded *plans* for Gus Hall to undertake a "harnstorming" trip through key areas of the country to meet Party people and thus better prepare himself for the November meeting.

In order for the Bureau to cope with the Party's efforts and thus fulfill our responsibilities in the security field, it is necessary that we at once intensify our coverage of communist influence on the Negro. Fullest consideration should be given to the use of all possible investigative techniques in the investigation of the CP-USA, those communist fronts through which the Party channels its influence, and the many individual Party members and dupes. There is also an urgent need for imaginative and aggressive tactics to be utilized through

¹²⁶ Memorandum from William Sullivan to Alan Belmont, 9/25/63, p. 1. Sullivan named the "changing situation in the Communist Party-Negro relations area" as the reason for a more intense investigation of communist influence in racial matters:

"During the past two weeks in particular there have been sharp stepped-up activities on the part of communist officials to infiltrate and to dominate Negro developments in this country. Further, they are meeting with success."

A review of the Bureau files for the month prior to Sullivan's memorandum reveals no increase in CPUSA activity or any success on its part. The only relevant entries indicate:

(1) At a meeting on August 30, leading Party functionaries termed the March on Washington a 'success,' and discussed what action to take to advance civil rights legislation. Demonstrations were discussed, but none were planned. (Memorandum from Director, FBI, to Attorney General, 9/5/63).

(2) On August 30, Advisor B was observed spending an hour in the building housing the New York SCIA offices. (Memorandum from Director, FBI to Attorney General, 9/5/63).

our Counterintelligence Program for the purpose of attempting to neutralize or disrupt the Party's activities in the Negro field. Because of the Bureau's responsibility for timely dissemination of pertinent information to the Department and other interested agencies, it is more than ever necessary that all facets of this matter receive prompt handling.¹²⁶

The instruction to use "all possible investigative techniques" appears to have dictated the intensification of the COMINFIL investigation of the SCLC.

This was consistent with Sullivan's assurance to Director Hoover at the end of September that "we will do everything that is humanly possible to develop all facts nationwide relative to the Communist penetration and influence over Negro leaders and their organizations."

The emphasis on "imaginative and aggressive tactics" to disrupt Communist Party activities in the Negro field appears to have involved an expansion of the COINTELPRO operation already underway against the Communist Party. In 1956, the Bureau had initiated a COINTELPRO operation against the Communist Party, USA, with the goal of "feeding and fostering" internal friction within the Party. The program was soon expanded to include "preventing communists from seizing control of legitimate mass organizations, and . . . discrediting others who [are] secretly operating inside such organizations."¹²⁷ The October 1, 1963 "intensification" instruction emphasized this latter objective of disruption.¹²⁸

The intensification order appears to have been more a product of preconceptions and bureaucratic squabbles within the FBI than a response to genuine concerns based on hard evidence that communists might be influencing the civil rights movement. Because Director Hoover is deceased, the Committee was able to obtain only one side of the story. Sullivan's version depicts the Domestic Intelligence Division executing an about-face after Director Hoover rejected its conclusion that evidence did not indicate significant communist influence, reinterpreting its original data to reach conclusions the Director wanted to hear, and then basing its recommendations for action on the new "analysis." However, the memoranda could also support a contention that the Domestic Intelligence Division misled Director Hoover in order to maneuver him into supporting expanded domestic intelligence programs.

IV. ELECTRONIC SURVEILLANCE OF DR. MARTIN LUTHER KING AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

Introduction and Summary

In October 1963, Attorney General Robert Kennedy approved an FBI request for permission to install wiretaps on phones in Dr. King's

¹²⁶ Director, FBI to SAC, 10/1/63. [Emphasis added.]

¹²⁷ The history of COINTELPRO—FBI's counterintelligence operations to disrupt various domestic dissident groups—is discussed in a separate staff report. Adviser B had been the target of one such COINTELPRO operation in 1962, when the Bureau attempted to generate a series of newspaper articles designed to expose his alleged Party background. See pp. 55-60.

¹²⁸ The use of COINTELPRO techniques to discredit Dr. King is discussed in the ensuing chapters.

home and in the SCLC's New York and Atlanta offices to determine the extent, if any, of "communist influence in the racial situation." The FBI construed this authorization to extend to Dr. King's hotel rooms and the home of a friend. No further authorization was sought until mid-1965, after Attorney General Katzenbach required the FBI for the first time to seek renewed authorization for all existing wiretaps. The wiretaps on Dr. King's home were apparently terminated at that time by Attorney General Katzenbach; the SCLC wiretaps were terminated by Attorney General Ramsay Clark in June 1966.

In December, 1963—three months after Attorney General Kennedy approved the wiretaps—the FBI, without informing the Attorney General, planned and implemented a secret effort to discredit Dr. King and to "neutralize" him as the leader of the civil rights movement. One of the first steps in this effort involved hiding microphones in Dr. King's hotel rooms. Those microphones were installed without Attorney General Kennedy's prior authorization or subsequent notification, neither of which were required under practices then current. The FBI continued to place microphones in Dr. King's hotel rooms until November 1965. Attorney General Katzenbach was apparently notified immediately after the fact of the placement of three microphones between May and November 1965. It is not clear why the FBI stopped its microphone surveillance of Dr. King, although its decision may have been related to concern about public exposure during the Long Committee's investigation of electronic surveillance.

This chapter examines the legal basis for the wiretaps and microphones, the evidence surrounding the motives for their use, and the degree to which Justice Department and White House officials were aware of the FBI's electronic surveillance of Dr. King.

A. Legal Standards Governing the FBI's Duty to Inform the Justice Department of Wiretaps and Microphones During the Period of the Martin Luther King Investigation

The FBI's use of wiretaps and microphones to follow Dr. King's activities must be examined in light of the accepted legal standards and practices of the time. Before March 1965, the FBI followed different procedures for the authorization of wiretaps and microphones. Wiretaps required the approval of the Attorney General in advance. However, once the Attorney General had authorized the FBI to initiate wiretap coverage of a subject, the Bureau generally continued the wiretap for as long as it judged necessary. As former Attorney General 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.¹²⁰

In "national security" cases, the FBI was free to carry out *microphone surveillances without* first seeking the approval of the Attorney General or informing him afterward. The Bureau apparently derived authority for its microphone practice from a 1954 memorandum sent by Attorney General Brownell to Director Hoover, stating:

¹²⁰ Nicholas Katzenbach testimony, 11/12/76, p. 87.

It is clear that in some instances the use of microphone surveillance is the only possible way to uncovering the activities of espionage agents, possible saboteurs, and subversive persons. In such instances I am of the opinion that the national interest requires that microphone surveillance be utilized by the Federal Bureau of Investigation. This use need not be limited to the development of evidence for prosecution. The FBI has an intelligence function in connection with internal security matters equally as important as the duty of developing evidence for presentation to the courts and the national security requires that the FBI be able to use microphone surveillance for the proper discharge of both such functions. The Department of Justice approves the use of microphone surveillance by the FBI under these circumstances and for these purposes. . . . 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.¹²¹

The Justice Department was on notice that the FBI's practice was to install microphones without first informing the Justice Department. Director Hoover told Deputy Attorney General Byron White in May 1961:

in the internal security field we are utilizing microphone surveillances on a restricted basis even though trespass is necessary to assist in uncovering the activity of Soviet intelligence agents and Communist Party leaders. . . . In the interest of national safety, microphone surveillances are also utilized on a restricted basis, even though trespass is necessary, in uncovering major criminal activities.¹²²

A memorandum by Courtney Evans indicates that he discussed microphones in "organized crime cases" with the Attorney General in July 1961:

It was pointed out to the Attorney General that we had taken action with regard to the use of microphones in [organized crime] cases and . . . we were nevertheless utilizing them in all instances where this was technically feasible and where valuable information might be expected. The strong objections to the utilization of telephone taps as contrasted to microphone surveillances was stressed. The Attorney General stated he recognized the reasons why telephone taps should be restricted to national-defense-type cases and he was pleased we had been using microphone surveillances, where these ob-

¹²¹ Memorandum from the Attorney General to the Director, FBI, "Microphone Surveillance," 5/20/64. Attorney General Brownell's memorandum authorizing "unrestricted use" of microphone surveillance in national security cases was prompted by the Supreme Court's decision in *Irvine v. California*, 347 U.S. 128 (1954), in which the Court denounced as "obnoxious" the installation of a microphone in a criminal suspect's bedroom.

¹²² Memorandum from Director, FBI, to Deputy Attorney General Byron White, 5/4/61.

jections do not apply, wherever possible in organized crime matters.¹³³

The Justice Department later summarized this practice in a brief to the Supreme Court:

Under Departmental practices in effect for a period of years prior to 1963, and continuing into 1965, the Director of the Federal Bureau of Investigation was given authority to approve the installation of devices such as [microphones] for intelligence (but not evidentiary) purposes when required in the interest of internal security or national safety, including organized crime, kidnappings, or matters wherein human life might be at stake.¹³⁴

On March 30, 1965, at the urging of Attorney General Katzenbach, the FBI adopted a uniform procedure for submitting both wiretaps and microphones to the Attorney General for his approval prior to installation. Director Hoover described the new procedures in a memorandum to the Attorney General:

In line with your suggestion this morning, I have already set up the procedure similar to requesting of authority for phone taps to be utilized in requesting authority for the placement of microphones. In other words, I shall forward to you from time to time requests for authority to install microphones where deemed imperative for your consideration and approval or disapproval. Furthermore, I have instructed that, where you have approved either a phone tap or the installation of a microphone, you will be advised when such is discontinued if in less than six months and, if not discontinued in less than six months, that a new request be submitted by me to you for extension of the telephone tap or microphone installation.¹³⁵

One week later Katzenbach sent to the White House a proposed Presidential directive to all Federal agencies on electronic surveillance. This directive, formally issued by President Johnson on June 30, 1965, forbade the nonconsensual interception of telephone communications by Federal personnel, "except in connection with investigations related to the national security" and then only after obtaining the written approval of the Attorney General. The directive was less precise concerning microphone surveillance:

Utilization of mechanical or electronic devices to overhear nontelephone conversations is an even more difficult problem.

¹³³ Memorandum from Courtney Evans to Alan Belmont, July 7, 1961. A Bureau memorandum by Director Hoover several years later states that Evans subsequently gave then Senator Robert Kennedy a letter, dated February 17, 1966, stating that Evans had never discussed the use of microphones with Kennedy and that Evans "did not know of any written material that was sent to you (Kennedy)" concerning microphone surveillances. The letter from Evans to Kennedy was released to the press. Director Hoover concluded in his memorandum reporting this incident that in view of Evans "disregard for the truth and duplicity toward the FBI, he should not be contacted without prior Bureau approval." (Memorandum, J. Edgar Hoover, Re: Courtney A. Evans, Person Not To Be Contacted, December 15, 1966.)

¹³⁴ *Black v. United States* 385 U.S. 26 (1966).

¹³⁵ Memorandum from Director, FBI to Attorney General, 3/30/65, p. 2.

which raises substantial and unresolved questions of constitutional interpretation. I desire that each agency conducting such investigations consult with the Attorney General to ascertain whether the agency's practices are fully in accord with the law and with a decent regard for the rights of others.¹³⁶

B. Wiretap Surveillance of Dr. King and the SCLC: October 1963-June 1966

On September 6, 1963, Assistant Director William Sullivan first recommended to Director Hoover that the FBI install wiretaps on Dr. King's home and the offices of the Southern Christian Leadership Conference.¹³⁷ Sullivan's recommendation was apparently part of an attempt to improve the Domestic Intelligence Division's standing with the Director by convincing him that Sullivan's Division was concerned about alleged communist influence on the civil rights movement and that the Division intended, as Sullivan subsequently informed the Director, to "do everything that is humanly possible" in conducting its investigation.¹³⁸

Sullivan's recommendation was viewed with scepticism by the FBI leadership since Attorney General Kennedy had rejected a similar proposal two months earlier. Associate Director Clyde Tolson noted on the memorandum containing Sullivan's proposal: "I see no point in making this recommendation to the Attorney General in view of the fact that he turned down a similar recommendation on July 22, 1963."¹³⁹ Director Hoover scrawled below Tolson's note: "I will approve though I am dizzy over vacillation as to influence of CPUSA."¹⁴⁰

In late September 1963 the FBI conducted a survey and concluded that wiretap coverage of Dr. King's residence and of the New York SCLC office could be implemented without detection.¹⁴¹ On October 7, citing "possible communist influence in the racial situation," Hoover requested the Attorney General's permission for a wiretap "on King at his current address or at any future address to which he may move" and "on the SCLC office at the current New York address or to any other address to which it may be moved."¹⁴² Attorney General Kennedy signed the request on October 10 and, on October 21, also approved the FBI request for coverage of the SCLC's Atlanta office.¹⁴³

Two memoranda by Courtney Evans indicate that the Attorney General was uncertain about the advisability of the wiretaps. On October 10, the Attorney General summoned Evans to discuss the FBI's request for the wiretaps on Dr. King's home telephone and the New York SCLC telephones. Evans wrote:

¹³⁶ Lyndon B. Johnson, Presidential Directive, 6/30/65.

¹³⁷ Memorandum from James Bland to William Sullivan, 9/6/63.

¹³⁸ Memorandum from William Sullivan to Alan Belmont, 9/25/63, p. 5. The dispute between Sullivan and Hoover, and the intensification which developed from it, are described pp. 104 et. seq.

¹³⁹ Memorandum from James Bland to William Sullivan, 10/4/63, attachment.

¹⁴⁰ Bland memorandum, 10/4/63, attachment.

¹⁴¹ Bland memorandum, 10/4/63, p. 1.

¹⁴² Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/7/63.

¹⁴³ Hoover memorandum, 10/7/63; Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/18/63.

The Attorney General said that he recognized the importance of this coverage if substantial information is to be developed concerning the relationship between King and the communist party. He said there was no question in his mind as to the coverage in New York City but that he was worried about the security of an installation covering a residence in Atlanta, Georgia. He noted that the last thing we could afford to have would be a discovery of a wiretap on King's residence.

I pointed out to the Attorney General the fact that a residence was involved did not necessarily mean there was any added risk because of the technical nature of the telephone system. . . . After this discussion the Attorney General said he felt we should go ahead with the technical coverage on King on a trial basis, and to continue it if productive results were forthcoming. He said he was certain that all Bureau representatives involved would recognize the delicacy of this particular matter and would thus be even more cautious than ever in this assignment. . . .¹⁴⁴

According to Evans' memorandum, the Attorney General signed the authorization for the wiretap immediately after this conversation.

Another memorandum by Evans describes the Attorney General's reaction on approving the Bureau's request for a wiretap on the Atlanta SCLC office a week later:

The Attorney General is apparently still vacillating in his position as to technical coverage. . . . I reminded him of our previous conversation wherein he was assured that all possible would be done to insure the security of this operation.

The Attorney General advised that he was approving [the wiretaps] but asked that this coverage and that on King's residence be evaluated at the end of thirty days in light of the results secured so that the continuance of those surveillances could be determined at that time.¹⁴⁵

Wiretaps were installed on the SCLC's New York office on October 24, 1963, and at Dr. King's home and the SCLC's Atlanta office on November 8, 1963. The FBI made an internal evaluation of the wiretaps in December 1963 and decided on its own to extend the wiretaps for three months. Reading the Attorney General's authorization broadly, the FBI construed permission to wiretap Dr. King "at his current address or at any future address" to include hotel room phones and the phone at the home of friends with whom he temporarily stayed. The FBI installed wiretaps, without seeking further authorization, on the following occasions:

Location	Installed	Discontinued
King's Atlanta home	Nov. 8, 1963	Apr. 30, 1964
A friend's home	Aug. 14, 1964	Sept. 8, 1964
Hyatt House Hotel, Los Angeles	Apr. 24, 1964	Apr. 26, 1964
Hyatt House Motel, Los Angeles	July 7, 1964	July 9, 1964
Claridge Hotel, Atlanta City	Aug. 27, 1964	Aug. 27, 1964
SCLC Atlanta headquarters	Nov. 8, 1963	June 21, 1964
SCLC New York headquarters	Oct. 24, 1963	Jan. 24, 1964
	July 13, 1964	July 31, 1964

¹⁴⁴ Memorandum from Courtney Evans to Alan Belmont, 10/10/68.

¹⁴⁵ Memorandum from Courtney Evans to Alan Belmont, 10/21/68.

The Committee was not able to ascertain why Attorney General Kennedy approved the FBI's request for wiretaps in October 1963 after refusing an identical request in July 1963. Burke Marshall, Kennedy's assistant in charge of civil rights affairs, testified that he could not recall ever having discussed the matter with the Attorney General. It was his opinion, however, that the decision had been influenced by events arising out of concern about possible communist influence in the civil rights movement that had been widely publicized during the hearings on the Public Accommodations Act in the summer of 1963. Marshall recalled that Dr. King had made a "commitment" to the Attorney General and to the President to "stop having any communication" with Advisers A and B. Subsequently,

information came in, not as far as Adviser B, but as far as Adviser A was concerned, that that commitment was not lived up to, and I have assumed since, although I do not remember discussing it with Robert Kennedy, that the reason that he authorized the tap . . . was that he wanted to find out what was going on.

From his point of view, Martin Luther King had made a commitment on a very important matter . . . [and] King had broken that commitment. So therefore the Attorney General wanted to find out whether [Adviser A] did in fact have influence over King, what he was telling King, and so forth.¹⁴⁷

Marshall's answer to a question concerning whether anyone in the Justice Department ever considered asking the FBI to discontinue the investigation of Dr. King also sheds some light on why the Attorney General might have decided to approve the wiretaps:

Not that I know of. [The FBI's allegations concerning Adviser A] were grave and serious, and the inquiries from the Senate and from the public, both to the President and to the Attorney General, as well as the Bureau, had to be answered and they had to be answered fully. Stopping the investigation in light of those circumstances would have run the risk that there would have been a lot of complaints that the Bureau had been blocked for political reasons from investigating serious charges about communist infiltration in the civil rights movement.¹⁴⁸

Edwin O. Guthman, the Justice Department Public Relations Chief during Robert Kennedy's tenure as Attorney General, told the Committee that he had spoken with then Senator Robert Kennedy about the wiretap when it was revealed in a Jack Anderson story in 1968. According to Guthman, Robert Kennedy told him:

he had been importuned or requested by the FBI over a period of time to wiretap the phones of Dr. King, specifically wiretap the phones, as I recollect, at the headquarters of the Southern Christian Leadership Conference and, I think,

¹⁴⁷ Burke Marshall testimony, 3/3/70, p. 20. The "commitment on a very important matter" had been Dr. King's promise to sever his relations with Adviser A.

¹⁴⁸ Marshall, 3/3/70, p. 55.

Martin Luther King's home, but I'm not certain about that. . . .

Robert Kennedy said that he finally agreed in the fall of 1963 to give the FBI permission to wiretap the phones, and my clear recollection on this is that his feeling was that if he did not do it, Mr. Hoover would move to impede or block the passage of the civil rights bill, which had been introduced in the summer of 1963, and that he felt that he might as well settle the matter as to whether (Adviser A) did have the influence on King that the FBI contended. . . . My recollection is that there had been a number of conversations with King by Burke Marshall and Robert Kennedy, and I think President Kennedy had indicated to King that he ought not to have anything to do with (Adviser A). My understanding and recollection is that King said he would, and then each time the FBI would come back and say, he's still in contact with (Adviser A) . . . Robert Kennedy viewed this as a serious matter and not in the interest of the country and not in the interest of the civil rights movement, if the FBI information was accurate.¹⁴⁹

Guthman testified that he could not recall Kennedy's elaborating on the steps that he had feared Director Hoover would take against the civil rights legislation if he had not agreed to the wiretap, against the civil rights legislation if he had not agreed to the wiretap, but gave his own opinion that "Hoover's influence on the Hill could be considerable and it could have been a form of public statement or conferring with Senators in that area."¹⁵⁰

It is also not clear why Attorney General Kennedy insisted that the wiretaps be evaluated after 30 days and then failed to complain when the FBI neglected to send him an evaluation. Evans, after reviewing his memorandum stating that the Attorney General required the FBI to evaluate the wiretaps after 30 days, testified that he assumed the Attorney General had "expected the Bureau to . . . submit the results of that evaluation to him." When asked if the Attorney General had ever inquired into whether the evaluation had been made, Evans testified:

I am reasonably certain he never asked me. I would point out, however, that the assassination of President Kennedy followed these events reasonably close in point of time, and this disrupted the operation of the Office of the Attorney General.¹⁵¹

In March 1965 Attorney General Nicholas Katzenbach requested the FBI to submit all of its wiretaps for reauthorization.¹⁵² He testified:

In late April 1965, in accordance with this program, I received a request from the Bureau to continue a tap on Dr. King's personal phone. I ordered it discontinued. It is, however, possible that a request for the continuation of a pre-existing tap on the headquarters of the Southern Christian

¹⁴⁹ Edwin O. Guthman testimony, 3/10/70, pp. 6, 15-17.

¹⁵⁰ Guthman testimony, 3/10/70, p. 17.

¹⁵¹ Courtney Evans testimony, 12/1/75, p. 15.

¹⁵² Nicholas Katzenbach testimony, 12/8/75, Hearings, Vol. 6, p. 210.

Leadership Conference was made about the same time, and I may have approved that tap. I do not recall the date or the circumstances which would have led me to do so.¹⁵³

Documents provided to the Committee by the FBI reflect that in early April 1965 the Atlanta office informed headquarters that it was discontinuing the wiretap on Dr. King's home because he was moving. On April 19 the Director authorized a survey to determine if a wiretap could be placed on the phone in Dr. King's new residence with "full security." The Director's memorandum also stated that "After receipt of results of survey and Atlanta's recommendations, a memorandum will be prepared along with any necessary correspondence with the Attorney General."¹⁵⁴ A memorandum from the Atlanta office the next month states: "On [May 6, 1965], Mr. Sullivan telephonically advised that the installation of this Tesur [technical surveillance] was not authorized at this time."¹⁵⁵

The Bureau has been unable to find a record of any discussions between FBI officials and Attorney Katzenbach concerning this wiretap, and there are no memoranda in the Bureau files which indicate the reason that the wiretap on Dr. King's new home was not authorized.

The FBI terminated the wiretap on the New York SCLC office in January 1964, only two months after it had been installed, "for lack of productivity."¹⁵⁶ The wiretap was reinstalled in July 1964 and discontinued later that month because "the office moved."¹⁵⁷ No further wiretaps were placed on the New York office.

The wiretap on the Atlanta SCLC office was reviewed by Attorney General Katzenbach on October 27, 1965, and received his approval. A Bureau memorandum recommending continuation of the coverage in April 1966 was returned with a notation by Katzenbach, dated June 20, 1966, stating: "I think this coverage should be discontinued, particularly in light of possible charges of a criminal nature against [certain SCLC employees]."¹⁵⁸ Technical coverage was discontinued the following day.¹⁵⁹

Attorney General Ramsey Clark turned down two requests by the FBI for wiretaps on the phones of the SCLC, once on January 3, 1968, and again on January 17, 1969.¹⁶¹ Clark wrote the Director concerning the 1968 request:

I am declining authorization of the requested installation of the above telephone surveillance at the present time. There has not been an adequate demonstration of a direct threat to national security.¹⁶²

Clark's refusal to authorize an SCLC wiretap in 1969 occurred two days before he left office, at the termination of the Johnson Admin-

¹⁵³ Katzenbach, 12/8/75. Hearings, p. 210.

¹⁵⁴ Memorandum from Director, FBI, to SAC, Atlanta, 4/19/65.

¹⁵⁵ Memorandum from SAC, Atlanta to Director, FBI, 5/19/65.

¹⁵⁶ Memorandum from SAC, New York to Director, FBI, 1/27/64.

¹⁵⁷ Memorandum from Director, FBI to SAC, New York, 8/7/64.

¹⁵⁸ Memorandum from Director, FBI to Attorney General, 6/22/66. The charges had nothing to do with Dr. King.

¹⁵⁹ Memorandum from Joseph Sizoo to Files, 6/28/66.

¹⁶⁰ Memorandum from Ramsey Clark to J. Edgar Hoover, 1/3/68; memorandum from Ramsey Clark to J. Edgar Hoover, 1/17/68.

¹⁶¹ Clark memorandum, 1/3/68.

istration. Less than a month later the Director informed the Atlanta office that an SCLC wiretap "is in line to be presented to the new Attorney General, and a survey, with full security assured . . . is desirable."¹⁶³ FBI files contain no indication of the disposition of this final request.

C. MICROPHONE SURVEILLANCE OF DR. KING: JANUARY 1964-NOVEMBER 1965.

From January 1964 through November 1965, the FBI installed at least 15 hidden microphones in hotel and motel rooms occupied by Martin Luther King.¹⁶⁴ The FBI has told the Committee about the following microphone surveillances:

- Willard Hotel, Washington, D.C. (Jan. 5, 1964).
- Shroeder Hotel, Milwaukee (Jan. 27, 1964).
- Hilton Hawaiian Village, Honolulu (Feb. 18, 1964).
- Ambassador Hotel, Los Angeles (Feb. 20, 1964).
- Hyatt House Motel, Los Angeles (Feb. 22, 1964).
- Statler Hotel, Detroit (Mar. 19, 1964).
- Senator Motel, Sacramento (Apr. 23, 1964).
- Hyatt House Motel, Los Angeles (July 7, 1964).
- Manger Hotel, Savannah, Ga. (Sept. 28, 1964).
- Park Sheraton Hotel, New York (Jan. 8, 1965).
- Americana Hotel, New York (Jan. 28, 1965).
- Sheraton Atlantic Hotel, New York (May 12, 1965).
- Astor Hotel, New York (Oct. 14, 1965).
- New York Hilton Hotel, New York (Oct. 28, 1965).
- Americana Hotel, New York (Nov. 29, 1965).¹⁶⁵

1. Reasons for the FBI's Microphone Surveillance of Dr. King.

The wiretaps on Dr. King's home telephone and the phones of the SCLC offices were authorized by the Attorney General for the stated purpose of determining whether suspected communists were influencing the course of the civil rights movement. FBI documents indicate that the microphone coverage, (which was initiated without the knowledge of the Attorney Generals, in conformance with practice then current), was originally designed not only to pick up information bearing on possible Communist influence over Dr. King, but also to obtain information for use in the FBI's secret effort to discredit Dr.

¹⁶³ Memorandum from Director, FBI to SAC, Atlanta, 2/14/69.

¹⁶⁴ Witnesses have indicated that other microphones might have been used to cover the activities of Dr. King and his associates, although those microphones might have been placed by local law enforcement officers. Bureau documents indicate that the New York and Miami police did in fact place microphones in Dr. King's hotel rooms. (Memorandum from Director, FBI to Special Agent in Charge, New York, 8/7/65; Memorandum from Frederick Baumgardner to William Sullivan, 5/27/66). Congressman Andrew Young, who was one of Dr. King's chief aides, testified: "We found a bug in the pulpit in a church in Selma, Alabama, in 1965, and we didn't even move it or destroy it. We took it out from under the pulpit, taped it on top of the pulpit, and Reverend Abernathy called it, 'this little do-biekey' and he said, 'I want you to tell Mr. Hoover, I don't want it under here where there is a whole lot of static, I want him to get it straight,' and he preached to the little bug." (Andrew Young testimony, 2/10/76, p. 55.)

¹⁶⁵ Letter from FBI to Senate Select Committee, 7/24/75, pp. 4-5. (The Bureau also authorized the installation of a microphone at the Park Sheraton Hotel in New York on March 20, 1965, but Dr. King did not stay at the hotel and the coverage was terminated.)

King as the leader of the civil rights movement.¹⁶⁶ By 1965, references to discrediting efforts had been dropped, and documents requesting authorization for microphones mentioned only the purpose of obtaining information about possible communist influences.¹⁶⁷ The details of the Bureau's efforts to undermine Dr. King are discussed in the ensuing chapters.

The first microphones were installed about two weeks after a December 23, 1963, FBI conference at which methods of "neutralizing" Dr. King were explored.¹⁶⁸ Microphone surveillance was again discussed at an all-day conference at FBI Headquarters in February 1964, attended by representatives of the FBI laboratory "preparatory to effecting coverage of the activities of Martin Luther King, Jr., and his associates in Honolulu."¹⁶⁹ Justifying the need for microphone coverage, the Chief of the FBI's Internal Security Section wrote that the FBI was "attempting" to obtain information about "the [private] activities of Dr. King and his associates" so that Dr. King could be "completely discredited."¹⁷⁰

The FBI memorandum authorizing the placement of the first microphone on Dr. King—at the Willard Hotel in early January 1964—gave as a basis "the intelligence and counterintelligence possibilities which thorough coverage of Dr. King's activities might develop. . . ."¹⁷¹ The Willard Hotel "bug" yielded 19 reels of tape. A memorandum summarizing the tapes was sent to the Director with William Sullivan's recommendation that it be shown to Walter Jenkins, President Johnson's Special Assistant, "inasmuch as Dr. King is seeking an appointment with President Johnson."¹⁷² Cartha D. DeLoach, Assistant to the Director, showed the summary memorandum to Jenkins, and later wrote:

I told Jenkins that the Director indicated I should leave this attachment with him if he desired to let the President personally read it. Jenkins mentioned that he was sufficiently aware of the facts that he could verbally advise the President of the matter. Jenkins 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. I

¹⁶⁶ See, for example, Memorandum from William Sullivan to Alan Belmont, 1/6/64; memorandum from Frederick Baumgardner to William Sullivan, 1/28/64. Some Bureau witnesses have suggested that the microphones were installed only to intercept conversations between Dr. King and other individuals, such as Adviser A, to determine the extent of communist influence over King. The Bureau, however, was unable to produce any evidence that it had anticipated meetings between Dr. King and Adviser A or between Dr. King and any other of his advisers whom the Bureau alleged had communist connections on the initial occasions when microphones were used.

¹⁶⁷ Memorandum from Frederick Baumgardner to William Sullivan, 10/20/65; memorandum from Frederick Baumgardner to William Sullivan, 11/29/65.

¹⁶⁸ Memorandum from William Sullivan to Alan Belmont, 1/18/64. This conference and the FBI's attempts to discredit King are discussed *infra*, pp. 188 *et seq.*

¹⁶⁹ Memorandum from Frederick Baumgardner to William Sullivan, 2/4/64.

¹⁷⁰ Baumgardner memorandum, 1/28/64.

¹⁷¹ Memorandum from William Sullivan to Alan Belmont, 1/6/64.

¹⁷² Memorandum from William Sullivan to Alan Belmont, 1/18/64. The memorandum did not indicate how the information had been obtained.

told him the Director had this in mind. however, he also believed we should obtain additional information prior to discussing it with certain friends.¹⁷³

The FBI was apparently encouraged by the intelligence afforded by "bugs" and by the White House's receptiveness to that type of information. A microphone was installed at the Shroeder Hotel in Milwaukee two weeks later, but was declared "unproductive" because "there were no activities of interest developed."¹⁷⁴ Dr. King's visit to Honolulu in mid-February 1964 was covered by a squad of surveillance experts brought in for the occasion from San Francisco. One of these experts was described in a Bureau memorandum as the "most experienced, most ingenious, most unruffled, most competent sound man for this type of operation in the San Francisco Office;" another was chosen because he had "shown unusual ingenuity, persistence, and determination in making microphone installations;" and a third had "been absolutely fearless in these types of operations for over twelve years."¹⁷⁵ More than twenty reels of tape were obtained during Dr. King's stay in Honolulu and his sojourn in Los Angeles immediately afterward.¹⁷⁶ Director Hoover agreed to send a copy of a memorandum describing the contents of the tapes to Jenkins and Attorney General Kennedy in order to:

remove all doubt from the Attorney General's mind as to the type of person King is. It will probably also eliminate King from any participation in [a memorial for President Kennedy which the Attorney General was helping to arrange].¹⁷⁷

Dr. King's stay in Los Angeles in July 1964 was covered by both wiretaps and microphones in his hotel room. The wiretap was intended to gain intelligence about Dr. King's plans at the Republican National Convention. Microphone surveillance was requested to attempt to obtain information useful in the campaigns to discredit him.¹⁷⁸ Sullivan's memorandum describing the coverage was sent to Hoover with a recommendation against dissemination to the White House or the Attorney General:

as in this instance it is merely repetitious and does not have nearly the impact as prior such memoranda. We are continuing to follow closely King's activities and giving consideration to every possibility for future similar coverage that will add to our record on King so that in the end he might be discredited and thus be removed from his position of great stature in the Negro community.¹⁷⁹

¹⁷³ Memorandum from Cartha D. DeLoach to J. Edgar Hoover, 1/14/64. Jenkins told members of Committee staff in an informal interview that he had never suggested disseminating derogatory material about Dr. King to the press. (Staff summary of interview with Walter Jenkins, 12/1/75, p. 2.) The Committee did not take Jenkins testimony because Jenkins informed the Committee that he was ill.

¹⁷⁴ Memorandum from William Sullivan to Alan Belmont, 1/28/64.

¹⁷⁵ Airtel, Special Agent in charge, San Francisco, to FBI Director, 2/25/64.

¹⁷⁶ The FBI also covered Dr. King's activities with photographic surveillance.

¹⁷⁷ Memorandum from Frederick Baumgardner to William Sullivan, 3/4/64. The memorandum did not show how the information had been obtained.

¹⁷⁸ Memorandum from Frederick Baumgardner to William Sullivan, 7/2/64.

¹⁷⁹ Memorandum from Frederick Baumgardner to William Sullivan, 7/15/64.

Hoover wrote on the memorandum, "Send to Jenkins." The summary memorandum and a cover letter were sent to Jenkins on July 17.¹⁶⁰

It should also be noted that Dr. King's activities at the Democratic National Convention in Atlantic City, New Jersey in August 1964 were closely monitored by the FBI. Microphones were not installed on that occasion, although wiretaps were placed on Dr. King's hotel room phone. The stated justification for the wiretap was the investigation of possible communist influence and the fact that Dr. King "may indulge in a hunger fast as a means of protest."¹⁶¹ A great deal of potentially useful political information was obtained from this wiretap and disseminated to the White House.¹⁶²

The memorandum authorizing microphone coverage of Dr. King's room in Savannah, Georgia during the annual SCLC conference in September and October 1964 described surveillance as necessary because it was "expected that attempts will again be made to exert influence upon the SCLC and in particular on King by communists."¹⁶³

The seven "bugs" in Dr. King's rooms during visits to New York from January to November 1965 were justified in contemporaneous internal FBI memoranda by anticipated meetings of Dr. King with several people whom the FBI claimed had affiliations with the Communist Party.¹⁶⁴ No mention was made of the possibility of obtaining private life material in memoranda concerning these "bugs."¹⁶⁵

2. Evidence Bearing on Whether the Attorneys General Authorized or Knew About the Microphone Surveillance of Dr. King

In summary, it is clear that the FBI never requested permission for installing microphones to cover Dr. King from Attorney General Kennedy, and there is no evidence that it ever directly informed him that it was using microphones. There is some question, however, concerning whether the Attorney General ultimately realized that the FBI was using "bugs" because of the nature of the information that he was being sent.

Evidence concerning Attorney General Katzenbach's knowledge of microphone surveillance of Dr. King is contradictory. In March 1965, Katzenbach required the FBI for the first time to seek the Justice Department's approval for all microphone installations. The FBI has given the Committee documents which indicate that Katzenbach was

¹⁶⁰ Letter from J. Edgar Hoover to Walter Jenkins, 7/17/64.

¹⁶¹ Memorandum from William Sullivan to Alan Belmont, 8/21/64.

¹⁶² The FBI's surveillance of Dr. King and other civil rights leaders at the Atlantic City Democratic National Convention is discussed at length in a separate staff report dealing with electronic surveillance.

¹⁶³ Memorandum from Frederick Baumgardner to William Sullivan, 9/28/64.

¹⁶⁴ Memoranda from Joseph Sizoo to William Sullivan, 1/8/65, 1/29/65, and 5/18/65; memorandum from William Sullivan to Alan Belmont, 10/14/65; memoranda from Frederick Baumgardner to William Sullivan, 10/29/65 and 11/29/65.

¹⁶⁵ Possible reasons that the mention of the collection of private life material was dropped from FBI memoranda during this period include (1) the "truce" between Dr. King and the FBI after December 1964 (see, pp. 168 *et seq.*) and (2) the fact that after May 1965 the FBI was required to inform the Attorney General of microphone surveillance and did not want to leave a "paper record" referring to the FBI's program to discredit Dr. King.

informed shortly after the fact of three microphone installations on Dr. King, that he did not object to those installations, and that he urged the FBI to use caution in its surveillance activities. Katzenbach does not now recall having been informed about the FBI's microphone surveillance of Dr. King.

(a) *Attorney General Robert F. Kennedy.*—The FBI makes no claim that Attorney General Kennedy was expressly informed about the microphones placed in Dr. King's hotel rooms. The only FBI claim that Attorney General Kennedy might have been aware of the microphones is a Domestic Intelligence Division memorandum written in December 1966, which states:

concerning microphone coverage of King. Attorney General Robert F. Kennedy was furnished the pertinent information obtained. Perusal of which would indicate that a microphone was the source of this information.¹⁸⁶

Next to this entry, Hoover wrote: "when?" A memorandum from the Domestic Intelligence Division a few days later explained:

Attorney General Robert F. Kennedy was furnished an eight page "Top Secret" memorandum . . . dated March 4, 1964. This memorandum is a summary of microphone coverage . . . in the Willard Hotel, Washington, D.C.; Hilton Hawaiian Village, Honolulu, Hawaii; Ambassador Hotel, Los Angeles, California; and the Hyatt House Hotel, Los Angeles, California. The wording of the memorandum is couched in such a manner that it is obvious that a microphone was the source.¹⁸⁷

The question of whether Attorney General Kennedy suspected that the FBI was using microphones to gather information about Dr. King must also be viewed in light of the Attorney General's express authorization of wiretaps in the King case on national security grounds, and of the FBI's practice—known to officials in the Justice Department—of installing microphones in national security cases without notifying the Department. We have examined the Bureau's claim with respect to Attorney General Kennedy's possible knowledge about the microphones and have found the following evidence.

As noted above, on January 13, 1964, William Sullivan recommended to Hoover that President Johnson's assistant, Walter Jenkins, be given a copy of a memorandum detailing information discovered through the Willard Hotel bug.¹⁸⁸ Sullivan expressed doubts, however, about whether the Attorney General should be given the information:

The attached document is classified "Top Secret" to minimize the likelihood that this material will be read by someone who will leak it to King. However, it is possible despite its classification, the Attorney General himself may reprimand King on the basis of this material. If he does, it is not likely

¹⁸⁶ Memorandum from Charles Brennan to William Sullivan, 12/16/66, p. 2.

¹⁸⁷ Memorandum from Charles Brennan to William Sullivan, 12/19/66.

¹⁸⁸ Memorandum from William Sullivan to Alan Belmont, 1/18/64. This incident is discussed, at p. 121.

we will develop any more such information through the means employed. It is highly important that we do develop further information of this type in order that we may completely discredit King as the leader of the Negro people.

Next to Sullivan's recommendation that Courtney Evans hand-deliver a copy of the memorandum to the Attorney General, Director Hoover wrote: "No. A copy need *not* be given the A.G." ¹⁸⁹

Jenkins was subsequently shown a copy of the report, but was not told the source of the information.

Shortly after the Honolulu bug, Sullivan changed his mind and recommended that the Attorney General be informed of information gathered by both the Willard and Honolulu bugs to "remove all doubt from the Attorney General's mind about the type of person King is." ¹⁹⁰ Sullivan suggested:

Mr. Evans personally deliver to the Attorney General a copy of the attached "Top Secret" memorandum. It is also believed that Mr. Evans should indicate to the Attorney General that if King was to become aware of our coverage of him it is highly probable that we will no longer be able to develop such information through the means employed to date and that we, of course, are still desirous of continuing to develop such information.

Director Hoover wrote next to this recommendation "O.K." A notation in the margin states: "Done, 3/10/64. E[vans]." ¹⁹¹ The memorandum sent to the Attorney General did not state the source of the information that it contained.

When shown Sullivan's memorandum by the Committee, Courtney Evans testified that he did not recall delivering the memorandum about Dr. King to the Attorney General, but that "I assume I must have in view of this record." ¹⁹² He doubted that he had spoken with the Attorney General about the substance of the memorandum, however, because "if I did have a conversation with him, I believe I would have written a memorandum as to that conversation." ¹⁹³ When asked if he recalled ever telling the Attorney General that the memorandum contained information obtained through microphone coverage, Evans testified:

No, I do not. And considering the tenor of the times then, I would probably have been very circumspect and told him

¹⁸⁹ Sullivan memorandum, 1/18/64. Sullivan's remarks in this passage underscore the tension generated by the mutually inconsistent policies of the FBI and the Justice Department toward Dr. King. Sullivan viewed the FBI's task as gathering information with which to discredit Dr. King. He perceived the Attorney General's goal was to prevent Dr. King from being discredited. Sullivan feared that if the Attorney General were told of the derogatory information about Dr. King, the Attorney General might reprimand Dr. King. Thus, the FBI would be thwarted in its goals if it gave the Attorney General information which he needed to ensure that Dr. King not be discredited.

¹⁹⁰ Baumgardner memorandum, 3/4/64. See p. 122. The memorandum also stated: "We avoided mentioning specific dates as to when it took place or mention of when the information was received—thus to avoid, if possible, a question being raised by the Attorney General as to why he was not told earlier of the Willard incident."

¹⁹¹ Baumgardner memorandum, 3/4/64, p. 2.

¹⁹² Courtney Evans testimony, 12/1/75, p. 20.

¹⁹³ Evans, 12/1/75, p. 20. The FBI has told the Committee that no such memorandum exists in its files.

exactly what I was instructed to tell him and nothing more. . . . I think it is a matter of record that the relationship between the Attorney General and the Director had deteriorated to the point that they weren't speaking to each other. And consequently I felt that it was essential that I followed these instructions very explicitly.¹⁹⁴

A memorandum from Evans dated September 11, 1964, indicates that the Attorney General had in fact received the summary memorandum, but sheds no light on whether he was told the source of the information:

Before leaving office, Attorney General Kennedy instructed his Executive Assistant, Harold Reis, to return to the Bureau copies of top secret memoranda submitted to him by the FBI . . . on March 4, 1964, and June 1, 1964, as Mr. Kennedy did not feel this material should go to the general Department files. These memoranda deal with activities of Martin Luther King. Reis accordingly handed these memoranda to me. They are attached.¹⁹⁵

It is uncertain whether the Attorney General understood the source of the information after reading the FBI summary memoranda. Evans told the Committee that he never received any indication that the Attorney General suspected the FBI was following Dr. King's activities with hidden microphones, and surmised that the Attorney General might have assumed the information was the product of live informants, or surveillance by local law enforcement agencies.¹⁹⁶ Walter Jenkins, who also read these memoranda, told the Committee that he had not suspected that the FBI had obtained the information in them by using microphones.¹⁹⁷ Bill Moyers, President Johnson's Assistant, also saw several of the memoranda concerning Dr. King, and testified that he had not realized that the FBI had collected the information through microphones. He told the Committee, however, that "the nature of the general references that were being made, I realized later, could only have come from that kind of knowledge unless there was an informer in Martin Luther King's presence a good bit of the time."¹⁹⁸

(b) *Attorney General Nicholas deB. Katzenbach.*—Four FBI documents appear to indicate that Attorney General Katzenbach was informed about the FBI's microphone surveillance of Dr. King. Katzenbach testified that he could not recall having been informed of the surveillance, and stated that it would have been inconsistent with his claimed disapproval of a wiretap on Dr. King's home at the same time. The Bureau's position appears in a Domestic Intelligence memorandum listing the wiretaps and microphones installed in the investigation of Dr. King:

Attorney General Katzenbach was specifically notified of three of these microphone installations. In each of these three

¹⁹⁴ Evans, 1/21/75, pp. 21-22.

¹⁹⁵ Memorandum from Courtney Evans to Alan Belmont, 9/11/64.

¹⁹⁶ Evans 12/1/75, pp. 21-22.

¹⁹⁷ Staff summary of Walter Jenkins interview, 10/75, p. 3.

¹⁹⁸ Bill Moyers testimony, 3/2/76, p. 89.

instances the Attorney General was advised that a trespass was involved in the installation.¹⁹⁹

The Bureau maintains that Attorney General Katzenbach was advised of microphone placements in Dr. King's hotel rooms on the following occasions:

On May 13, 1965, the New York field office installed a microphone in Dr. King's suite at the Sheraton Atlantic Hotel in New York, pursuant to authorization from an Inspector in the Domestic Intelligence Division, apparently without Director Hoover's prior knowledge. According to a contemporaneous memorandum, the New York office had only a few hours notice of Dr. King's arrival and needed to install the microphone "immediately."²⁰⁰ A memorandum dated May 17, addressed to the Attorney General and signed by Director Hoover, stated:

On May 12, 1965, information was obtained indicating a meeting of King and his advisors was to take place in New York on that date. Because of the importance of that meeting and the urgency of the situation, a microphone surveillance was effected on May 13 . . .²⁰¹

On October 14, 1965, a microphone was installed in Dr. King's room in the Astor Hotel in New York. This installation was approved by William Sullivan, head of the Domestic Intelligence Division, again without Director Hoover's prior knowledge, "on New York's assurance that full security was available, and since time was of the essence" (Sullivan claimed that the FBI had learned of Dr. King's plan to visit New York only a few hours before.)²⁰² On his memorandum informing Assistant to the Director Alan Belmont of the microphone placement, Sullivan wrote: "Memo to AG being prepared." A memorandum to the Attorney General, dated October 19 and signed by Director Hoover, stated that the Astor Hotel surveillance had been placed because of the "importance" of Dr. King's meeting with his advisers in New York "and the urgency of the situation."²⁰³

On November 9, 1965, a microphone was installed in Dr. King's room in the Americana Hotel in New York. A Domestic Intelligence Division memorandum of that date states:

On New York's assurance that full security was available and since time was of the essence [as the FBI had learned of Dr. King's planned visit to New York on that day], New York was told to go ahead with the installation. . . . Inasmuch as the installation will be made today (11/20/65) and deactivated immediately upon King's departure, probably 11/30/65, we will promptly submit a memorandum to the Attorney General advising when the installation was made and when it was taken off.²⁰⁴

¹⁹⁹ Memorandum from Charles Brennan to William Sullivan, 12/16/76, p. 2.

²⁰⁰ Memorandum from Joseph Sizoo to William Sullivan, 5/13/65.

²⁰¹ Memorandum from Director, FBI to Attorney General, 5/17/65.

²⁰² Memorandum from William Sullivan to Alan Belmont, 10/14/65.

²⁰³ Memorandum from Director, FBI to Attorney General, 10/19/65.

²⁰⁴ Memorandum from Frederick Baumgardner to William Sullivan, 11/20/65.

A memorandum to the Attorney General, dated December 1, 1965, and bearing Director Hoover's signature, stated that "a microphone surveillance was effected November 20, 1965 on King . . . and was discontinued on November 30, 1965." The reason for the installation was the "importance of the meeting and the urgency of the situation . . ."

The FBI has given the Committee copies of the three memoranda to Attorney General Katzenbach informing him that microphones had been placed on Dr. King's rooms. Each is initialed "N deB K" in the upper right hand corner. When shown these memoranda, Katzenbach testified: "Each of these bears my initials in what appears to be my handwriting in the place where I customarily initialed Bureau memoranda." He denied, however, any recollection of having received the memoranda.

The Bureau also supplied the Committee with a transmittal slip dated December 10, 1965.

Mr. Hoover—

Obviously these are particularly delicate surveillances and 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.

N deB K

Katzenbach identified the handwritten note as his, and testified that although he recalled writing the note, he could not recall why he had written it. When asked if he recalled the "delicate surveillances" mentioned in the note, Katzenbach told the Committee:

I don't recall, and I have nothing in my possession that has served to refresh my recollection, and nothing has been shown to me by the Committee staff that serves to refresh my recollection.

Q. In your opinion, could this note have referred to the three mentioned electronic surveillances against Dr. King?

Mr. KATZENBACH. On its face it says that it did . . . it would seem to me that would be a possibility. I point out that it could refer to almost anything. My opinion is obviously, since I don't recall getting the first three, that this was not associated with it, and I really don't have enough recollection of what was associated with it to say. I did see Mr.

²⁰⁵ Memorandum from Director, FBI to Attorney General, 12/1/65.

²⁰⁶ Nicholas Katzenbach testimony, 12/8/75, Hearings, Vol. 6, p 211.

²⁰⁷ When asked if he thought his initials in the corner of the three documents were forgeries, Katzenbach testified: "Let me be just as clear about that as I can. I have no recollection of receiving these documents, and I seriously believe that I would have recollected them had I received them. If they are my initials and if I put them on, then I am clearly mistaken in that recollection." (Katzenbach, 12/8/75, Hearings, p. 227.)

²⁰⁸ Memorandum from Nicholas Katzenbach to J. Edgar Hoover, 12/10/65. The Bureau asserts that the transmittal slip, which bears an FBI secretary's notation "Martin Luther King," was located in the FBI's Martin Luther King file. The serial number for filing on the transmittal slip is immediately subsequent to the serial number of the December 1 notification. The Bureau has informed the committee, however, that there is no evidence that the two memoranda were ever attached to one another, or that anything was attached to the transmittal slip when it came to the Bureau.

Helms on that date. Whether it related to something he asked for, I don't know.²⁰⁹

Katzenbach added that he was:

puzzled by the fact that the handwritten note, if related to the December 1 memorandum from the Director, is written on a separate piece of paper. It was then, and is now, my consistent practice to write notes of that kind on the incoming piece of paper, provided there is room to do so.²¹⁰

The documentary evidence—the three notices that a microphone had been placed on a room occupied by Dr. King shortly before, and the note in Katzenbach's handwriting referring to "delicate surveillances" which the FBI states was sent to the Bureau with the last of the notices—indicates that Attorney General Katzenbach knew of the microphone surveillance but did not order it halted. Katzenbach, in denying any knowledge of the microphones, pointed to two factors mitigating against the likelihood of his having permitted the surveillance to continue once learning of it: his rejection of a wiretap on Dr. King's new home in April 1965, the fact that his handwritten note urged caution in *future* surveillances, and that no microphone surveillances were carried out after the date of the note.²¹¹

Katzenbach's position throughout his testimony before the Committee is best summarized by a portion of a written, sworn statement that he submitted at the time of his public appearance:

These memoranda do not indicate on their face the Bureau sought any prior authorization, or state any reasons why it was not sought. They appear to present me with information after the fact and request no authority to perform similar surveillances in the future. I believe the Bureau knew full well that I would not authorize the surveillances in question, not only because of the circumstances surrounding Dr. King, but particularly because the bugs were to be placed in a hotel room. That is among the worst possible invasions of privacy and would demand the strongest conceivable justification. Indeed, I believe this position had been made clear in written memoranda to the Bureau dating back to the 1950s, and I have a clear recollection of being critical of the Bureau for installing a bug in the bedroom of a leading member of the Mafia. I reaffirmed this position to the Bureau sometime in 1965 or 1966, but that reaffirmation may have postdated these memoranda.

Finally, I cannot recall any memoranda at any time informing me that the Bureau had installed a tap or a bug without

²⁰⁹ Katzenbach, 12/3/75, Hearings, p. 220. Katzenbach also told the Committee: "My calendar does show that on that date I had a meeting alone with the Deputy Director of the CIA, Mr. Helms, which he had requested the previous afternoon. The meeting was a brief one and would be consistent with a request by the CIA for domestic surveillances by the FBI. I rarely saw Mr. Helms alone, and he did on one or two occasions make such a request. But I have no recollection of the subject matter of that particular meeting and cannot, therefore say that this handwritten note is related to it." (Katzenbach, 12/3/75, Hearings, p. 211.)

²¹⁰ Katzenbach, 12/3/75, Hearings, p. 211.

²¹¹ Katzenbach, 11/12/76, pp. 76-76.

my prior authorization. While I authorized Mr. Hoover to do so in emergency circumstances in a memorandum written in the summer of 1965, not only does the May memorandum pre-date that authorization, but there is nothing in the memorandum which suggests that on any of these occasions was there an "emergency." Further, my calendars, which are in the possession of the Committee, indicate my general availability²¹² to the Bureau on two occasions involving these memoranda, and my total availability to the Bureau on the third. Nor do I have any recollection that the "emergency" procedure was ever invoked by the Bureau during my term in office.

Obviously I do not believe that I received these memoranda. Equally obvious is the fact that if I initialed them, I am mistaken in my belief.²¹³

Although apparently no microphones were placed in Dr. King's hotel rooms after the November 29, 1965 "bug" at the Americana Hotel, the Domestic Intelligence Division did make one further attempt to install a microphone. A memorandum from William Sullivan to Cartha DeLoach, then Assistant to the Director, dated January 21, 1966, states that Sullivan had authorized the New York office to "bug" King's room during an anticipated three-day stay. Clyde Tolson wrote across this memorandum, "Remove this surveillance at once. 1/21," and Hoover added his "yes." Tolson added a note on the bottom of the memorandum, complaining, "No one here approved this. I have told Sullivan again not to institute a mike surveillance without the Director's approval." Hoover wrote next to this comment, "Right."²¹⁴

²¹² Katzenbach wrote in a footnote, asterisked after this reference to his "general availability": "For communications purposes, it was my consistent practice to be met by Bureau agents whenever I traveled. In addition, I kept the White House operator informed of how to reach me at all times. In the first occasion, I left my office for a flight to Chicago at 2:30 p.m. and was, as a practical matter, unavailable to the Bureau only during the two-hour flight. On the second occasion, I left my office at 12:35 p.m. for a one-hour flight to New York, and was similarly unavailable only during the flight. On the third occasion, I was in my Washington office all day, and thus always available to the Bureau."

²¹³ Katzenbach, 12/3/76, Hearings, pp. 211-212.

²¹⁴ Memorandum from William Sullivan to Cartha DeLoach, 1/21/66. The significance of this memorandum is unclear. Hoover's and Tolson's strong reactions to Sullivan's approval of a microphone on King's room—an action which Sullivan had taken several times before—may have been in response to the "delicate surveillances" warning of the Attorney General, or an added caution in light of the Long Committee investigation into electronic surveillance. (The Long Committee investigation is discussed in the Committee Staff Report about electronic surveillance.) It is perhaps significant that on the same day that Tolson ordered Sullivan to remove the "bug" from Dr. King's hotel room, C. D. DeLoach met with Senator Long and, according to a memorandum by DeLoach, secured Senator Long's promise not to call any FBI witnesses to testify before his Subcommittee. DeLoach's account of that meeting states:

"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 from C. D. DeLoach to C. Tolson, 1/21/66. Ordering Sullivan to remove the microphone in Dr. King's hotel room, which would have proven extremely embarrassing if it had been discovered, might have been one of Tolson's responses to DeLoach's warning.)

V. THE FBI'S EFFORT TO DISCREDIT DR. MARTIN LUTHER KING: 1964

Introduction and Summary

In December 1963, a meeting was convened at FBI headquarters to discuss various "avenues of approach aimed at neutralizing King as an effective Negro leader." Two weeks later, FBI agents planted the first microphones in Dr. King's hotel rooms in an "attempt" to obtain information about the private "activities of Dr. King and his associates" so that Dr. King could be "completely discredited." That same week, the head of the Domestic Intelligence Division recommended the promotion of a new "national Negro leader" who could "overshadow King and be in the position to assume the role of the leadership of the Negro people when King has been completely discredited."

The FBI's effort to discredit Dr. King and to undermine the SCLC involved plans touching on virtually every aspect of Dr. King's life. The FBI scrutinized Dr. King's tax returns, monitored his financial affairs, and even tried to establish that he had a secret foreign bank account. Religious leaders and institutions were contacted in an effort to undermine their support of him, and unfavorable material was "leaked" to the press. Bureau officials contacted members of Congress, and special "off the record" testimony was prepared for the Director's use before the House Appropriations Committee. Efforts were made to turn White House and Justice Department Officials against Dr. King by barraging them with unfavorable reports and, according to one witness, even offering to play for a White House official tape recordings that the Bureau considered embarrassing to King.

This chapter examines not only the Bureau's efforts to discredit Dr. King, but the degree to which officials in other branches of the Government were responsible for those actions. A few months before the FBI held its December 1963 conference at which its program against Dr. King was apparently formulated, the Director distributed a "monograph" about Dr. King to the heads of several Governmental agencies. Attorney General Kennedy ordered it immediately withdrawn. During the course of the following year, the FBI sent several intelligence reports bearing on Dr. King's private life to the White House and Justice Department. Although government officials outside the FBI were not aware of the extent of the FBI's efforts to discredit Dr. King, officials of the Justice Department and of the White House did know that the FBI had offered tape recordings and derogatory information about Dr. King to reporters. The Attorney General went no further than complaining to the President and accepting a Bureau official's representation that the allegations were not true. President Johnson not only failed to order the Bureau to stop, but indeed cautioned it against dealing with certain reporters who had complained of its conduct.

A. The FBI Disseminates the First King "Monograph" and Attorney General Kennedy Orders It Recalled: October 1963

On October 15, 1963, William Sullivan forwarded to Assistant Director Alan Belmont for his approval a monograph entitled "Communism and the Negro Movement—A Current Analysis." He proposed

that it be distributed to the Attorney General, the White House, CIA, State Department, Defense Department, and Defense Department intelligence agencies.²¹⁵ Sullivan testified that the purpose of the monograph was to "discredit King."²¹⁶

Belmont submitted the monograph to the Director with a note stating:

The attached analysis of Communism and the Negro movement is highly explosive. It can be regarded as a personal attack on Martin Luther King. There is no doubt it will have a heavy impact on the Attorney General and anyone else to whom we disseminate. . . .

The memorandum makes good reading and is based on information from reliable sources. We may well be charged, however, with expressing opinions and conclusions, particularly with reference to some of the statements about King.

This memorandum may startle the Attorney General, particularly in view of his past association with King, and the fact that we are disseminating this outside the Department. He may resent this. Nevertheless, the memorandum is a powerful warning against Communist influence in the Negro movement, and we will be carrying out our responsibility by disseminating it to the people indicated in the attached memorandum.²¹⁷

The monograph was distributed on October 18, 1963. One week later the Attorney General called Courtney Evans and stated that he had just learned that the Army had received a copy of a report about Dr. King's alleged communist activities. Evans reported to Belmont:

He was obviously irritated. He went on to ask if the Army got copies of all reports submitted to him. . . . The Attorney General asked what responsibilities the Army had in relation to the communist background of Martin Luther King. I told the Attorney General . . . that the Army had an interest in communist activities particularly in relation to racial matters because the military had to be called on if civil disturbances arising out of such matters went beyond the ability of civilian authorities. This explanation seemed to serve no purpose.²¹⁸

Director Hoover recorded in a memorandum of the same date:

The Attorney General called and advised me there was a lot of talk at the Pentagon regarding the document. . . . The Attorney General anticipated that this information would leak out as the military didn't like the Negroes.

The Attorney General felt we should get back all copies of the document. I told him . . . we would get them from all agen-

²¹⁵ Memorandum from William Sullivan to Alan Belmont, 10/15/63.

²¹⁶ William Sullivan testimony, 11/1/75, p. 49.

²¹⁷ Memorandum from Alan Belmont to Clyde Tolson, 10/17/63. Hoover wrote in the margin "We must do our duty" and "I am glad you recognize at last that there exists such influence." Copies were sent to the Attorney General, the White House, the Secretary of State, the Director of Central Intelligence, the Secretary of Defense, the Director of Naval Intelligence, the Army Assistant Chief of Staff for Intelligence, and the Department of Special Investigations of the Air Force.

²¹⁸ Memorandum from Courtney Evans to Alan Belmont, 10/27/63.

cies to which they were disseminated. . . . I also told him if any newspapers asked about this, no comment would be made and no mention would be made that such a document existed.²¹⁰

All copies were recovered by October 28.

Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division under Robert Kennedy, told the Committee that the monograph was:

a personal diatribe . . . a personal attack without evidentiary support on the character, the moral character and person of Dr. Martin Luther King, and it was only peripherally related to anything substantive, like whether or not there was communist infiltration or influence on the civil rights movement. . . . It was a personal attack on the man and went far afield from the charges [of possible communist influence].²¹⁰

Marshall recalled that he had been very "irritated" about the monograph and that the Attorney General had "thought it was outrageous." He remembered that the Attorney General had ordered the monograph withdrawn, but did not know if the Attorney General had taken any further steps to reprimand the Bureau.²¹¹

B. The FBI Plans Its Campaign To Discredit Dr. King: December 23, 1963

On December 23, 1963, a nine-hour conference was held at FBI headquarters to discuss Martin Luther King. In attendance were Assistant Director Sullivan, Internal Security Section Chief Frederick Baumgardner, three other FBI headquarters officials, and two agents from the FBI's Atlanta Field Office.

A prepared list of twenty-one proposals was presented and discussed. The proposals raised the possibility of "using" ministers, "disgruntled" acquaintances, "aggressive" newsmen, "colored" agents, Dr. King's housekeeper, and even suggested using Dr. King's wife or "placing a good looking female plant in King's office."²¹² An account of the meeting written by William Sullivan emphasized that the Bureau must take a "discreet approach" in developing information about Dr. King for use "at an opportune time in a counterintelli-

²¹⁰ Memorandum from J. Edgar Hoover to Clyde Tolson, Alan Belmont, John Mohr, Cartha DeLoach, Alex Rosen, and William Sullivan, 10/25/63.

²¹¹ Burke Marshall testimony, 3/3/76, p. 32. Carl T. Rowan, then Director of USIA, was sent a copy of the monograph. In a newspaper article in 1960, Rowan wrote, "(p)erhaps this is the time for me to reveal that I have read the FBI reports based on electronic surveillance of the late Nobel Prize-winner. I know how much dirt the FBI has dug up, and 90 percent of it is barn-yard gossip that has nothing to do with 'internal security' or 'Marxist influences.'" (Carl T. Rowan, "FBI Won't Talk About Additional Wiretappings," The Washington D.C. Evening Star, 6/20/60, p. A-18)

²¹² Marshall testimony, 3/3/76, p. 34.

²¹³ FBI work paper, "Questions To Be Explored at Conference 12/23/63 re: Communist Influence in Racial Matters."

The Bureau subsequently considered the possibility of getting Detroit policemen to raid Dr. King's hotel room in March 1964 and kept abreast of the Miami police force's plans to raid Dr. King's hotel room in 1963 (Unsigned Bureau memorandum, "For Telephonic Briefing of Detroit Office;" Airtel, Miami Office to Director, FBI, 5/28/60).

gence move to discredit him." It was generally agreed that the Bureau should make use of "all available investigative techniques coupled with meticulous, planning, boldness, and ingenuity, tempered only with good judgment," but that "discretion must not reach the point of timidity."²²³

Sullivan's memorandum reported that the following decisions were made at the conference :

(1) We must determine and check out all of the employees of the SCLC.

(2) We must locate and monitor the funds of the SCLC.

(3) We must identify and check out the sources who contribute to the SCLC.

(4) We must continue to keep close watch on King's personal activities.

(5) We will, at the proper time when it can be done without embarrassment to the Bureau, expose King as an opportunist who is not a sincere person but is exploiting the racial situation for personal gain.

(6) We will explore the possibility of utilizing additional specialized investigative techniques at the SCLC office.

Sullivan described the purpose of the meeting as

To explore how best to carry on our investigation to produce the desired results without embarrassment to the Bureau. Included in our discussion was a complete analysis of the avenues of approach aimed at neutralizing King as an effective Negro leader and developing evidence concerning King's continued dependence on communists for guidance and direction.²²⁴

Precisely what prompted the Bureau to decide upon this drastic new approach is still unclear.

William Sullivan was asked by the Committee whether tactics, such as placing female "plants," were common practices of the FBI. Sullivan testified that they were :

common practice among intelligence services all over the world. This is not an isolated phenomenon. . . . This is a common practice, rough, tough, dirty business. Whether we should be in it or not, that is for you folks to decide. We are in it No holds were barred. We have used that technique against Soviet agents. They have used it against us.

Question. The same methods were brought home?

Mr. SULLIVAN. Brought home against any organization against which we were targeted. We did not differentiate. This is a rough, tough business.

Senator MONDALE. Would it be safe to say that the techniques we learned in fighting . . . true espionage in World

²²³ Memorandum from William Sullivan to Alan Belmont, 12/24/63. Six months later, in April 1964, FBI headquarters was still instructing agents in the field 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" and to consider the possibility of "utilizing contracts in the news media field." (Memorandum from FBI Director to Atlanta Office, April 1, 1964)

²²⁴ Sullivan memorandum, 12/24/63.

War II came to be used against some of our own American citizens?

Mr. SULLIVAN. That would be a correct deduction.²²⁵

Sullivan testified that the plans formulated at the December 24, 1963 meeting were in accord with "Mr. Hoover's policy."²²⁶ After reviewing the memoranda, Sullivan emphasized,

I want to make this clear, this is not an isolated phenomenon, that this was a practice of the Bureau down through the years. I might say it often became a real character assassination.²²⁷

Sullivan was asked by the Committee whether he or any other employees of the Bureau ever objected to using these tactics. Sullivan responded:

Not to my recollection . . . I was not ready at that time to collide with him. Everybody in the Division went right along with Hoover's policy. I do not recall anybody ever raising a question.

. . . 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 realm of reasoning, because we were just naturally pragmatists. The one thing we were concerned about 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, was never raised by myself or anybody else. . . . I think this suggests really in government we are amoral.²²⁸

On December 20, 1963, less than a week after the FBI conference, Time magazine chose Dr. King as the "Man of the Year," describing him as the "unchallenged voice of the Negro people . . . [who] has infused the Negroes themselves with the fiber that gives their revolution its true stature."²²⁹ Hoover wrote across the memorandum informing him of this honor: "They had to dig deep in the garbage to come up with this one."²³⁰

C. William Sullivan proposes a plan to promote a new negro leader: January 1964

On January 6, 1964—about two weeks after the FBI's conference to plan methods of "neutralizing" Dr. King's influence and to gather information about Dr. King's personal life—the FBI installed the microphone in Dr. King's room at the Willard Hotel. As explained in the preceding chapter, additional microphones soon followed;

²²⁵ Sullivan, 11/1/75, p. 97.

²²⁶ Sullivan, 11/1/75, p. 85.

²²⁷ Sullivan, 11/1/75, p. 87.

²²⁸ Sullivan, 11/1/75, pp. 92-98.

²²⁹ United Press International release, 12/20/63, regarding 1/8/64 Time cover story.

²³⁰ UPI release, 12/20/63.

physical and photographic surveillance was initiated; special Headquarters "briefings" were held; "dry runs" were planned; and the most sophisticated and experienced Bureau personnel were deployed to gather information that might be used in a concerted effort to destroy Dr. King's influence.

Two days after the installation of the Willard Hotel microphones, Assistant Director William Sullivan proposed that the FBI select a new "national Negro leader" as Dr. King's successor. In proposing the plan, Sullivan stated:

It should be clear to all of us that Martin Luther King must, at some propitious point in the future, be revealed to the people of this country and to his Negro followers as being what he actually is—a fraud, demagogue and scoundrel. When the true facts concerning his activities are presented, such should be enough, if handled properly, to take him off his pedestal and to reduce him completely in influence. When this is done, and it can be and will be done, obviously much confusion will reign, particularly among the Negro people. . . . The Negroes will be left without a national leader of sufficiently compelling personality to steer them in the proper direction. This is what could happen, but need not happen if the right kind of a national 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 the leadership of the Negro people when King has been completely discredited.

For some months I have been thinking about this matter. One day I had an opportunity to explore this from a philosophical and sociological standpoint with [an acquaintance] whom I have known for some years. . . . I asked [him] to give the matter some attention and if he knew any Negro of outstanding intelligence and ability to let me know and we would have a discussion. [He] has submitted to me the name of the above-captioned person. Enclosed with this memorandum is an outline of [the person's] biography which is truly remarkable for a man so young. On scanning this biography, it will be seen that [he] does have all the qualifications of the kind of a Negro I have in mind to advance to positions of national leadership. . . .

If this thing can be set up properly without the Bureau in any way becoming directly involved, I think it would be not only 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. These can be discussed in detail later when I have probed more fully into the possibilities.²³¹

When Sullivan was shown this memorandum by the Committee, he testified:

²³¹ Memorandum from William Sullivan to Alan Belmont, 1/8/64.

I'm very proud of this memorandum, one of the best memoranda I ever wrote. I think here I was showing some concern for the country.²³²

Sullivan sought the Director's approval "to explore this whole matter in greater detail." The Director noted his own "o.k." and added:

I am glad to see that "light" has finally, though dismally delayed, come to the Domestic Int. Div. I struggled for months to get over the fact that the communists were taking over the racial movement but our experts here couldn't or wouldn't see it.²³³

It is uncertain whether the FBI took steps to implement Sullivan's plan. The FBI files contain no additional memoranda on the subject. The successor for Dr. King proposed in Sullivan's memorandum has told the Committee that he was never contacted by the FBI, and that he was not aware of the FBI's plans for him or of any attempts by the FBI to promote him as a civil rights leader.²³⁴

D. FBI Headquarters Orders the Field Offices To Intensify Efforts to Discredit Dr. King: April-August 1964

On April 1, 1964, in response to a suggestion from the Atlanta field office for another conference in Washington to plan strategy against Dr. King, FBI Headquarters ordered the Atlanta and New York offices to:

give the matter of instant investigation a thorough analysis with a view toward suggesting new avenues of investigation and intensification in areas already being explored. Bear in mind the main goals of this matter: namely, determining the extent of the communist influence in racial matters and taking such action as is appropriate to neutralize or completely discredit the effectiveness of Martin Luther King, Jr., as a Negro leader. . . .²³⁵ [Emphasis added.]

Headquarters listed several areas "having potential for further inquiry":

possibilities of anonymous source contacts, possibilities of utilizing contacts in the news media field; initiating discreet checks relative to developing background information on employees of the Southern Christian Leadership Conference (SCLC); remaining alert to the possibility of capitalizing on any disgruntled SCLC employee; the possibility of developing information concerning any financial dealings of King which may be illegal; and the development of subversive information pertaining to SCLC employees.²³⁶

The Atlanta Office responded with several ideas for "how the effectiveness of King can be neutralized or discredited."²³⁷

²³² Sullivan, 11/1/75, p. 140.

²³³ Sullivan memorandum, 1/8/64.

²³⁴ Staff interview, 11/17/75. This note by Director Hoover should be read in light of his "feud" with the Domestic Intelligence Division described pp. 104 et seq.

²³⁵ Memorandum from Director, FBI to SAC Atlanta, 4/1/64.

²³⁶ Director, FBI memorandum, 4/1/64.

²³⁷ Memorandum from SAC, Atlanta to Headquarters, 4/14/64, p. 11.

—Determining whether a "rift" was developing between Dr. King and Roy Wilkins, head of the NAACP, and if so, using newspapers friendly to the Bureau to "feed pertinent subversive connections and dealings of King to Wilkins."

—Furnishing to friendly newspapers on an anonymous basis, certain specific leads where he may develop the necessary data so that he may further write critical news stories."

—"Discreetly investigate the background of twelve key (SCLC) employees and associates in an effort to obtain some weakness that could be used for counter-intelligence activities."

—"Injection of false information with certain discontented (SCLC) employees."

—Sending letters to SCLC's financial donors, written on SCLC stationery fabricated in the FBI laboratory and bearing Dr. King's signature, advising the donors that the IRS was checking SCLC's tax records. "It is believed that such a letter of this type from SCLC may cause considerable concern and eliminate future contributions."

—Placing a pretext call to an SCLC creditor to impress him with the "financial plight" of the SCLC so that he "may be incited into collection efforts."

—Examining Dr. King's checking accounts and credit card accounts to develop information about his financial affairs.

—Making a survey to determine whether to install a "trash cover" of the SCLC office in Atlanta.²²³

The Atlanta office also assured the Bureau that it would continue to explore the possibility of technical coverage of an Atlanta apartment frequently used by Dr. King, although coverage would involve several security problems.²²⁴

Shortly after these proposals were submitted, the Director expressed "the Bureau's gratitude" to the Atlanta agents for their "aggressive imagination looking toward more and better ways of meeting the problems involved" in the investigation.²²⁵

The New York office submitted only a few new suggestions, assertions that "It is felt that [our] coverage is adequate."²²⁶ To this the Director replied:

The Bureau cannot adjudge as adequate any coverage which does not positively provide to the Bureau 100 percent of the intelligence relating to the communist influence in racial mat-

²²³ SAC, Atlanta memorandum, 4/14/64.

²²⁴ The FBI overcame similar security problems in another city where hotel room coverage of Dr. King was desired by supplying "lead" information to newsmen "in order that they might determine if they could develop sufficient facts to cause an expose of King."

²²⁵ Memorandum from Director, FBI to SAC, Atlanta, 4/24/64. The Domestic Intelligence Division ultimately approved taking preliminary steps for possible anonymous mailings to the newsmen and to install coverage on any new apartments that King might lease. The other suggestions were rejected because they did "not appear desirable and/or feasible for direct action by the Bureau at this time." Memorandum from Frederick Batungardner to William Sullivan, 5/6/64.)

²²⁶ Memorandum from SAC, New York to Director, FBI, 4/14/64, p. 2. Those suggestions essentially included increasing coverage of the New York SCLC office and sending an anonymous letter to a disaffected SCLC employee "to cause disruption in the New York office." The anonymous letter was ultimately mailed. (Memorandum from Director, FBI, to SAC, New York, 4/20/64.)

ters. Obviously, we are not securing all the information that is pertinent and needs to be secured. Our coverage, therefore, is not deemed adequate.²¹²

With respect to the New York office's conclusions about a civil rights leader and associate of Dr. King, who was also under close Bureau scrutiny for alleged "subversive" ties, the Director wrote:

The Bureau does not agree with the expressed belief of the New York office that [] is not sympathetic to the Party cause. While there may not be any direct evidence that [] is a communist, neither is there any substantial evidence that he is anticommunist.²¹³

Surprisingly, the Bureau did not even comment on the statement of the New York office that Adviser A was "not now under CP discipline in the civil rights field."²¹⁴

In June 1964 a special unit was established in the Bureau's Internal Security Section to handle exclusively "the over-all problem of communist penetration with the racial movement."²¹⁵ The memorandum justifying the special unit pointed out that "urgency for the FBI to 'stay ahead' of the situation is tied to pending civil rights legislation and foreseeable ramifications arising out of the complex political situations in an election year where civil rights and social disturbances will play a key role in campaign efforts and possible election results."²¹⁶

In August the Bureau issued new instructions directing the field "to broaden its efforts relating to communist influences in the racial field."²¹⁷ The term "communist," the field was told, "should be interpreted in its broadest sense as including persons not only adhering to the principles of the CPUSA itself, but also to such splinter and offshoot groups as the Socialist Workers Party, Progressive Labor and the like."²¹⁸ The Director pointed out:

The news media of recent months mirror the civil rights issue as probably the number one domestic issue in the political spectrum. There are clear and unmistakable signs that we are in the midst of a social revolution with the racial movement as its core. The Bureau, in meeting its responsibilities in this area, is an integral part of this revolution. . . .²¹⁹

The Special Unit that had been established in June was made a permanent unit.

²¹² Memorandum from Director, FBI, to SAC, New York, 4/24/64.

²¹³ Director, FBI memorandum, 4/24/64, p. 2.

²¹⁴ SAC, New York memorandum, 4/14/64. A detailed, comprehensive, 163-page Internal Headquarters working paper, entitled "Communist Party, U.S.A., Negro Question, Communist Influence in Racial Matters," dated April 27, 1964, includes 14 pages dealing solely with Adviser A, but does not include the information received from New York just two weeks earlier that Adviser A "is not now under CP discipline in the civil rights field."

²¹⁵ Unsigned FBI Memorandum, Addendum by Inspection Division, 6/4/64.

²¹⁶ Memorandum from Frederick Baumgardner to William Sullivan, 5/20/64, addendum by Inspection Division, p. 1.

²¹⁷ Memorandum from Frederick Baumgardner to William Sullivan, 8/25/64.

²¹⁸ Memorandum from Director, FBI, to SAC, Atlanta, 8/28/64, p. 6.

²¹⁹ Director, FBI memorandum, 8/28/64, pp. 1-2.

E. Steps Taken by the FBI in 1964 to Discredit Dr. King

The FBI's program to "neutralize" Martin Luther King as the leader of the civil rights movement went far beyond the planning and collection stage. The Committee has discovered the following attempts by the FBI to discredit Dr. King in 1964.

1. Attempts to Discredit Dr. King with the White House

As set forth in the preceding chapter, a memorandum summarizing the contents of the Willard Hotel tapes was shown to presidential assistant Walter Jenkins in January 1964 "inasmuch as King is seeking an appointment with President Johnson."²⁵⁰ The summary of information obtained from surveillance at the Willard, Honolulu, and Los Angeles hotels was sent to the White House and to the Attorney General in March 1964 in order to "remove all doubt from the Attorney General's mind as to the type of person King is."²⁵¹ A third memorandum derived from microphone surveillance was sent to the White House in July.²⁵²

2. Attempts to Discredit Dr. King With the Congress

In January 1964, Director Hoover gave off-the-record testimony before the House Appropriations Committee. His precise comments are not known. The briefing paper prepared for his appearance by the Domestic Intelligence Division, however, indicates that Director Hoover was prepared to represent to the Committee that Dr. King's advisers were communists and that Dr. King engaged in improper behavior.²⁵³

The Director's off-the-record briefing had an immediate impact. The FBI was soon told that the members of the Committee were "very concerned regarding the background" of Dr. King, and that some members of the Committee felt that the President should be requested to instruct the USIA to withdraw a film dealing favorably with the August 1963 March on Washington. They were reported to be "particularly disturbed and irked at the fact that Martin Luther King appears to predominate the film."²⁵⁴

In March 1964 Cartha DeLoach, Assistant to the Director, reported that he had been approached by Representative Howard Smith (D-Va.), Chairman of the House Rules Committee. According to DeLoach's memorandum, Representative Smith said that he had heard about the Director's remarks before the Appropriations Committee. Congressman Smith was reported to have asked for information for a speech about Dr. King on the floor of the House. DeLoach declined to furnish the required information, but recommended to the Director

²⁵⁰ Sullivan memorandum, 1/13/64, p. 2.

²⁵¹ Baumgardner memorandum, 3/4/64.

²⁵² See Chapter IV.

²⁵³ Memorandum from Frederick Baumgardner to William Sullivan, 1/22/64.

²⁵⁴ Memorandum from S. P. Callahan to John Mohr, 1/31/64.

Carl Rowan told a Committee staff member that shortly before his appointment as Director of USIA was announced, he had been invited to the White House for a Sunday evening dinner with the President and Mrs. Johnson to view the film about the March. Rowan said that when the President asked him if he was going to distribute the film, Rowan replied that if he could not, "you have to find yourself a new Director." Rowan recalled that the President replied, "That's good enough for me." Rowan recalled that after the film had been distributed, he had been called aside by Congressman Rooney, who repeated stories about Dr. King that had been given to him by the Bureau. Rowan stated that Rooney had specifically mentioned the bugging of Dr. King's suite at the Willard Hotel. (Staff Interview of Carl T. Rowan, 8/20/75)

that Congressman Smith might be useful in the future because a speech by him about Dr. King would be picked up by "newspapers all over the Nation."²⁵⁵

In a television interview several years later, Congressman Rooney stated:

Now you talk about the FBI 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 tapes or other sources about Martin Luther King?

Representative ROONEY. They did.

INTERVIEWER. Is that proper?

Representative ROONEY. Why not?²⁵⁶

3. Attempts to Discredit Dr. King with Universities

In early March 1964, the Bureau learned that Marquette University in Milwaukee, Wisconsin contemplated awarding Dr. King an honorary degree. A memorandum noted:

It is shocking indeed that the possibility exists that King may receive an Honorary Degree from the same institution which honored the Director with such a degree in 1950. . . . By making pertinent information available to [a University official] at this time, on a strictly confidential basis, we will be giving the University sufficient time to enable it to take positive action in a manner which might avoid embarrassment to the University.²⁵⁷

The university official was briefed by an FBI agent on Dr. King's background and assured the Bureau that Dr. King would not be considered for an honorary degree. The result of this FBI project is unclear.

In April 1964, the FBI learned that Dr. King had been offered an honorary degree by Springfield College. DeLoach visited Senator Leverett Saltonstall, who was a member of the board of the College, in an effort to convince him to influence the College to withdraw its offer. According to DeLoach, Senator Saltonstall promised to speak with an official of the College. The College official was reported to have subsequently visited DeLoach,²⁵⁸ but to have said that he would be unable to "uninvite" Dr. King because the information concerning

²⁵⁵ Memorandum from Cartha DeLoach to John Mohr, 3/10/64, p. 2. Hoover wrote on E. Loach's memorandum: "Someone on Senator [sic] Rooney's committee certainly betrayed the secrecy of the 'off-the-record' testimony I gave re: King. I do not want anything on King given to Smith nor anyone else at this time."

²⁵⁶ Interview with Congressman Rooney, NBC News "First Tuesday," 6/1/71.

²⁵⁷ Memorandum from Frederick Baumgardner to William Sullivan, 3/4/64. The officer who handled this assignment was given a letter of commendation by the Director and a monetary award.

²⁵⁸ DeLoach had originally intended not to contact the College official because of his "close association with (Sargent) Shriver." Senator Saltonstall, however, requested the College official to confer with DeLoach.

Dr. King had to be held in confidence, and the board of trustees was governed by "liberals."²⁵⁰

4. Attempts to Discredit Dr. King with Churches

On June 12, 1964, William Sullivan wrote a memorandum stating that he had been contacted by the General Secretary of the National Council of the Churches of Christ. Sullivan reported that, "I took the liberty of advising [him] confidentially of the fact that Dr. Martin Luther King not only left a great deal to be desired from the standpoint of Communism, but also from the standpoint of personal conduct." Sullivan observed:

I think that we have sowed an idea here which may do some good. I will follow up on the matter very discreetly to see what desirable results may emanate therefrom.²⁵⁰

Sullivan met again with the General Secretary in mid-December 1964 and reported that the General Secretary had assured him "steps have been taken by the National Council of the Churches of Christ to make certain from this time on that Martin Luther King will never get 'one single dollar' of financial support from the National Council." Sullivan reported that the Secretary stated that he had discussed Dr. King's background with some "key" protestant clergymen who were "horrified." Sullivan also noted that the Secretary said that he also intended to discuss the matter with Roy Wilkins to persuade Wilkins "that Negro leaders should completely isolate King and remove him from the role he is now occupying in civil rights activities."²⁵¹

On December 8, 1964, the Director authorized the disclosure of information about Dr. King's personal life to an influential member of the Baptist World Alliance (BWA), so that he could pass the information along to the General Secretary of BWA, and to BWA Program Committee members, to prevent the Committee from inviting Dr. King to address the BWA's 1965 Congress in Miami Beach. The Director rejected a proposal, however, for "arranging for [certain BWA members] to listen to sources we have concerning this matter."²⁵²

5. Attempts to Discredit Dr. King with the Pope

On August 31, 1964, the FBI learned that Dr. King, who was going to be touring Europe in September, might have plans to visit the Pope. Internal Security Section Chief Baumgardner observed:

It would be shocking indeed for such an unscrupulous character as King to receive an audience with the Pope. It is believed that if a plan to see the Pope is in the making, it ought to be nipped in the bud. We have considered different possibilities for meeting this problem and believe that the best one would be to have Assistant Director Malone of the New York office personally contact Francis Cardinal Spellman and on a highly confidential basis bring to the Cardinal's attention the fact that King is to visit Rome. . . .

²⁵⁰ Memorandum from Cartha DeLoach to John Mohr, 4/8/64. DeLoach stated that he would "deny any such information had been furnished" if the official told anyone that the FBI had briefed him.

²⁵¹ Memorandum from William Sullivan to Alan Belmont, 12/10/64.

²⁵² Memorandum from William Sullivan to Alan Belmont, 12/10/64.

²⁵³ Memorandum from Milton Jones to Cartha DeLoach, 12/8/64.

Malone should be able to impress upon the Cardinal the likely embarrassment that may result to the Pope should he grant King an audience and King is later discredited.²⁶³

On September 8, Baumgardner reported:

Malone called today and stated that he had discussed the situation with Cardinal Spellman over the weekend and he said that the Cardinal took instant steps to advise the Vatican against granting any audience to King . . . Cardinal Spellman is going to Rome next week . . . and thus will be on the scene personally and further insure that the Pope is not placed in an embarrassing position through any contact with King.²⁶⁴

The FBI's efforts were to no avail. The Pope met with Dr. King. The Director wrote across the memoranda informing him of that meeting, "astounding," and "I am amazed that the Pope gave an audience to such a [excised by FBI]."²⁶⁵ The Director then initiated inquiries into the reason for the failure of this project.

6. The Attempt to Discredit Dr. King During His Receipt of the Nobel Peace Prize

On October 14, 1964, Martin Luther King was named to win the Nobel Peace Prize. He received the prize in Europe on December 10, 1965. The FBI took measures to dampen Dr. King's welcome, both in Europe and on his return home.

On November 22, 1964—two weeks before Dr. King's trip to receive the prize—the Domestic Intelligence Division assembled a thirteen-page updated printed version of the monograph which Attorney General Kennedy had ordered recalled in October 1963.²⁶⁶ A copy was sent to Bill Moyers, Special Assistant to the President, on December 1, 1964, with a letter requesting his advice concerning whether the monograph should also be distributed to "responsible officials in the Executive Branch."²⁶⁷ Moyers gave his permission on December 7,²⁶⁸ and copies were distributed to the heads of several executive agencies.²⁶⁹

Information about Dr. King's private life was also made available to United Nations representatives Adlai Stevenson and Ralph Bunche, whom the Bureau had learned were being considered as possible par-

²⁶³ Memorandum from Frederick Baumgardner to William Sullivan, 8/31/64, p. 1.

The Chief of the Security Section recommended:

"If approved, Assistant Director Malone should personally orally brief Francis Cardinal Spellman in accordance with the attached Top Secret summary [containing information about Dr. King's private life] . . . This is the same summary we previously used in preventing King's receiving an honorary degree from Marquette University." (Baumgardner to Sullivan, 8/31/64.)

²⁶⁴ Memorandum from Frederick Baumgardner to William Sullivan, 9/8/64.

²⁶⁵ Director's notes on UPI release, 9/8/64, and *New York Herald Tribune*, 9/10/64.

²⁶⁶ Memorandum from William Sullivan to Alan Belmont, 11/22/64. See pp. 131 et seq.

²⁶⁷ Letter from J. Edgar Hoover to Bill Moyers, 12/1/64.

²⁶⁸ Memorandum from Cartha DeLouch to John Mohr, 12/7/64.

²⁶⁹ Copies were distributed to Acting Attorney General Nicholas Katzenbach, the Secretaries of State and Defense, the Director of the CIA, and the heads of the Military Intelligence agencies, as well as to USA.

ticipants at the December 1964 "welcome home" reception for Dr. King.²⁷⁰

Three days after Vice President-elect Humphrey participated in one of the "welcome home" receptions for Dr. King in New York, the Bureau sent him a copy of the updated King monograph and a separate memorandum entitled "Martin Luther King, Jr.: His Personal Conduct."²⁷² On December 8, 1964, the Bureau decided to brief Governor Nelson Rockefeller about Dr. King's private life and alleged Communist associations, apparently to dissuade the Governor from taking part in ceremonies commending Dr. King for having received the Nobel Prize.²⁷³

Upon learning that Dr. King might meet with a certain foreign leader, FBI headquarters instructed the FBI representative in that country to brief the proper authorities about Dr. King.²⁷⁴ The United States ambassadors in London and Oslo were briefed about Dr. King because "the Ambassadors might consider entertaining King while he is in Europe to receive the Nobel Peace Prize" and it might be possible to "forestall such action by the Ambassadors if they were briefed." The ambassadors in Stockholm and Copenhagen were also briefed because "King is also to visit those cities."²⁷⁵

On November 10, 1964, the FBI learned that the United States Information Agency was considering requesting Dr. King to engage in a one-week lecture tour in Europe following his receipt of the Noble Prize. Hoover approved the Domestic Intelligence Division's recommendation that USIA be furnished with the latest critical Bureau reports about Dr. King.²⁷⁶

7. Attempts to Block Dr. King's Publications

On September 11, 1964, the FBI learned that Dr. King intended to publish an article in a major national publication. The Domestic Intelligence Division noted that it did not know "what line King will take in the article or what its specific stands will be," but, nonetheless recommended that "... would be well to prevent any publication of his views."²⁷⁷

The task of preventing publication was assigned to an agent with contacts at the magazine who had "forestalled" the publication of an article by Dr. King in that magazine earlier in 1964.²⁷⁸

The agent subsequently reported that he had contacted an official of the magazine in late September. According to the agent, the official had agreed to "endeavor to assist" the FBI, and had been briefed about King, but was unable to block publication because a contractual agreement had already been made.²⁷⁹ The FBI did apparently have some influence at the magazine, however, because a memorandum reporting the incident concludes:

²⁷⁰ Untitled memorandum, 11/12/64.

²⁷¹ Letter from J. Edgar Hoover to Hubert Humphrey, 12/21/64.

²⁷² Memorandum from Frederick Baumgardner to William Sullivan, 12/8/64.

²⁷³ Cable from Director, FBI to Legat, 11/10/64.

²⁷⁴ Memorandum from Frederick Baumgardner to William Sullivan, 11/30/64.

²⁷⁵ Memorandum from Frederick Baumgardner to William Sullivan, 11/12/64.

²⁷⁶ Memorandum from Frederick Baumgardner to William Sullivan, 9/11/64.

²⁷⁷ Baumgardner memorandum, 9/11/64.

²⁷⁸ Memorandum to Cartha DeLoach, 11/8/64.

In connection with this [magazine] article by King, our sources have indicated that since he was awarded the Nobel Peace Prize he has attempted through some of his associates to change the [magazine] article in an effort to soften criticism made by him against other civil rights groups and leaders. King feared that such criticism would cause difficulties in the civil rights movement. The [magazine], however, has resisted King's efforts to make these changes.²⁸⁰

In February 1964, the Director alerted the field offices that Dr. King was writing a new book, and noted that "it is entirely possible that with the publication of the book the Bureau may desire to take some action, possibly in the counterintelligence area or otherwise, which may be designed to discredit King or otherwise neutralize his effectiveness . . ." ²⁸¹

The field offices were instructed to maintain information relating to the preparation and publication of the book. The FBI files indicate that this information was collected, but it is not clear whether it was ever used.

8. Attempt to Undermine the National Science Foundation's Cooperation with the SCLC

The FBI sent the National Science Foundation (NSF) a copy of the second printed monograph on King in order to convince the NSF to remove the SCLC from "the NSF program to obtain qualified Negro students from southern schools." ²⁸²

9. Unsuccessful FBI Attempts to Locate Financial Improprieties

In early January 1964, the Chief of the Internal Security Section of the Domestic Intelligence Division, Frederick J. Baumgardner, recommended that "examination of recent income tax returns of King might well reveal information which could assist the Bureau in its efforts to discredit King or neutralize his effectiveness." ²⁸³ The Intelligence Division subsequently acquired from the Internal Revenue Service copies of income tax returns for the prior five years of Dr. King, the SCLC, and the Gandhi Society,²⁸⁴ an organization which the FBI stated "augmented" the fund-raising activities of the SCLC.²⁸⁵ The Intelligence Division of the IRS told the Bureau that "IRS had very carefully scrutinized King's returns in the past but had not been able to establish a cause of action against him." ²⁸⁶ However, the IRS assured the FBI that Dr. King's current returns would

²⁸⁰ FBI memorandum, 11/3/64, p. 21.

²⁸¹ Memorandum from Director, FBI, to Special Agent in Charge, New York, 2/18/64.

²⁸² Memorandum from Frederick Baumgardner to William Sullivan, 12/17/64, p. 2.

²⁸³ Memorandum from Frederick Baumgardner to William Sullivan, 1/8/64. Baumgardner observed that it was "essential that our current requests of the IRS . . . be handled in a manner which would provide for optimum security so that neither King nor any other unauthorized individuals may become aware of the Bureau's interest and so that no embarrassment may come to the Bureau."

²⁸⁴ A wiretap had been placed on the Gandhi Society in July, 1963.

²⁸⁵ Memorandum from Frederick Baumgardner to William Sullivan, 3/25/64.

²⁸⁶ Memorandum from Daniel Brennan to William Sullivan, 3/27/64.

be scrutinized "very carefully to determine whether any violations appear."²⁸⁷ None did.

Undeterred, the Director informed the field offices that "the Bureau believes that more than ever it would be most desirable to identify any bank where [King] may have an account . . . and consider an audit of such account."²⁸⁸

One effort to uncover derogatory information about Dr. King was conceived by the Supervisor in charge of the King case during a golf game.²⁸⁹ A remote acquaintance of the Supervisor mentioned that he had heard from a friend that an acquaintance had said that Dr. King had a numbered account in a foreign bank with a balance of over one million dollars. The Supervisor suggested to Sullivan:

If we can prove that King is hoarding large sums of money, we would have available possibly the best information to date which could be used to discredit him, especially in the eyes of his own people . . . we may take the action to discredit King ourselves through friendly news sources, or the like, or we might turn the information over to the Internal Revenue Service for possible criminal prosecution.²⁹⁰

The plan was approved by Director Hoover and an inquiry was initiated. By December 1965, the investigation into a possible foreign bank account was described by the Director as "the most important presently pending" facet of the King investigation.²⁹¹ The investigation was dropped shortly afterward, however, when it developed that the initial source of the allegation informed the FBI that "it was merely a wild conclusion that had been previously drawn by someone whose identity he does not now recall."²⁹²

F. The Question of Whether Government Officials Outside of the FBI Were Aware of the FBI's Effort to Discredit Dr. King

There is no doubt that the responsible officials in the Kennedy and Johnson administrations were aware of the FBI's COMINFIL investigation involving Dr. King and the SCLC and that the wiretaps used by the FBI to collect its information were authorized under procedures existing at the time. While there is some question concerning whether officials outside of the FBI were aware that the FBI was using microphones to cover Dr. King's activities, there is no doubt that the product of the microphone surveillance was widely disseminated within the executive branch. Indeed, dissemination of the printed "monograph" about Dr. King to several executive agencies was expressly approved by Bill Moyers, President Johnson's assistant, in January 1965.

²⁸⁷ Brennan memorandum, 3/27/64. On the bottom of this memorandum, Hoover wrote "What a farce!"

²⁸⁸ Memorandum from Director, FBI to Special Agent in Charge, New York, 5/21/64.

²⁸⁹ It should be noted that the Supervisor in charge of the King case is still in a high position with the FBI and handled the committee's documents requests in the King case investigation.

²⁹⁰ Memorandum from Frederick Baumgardner to William Sullivan, 6/20/65.

²⁹¹ Memorandum from Director, FBI, to Special Agent in Charge, New Orleans, 12/3/65.

²⁹² Memorandum from Frederick Baumgardner to William Sullivan, 12/10/65.

The Committee has been unable to determine the extent to which the FBI's effort to discredit Dr. King and the SCLC by disseminating unfavorable information outside of the Government was suspected or known about by Government officials responsible for supervising the FBI. The Committee requested the FBI to provide any information in its possession reflecting that any Presidents or Attorneys General during the relevant periods were aware of any FBI efforts to "discredit" or "neutralize" Dr. King. The Bureau replied:

A review of the King file in response to other items included in the request and a polling of all Headquarters personnel involved in that and previous reviews did not result in the location or recollection of any information in FBIHQ files to indicate any of the aforementioned individuals were specifically aware of any efforts, steps or plans or proposals to "discredit" or "neutralize" King.

It is, of course, evident that much information developed in the course of the King case involving him in activities of interest to the White House and to representatives of the Department of Justice, including Attorneys General Kennedy and Katzenbach, as well as Assistant Attorney General Marshall, was such that it could conceivably have been the opinion of one or more of the above individuals that such information was being provided to "discredit" or "neutralize" King.²⁰³

Nicholas Katzenbach, Burke Marshall, Walter Jenkins, and Bill Moyers have told the Committee that they did not realize that the FBI was engaged in a concerted effort to discredit Dr. King, and that to the best of their knowledge, Presidents John Kennedy and Lyndon Johnson, as well as Attorney General Robert Kennedy, were not aware of that effort. There was no evidence that the FBI's program to discredit Dr. King was authorized outside of the FBI. There is evidence, however, that officials responsible for supervising the FBI received indications that such an effort to discredit Dr. King might be taking place, and failed to take adequate steps to prevent it. President Johnson and his Attorneys General were aware at least of Bureau attempts to disseminate unfavorable reports about Dr. King to the press. Top Executive Branch officials have told the Committee that they had believed that the FBI had tape recordings embarrassing to Dr. King, and that the FBI had offered to play those tapes both to a government official and to reporters. The evidence reveals a disturbing attitude of unconcern by responsible officials and a failure on their part to make appropriate corrective measures. As Nicholas Katzenbach explained to 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

²⁰³ Letter from FBI to the Senate Select Committee, 11/4/75.

believe one could have anticipated the extremes to which it was apparently carried.^{294a}

The following incidents have played a part in our determination that high officials of the Executive Branch must share responsibility for the FBI's effort against Dr. King.

(1) As described in the previous chapter, a summary memorandum containing information gathered from the FBI microphone placed in Dr. King's room in the Willard hotel was shown to Presidential Assistant Walter Jenkins by Cartha DeLoach on January 14, 1964. According to DeLoach's contemporaneous account of that meeting:

Jenkins 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. I told him the Director had this in mind, however, also believed we should obtain additional information prior to discussing it with certain friends.²⁹⁵

DeLoach testified that he could not recall the meeting with Jenkins, but that the memorandum should accurately reflect his conversation.²⁹⁶

Jenkins told the Committee staff in an unsworn interview that he did not recall the meeting described in DeLoach's memorandum, but that he had no reason to doubt that he had read the summary memorandum which DeLoach claims Jenkins saw. Jenkins expressly denied, however, that he had suggested that the information in the summary memorandum should be "leaked" to the press, or that either he or President Johnson had ever suggested that information about Dr. King should be "leaked" to anyone. He added, however, that he might have used words to the effect that "this is something people should know about"—referring to people in the Government—which could have been misinterpreted by DeLoach. He did not recall DeLoach telling him that the Director ultimately planned to leak this information to "certain friends."²⁹⁷

(2) A February 5, 1964 FBI memorandum reports a conversation between Edwin Guthman, the Justice Department's press secretary, and John Mohr of the Domestic Intelligence Division. According to Mohr's memorandum, Guthman told Mohr that he had heard that a reporter was preparing an article about Dr. King's alleged Communist affiliations.

Guthman stated he was quite concerned inasmuch as it appeared there had been a leak from the FBI in connection with this matter. He told me the Attorney General had been most hopeful that there would be no "leaks" concerning King.

From the tone of Guthman's entire remarks, it would appear he had two thoughts in mind without actually stating such thoughts. These thoughts were (1) that the Attorney

^{294a} Hearings, Vol. 6, p. 209.

²⁹⁵ Memorandum from Cartha DeLoach to J. Edgar Hoover, 1/14/64. This memorandum is also discussed pp. 121-122.

²⁹⁶ Cartha DeLoach testimony, 11/25/75, p. 150.

²⁹⁷ Staff summary, Walter Jenkins interview, 12/1/75, pp. 1-2. Jenkins said that he was physically unable to undergo the strain of a sworn and transcribed version.

General is most anxious that information concerning King not be released; and (2) that the Attorney General's connections with King, and his defensive statements concerning King to Congress in Civil Rights hearings, would certainly injure the Attorney General's political chances for the future.

(H)e told me once again the Attorney General was not worried about what an exposure of King could do to him. He stated he and the Attorney General are only trying to protect FBI sources of information.²⁹⁸

The memorandum states that Guthman was told "there had been no leaks from the FBI concerning Dr. Martin Luther King," and that Guthman had responded that "he had no proof whatsoever that the FBI had furnished information to the newspapers concerning King."

Guthman testified that he recalled the Justice Department had "suspected that the information had been leaked by the FBI." When asked the basis for that suspicion, he said that "we felt that the question of King and the association with [Advisers A] was a matter which was rather tightly held since it was not something of general knowledge."²⁹⁹ Guthman said that he could "not specifically" recall a reaction by Attorney General Kennedy to this "leak":

except to be somewhat displeased over it. But that was in a sense all in a day's work and I don't recall anything specific.³⁰⁰

Guthman testified that he did not recall any further efforts to determine whether the FBI had in fact leaked the story.³⁰¹

Guthman testified that DeLoach's memorandum "distorted" his remarks. Guthman said that his visit had been motivated, not by concerns about Kennedy's political future, but rather by a concern to protect FBI sources.³⁰² A memorandum dated February 5, 1964, by Guthman, does not mention a meeting with Mohr, but does contain an account of a meeting between Guthman and Cartha DeLoach on the previous day.

We both agreed that it was inevitable that King's connections with (Adviser A) would ultimately become public. I told DeLoach that our concern was over the FBI's source and that we had no other concern as to what the Attorney General had said or what our actions had been in connection with Martin Luther King.

DeLoach said he thought we should be concerned in view of what the Attorney General had said on the subject. I pointed out that anything the Attorney General had said had been cleared with the FBI. I told Deke that our record in this matter could stand any scrutiny and that both Senator Russell

²⁹⁸ Memorandum from John Mohr to Cartha DeLoach, 2/5/64. Hoover wrote next to the last paragraph quoted above, "There has never been such collusion in the past."

²⁹⁹ Edwin Guthman testimony, 3/10/70, p. 13.

³⁰⁰ Guthman, 3/10/70, p. 12.

³⁰¹ Guthman, 3/10/70, p. 20.

³⁰² Guthman, 3/10/70, p. 22.

and Senator Monroney had been fully apprised of the facts last summer or last fall.³⁰²

A memorandum by Courtney Evans later that day reports that Evans discussed this matter with Assistant Attorney General Burke Marshall, who said that he did not intend to tell the reporter anything about Dr. King, but that "if he developed anything at all with regard to [the reporter's] source of information, he would pass this along to us . . ." Evans' memorandum also notes, "According to information developed by our Atlanta office on February 4, 1964, [the reporter] had in his possession what appeared to be a blind memorandum containing information as to [Adviser A's alleged connections with the Communist Party]."³⁰³

A memorandum from Cartha DeLoach to Director Hoover dated February 18, 1964, apparently alludes to this incident and provides some insight into the political implications of the FBI's investigation of Dr. King. According to DeLoach's memorandum, Walter Jenkins and Bill Moyers of the White House told him that Burke Marshall had called and "indicated that the Attorney General had thought it highly advisable for the President to see the Department of Justice file on Martin Luther King . . . to make certain that the President knew all about King."³⁰⁴

The memorandum states that Marshall then:

told Moyers that he wanted to give the White House a little warning. He stated that he personally knew that the FBI had leaked information concerning Martin Luther King to a newspaper reporter. Marshall told Moyers that he thought the White House should know this inasmuch as information concerning King would undoubtedly be coming out before the public in the near future.

Director Hoover wrote next to this entry, "Marshall is a liar."³⁰⁵

The memorandum reports that Jenkins told DeLoach that he thought the Attorney General was concerned with "being on record with the President with the fact that although he has, for political purposes, defended King, he wants the President to realize that he, the Attorney General, is well aware of King's Communistic background."³⁰⁶

The Director's handwritten note states: "Katzenbach did his dirt against us before Warren Commission and now Marshall is trying to poison the W(hite) H(ouse) about FBI."³⁰⁷

Neither Burke Marshall nor Bill Moyers recalled the events described in DeLoach's memorandum. Marshall testified, however, about an incident involving the FBI's leaking information to a reporter that may well have been the same incident. Marshall recalled that sometime in 1964, a reporter told him that the Atlanta office of the FBI had given him information unfavorable to Dr. King. Marshall said that he phoned the Bureau official with whom he normally con-

³⁰² Memorandum, Edwin Guthman, 2/5/64.

³⁰³ Memorandum from Courtney Evans to Alan Belmont, 2/5/64.

³⁰⁴ Memorandum from Cartha DeLoach to J. Edgar Hoover, 2/18/64.

³⁰⁵ DeLoach memorandum, 2/18/64.

³⁰⁶ DeLoach memorandum, 2/18/64.

³⁰⁷ DeLoach memorandum, 2/18/64.

ducted business and said, "I'm informed by a reporter that your people in Atlanta have given this information about Martin Luther King, and that I think it is outrageous." The officier¹ at first said, "I don't believe it," but promised to inquire further. He later called and said, "The Director wants you to know that you're a . . . damned liar." Marshall told the Committee, "It was very difficult with the Bureau because if you said that they were leaking derogatory information, they would say, 'no, we're not.'" ³⁰⁸

(3) Bill Moyers, President Johnson's assistant, testified that sometime during the "hurley-burley disorganized period" shortly after President Kennedy's assassination and prior to President Johnson's state of the Union address, he heard laughter inside Walter Jenkins' office. Moyers inquired and was told by a secretary that an FBI agent had come to the office and offered to play for Jenkins a tape recording which would have been personally embarrassing to Dr. King. Jenkins refused to listen to the tape. A week later, the same FBI agent again came to the White House²⁰ and offered to play the tape for Jenkins, and again Jenkins refused to listen to it.³⁰⁹

Jenkins told the Committee that he did not recall ever having been offered tapes by the FBI, and did not know of anyone on the White House staff who had been.³¹⁰

In addition to this incident, Moyers testified that he had been generally aware that the FBI reports about Dr. King included information of a personal nature, unrelated to the purpose of the FBI's investigation. When asked if he had ever asked the FBI why it was disseminating this type of material to the White House, Moyers responded:

I don't remember. I just assumed it was related to a fallout of the investigations concerning the communist allegations, which is what the President was concerned about.

Question. Did you ever question the propriety of the FBI's disseminating that type of information?

Answer. I never questioned it, no. I thought it was spurious and irrelevant . . . If they were looking for other alleged communist efforts to embarrass King and the President, which is what the President thought, Kennedy or Johnson, it would just seem natural that other irrelevant and spurious information would come along with that investigation.

Question. And you found nothing improper about the FBI's sending that information along also?

Answer. Unnecessary? Improper at that time, no.

Question. Do you recall anyone in the White House ever questioning the propriety of the FBI's disseminating this type of material?

Answer. I think . . . there were comments that tended to ridicule the FBI's doing this, but no.³¹¹

Moyers testified that he had not suspected that the FBI was covering Dr. King's activities with microphones, although he con-

³⁰⁸ Burke Marshall testimony, 3/3/76, pp. 40-47.

³⁰⁹ Bill Moyers testimony, 3/2/76, p. 19, staff summary of Bill Moyers Interview, 11/24/75.

³¹⁰ Jenkins (staff summary), 12/1/75, p. 4.

³¹¹ Moyers, 3/2/76, p. 17.

ceded. "I subsequently realized I should have assumed that. . . . The nature of the general references that were being made I realized later could only have come from that kind of knowledge unless there was an informer in Martin Luther King's presence a good bit of the time."³¹²

(4) According to Nicholas Katzenbach, on November 25, 1964, the Washington Bureau Chief of a national news publication told him that one of his reporters had been approached by the FBI and given an opportunity to listen to some "interesting" tapes involving Dr. King.³¹³ Katzenbach told the Committee:

I was shocked by this revelation, and felt that the President should be advised immediately. On November 28, I flew, with Mr. Burke Marshall, the retiring head of the Civil Rights Division, to the LBJ Ranch.

On that occasion he and I informed the President of our conversation with the news editor and expressed in very strong terms our view that this was shocking conduct and politically extremely dangerous to the Presidency. I told the President my view that it should be stopped immediately and that he should personally contact Mr. Hoover. I received the impression that President Johnson took the matter very seriously and that he would do as I recommended.

On the following Monday, I was informed by at least one other reporter, and perhaps two, of similar offers made to them the prior week. I spoke to the Bureau official who had been identified as having made the offer and asked him about it. He flatly denied that any such offer had been made or that the FBI would engage in any such activity. Thereupon I asked at least one of the reporters—perhaps all of them—whether they would join me in confronting the Bureau on this issue. They declined to do so.

I do not know whether President Johnson discussed this matter with Mr. Hoover, or what, if anything, was said. However, I was quite confident that that particular activity ceased at that time, and I attributed it to Mr. Johnson's intervention. From that time until I left the Justice Department I never heard from any person of subsequent similar activity by the Bureau, and I assumed it had ceased. I should add only this: I believed that the tapes in question were not tapes resulting from Bureau surveillance but tapes acquired from State law enforcement authorities, and that such a representation was made to the reporter at the time.³¹⁴

Katzenbach testified that Cartha DeLoach was the Bureau official whom the reporters had identified as having offered the tapes. Katzenbach said that he had contacted DeLoach on his own volition, and that he did not tell DeLoach that he had discussed the matter with the President. He said that when he asked DeLoach if the Bureau had

³¹² Moyers, 8/2/70, p. 17.

³¹³ The two newsmen turned down the Bureau's offer.

³¹⁴ Nicholas Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 210.

been offering to play tape recordings concerning Dr. King to reporters. DeLoach "told me rather angrily they were not."³¹⁵

Burke Marshall, when questioned by the Committee about these events, testified that the same two reporters had also informed him that Director Hoover was offering to play tape recordings of Dr. King. He testified that he had assumed the reporters "were telling the truth, that these tape recordings existed, and that they were being leaked by the FBI."³¹⁶ He testified that he had not suspected that the FBI had produced the tapes itself from microphone coverage, but that he had assumed the FBI had acquired the tape recordings from Southern law enforcement agencies.

It did not occur to me that the FBI would go around placing microphones in Dr. King's hotel . . . The notion that they would plant the microphone, that they had a whole system of surveillance of that sort, involving illegal entry and trespass and things like that, did not occur to me. I would not have put it past the local police, but I considered at the time—except for Mr. Hoover himself—that the Bureau was a tightly controlled, well-run, efficient, law abiding law enforcement agency, that it didn't do things like that, and therefore, it didn't occur to me that they had done it.³¹⁷

Marshall recalled that he and Katzenbach had flown to President Johnson's ranch in Texas and had told the President that the FBI was offering the tape recordings to reporters. Marshall said that the President was "shocked," and that the "conversation was in the context of it being very important and a very nasty piece of business that had to be stopped." Marshall did not know, however, what action the President subsequently took, if any, and could not remember whether the President had voiced an intention to take any specific action.³¹⁸

DeLoach, when asked if he had ever discussed the contents of tape recordings or surveillances of Dr. King with members of the press, testified: "I don't recall any such conversations."³¹⁹ DeLoach did state, however, that he had known about the tape recordings of Dr. King. He testified that one such tape recording had been in his office on one occasion, and that "it was so garbled and so terrible, I mean from the standpoint of fidelity, that I told them to knock it off and take it back."³²⁰

The only record of this episode in the FBI files is a memorandum by DeLoach dated December 1, 1964, stating in part:

Bill Moyers, while I was at the White House, today, advised that word had gotten to the President this afternoon that [the newsmen] was telling all over town . . . that the FBI had told him that Martin Luther King was [excised]. [The newsmen] according to Moyers, had stated to several people

³¹⁵ Nicholas Katzenbach testimony, 11/12/75, pp. 97-98.

³¹⁶ Marshall testimony, 3/3/76, p. 39.

³¹⁷ Marshall testimony, 3/3/76, p. 43.

³¹⁸ Marshall testimony, 3/3/76, p. 48.

³¹⁹ DeLoach testimony, 11/25/75, p. 150.

³²⁰ DeLoach testimony, 11/25/76, p. 188.

that, "If the FBI will do this to Martin Luther King, they will undoubtedly do it to anyone for personal reasons."

Moyers stated the President wanted to get this word to us so we would know not to trust [the newsmen]. Moyers also stated that the President felt that [the newsmen] lacked integrity and was certainly no lover of the Johnson administration or the FBI. I told Moyers this was certainly obvious.³²¹

DeLoach testified that he could not recall the events surrounding this memorandum. Bill Moyers, after reviewing DeLoach's memorandum, testified that he recalled nothing about the incident involving the newsmen or about Katzenbach's and Marshall's discussion with the President. He did not recall ever having heard that the Bureau had offered to play tape recordings of Dr. King to reporters, or ever having discussed the matter with DeLoach. He testified, however, that DeLoach's memorandum:

sounds very plausible. I'm sure the President called me or he told me to tell him whatever [DeLoach's document reflects].

Question. Did the President tell you that he understood that [the newsmen] was saying all over town that the Bureau had been offering tapes?

Answer. I can't remember the details of that. You know, I can't tell you the number of times the President was sounding off at [the newsmen].³²²

When asked if it would be fair to conclude that the President had complained to Moyers about the newsmen's revealing that the Bureau had offered to play tapes rather than about the fact that the Bureau had such tapes and had offered to play them, Moyers replied, "It would be fair to conclude that. I don't recall if that was exactly the way the President said it."³²³

VI. THE HOOVER-KING CONTROVERSY BECOMES PUBLIC AND A TRUCE IS CALLED: APRIL-DECEMBER 1964

Summary

Director Hoover's dislike for Dr. King, which had been known within the Bureau since early 1962,³²⁴ became a matter of public record in November 1964 when Director Hoover described Dr. King at a meeting with women reporters as the "most notorious liar" in the country. Dr. King responded that the Director was obviously "faltering" under the responsibilities of his office. The FBI immediately intensified its secret campaign against Dr. King, offering to play the tapes from microphone surveillance of Dr. King to reporters and to leak stories concerning him to the press. The FBI also sent a tape recording made from the microphone surveillance to Dr. King, with a warning which Dr. King and his close associates interpreted as an invitation to suicide.

The public aspects of the dispute peaked in December 1964, shortly before Dr. King went to Europe to receive the Nobel Peace Prize. Dr.

³²¹ Memorandum from Cartha DeLoach to John Mohr, 12/1/64.

³²² Bill Moyers testimony, 3/2/76, p. 8.

³²³ Moyers testimony, 3/2/76, p. 9.

³²⁴ As early as February 1962, the Director had informed the Domestic Intelligence Division: "King is no good anyway."

King publicly announced that it was time for the controversy to end, and arranged a meeting with Director Hoover to seal a truce. The FBI's public criticism stopped, but the Bureau's secret campaign to discredit Dr. King continued. Believing that Dr. King's downfall would severely harm the entire movement for racial equality, several prominent civil rights figures met with FBI officials to voice their concern and seek assurances from the FBI that the attacks on Dr. King would stop.

A. First Steps in the Public Controversy April–November 1964

Although the FBI had been covertly engaged in a massive campaign to discredit Dr. King for several months, the fact that the FBI was the source of allegations about communist influence in the civil rights movement did not become public until the release of Director Hoover's off-the-record testimony before the House Appropriations Committee in April 1964. The Director was quoted in the press as having testified that " 'Communist influence does exist in the Negro movement' and can influence 'large masses' of people." ³²⁵ Dr. King immediately issued a forceful reply:

It is very unfortunate that Mr. J. Edgar Hoover, in his claims of alleged communist infiltration in the civil rights movement, has allowed himself to aid and abet the salacious claims of southern racists and the extreme right-wing elements.

We challenge all who raise the "red" issue, whether they be newspaper columnists or the head of the FBI himself—to come forward and provide real evidence which contradicts this stand of the SCLC. We are confident that this cannot be done.

We affirm that SCLC is unalterably opposed to the misguided philosophy of communist.

It is difficult to accept the word of the FBI on communist infiltration in the civil rights movement, when they have been so completely ineffectual in resolving the continued mayhem and brutality inflicted upon the Negro in the deep south. It would be encouraging to us if Mr. Hoover and the FBI would be as diligent in apprehending those responsible for bombing churches and killing little children as they are in seeking out alleged communist infiltration in the civil rights movement. ³²⁶

In early May 1964, Director Hoover made the following response to a question from United Press International concerning whether any

³²⁵ New York Times, 4/22/64, p. 30.

³²⁶ FBI transcription of Dr. King's statement to press, Memorandum from William Sullivan to Alan Belmont, 4/28/64. Another FBI memorandum which dealt with Dr. King's statement indicated the Bureau's opinion that someone "high in the Administration not known to us . . . apparently agreed with Dr. King's press release." Sullivan's report about Dr. King's statement pointed out that "King quoted the AG against the Director, to the effect that it is to be expected that communist will try to infiltrate civil rights movements, but they had not succeeded in making the expected impact." (Memorandum from William Sullivan to Alan Belmont, 4/28/64.)

communists were in positions of leadership in the civil rights movement:

Let me first emphasize that I realize the vast majority of Negroes have rejected and recognize communism for what it is....

The existence and importance of the communist influence in the Negro movement should not be ignored or minimized, nor should it be exaggerated. The Communist Party will use its forces either in the open forum of public opinion or through its sympathizers who do not wear the badge of communism but who spout some of the same ideas carried in the Communist Party line. This is the influence which is capable of moving large masses of loyal and dedicated citizens toward communist objectives while being lured away from the true issues involved. It is up to the civil rights organizations themselves to recognize this and face up to it.³²⁷

On May 11, Dr. King appeared on the news program, "Face the Nation." He denied communists had infiltrated decision-making positions in the civil rights movement or the SCLC and remarked that it was "unfortunate" that "such a great man" as Director Hoover had made allegations to that effect. Dr. King added that the Director should more appropriately have remarked on how surprising it was that so few Negroes had turned to communism in light of the treatment they had received. Dr. King said that the Justice Department had warned him of only one suspected communist in the SCLC, and that he had fired that individual.³²⁸

The feud between Director Hoover and Dr. King heightened on November 18, 1964, with the Director's public allegation that Dr. King was the "most notorious liar" in the country. Director Hoover made that comment during a meeting with women reporters in the context of explaining how FBI agents were assigned in civil rights cases. According to a memorandum of the meeting written by DeLoach:

[The Director] stated it was a common belief in some circles that Special Agents in the South were all, without exception, southern born agents. As a matter of fact, 70% of the agents currently assigned to the South were born in the North. He stated that the "notorious" Martin Luther King had attempted to capitalize on this matter by claiming that all agents assigned to the Albany, Georgia, Resident Agency were southern born agents. As a matter of fact, 4 out of 5 of

³²⁷ Memorandum from Cartha DeLoach to Edwin Guthman, 5/14/64, p. 4. Director Hoover's answer was initially submitted to Guthman, the Attorney General's Special Assistant for Public Information. Guthman strongly objected to the answer because it "put communist influence in the civil rights movement out of perspective." He then had a lengthy conference with DeLoach, and the answer, quoted above, was agreed upon. (Memorandum from Edwin Guthman to Cartha DeLoach, 5/12/64; DeLoach memorandum, 5/14/64.)

³²⁸ Memorandum from Frederick Baumgardner to William Sullivan, 5/11/64. The Headquarters agent who reported on the television program added the comment: "King's obvious reference was to the 'removal' of (Adviser B) from the SCLC. As expected, King lied about being warned of anyone else because he had been warned about (Adviser A) and has nevertheless maintained a close association with (Adviser A)." (Baumgardner memorandum, 5/11/64.)

the agents assigned to the Albany, Georgia, Resident Agency were northern born. The Director stated he had instructed me to get in touch with Reverend King and line up an appointment so that King could be given the true facts. He stated that King had refused to give me an appointment and, therefore, he considered King to be the most "notorious liar" in the country.³²⁰

When the reporters asked Director Hoover for more details about Dr. King,

he stated, off the record, "He is one of the lowest characters in the country." There was an immediate inquiry as to whether he could be quoted on the original statement that Martin Luther King was a liar and he stated, "Yes—that is public record."³²⁰

Nicholas Katzenbach, who was then Acting Attorney General, testified that he talked with Director Hoover about that press conference and

[Hoover] told me that it was not his practice to have press conferences, had not done so in the past, and would not do so again in the future. Perhaps the depth of his feeling with respect to Dr. King was revealed to me by his statement that he did not understand all the publicity which the remark had attracted because he had been asked a simple question and given a simple truthful answer.³²¹

Some of Dr. King's advisers drafted a strong response, one of which would have "blown Hoover out of the water, calling him every name in the book."³²² Before they had an opportunity to release the statement, Dr. King, who was then in Bimini, issued the following public reply:

I cannot conceive of Mr. Hoover making a statement like this without being under extreme pressure. He has apparently faltered under the awesome burden, complexities and responsibilities of his office.³²³

Dr. King also sent a telegram to Director Hoover, which was made public, stating:

I was appalled and surprised at your reported statement maligning my integrity. What motivated such an irresponsible accusation is a mystery to me.

³²⁰ Memorandum from Cartha DeLoach to John Mohr, 11/18/64, p. 6.

³²¹ DeLoach memorandum, 11/18/64, p. 10. DeLoach told the Committee about the incident: "I passed Mr. Hoover a note and told him that if he really felt that way, he should keep it off the record. He paid no attention to that note. I passed him a second note and made the same statement and he paid no attention to that, and on the third occasion that I passed him a note, he said out loud to the women that 'DeLoach tells me I should keep these statements concerning King off the record, but that's none of his business. I made it for the record and you can use it for the record.'" (Cartha DeLoach testimony, 11/25/75, p. 169. See also DeLoach testimony, 12/3/75, Hearings, Vol. 6, p. 173.)

³²² Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 210.

³²³ Harry Wachtel testimony, 2/27/76, p. 42.

³²³ New York Times, 11/20/64, p. 18.

I have sincerely questioned the effectiveness of the F.B.I. in racial incidents, particularly where bombings and brutalities against Negroes are at issue . . .

I will be happy to discuss this question with you at length in the near future. Although your statement said you have attempted to meet with me, I have sought in vain for any record of such a request.³³⁴

Dr. King also criticized Director Hoover in a press interview on the same day for "following the path of appeasement of political powers in the South."³³⁵

The Domestic Intelligence Division prepared an analysis of the allegations in Dr. King's telegram, emphasizing the events two years earlier which the FBI had interpreted as a refusal by Dr. King to be interviewed.³³⁶ Sullivan recommended against replying to Dr. King's charges or meeting with Dr. King. The Director penned his agreement on Sullivan's memorandum:

O.K. But I can't understand why we are unable to get the true facts before the public. We can't even get our accomplishments published. We are never taking the aggressive, but above lies remain unanswered.³³⁷

The following day, the FBI mailed a tape recording from the Willard Hotel microphone surveillance to Dr. King accompanied by a letter which Dr. King and his associates interpreted as an invitation to suicide.

B. Tapes Are Mailed to King: November 21, 1964

Sometime in mid-November 1964 a decision was made at FBI Headquarters to mail a tape recording made during microphone surveillance of Dr. King to the SCLC office in Atlanta. William Sullivan, who was responsible for the project, testified that he first learned of the plan when Alan Belmont, Assistant to the Director, told him that Director Hoover wanted one of the King tapes mailed to Coretta King to precipitate their separation, thereby diminishing Dr. King's stature. Belmont told Sullivan that the FBI laboratory would "sterilize the tape to prevent its being traced to the Bureau." Sullivan was to have the tape mailed from a southern state.³³⁸

Sullivan told the Committee that he had opposed the plan because it would warn Dr. King that his activities were being covered by microphones. According to Sullivan, Belmont agreed that the plan was unwise, but said that he had no power to stop it because the orders had come from Hoover and Tolson.³³⁹

³³⁴ New York Times, 11/20/64, p. 12.

³³⁵ New York Times, 11/20/64, p. 12.

³³⁶ That incident is described at pp. 89-91.

³³⁷ Memorandum from Alex Rosen to Alan Belmont, 11/20/64, p. 4. Director Hoover remarked on another memorandum, "I have no intention of seeing King. I gave him that opportunity once and he ignored it."

³³⁸ William Sullivan testimony, 11/1/75, pp. 104-105. The Willard Hotel tape was called in from the Washington field office on November 19, 1964. The decision at Headquarters would have been made sometime earlier, probably as a result of the "notorious liar" controversy.

³³⁹ Sullivan, 11/1/75, p. 105.

The FBI technician who prepared the tape told the Committee that he had been ordered to produce a "composite" tape from coverage of hotel rooms in Washington, D.C., San Francisco, and Los Angeles. After the tape was completed, a copy was left with Sullivan.³⁴⁰

Sullivan testified that he ordered a "tight-lipped . . . reliable" agent to fly to Tampa, Florida to mail a package to Coretta King. He did not tell the agent that the package contained the King tape.³⁴¹ The agent testified that he flew to Miami and then called Sullivan, who instructed him to address the package to Martin Luther King, Jr. The agent said that he mailed the package from a post office near the Miami airport.³⁴² A travel voucher provided to the Committee by the FBI indicates that the agent flew to Miami on November 21, 1964.

Congressman Andrew Young, who was then Dr. King's assistant, recalled that the tape arrived at the SCLC Headquarters in Atlanta sometime before December 1964. Congressman Young said that the office personnel assumed the tape contained another of Dr. King's speeches; it was stored for a while, and later sent to Dr. King's home along with several other tapes.³⁴³ Dr. King, Congressman Young, and some others listened to the tape sometime after Dr. King had returned from receiving the Nobel Peace Prize, probably in January 1965. Congressman Young testified that he probably destroyed the tape several years later.

Congressman Young recalled that the tape was of "very poor quality, very garbled," but that at least part of it appeared to have been made during a conversation between Dr. King and other civil rights leaders at the Willard Hotel. He testified that none of the comments on the tape related to the commission of a crime or to "affection" for communism. "It was personal conversation among friends."³⁴⁴

According to Congressman Young a letter had accompanied the tape, stating that the tape would be released in 34 days and threatening "there is only one thing you can do to prevent this from happening." Congressman Young said that when he and Dr. King read the letter, "we assumed that the letter and the tape had been mailed 34 days before the receipt of the Nobel Prize, and that this was a threat to expose Martin just before he received the Nobel Prize." Congressman Young testified:

I think that the disturbing thing to Martin was that he felt somebody was trying to get him to commit suicide, and because it was a tape of a meeting in Washington and the postmark was from Florida, we assumed nobody had the capacity to do that other than the Federal Bureau of Investigation.³⁴⁵

³⁴⁰ Staff summary of [FBI Technician] interview, 7/25/75, p. 5. The tape which was ultimately sent to Dr. King, however, may have consisted of the Willard coverage.

³⁴¹ Sullivan, 11/1/75, p. 100.

³⁴² Staff summary of [FBI Agent] interview, 4/23/75. The agent recalled that the package, which was marked "fragile," did not have a return address. Sullivan remembered that the agent had commented that he had had trouble mailing the package because it had no return address, but that he had "talked his way around it." (Sullivan, 11/1/75, p. 100.)

³⁴³ Andrew Young testimony, 2/19/70, pp. 6-9. Young recalled that the package containing the tape had a Florida postmark.

³⁴⁴ Young, 2/19/70, p. 7.

³⁴⁵ Young, 2/19/70, p. 8.

Both Young and Ralph Abernathy, who also heard the tape and read the letter, interpreted it as inviting Dr. King to take his own life.³⁴⁶

William Sullivan testified that he could not recall such a letter.³⁴⁷ The FBI provided the Committee with a copy of a letter which was found in Sullivan's office files following his discharge in 1971.³⁴⁸ The letter stated in part:

King, look into your heart. You know you are a complete fraud and a greater liability to all of us Negroes. White people in this country have enough frauds of their own but I am sure they don't have one at this time that is any where near your equal. You are no clergyman and you know it. I repeat that you are a colossal fraud and an evil, vicious one at that. . . .

King, like all frauds your end is approaching. You could have been our greatest leader. . . . But you are done. Your "honorary" degrees, your Nobel Prize (what a grim farce) and other awards will not save you. King, I repeat you are done. . . .

The American public, the church organizations that have been helping—Protestants, Catholics and Jews will know you for what you are—an evil beast. So will others who have backed you. You are done.

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. You better take it before your filthy fraudulent self is hared to the nation.

Andrew Young stated that the last paragraph of this letter was identical with the letter that had been sent to the SCLC headquarters, but that the other portions of the letter appeared to be an earlier draft of the letter that he had seen.³⁴⁹ Sullivan testified that he did not recall ever having seen the document, although it was "possible" that he had something to do with it and simply cannot remember.³⁵⁰ Sullivan also testified that he could not recall any conversations at the FBI concerning the possibility of Dr. King's committing suicide. After reading the last paragraph of the letter, he conceded that it could be interpreted as an invitation to suicide, although so far as Sullivan knew,

³⁴⁶ Young, 2/19/70, p. 8; staff summary of Ralph Abernathy interview, 11/10/75, p. 3.

³⁴⁷ Sullivan, 11/1/75, p. 112.

³⁴⁸ The Bureau said it could not find a copy in any of its other files.

³⁴⁹ The letter given to the Committee by the FBI was single spaced; Andrew Young testified that Dr. King had received "a double spaced letter and it was about a page and a half. It was typed in a very old typewriter, very bad typing." He was certain, however that the last paragraph of the two letters were nearly identical. The one sent to Dr. King "was simplified and has shorter, simpler sentences, but essentially said the same thing, especially the part about 'there's only one thing left for you to do. . . . I remember that vividly.'" (Young, 2/19/70, p. 30)

³⁵⁰ Sullivan, 11/1/75, p. 112. Sullivan suggested that the letter might have been "planted" in his files.

the FBI's goal was simply to convince Dr. King to resign from the SCLC, not to kill himself.³⁵¹

When asked by the Committee what had ultimately happened to the letter received by Reverend King, Andrew Young testified:

I'm not really sure about this now, but I think we discussed something about a letter with DeLoach—I'm not certain whether it was DeLoach or the local FBI agents—and they said they would be glad to look into it. They said, whenever we got any of these kind of threatening letters, to send them to them, and they would be glad to investigate. That letter may have been sent back to DeLoach.³⁵²

C. Attempts by the FBI to "Leak" to Reporters Tape Recordings Embarrassing to Dr. King

After Director Hoover denounced Dr. King as a "notorious liar" in mid-November, the FBI apparently made several attempts to "leak" tape recordings concerning Dr. King to newsmen. One offer involving the Bureau Chief of a national news publication has been discussed at length in the preceding chapter.³⁵³ David Kraslow, another reporter, has told a Committee staff member, that one of his "better sources at the Bureau" offered him a transcript of a tape recording about Dr. King. Kraslow said that his source read him a portion of the transcript on the phone, and claimed that it came from a "bug" operated by a Southern police agency. Kraslow said that he declined the offer.³⁵⁴

It is not known how many other reporters were approached by the FBI during that period; Nicholas Katzenbach testified that at least one other reporter had informed him of a similar Bureau offer,³⁵⁵ and other witnesses, such as James Farmer, have mentioned additional "leaks" from the Bureau.³⁵⁶

³⁵¹ One FBI witness testified that he interpreted the "34 days" to refer to Christmas, and that the FBI had apparently hoped Dr. King would resign for Christmas. (James Adams testimony, 11/19/75, Hearings, Vol. 6, pp. 60-68.) When asked about this interpretation, Andrew Young testified:

"We didn't think of that. We thought that he was talking about committing suicide, and we tied the date to the Noble Prize. . . . That is the way we discussed it; to commit suicide, or that he was going to be publicly humiliated just at the moment of his receipt of the Noble Prize." (Andrew Young, 2/10/76, p. 37)

Carl Rowan stated during a staff interview that he had been informed by a reliable source, whom he declined to identify, that the decision to mail the tape recording and letter had been made during a meeting at which Director Hoover was present. Rowan's source said that the Director was "livid" over Dr. King's receipt of the Nobel Peace Prize, and that methods of preventing Dr. King from receiving the Prize were discussed at the meeting. According to the source, there was a discussion at the meeting concerning allegations that Dr. King had tried to commit suicide when he was young (such allegations had appeared in the news media—e.g. Time 1/3/64, p. 14), and that he still had suicidal tendencies. The source told Rowan that the participants in the meeting had concluded that if the tape were mailed, Dr. King might be so distressed that he would commit suicide. (Staff summary of Carl Rowan interview, 8/20/75, p. 2.)

³⁵² Young, 2/10/76, p. 38. Young's conference with DeLoach is discussed p. 160.

³⁵³ See p. 152 *et seq.*

³⁵⁴ Staff summary, David Kraslow interview.

³⁵⁵ Katzenbach, 11/12/75, p. 91. Katzenbach was unable to recall the identity of the reporter.

³⁵⁶ James Farmer Staff Interview, 11/13/75, p. 5.

D. Roy Wilkins of NAACP meets with DeLoach to discuss allegations about Dr. King: November 27, 1964

On November 24, 1964, Director Hoover gave a speech at Loyola University in Chicago in which he referred to moral laxness in civil rights group. On November 27, Roy Wilkins, Executive Secretary of NAACP, phoned DeLoach and requested a meeting. Wilkins told the Committee that he had been disturbed by Hoover's Loyola University speech a few days before, and that he had realized Hoover had been referring to Dr. King because of rumors then circulating that the FBI had developed "derogatory" material about Dr. King. Wilkins was spurred into meeting with DeLoach by pointed inquiries from several reporters about whether Director Hoover's remarks had been directed toward Dr. King. Wilkins described his motivation in requesting the meeting as "protecting the civil rights movement." He said that Dr. King did not learn of his meeting with DeLoach until over a week after it had occurred.³⁵⁷

DeLoach and Wilkins have given the Committee differing accounts of what was said at their meeting. DeLoach's version is summarized in a letter that he sent to President Johnson on November 30, 1964:

Wilkins said that . . . the ruination of King would spell the downfall of the entire civil rights movement . . . Wilkins indicated that [if allegations concerning King's personal conduct and supposed connections with communists were publicized], many of his Negro associates would rise to his defense. He felt, however, that many white people who believe in the civil rights movement and who yearly contribute from \$500 to \$50,000 to this movement would immediately cease their financial support. This loss, coupled with the loss of faith in King by millions of Americans, would halt any further progress of the civil rights movement.³⁵⁸

A memorandum by DeLoach written shortly after the meeting states:

I told him . . . that if King wanted war we certainly would give it to him. Wilkins shook his head and stated there was no doubt in his mind as to which side would lose if the FBI really came out with all its ammunition against King. I told him the ammunition was plentiful and that while we were not responsible for the many rumors being initiated against King, we had heard of these rumors and were certainly in a position to substantiate them.³⁵⁹

DeLoach's memorandum stated that the meeting had concluded with Wilkins' promise to "tell King that he can't win in a battle with the FBI and that the best thing for him to do is to retire from public life."

Wilkins told the Committee that DeLoach's description of the meeting was "self serving and filled with inaccuracies" and denied DeLoach's description of his remarks as "pure invention."³⁶⁰ Wilkins stated that he had expressed his concern that accusations about Dr. King would cripple the civil rights movement, noting that if charges

³⁵⁷ Staff summary, Roy Wilkins interview, 11/23/75, p. 1.

³⁵⁸ Letter, Hoover to President, 11/30/64.

³⁵⁹ Memorandum from Cartha DeLoach to John Mohr, 11/27/64, p. 2.

³⁶⁰ Wilkins staff summary, 11/23/75, p. 2.

were publicly levied against Dr. King, the black community would side with Dr. King and the white community with Director Hoover. Wilkins said that he advised DeLoach that the FBI should not over-react to Dr. King's criticisms and that he considered Dr. King's criticism of the FBI's failure to vigorously enforce the civil rights laws to be totally justified. Wilkins told the Committee that although he had considered the meeting a "success" at the time, after reading DeLoach's memorandum he realized that he had failed to convey the impression that he had intended, since DeLoach had clearly misinterpreted his remarks.³⁶¹

When DeLoach was asked by the Committee if the "ammunition" he had threatened to use against Dr. King was the tape recordings, DeLoach replied, "I don't know what I had in mind, frankly, it's been so long ago, I can't recall."³⁶² Wilkins did not remember DeLoach's use of the term "ammunition," but did recall that DeLoach frequently alluded to "derogatory information," although Wilkins was unclear whether DeLoach was referring to allegations about Dr. King's personal conduct or about Communist infiltration of the SCLC.³⁶³

The following day, an official of the Domestic Intelligence Division proposed to William Sullivan, head of the Division, that several leading members of the Black community should be briefed about Dr. King by the FBI "on a highly confidential basis." It was proposed that "the use of a tape, such as contemplated in your memorandum, together with a transcript for convenience in following the tape," should be used.

"The inclusion of U.S. Government officials, such as Carl Rowan or Ralph Bunch, is not suggested as they might feel a duty to advise the White House of such contemplated meeting. . . . This group should include such leadership as would be capable of removing King from the scene if they, of their own volition, decided this was the thing to do after such a briefing."^{363a}

E. Dr. King and Director Hoover Meet: December 1, 1964

According to one of Dr. King's legal counsels, Harry Wachtel, several prominent civil rights leaders told Dr. King of their concern that public controversy with Director Hoover would hurt the civil rights movement, but promised to support Dr. King should such a confrontation occur. Wachtel recalled that Dr. King and his staff pondered "how to defuse this and prevent it from becoming the principal focus of the struggle, Hoover versus King," which "could only have lead to a division and thus a dilution of the growing strength of the civil rights movement." Wachtel testified:

Everything pointed toward the problem of how Hoover would respond if Dr. King said in effect, "you're a liar; prove your case. If you call me a liar, prove it." Every lawyer worth his salt knows this is the beginning of the Alger Hiss type of dilemma. Libel and slander litigation or public debate of

³⁶¹ Wilkins (staff summary), 11/23/75, p. 2.

³⁶² Cartha DeLoach testimony, 11/25/75, p. 173.

³⁶³ Wilkins (staff summary), 11/23/75, p. 2.

^{363a} (Memorandum from J. A. Sizoo to W. C. Sullivan, 12/1/64.)

famous personalities can easily lead to destruction of an on-going movement. You end up spending your time fighting over "truth as a defense."³⁶⁴

Dr. King and his advisers settled on an approach to the problem, and on the evening of November 30, 1964, at a public meeting in honor of his receiving the Nobel Peace Prize. Dr. King announced his intention to meet with Director Hoover to iron out their differences.

I do not plan to engage in public debate with Mr. Hoover and I think the time has come for all this controversy to end, and for all of us to get on with the larger job of civil rights and law enforcement.³⁶⁵

According to Andrew Young, who was then Dr. King's Executive Assistant, the meeting was arranged by Dr. Archibald Carey, a close friend of both DeLoach and Dr. King, at King's request.³⁶⁶

Young recalled that Dr. King had been surprised by Director Hoover's "most notorious liar" allegation and wanted to find out what was at the heart of the problem.³⁶⁷ Walter Fauntroy, who said that his recollection of events surrounding the meeting was "fuzzy," added that Dr. King had also been motivated by a desire to bring to the Director's attention complaints of Southern SCLC workers concerning the lack of FBI protection during civil rights demonstrations.³⁶⁸

The meeting between Dr. King and Director Hoover took place at 3:30 p.m. on the afternoon of December 1, 1964. Dr. King was accompanied by Ralph Abernathy, Secretary of the SCLC; Andrew Young, Dr. King's Executive Assistant; and Walter Fauntroy, the SCLC representative in Washington. Director Hoover was accompanied by Cartha DeLoach.

DeLoach detailed the meeting in a twelve-page memorandum which Young and Abernathy described as "substantially" accurate, finding fault chiefly with the praise of Director Hoover and of the FBI which DeLoach attributed to Dr. King. According to the DeLoach account, Dr. King said:

(he) wanted to clear up any misunderstanding which might have occurred. He stated that some Negroes had told him that the FBI had been ineffective, however, he was inclined to discount such criticism. Reverend King asked that the Director please understand that any criticism of the Director and the FBI which had been attributed to King was either a misquote or an outright misrepresentation. He stated this particularly concerned Albany, Georgia.

Reverend King stated he personally appreciated the great work of the FBI which had been done in so many instances . . . Reverend King stated he has never made any personal at-

³⁶⁴ Harry Wachtel testimony, 2/27/70, p. 46.

³⁶⁵ United Press International release, 12/1/64.

³⁶⁶ Andrew Young testimony, 2, 10/70, p. 13. Carey's recollection supports this account. (Staff summary of Archibald Carey interview, 11/21/75.)

³⁶⁷ Staff summary of Andrew Young interview, 11/10/75, p. 1.

³⁶⁸ Staff summary of Walter Fauntroy interview, 11/17/75, p. 1.

tack upon Mr. Hoover . . . Reverend King said that the Director's report to the President this summer on rioting was a very excellent analysis.

Reverend King stated he has been, and still is very concerned regarding the matter of communism in the civil rights movement. Reverend King stated that from a strong philosophical point of view he could never become a communist . . . He claimed that when he learns of the identity of a communist in his midst he immediately deals with the problem by removing this man. He stated there have been one or two communists who were engaged in fund raising for the SCLC. Reverend King then corrected himself to say that these one or two men were *former* communists and not Party members at the present time . . . He stated that he had insisted that [Adviser B] leave his staff because the success of his organization . . . was far more important than friendship with [Adviser B.]³⁶⁹

According to Young, the meeting opened with a simple exchange of greetings—not with the excessive praise of the Director reflected in DeLoach's memorandum—and then Director Hoover proceeded to give a monologue that lasted for some fifty-five minutes. DeLoach's summary memorandum bears out Young's characterization of the meeting as essentially a briefing by Director Hoover on FBI operations relating to civil rights.³⁷⁰

³⁶⁹ Memorandum from Cartha DeLoach to John Mohr, 12/2/64, pp. 1-2.

³⁷⁰ After reporting Dr. King's opening remarks to Director Hoover, the paragraphs from the bottom of the second page to the end of the memorandum begin:

- "The Director interrupted King of state . . .
- "The Director told King and his associates . . .
- "The Director told Reverend King that the FBI . . .
- "The Director told King that many cases . . .
- "The Director made it clear to Reverend King and his associates . . .
- "The Director made reference to Reverend King's allegation . . .
- "The Director made reference to the recent case in . . .
- "The Director explained that there is a great misunderstanding today . . .
- "The Director spoke of the FBI's successful penetration of the KKK . . .
- "He spoke of the FBI's case in Louisiana . . .
- "The Director told the group that . . .
- "The Director explained that in Alabama . . .
- "The Director told Reverend King and his associates that . . .
- "The Director made it very clear to Reverend King and his associates . . .
- "The Director told Reverend King he desired to give him some advice . . .
- "The Director told Reverend King that in due time . . .
- "The Director praised the newspapers that . . .
- "The Director told him that he wanted to make it very clear . . .
- "The Director explained that we have . . .
- "The Director spoke once again of the necessity of . . .
- "The Director spoke of . . .
- "Reverend King interrupted the Director at this point and asked . . .
- "The Director told Reverend King and his associates . . .
- "The Director mentioned that he wanted to make it very plain that . . .
- "The Director proudly spoke of the ability of Agents to . . .
- "The Director spoke of the Mack Charles Parker case in . . .
- "The Director told Reverend King that in many instances . . .
- "Reverend Abernathy stated that the Negroes have a real problem in . . .
- "The Director explained that . . .
- "Reverend Abernathy stated that . . .
- "The Director stated that . . .
- "The Director reiterated that . . .
- "The Director interrupted King and briefly detailed five cases . . .

Congressman Young testified that neither the Director's pointed criticism of Dr. King nor the possibility that the FBI was spreading rumors about Dr. King was raised at the meeting.³⁷¹ Neither Young nor Abernathy recalled any hint of blackmail, but Abernathy did remember quite clearly that at one point Hoover "gave King a lecture reminding him that he was a man of the cloth" and a national leader, and that he should "behave himself." Abernathy did not discern any hint that Dr. King had not lived up to the expected standards. He said that Dr. King remained "very calm," thanked Director Hoover for the reminder, and agreed that it was important for a national leader to set a moral example. Abernathy said that the Director then told Dr. King, "If you haven't done anything wrong, you don't have anything to worry about."³⁷²

Although DeLoach's memorandum of the meeting states that Director Hoover and Dr. King discussed possible Communist influence in the SCLC, Andrew Young testified:

He never brought up the subject of Communism at all . . . (Adviser A's) name never came up, and there was never any discussion in our meeting about Communism or Communist advisers.³⁷³

DeLoach described the meeting to the Committee as follows:

I fully expected it to be a confrontation. However, to the contrary, it was more or less of a love feast with Mr. Hoover telling Dr. King that Dr. King is a symbol of leadership for 12 million Negroes and should be careful about his associations and about his personal conduct, and Dr. King telling Mr. Hoover that he had not wished to cast any reflection upon the FBI and had no intention of doing so in the future. In other words, it was a very peaceful meeting. (DeLoach, p. 170)³⁷⁴

³⁷¹ Young, 2/10/73, p. 14.

³⁷² Staff summary of Ralph Abernathy interview, 11/14/77, p. 2. Upon reflection, Abernathy stated that he was uncertain whether this latter exchange had occurred at the December 1 meeting or at some other meeting. However, he could not recall any other meeting between Director Hoover and Dr. King at which he was present. DeLoach's memorandum account of the meeting does not mention this exchange, and Andrew Young could not recall it.

In 1970, when the Bureau received a series of inquiries following a series of stories in the press suggesting that Director Hoover had "blackmailed" Dr. King at the December 1964 meeting by threatening to "expose" his alleged "extramarital activities," the FBI prepared a form letter stating:

"I received your letter of _____ and would like to assure that the FBI does not engage in blackmail activities. Also, there is not one shred of truth in the allegation that this Bureau blackmailed Martin Luther King."

³⁷³ Young, 2/10/73, p. 10.

³⁷⁴ DeLoach, 11/25/73, p. 170.

Time magazine subsequently carried two accounts of the Hoover-King meeting. According to the December 14, 1970 issue of Time, Director Hoover described the meeting as follows:

"I got a wire from the Reverend King in New York. He was getting ready to get the Nobel Prize. He was the last one in the world who should ever have received it. He wired asking to see me. I held him in complete contempt because of the things he said and because of his conduct. First I felt I shouldn't see him, but then I thought he might become a martyr if I didn't. King was very suave and smooth. He sat right there where you're sitting and said, he never criticized the FBI. I said, Mr. King—I never called him reverend—stop right there, you're lying. He then pulled out a press release that he said he intended to give to the press. I said, don't show it to me or read it to me. I couldn't understand how he could have

Andrew Young agreed that there had been

not even an attitude of hostility. In fact, Hoover was very disarming in that he congratulated Dr. King for having won the Nobel Prize, and as far as we are concerned, this was not the same man that called Martin a notorious liar. We attributed it to the fact of his age and the kinds of possible fluctuations that are possible with people under pressure in advanced years.³⁷⁵

Young also told the Committee that within a few weeks of the meeting, the FBI announced that it had arrested suspects in the summer murder of three civil rights workers in the South. "So in a sense we were reassured that the FBI was doing its law enforcement job, and we hoped the personal tensions, as far as Dr. King was concerned, were over and done."³⁷⁶

Harry Wachtel said that Dr. King and his advisors had viewed the meeting as a success because it had "defused" the FBI's attacks in time to permit Dr. King to travel to Europe and receive the Nobel Prize. Wachtel believed that Dr. King's response to Hoover's challenge prevented the FBI from succeeding in what Wachtel viewed as an attempt to promote disputes and factionalism among the civil rights leaders:

The factionalism that the FBI sought to create was widespread. It came out in the Committee's record that they were even seeking a new leader. In CIA terms, you find yourself a new president of a country who is in your control . . . They were applying to domestic affairs the type of factionalism that they had worked on so successfully. . . . And you had to be around to know that it didn't take much to disrupt this delicate marriage of the leadership of the civil rights movement.³⁷⁷

A memorandum written by DeLoach on December 12, 1964, indicates that the FBI also viewed the feud with Dr. King as having quieted. In response to an inquiry from William Sullivan concerning

prepared a press release even before we met. Then he asked if I would go out and have a photograph taken with him, and I said I certainly would mind. And I said, if you ever say anything that is a lie again, I will brand you a liar again. Strange to say, he never attacked the Bureau again for as long as he lived."

The exchange which Director Hoover reported to Time magazine does not appear in DeLoach's detailed memorandum of the meeting. Young also denied the Director's account, and noted that "there was a public Hoover that made remarks about Dr. King that were more on that tone, but in the meeting, none of that kind of attitude or none of those statements were made." (Young, 2/19/75, p. 17.)

The August 17, 1970 issue of Time magazine states:

"Hoover, Time learned, explained to King just what damaging private detail he had on the tapes, and lectured him that his morals should be those befitting a Nobel Prize winner. He also suggested that King should tone down his criticism of the FBI."

Young testified, "there was nothing like that at the meeting." (Young, 2/19/70, p. 17) and DeLoach's memorandum of the meeting does not report such a conversation.

³⁷⁵ Young, 2/19/70, p. 15.

³⁷⁶ Young, 2/19/75, p. 14.

³⁷⁷ Wachtel, 2/27/70, p. 48.

whether the remainder of the tape recordings about Dr. King should be transcribed, DeLoach responded:

I fully agree that the work should eventually be done, particularly if an additional controversy arises with King. I see no necessity, however, in this work being done at the present time inasmuch as the controversy has quieted down considerably and we are not in need of transcripts right now . . . I would recommend that we hold off doing this tremendous amount of work until there is an actual need.²⁷⁸

F. Civil Rights Leaders Attempt To Dissuade the FBI From Discrediting Dr. King: December 1964-May 1965

1. Farmer-DeLoach Meeting: December 1, 1964

On December 1, 1964—apparently immediately following Hoover's meeting with Dr. King²⁷⁹—James Farmer, National Director of the Congress of Racial Equality, met with DeLoach to convince him not to launch a smear campaign against Dr. King. Farmer explained the circumstances leading up to the meeting to the Committee as follows.

During the last week in November 1964, Farmer met with the editor of a New York newspaper who said that he had been with an FBI agent when Director Hoover's accusation of Dr. King as a "notorious liar," was reported. The editor told Farmer that the Agent had remarked, "the Chief has finally gotten it off his chest." The Agent then went into a "tirade" against Dr. King. A few days later, Farmer was told by a reporter from the *New York Post* that stories about Dr. King were being repeated in journalistic circles. Shortly afterwards, Farmer was informed that a conservative columnist was preparing a derogatory story about Dr. King, and that the FBI was prepared to back up his allegations.

Farmer told the Committee that a CORE staff member had verified this rumor with an FBI contact who reportedly said "the chief wants Farmer to know" that he had no interest in "getting Farmer, Whitney Young, or Roy Wilkins—only King."²⁸⁰

Farmer then called DeLoach, whom he considered to be a "man of his word," and asked for a private conference. Before the meeting, Farmer met with Dr. King and told him about the allegations. Dr. King approved Farmer's meeting with DeLoach, but did not tell Farmer that he was intending to meet with Director Hoover.

On December 1, Farmer conferred with DeLoach in the back seat of a limousine while driving around Washington, D.C. Farmer told the Committee that DeLoach began the conversation by remarking, "I know why you wanted to come down here." He recalled that DeLoach

²⁷⁸ DeLoach memorandum, 12/10/64, addendum. Director Hoover wrote on the memorandum, "I think it should be done now while it is fresh in the minds of the specially trained agents." A notation states: "Done. We have prepared 321 pp. of transcripts, 3/26/65."

²⁷⁹ DeLoach's memorandum of the meeting sets it at 5 p.m., after the King-Hoover meeting. Farmer, however, said that DeLoach left the King-Hoover meeting to confer with him. (Staff summary of James Farmer interview, 11/13/75, p. 5.)

²⁸⁰ Farmer (staff summary), 11/13/75, pp. 1-2.

said that the FBI did have evidence which supported the rumor about Dr. King, but that the Bureau was not "peddling" the information.³⁸¹ DeLoach's memorandum of that meeting states:

Farmer told me that he had heard from a number of newsmen that the FBI planned to expose Reverend King by tomorrow, Wednesday, December 2, 1964. He stated that he and King had had a lengthy conference last night in New York City and that it had been agreed that Farmer should come down to see me and prevent this action being taken if at all possible. He stated he knew that King had made a sudden decision to come down also and that he hoped that King's meeting with the Director had been an amiable one. I told him that it had been.

I told Farmer that we, of course, had no plan whatsoever to expose Reverend King. I told him that our files were sacred to us and that it would be unheard of for the FBI to leak such information to newsmen. I told him I was completely appalled at the very thought of the FBI engaging in such endeavors. . . .

I again repeated that we had never entertained the idea to expose Reverend King; however, I wanted Farmer to definitely know that the campaign of slander and vilification against the Director and the FBI should stop without any delay. I told him that if this war continued that we, out of necessity, must defend ourselves. I mentioned that I hoped it would not be necessary for the FBI to adopt defensive tactics. Farmer got the point without any difficulty whatsoever. He immediately assured me that there would be no further criticism from him. He stated he felt certain there would be no further criticism from King.

Farmer was shown DeLoach's memorandum by the Committee. He denied that he had assured DeLoach that his or Dr. King's criticism of the FBI would cease, that there had been any discussion of "warfare," and he stated that he did not know what the reference to his "getting the point" meant.³⁸²

2. Young-Abernathy-DeLoach Meeting: January 8, 1965

On January 8, 1965—shortly after the tape and letter were brought to the attention of the leaders of the SCLC—Andrew Young and Ralph Abernathy, at Dr. King's urgings, requested a meeting with Director Hoover.

Both Young and Abernathy told the Committee that the purpose of the meeting was to determine why the FBI was antagonistic toward Dr. King and to stem continuing attacks against Dr. King's character. Young said that the meeting was prompted by the receipt of the tape and letter.³⁸³ Abernathy confirmed this account, and added that al-

³⁸¹ Farmer (staff summary), 11/18/75, pp. 2-4.

³⁸² Farmer (staff summary), 11/18/76, p. 4.

³⁸³ Young, 2/10/76, p. 20. Young testified that:

"We asked for the meeting because even though we thought that Hoover wasn't as bad as he seemed publicly, and we thought this was just a sort of lapse in his behavior, we still kept getting reports from the press about stories that were still being told, and we received the tape."

though they had not assumed that the FBI had sent the tape itself, they did believe that the FBI had at least known about the tape and could help in terminating the campaign of personal abuse directed against Dr. King.³²⁵

DeLoach, rather than Director Hoover, met with Young and Abernathy. Abernathy told the Committee that he had made it unmistakably clear to DeLoach they were concerned about charges bearing on Dr. King's personal conduct.³²⁶ DeLoach's memorandum of the meeting states:

Reverend Abernathy spoke very generally, pointing out that people were always "making charges" and "innuendoes" against Mr. King. . . . Reverend Young said it looked like there were some attempts to smear and ruin the civil rights movement; that just lately there has been some new evidence in this regard and that very obviously the activities of Mr. King and the SCLC are under close surveillance. . . .

[Young] said he did feel though there must be some sort of concerted organized campaign that was being directed against King and the SCLC. . . .

Reverend Abernathy stated that there were three points they had wanted to discuss: communist infiltration, allegations that King was getting rich on the civil rights movement and the third point had to do with allegations about the personal life and moral character of King. . . . Abernathy said that he was not going to make allegations against the FBI but that some things were going on they just could not understand.

Reverend Young said that King had been receiving letters charging him with immorality, that these letters attacked his personal life.

Reverend Young said that he was deeply concerned about irresponsible usage of personal information on the part of scandalmongers and wondered if there could be any "leaks" from the Government. He was assured that there were no leaks from the FBI, that the Director ran a tight organization and that any irresponsibility on the part of any agent would not be tolerated.³²⁷

Andrew Young testified that he "thought" that he had mentioned the letter and tape recording that had been received by Dr. King. He recalled that DeLoach

denied everything. He denied that an FBI agent would ever talk to the press about anything.

Question. Did you bring up the issue of whether the FBI was tapping Dr. King's phone, SCLC's phone, or bugging Dr. King?

YOUNG. Yes, we did. He assured us that was not true.³²⁸

³²⁵ Abernathy (staff summary), 11/14/75, pp. 2-3.

³²⁶ Abernathy (staff summary), 11/14/75, p. 2.

³²⁷ Memorandum from Cartha DeLoach to John Mohr, 1/11/65, pp. 1-3.

³²⁸ Young, 2/10/70, p. 38.

3. Carey-DeLoach Meeting: May 19, 1965

On May 19, 1965, Dr. Archibald J. Carey, Jr., then a Chicago attorney who was well acquainted with Dr. King, DeLoach, and Director Hoover, met with DeLoach to "mediate" in what he regarded as an unfortunate dispute among his friends. Dr. Carey told the Committee staff that Dr. King had first brought to his attention rumors about Dr. King's "communist sympathies" and personal conduct during a weekend visit to Chicago some time in May 1965. On that occasion, Dr. King told Dr. Carey that the FBI was trying to discredit him and might release stories to the press regarding his personal life in the near future. Dr. Carey told the Committee that Dr. King did not ask him to talk with the FBI about their attempt to discredit him, but rather that he had volunteered to "see what he coul^d do." Dr. King gave his assent.²⁹⁹

DeLoach, in a memorandum of the meeting, wrote that "Carey told me that he wanted to enlist the sympathies of the FBI in not letting any effort to discredit King occur." DeLoach said that he had told Dr. Carey that "the FBI had plenty to do without being responsible for a discrediting campaign against Reverend King." DeLoach ended the memorandum with the comment:

Dr. Carey is the third individual that King has had come to see us relative to requesting that we not expose him. Roy Wilkins, Jim Farmer, and Reverend Abernathy have all been here for the same purpose. It is obvious that King is becoming very disturbed and worried about his background, else he would not go to such great efforts to have people approach the FBI. I did not commit the FBI in any manner insofar as exposing King is concerned. To the contrary, I let Carey flatly know of King's derelictions insofar as false allegations against us are concerned and of the fact that King and other civil rights workers owed the FBI a debt of gratitude they would never be able to repay.³⁰⁰

Director Hoover wrote on the memorandum, "Well handled."

Dr. Carey told the Committee staff that he contacted Dr. King after the meeting and suggested that criticizing the FBI was not the best strategy for the civil rights movement. Dr. Carey said that he had asked both Dr. King and Director Hoover not to alienate each other. He also said that he had been concerned less with the truth or falsity of any of the allegations that were made than with ending the dispute.^{300a}

²⁹⁹ Staff summary of Archibald Carey interview 12/21/75, pp. 1-2. DeLoach in a memorandum concerning his meeting with Dr. Carey, wrote that Dr. Carey had said:

"He had come to see us on behalf of Martin Luther King. He added that King was in Chicago last weekend and stayed in Carey's home, and at that time indicated every evidence of great disturbance. King told Carey he had been reliably informed there was a massive effort to discredit him by the Federal Bureau of Investigation. This effort is to begin this week." (Memorandum from Cartha DeLoach to John Mohr, 5/19/65, p. 1)

Dr. Carey told the Committee that DeLoach had exaggerated Dr. King's concern over these rumors in his memorandum.

³⁰⁰ DeLoach memorandum, 5/19/65, p. 2.

^{300a} Carey (staff summary), 11/21/75, p. 8.

VII. THE FBI PROGRAM AGAINST DR. KING: 1965-1968

The public dispute between Dr. King and Director Hoover ended with their December 1, 1964, meeting. The Bureau's covert attempts to discredit Dr. King and undermine his influence in the civil rights movement did not cease, however, but continued unabated until Dr. King's death.³⁰¹ Although the intensity of the FBI's campaign against Dr. King appears to have been reduced somewhat in 1966 and 1967, Dr. King's public stand against the war in Vietnam in mid-1967 revived the FBI's attempt to link Dr. King and the SCLC with communism.

A. Major Efforts to Discredit Dr. King: 1965-1968

1. Attempts to Discredit Dr. King With Churches

On February 1, 1965, The Domestic Intelligence Division learned that Dr. King was scheduled to speak at the Davenport, Iowa, Catholic Interracial Council's banquet and receive a "Pacom in Terris" award in memory of Pope John. Internal Security Section chief Frederick Baumgardner observed, "it is shocking indeed that King continues to be honored by religious groups."³⁰² Baumgardner recommended that Assistant Director Malone contact Francis Cardinal Spellman and suggest that "in the end it might well be embarrassing to the Catholic Church for having given honors to King." The Director noted on the memorandum, "I see no need to further approach Spellman"; he was apparently alluding to the unsuccessful attempt to sabotage Dr. King's audience with the Pope through Spellman's intervention. There is no record of any further action.

In February 1966 Dr. King held a press conference following a meeting with the Reverend John P. Cody, Archbishop of the Chicago Diocese of the Roman Catholic Church, and announced that he and Cody were in agreement on general civil rights goals and that he hoped priests and nuns in Chicago would participate in SCLC programs. The Domestic Intelligence Division subsequently recommended that a special agent acquainted with the Archbishop brief him about Dr. King to aid "the Archbishop in determining the degree of cooperation his archdiocese will extend to King's program in Chicago and [to] result in a lessening of King's influence in Chicago."³⁰³

The Archbishop was briefed on February 24, 1966, "along the lines discussed with Assistant Director Sullivan."³⁰⁴ The agent who conducted the briefing wrote that he felt "certain that [Cody] will do everything possible to neutralize King's effect in this area."³⁰⁵

In April 1966 the FBI Legal Attaché in Paris requested permission to inform the pastor of the American Church in Paris of Dr. King's background "in an effort to convince him that his continued support of Martin Luther King may result in embarrassment for him and the

³⁰¹ Even after Dr. King's death, the FBI tried to tarnish his public image. See pp. 188.

³⁰² Memorandum from Frederick Baumgardner to William Sullivan, 2/1/65.

³⁰³ Memorandum from Frederick Baumgardner to William Sullivan, 2/18/66.

³⁰⁴ Memorandum from SAC, Chicago, to Director, FBI, 2/24/66. Sullivan had apparently suggested that the Archbishop be informed about alleged communist influence on Dr. King and about Dr. King's private life.

³⁰⁵ SAC, Chicago memorandum, 2/24/66.

American Church in Paris."³⁹⁰ The pastor was briefed on May 9, 1966. According to the agent who conducted the briefing, the pastor was skeptical about the FBI allegations, but promised to keep the information in mind for future dealings with Dr. King.³⁹¹

2. Attempts to Discredit Dr. King With Heads of Government Agencies

In March 1965 the FBI contacted former Florida Governor LeRoy Collins. Collins was then Director of the Community Relations Service, Department of Commerce, a position the Bureau viewed as "something of a 'mediator' in problems relating to the racial field."³⁹² The FBI told Collins that Coretta King had criticized his participation in developments in Selma, Alabama and had said that Collins was "blinded by prejudice." A copy of the December 1964 monograph about Dr. King was also sent to Collins, "in view of [his] important position relative to the racial movement."³⁹³

Also in March 1965 the FBI learned that the Internal Revenue Service intended to invite Dr. King as one of 19 guest lecturers at a series of seminars on Equal Employment Opportunities. When the IRS requested routine name checks on the 19 individuals, Director Hoover approved a Domestic Intelligence Division request to send the IRS a copy of the December 1964 monograph; normal procedures were followed in checking the other 18 people.³⁹⁴

In December 1966 Domestic Intelligence Director William Sullivan reported that he had met with Ambassador U. Alexis Johnson during a tour of the FBI's Legal Attaché Office in Japan and was surprised to learn that Johnson was unaware of allegations that communists were influencing Dr. King. Sullivan recommended that Johnson be sent a copy of the monograph about Dr. King "because of his position."³⁹⁵ Director Hoover approved the plan, and a copy of the monograph was sent to the FBI Legal Attaché in Tokyo for hand-delivery to the Ambassador.³⁹⁶

Dr. King publicly announced his opposition to American involvement in the war in Vietnam in a speech at New York's Riverside Church on April 4, 1967. Six days later, Charles Brennan of the Domestic Intelligence Division recommended the circulation of an updated draft of the King monograph to the White House. Brennan's memorandum states that the revised monograph contained allegations about communist influence over Dr. King as well as personally derogatory allegations.³⁹⁷

Director Hoover approved and copies of the revised monograph were sent to the White House, the Secretary of State, the Secretary of De-

³⁹⁰ Memorandum from LEGAT, Paris, to Director, FBI, 4/14/66.

³⁹¹ Memorandum from LEGAT, Paris, to Director, FBI, 5/9/66.

³⁹² Memorandum from Frederick Baumgardner to William Sullivan, 3/23/65.

³⁹³ Baumgardner memorandum, 3/23/65.

³⁹⁴ Memorandum from Frederick Baumgardner to William Sullivan, 3/31/65. The delivery was made shortly thereafter (Memorandum from J. Edgar Hoover to Internal Revenue Service, 4/2/65).

³⁹⁵ Memorandum from William Sullivan to Cartha DeLoach, 12/19/66.

³⁹⁶ Memorandum from Director, FBI to LEGAT, Tokyo, 12/28/66.

³⁹⁷ Memorandum from Charles Brennan to William Sullivan, 4/10/67.

fense, the Director of the Secret Service, and the Attorney General.⁴⁰⁴ A copy was subsequently sent to the Commandant of the Marine Corps, who had been interested in "King's activities in the civil rights movement but recently had become quite concerned as to whether there are any subversive influences which have caused King to link the civil rights movement with the anti-Vietnam War movement." The Domestic Intelligence Division recommended that a copy be given to the Marine Commandant because "it is felt would definitely be to the benefit of [the Commandant] and to the Bureau. . . ." ⁴⁰⁵

In February 1968, FBI Headquarters learned that Dr. King planned a "Washington Spring Project" for April 1968. According to a Domestic Intelligence Division memorandum, the Director suggested that the King monograph be again revised. That memorandum noted:

Bringing this monograph up-to-date and disseminating it at high level prior to King's "Washington Spring Project" should serve again to remind top-level officials in Government of the wholly disreputable character of King. . . .

Because of the importance of doing a thorough job on this, we will conduct an exhaustive field review to bring together the most complete and up-to-date information and to present it in a hard-hitting manner.⁴⁰⁶

The revised monograph, dated March 12, 1968, was disseminated to the White House, the Attorney General, and the heads of various government intelligence agencies.⁴⁰⁷

3. Attempts to Discredit Dr. King By Using the Press

Despite Cartha DeLoach's assurances to Andrew Young and Ralph Abernathy that the FBI would never disseminate information to the press, the Bureau continued its efforts to cultivate "friendly" news sources that would be willing to release information unfavorable to Dr. King. Ralph McGill, the pro-civil rights editor of the *Atlanta Constitution*, was a major focus of the Bureau's attentions. The Bureau apparently first furnished McGill with derogatory information about Dr. King as part of an attempt to dissuade community leaders in Atlanta from participating in a banquet planned to honor Dr. King upon his return from the Nobel Prize ceremonies. After a meeting with McGill, William Sullivan reported that McGill said that he had stopped speaking favorably of Dr. King, that he had refused to take an active part in preparing for the banquet, and that he had even taken steps to undermine the banquet. McGill's version of what transpired will never be known, since McGill is deceased. According to Sullivan's memorandum, however:

Mr. McGill told me that following my first discussion with him a few weeks ago he contacted a banker friend in Atlanta who was helping to finance the banquet to be given King next Wednesday night. The banker was disturbed and said he

⁴⁰⁴ Letters from J. Edgar Hoover to the Attorney General; Director, U.S. Secret Service; the Secretary of State; the White House; and the Secretary of Defense, 4/10/67.

⁴⁰⁵ Memorandum from Charles Brennan to William Sullivan, 8/30/67.

⁴⁰⁶ Memorandum from George Moore to William Sullivan, 2/29/68.

⁴⁰⁷ Memoranda from George Moore to William Sullivan, 3/11/68 and 3/10/68.

would contact some other bankers also involved and see if support could be quietly withdrawn. McGill's friend and some of the bankers did take steps to withdraw but this was very quickly relayed to bankers in Haiti who were on the threshold of an important financial deal with the Atlanta, Georgia, bankers. They took the position that if the Atlanta bankers did not support the Martin Luther King party, their financial deal with these Georgia bankers was off. . . . As a result they got cold feet and decided to go ahead with financing King's party.

McGill told me that . . . , a Catholic leader in Georgia, an Episcopal clergyman and a Jewish rabbi are also quite active in support of this party for King. . . . I told him that . . . he might want to explore very confidentially and discreetly the subject matter with these three men. . . .

McGill told me that he thinks it is too late now, especially in view of the financial interest of the Georgia bankers in the Haiti deal, to prevent the banquet from taking place. However, McGill said he would do what he could to encourage key people to limit their praise and support of King as much as possible.

McGill also told me that he is taking steps through [a Negro leader] to get key Negro leaders to unite in opposition to King and to gradually force him out of the civil rights movement if at all possible.⁴⁰⁹

The FBI subsequently told the White House that McGill:

believes that the very best thing that could happen would be to have King step completely out of the civil rights movement and public life for he feels that if this is not done, sooner or later King will be publicly exposed. Mr. McGill believes that an exposure of King will do irreparable harm to the civil rights movement in which he, Mr. McGill, and others are so interested and have worked so hard for; and likewise it will do injury to different citizens of the country who have been supporting King. . . .⁴¹⁰

In late May 1965, a reporter from United Press International requested the Bureau for information about Dr. King for use in a series of articles about the civil rights leader. The Special Agent in Charge in Atlanta recommended that the Bureau give the reporter both public source and confidential information about Dr. King because the reporter "is the UPI's authority in the South on the Negro movement and his articles carry a great deal of influence and [the SAC did not believe] that he would prepare anything flattering or favorable to King." The Director approved a recommendation that the reporter be supplied with a public source document and with a "short summation" of allegations concerning communist influence over Dr. King to be used "merely for orientation purposes."⁴¹¹

⁴⁰⁹ Memorandum from William Sullivan to Alan Belmont, 1/21/65.

⁴¹⁰ Letter from J. Edgar Hoover to Bill Moyers, 1/22/65.

⁴¹¹ Memorandum from Joseph Sizoo to William Sullivan, 5/24/65.

In October 1966, the Domestic Intelligence Division recommended that an article "indicting King for his failure to take a stand on the [black power] issue and at the same time exposing the degree of communist influence on him" be given to a newspaper contact "friendly" to the Bureau, "such as . . . [the] Editor of U.S. News and World Report."

It is felt that the public should again be reminded of this communist influence on King, and the current controversy among civil rights leaders makes this timely to do so.⁴¹²

Attached to the memorandum was a proposed article which noted that the efforts of several civil rights leaders to denounce "Black Power" had been "undermined by one man in the civil rights movement who holds in his hands the power to silence the rabble rousers and to give the movement renewed momentum." The article attributed Dr. King's equivocation to his advisers, who were alleged to have had affiliations with the Communist Party or organizations associated with the Party. Dr. King's decision to oppose the Vietnamese war was also attributed to these advisers.⁴¹³

One project involving the mass media which the FBI felt had been particularly successful was its attempt to prevent Dr. King from obtaining contributions from James Hoffa of the Teamsters Union. In October 1966, the FBI discovered that Dr. King planned to meet with Hoffa, but that Dr. King had wanted to avoid publicity because, in the words of the Bureau:

Disclosure of King's transparent attempt to blackmail Hoffa with the large Negro membership of Hoffa's union, to solve the Southern Christian Leadership Conference's financial problems, would cause an uproar among leaders of organizations having large Negro memberships; pointing out their own vulnerability to such a squeeze by any unscrupulous civil rights leader. This potential collusion between large labor unions and the civil rights movement could also react to the detriment of the Negro in that through large financial donations, an unscrupulous labor leader could subvert the legitimate aims and objectives of the civil rights movement to his own purposes.⁴¹⁴

The Crime Records Division prepared an article for public release raising the question of "who really gets squeezed when these two pythons get together."⁴¹⁵ The Domestic Intelligence Division also recommended:

a Bureau official be designated now to alert friendly news media of the meeting once the meeting date is learned so that

⁴¹² Memorandum from Frederick Baumgardner to William Sullivan, 10/27/66.

⁴¹³ Director Hoover's "O.K." appears at the bottom of the memorandum. There is also a note stating, "U.S. News and World Report will not use article of this nature." It is not known whether the article was actually distributed.

⁴¹⁴ Memorandum from Frederick Baumgardner to William Sullivan, 10/28/66.

⁴¹⁵ Memorandum from Charles Brennan to Frederick Baumgardner, William Sullivan, attached to Baumgardner memorandum, 10/28/66.

arrangements can be made for appropriate press coverage of the planned meeting to expose and disrupt it.⁴¹⁷

Director Hoover's "O.K." appears below that recommendation.

On discovering that the meeting was about to occur, the Crime Records Division notified a reporter for the *New York Daily News* and a national columnist. "News photographers and wire services are also being alerted to give coverage. . . ."⁴¹⁸

A Crime Records Division memorandum on the following day reported that "in view of publicity in the *New York Daily News* regarding this proposed meeting, King and his aides had decided that it would be unwise to meet with Hoffa." The Bureau then notified reporters that Dr. King was coming to Washington, D.C. The reporters "cornered" Dr. King as he came off the plane and quizzed him about the proposed meeting. The Crime Records Division reported these events to the Director with the assessment that "our counterintelligence aim to thwart King from receiving money from the Teamsters has been quite successful to date." Director Hoover initialed the memorandum reporting this news, "Excellent."⁴¹⁹

In March 1967 Director Hoover approved a recommendation by the Domestic Intelligence Division to furnish "friendly" reporters questions to ask Dr. King. The Intelligence Division believed that Dr. King would be particularly "vulnerable" to questions concerning his opposition to the war in Vietnam, and recommended that a reporter be selected to interview Dr. King "ostensibly to question King about his new book," but with the objective of bringing out the foreign-policy aspects of Dr. King's philosophy.

This could then be linked to show that King's current policies remarkably parallel communist efforts. This would cause extreme embarrassment to King.⁴²⁰

In October 1967 the Domestic Intelligence Division recommended that an editorial in a Negro magazine, which criticized Dr. King for his stance on the Vietnam war, be given to "friendly news sources." The purpose of the dissemination was to "publicize King as a traitor to his country and his race" and to "reduce his income" from a series of shows given by Harry Belafonte to earn funds for the SCLC. The recommendation was approved by the Director and is marked "Handled 10/28/67."⁴²¹

∴ Attempts to Discredit Dr. King With Major Political and Financial Leaders

In March 1965 the FBI learned that a "Martin Luther King Day" was being planned in a major city. The Domestic Intelligence Division recommended that the Special Agent in Charge "personally meet with the Governor and brief him concerning King" in order to "induce him to minimize the affair and especially the award for King."

⁴¹⁷ Memorandum from Frederick Baumgardner to William Sullivan, 11/3/66.

⁴¹⁸ Memorandum from Robert Wick to Cartha DeLoach, 11/8/66.

⁴¹⁹ Memorandum from Robert Wick to Cartha DeLoach, 11/9/66.

⁴²⁰ Memorandum from Charles Brennan to William Sullivan, 8/8/67. The proposal was given Director Hoover's "O.K." and a handwritten note in the margin initialed by the Chief of the Crime Records Division states, "handled."

⁴²¹ Memorandum from George Moore to William Sullivan, 10/18/67.

The Domestic Intelligence Division memorandum was initiated by the Director and bears the handwritten notation, "handled 3-5-65, WCS[sullivan]." ⁴²²

In October 1966 the FBI learned that Dr. King had met with McGeorge Bundy, then Director of the Ford Foundation, and received a tentative offer of a grant for the SCLC. The Domestic Intelligence Division decided that officials of the Foundation might not be aware of the "subversive backgrounds of King's principal advisers," but that if they were briefed, "this might preclude any assistance being granted." Director Hoover approved a plan to have a former FBI agent, who was then a vice-president of the Ford Motor Company, approach Bundy. ⁴²³ The ex-agent was contacted, briefed on Dr. King, and according to DeLoach, "stated he would personally contact Bundy in an effort to put a stop to King receiving any funds from the Ford Foundation." ⁴²⁴

In a memorandum dated October 26, 1966, DeLoach reported that the ex-agent had contacted Bundy, but that Bundy had refused to talk with him about Dr. King, saying that he would only talk with a person having first-hand knowledge about Dr. King, and would not listen to rumors. DeLoach recommended that the FBI not directly approach Bundy, since "it is doubtful that contact with him by the FBI will convince him one way or another." Director Hoover wrote on DeLoach's memorandum, "Yes. We would get no where with Bundy." ⁴²⁵

5. Attempts to Discredit Dr. King With Congressional Leaders

According to a memorandum by Assistant to the Director DeLoach, Speaker of the House John McCormack requested a briefing about Dr. King's background and activities in August 1965. DeLoach reported that he briefed McCormack for 45 minutes about Dr. King's private life and about possible communist influence over Dr. King. According to DeLoach, McCormack stated that "he now recognized the gravity of the situation and that something obviously must be done about it." ⁴²⁶ McCormack was not interviewed by the committee staff.

Not all Congressional inquiries about Dr. King, however, were answered by the Bureau. For example, in January 1968, DeLoach reported that he had met with Senator Robert C. Byrd at the Senator's request. DeLoach's memorandum of the meeting states that the Senator expressed concern over Dr. King's plan for demonstrations in Washington, D.C. during the summer and said that it was time Dr. King "met his Waterloo." DeLoach's memorandum states that Senator Byrd asked if the FBI would prepare a speech about Dr. King which he could deliver on the floor of the Senate. DeLoach declined to provide any information that was not on the public record, al-

⁴²² Memorandum from Frederick Baumgardner to William Sullivan, 8/2/65.

⁴²³ Memorandum from Frederick Baumgardner to William Sullivan, 10/24/66.

⁴²⁴ Memorandum from Cartha DeLoach to Clyde Tolson, 10/26/66.

⁴²⁵ Memorandum from Cartha DeLoach to Clyde Tolson, 10/26/66. DeLoach's memorandum noted: "I personally feel that Bundy is of the pseudo-intellectual, Ivy League group that has little respect for the FBI." Bundy confirmed that he had been approached concerning Dr. King and that he had refused to talk about Dr. King.

⁴²⁶ Memorandum from Cartha DeLoach to John Mohr, 8/14/65.

though he did promise to keep the Senator informed of new public source items.⁴²⁷ The Committee staff did not interview Senator Byrd.

B. COINTELPRO Operations Against Dr. King and His Associates

The FBI elevated its activities against Dr. King and his associates to the status of formal counterintelligence programs (COINTELPRO) during this period.⁴²⁸ In July 1966, the Director instructed the New York field office that "immediate steps should be taken to discredit, expose, or otherwise neutralize Adviser A's role as a clandestine communist."⁴²⁹ An agent was assigned full-time to "carefully review the [Adviser A] case file seeking possible counterintelligence approaches." He reported that there was no derogatory information on Adviser A's personal life,⁴³⁰ and that the only "effective way to neutralize [him] is by public exposure" of his alleged Communist Party associations.⁴³¹ None of the FBI's efforts against Adviser A appear to have met success.

The FBI considered initiating a formal COINTELPRO to discredit Dr. King and Dr. Benjamin Spock in May 1967 when rumors developed concerning the possibility that King and Spock might run as "peace" candidates in the 1968 presidential election. The New York field office recommended postponing the effort to expose "communist connections" of persons associated with King and Spock until they had formally announced their candidacy.⁴³² The Chicago field office proposed waiting until the summer of 1968, reasoning that by then the Administration would have either resolved the Vietnam conflict or, if not, the Communist Party would be emphasizing the peace theme, and exposure of Communist Party links with the King-Spock campaign "would doubtlessly be appreciated by the Administration."⁴³³ While the Chicago field office felt that the Bureau should not "rule out" the use of "flyers, leaflets, cards and bumper stickers" to discredit the King-Spock ticket, it recommended "the use of a political columnist or reporter for this purpose."⁴³⁴ Apparently no steps were taken to implement the plan.

In August 1967 the Bureau initiated a COINTELPRO captioned "Black Nationalist—Hate Groups." This program is extensively described in the Staff Report on COINTELPRO. The document initiating the program states:

⁴²⁷ Memorandum from Cartha DeLoach to Clyde Tolson, 1/10/68.

⁴²⁸ COINTELPRO is discussed at length in the Staff Report on COINTELPRO.

⁴²⁹ Memorandum from Director, FBI to SAC, New York, 7/18/66. Allegations concerning Adviser A's suspected Communist Party affiliations are discussed at pp. 149-150.

⁴³⁰ The complete absence of any derogatory information on Adviser A's personal life did not prevent the Bureau from attempting to develop such information. In October 1967 the New York office informed Washington it would "continue its efforts to place [Adviser A] in a compromising position" with a woman acquaintance. (Memorandum from SAC New York to Director, FBI, 10/7/66.)

⁴³¹ Memorandum from SAC, New York to Director, FBI, 8/15/68.

⁴³² Memorandum from SAC, New York to Director, FBI, 2/25/67.

⁴³³ Memorandum from SAC The field office noted: "Effectively tabling 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."

⁴³⁴ Memorandum from SAC, Chicago to Director, FBI, 6/1/67. The Chicago office observed: "It is emphasized that this person should be respected for his balance and fair-mindedness. An article or series by an established conservative would not adequately serve our purposes."

The purpose of this new counterintelligence endeavor is to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black-nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership and supporters, and to counter their propensity for violence and civil disorder.

Intensified attention under this program should be afforded to the activities of such groups as the Student Nonviolent Coordinating Committee, *Southern Christian Leadership Conference*, Revolutionary Action Movement, the Deacons for Defense and Justice, Congress of Racial Equality, and the Nation of Islam. [Emphasis added.]⁴³⁵

The Domestic Intelligence Division expanded the Black Nationalist-Hate Groups COINTELPRO in February 1968. The instructions to the field offices listed as a "goal":

Prevent the rise of a "messiah" who could unify and electrify the militant black nationalist movement. Malcolm X might have been such a "messiah;" he is the martyr of the movement today. Martin Luther King, Stokely Carmichael, and Elijah Muhammed all aspire to this position. Elijah Muhammed is less of a threat because of his age. King could be a real contender for this position should he abandon his supposed "obedience" to "white, liberal doctrines" (nonviolence) and embrace black nationalism. . . .⁴³⁶

The SCLC was retained as a "primary target" of the COINTELPRO, and Martin Luther King's name was added to the list of persons who were targets.

The supervisor of the Black Nationalist COINTELPRO, told the Committee that he could recall no counterintelligence activities directed against the SCLC, but that several were taken against Dr. King.⁴³⁷

C. The FBI's Efforts to Discredit Dr. King During His Last Months

Between 1965 and early 1967, the files indicate that Bureau concern about Dr. King had decreased. This concern was revived by Dr. King's April 4, 1967, speech at New York's Riverside Church, in which he opposed the Administration's position in Vietnam. The FBI interpreted this position as proof he "has been influenced by communist advisers," and noted that King's remarks were "a direct parallel of the communist position on Vietnam."⁴³⁸ A week after the speech the FBI sent the White House and the Justice Department a revised edition of the printed King monograph.

In early December 1967 Dr. King announced plans to hold demonstrations in major American cities, including Washington, D.C., to spur Congress into enacting civil rights legislation. The FBI followed closely developments in Dr. King's "Washington Spring Project" forwarding to the White House information concerning Adviser A's

⁴³⁵ Memorandum from Director, FBI to Special Agents in Charge, 8/28/67.

⁴³⁶ Memorandum from Director, FBI to Special Agents in Charge, 8/4/68.

⁴³⁷ Testimony, 10/17/75, p. 14.

⁴³⁸ Memorandum from Charles Brennan to William Sullivan, 4/10/67.

fund-raising activities and Dr. King's plans to tape a lecture series for a foreign television system, allegedly to raise funds for the project.⁴⁴⁰

In February 1968 the FBI again revised the King monograph and distributed it to certain officials in the Executive Branch. The Domestic Intelligence Division memorandum recommending the new monograph stated that its dissemination "prior to King's 'Washington Spring Project' should serve again to remind top-level officials in Government of the wholly disreputable character of King."⁴⁴¹

In early March, the Bureau broadened its Black Nationalist-Hate Groups COINTELPRO explicitly to include Dr. King.⁴⁴² Toward the end of the month, the FBI began to disseminate information to the press "assigned to curtail success of Martin Luther King's fund raising campaign for the Washington Spring Project." The first of many plans included circulating a story

that King does not need contributions from the 70,000 people he solicited. Since the churches have offered support, no more money is needed and any contributed would only be used by King for other purposes. This item would need nation-wide circulation in order to reach all the potential contributors and curtail their donations.⁴⁴³

On March 25, the Bureau approved a plan to mail an anonymous letter to a civil rights leader in Selma, Alabama, who was "miffed" with Dr. King, and a copy of that letter to a Selma newspaper, hoping that the newspaper might interview the leader about its contents. The Bureau described the purpose of the letter as calling

to the attention of [the civil rights leader] that King is merely using the Negroes of the Selma area for his own personal aggrandizement; that he is not genuinely interested in their welfare, but only in their donations; that in all probability the individuals going to Washington for the Spring Project will be left stranded without suitable housing or food. The letter should also play up the possibility of violence.⁴⁴⁴

There is no indication in FBI files that the letter was mailed.

During the latter part of March, Dr. King went to Memphis, Tennessee, where a strike by Sanitation Workers had erupted into violent riots.

A March 28, 1968, Domestic Intelligence Division memorandum stated:

A sanitation strike has been going on in Memphis for some time. Martin Luther King, Jr., today led a march composed of 5,000 to 6,000 people through the streets of Memphis. King was in an automobile preceding the marchers. As the march developed, acts of violence and vandalism broke out including the breaking of windows in stores and some looting.

⁴⁴⁰ Memorandum from George Moore to William Sullivan, 12/18/67; memorandum from Director, FBI to LEGAT, 12/21/67.

⁴⁴¹ Memorandum from George Moore to William Sullivan, 2/20/68.

⁴⁴² See discussion, *supra*, p. 180.

⁴⁴³ Memorandum from George Moore to William Sullivan, 8/26/68.

⁴⁴⁴ Memorandum from SAC, Mobile to Director, FBI, 8/26/68; memorandum from Director, FBI to SAC, Mobile, 4/2/68.

This clearly demonstrates that acts of so-called nonviolence advocated by King cannot be controlled. The same thing could happen in his planned massive civil disobedience for Washington in April.

ACTION

Attached is a blind memorandum pointing out the above, which if you approve, should be made available by Crime Records Division to cooperative news media sources.

The memorandum carried Director Hoover's "O.K." and the notation, "handled on 3/28/68."⁴⁵

On March 29, 1968, the Domestic Intelligence Division recommended that the following article be furnished to a cooperative news source:

Martin Luther King, during the sanitation workers' strike in Memphis, Tennessee, has urged Negroes to boycott downtown white merchants to achieve Negro demands. On 3/29/68 King led a march for the sanitation workers. Like Judas leading lambs to slaughter King led the marchers to violence, and when the violence broke out, King disappeared.

The fine Hotel Lorraine in Memphis is owned and patronized exclusively by Negroes but King didn't go there for his hasty exit. Instead King decided the plush Holiday Inn Motel, white owned, operated and almost exclusively patronized, was the place to "cool it." There will be no boycott of white merchants for King, only for his followers.⁴⁶

On April 4, Dr. King returned to Memphis. This time he registered at the Lorraine Hotel. We have discovered no evidence that the FBI was responsible for Dr. King's move to the Lorraine Hotel.⁴⁷

⁴⁵ Memorandum from George Moore to William Sullivan, 3/28/68. An article about violence in the sanitation strike, published in the Memphis Commercial Clarion on March 29, 1968, echoed the wording of the FBI memorandum, although there is no proof that the FBI was responsible for the article. The article stated: "Yesterday's march, ostensibly a protest on behalf of the city's striking sanitation workers, was generally considered to be a 'dress rehearsal' by Dr. King for his planned march on Washington April 22." (Memphis Commercial Clarion, 3/29/68.)

⁴⁶ Memorandum from George Moore to William Sullivan, 3/29/68.

⁴⁷ Dr. King's associates and the FBI both deny that this last effort to discredit Dr. King influenced his decision to move to the Lorraine Hotel. Dr. Ralph Abernathy, who was with Dr. King during his last days, told the Committee that he had not been aware of any newspaper articles criticizing Dr. King for staying at the Holiday Inn during his visit the previous week. He was certain that the Lorraine had not been chosen because of any articles that might have appeared and said that Dr. King always stayed at the Lorraine when he visited Memphis, with the exception of the prior visit. In that instance, Dr. King had been brought to the Holiday Inn by police following a riot during the sanitation strike. (Staff summary of Ralph Abernathy interview, 11/19/75, p. 2.)

A handwritten note on the FBI memorandum criticizing Dr. King for staying at the Holiday Inn states: "handled, 4-3-68." The FBI questioned the agent who wrote "handled" on the memorandum and informed the Committee that he did not recall the memorandum, and did not know whether "handled" indicated that he had disseminated the article or simply cleared the memorandum through the Crime Records Division of the FBI.

According to the FBI, Dr. King checked into the Lorraine Hotel at 10:30 a.m. on April 8. The FBI has concluded that "the notation indicating that the proposed furnishing of information to news media was 'handled' on April 8, 1968, would, of course, preclude any such information from appearing in the press prior to King's checking into the Hotel Lorraine. . . ."

D. Attempts to Discredit Dr. King's Reputation After His Death

The FBI's attempts to discredit Dr. King did not end with his death. In March 1969 the Bureau was informed that Congress was considering declaring Dr. King's birthday a national holiday, and that members of the House Committee on Internal Security might be contacting the Bureau for a briefing about Dr. King. The Crime Records Division recommended briefing the Congressmen because they were "in a position to keep the bill from being reported out of Committee" if "they realize King was a scoundrel." DeLoach noted: "This is a delicate matter—but can be handled very cautiously." Director Hoover wrote, "I agree. It must be handled *very cautiously*."^{447a}

In April 1969 FBI Headquarters received a recommendation for a counterintelligence program from the Atlanta Field Office. The nature of the proposed program has not been revealed to the Committee. A memorandum concerning the plan which the Bureau has given to the Committee, however, notes that the plan might be used "in the event the Bureau is inclined to entertain counterintelligence action against Coretta Scott King and/or the continuous projection of the public image of Martin Luther King. . . ." ^{447b} The Director informed the Atlanta office that "the Bureau does not desire counterintelligence action against Coretta King of the nature you suggest at this time."⁴⁴⁸

CONCLUSION

Although it is impossible to gauge the full extent to which the FBI's discrediting programs affected the civil rights movement, the fact that there was impact is unquestionable.

Rumors circulated by the FBI had a profound impact on the SCLC's ability to raise funds. According to Congressman Andrew Young, a personal friend and associate of Dr. King, the FBI's effort against Dr. King and the SCLC "chilled contributions. There were direct attempts at some of our larger contributors who told us that they had been told by agents that Martin had a Swiss bank account, or that Martin had confiscated some of the monies from the March on Washington for his personal use. None of that was true."⁴⁴⁹ Harry Wachtel, one of Dr. King's legal counsels who handled many of the financial and fund raising activities of the SCLC, emphasized that the SCLC was always in need of funds. "Getting a grant or getting a contribution is a very fragile thing. A grant delayed has a very serious impact on an organization whose financial condition was pretty rough."⁴⁵⁰ Wachtel testified that the SCLC continually had to overcome rumors of poor financial management and communist connections.

The material . . . stayed in the political bloodstream all the way through to the time of Dr. King's death, and even after. In our efforts to build a King Center, it was around. It was like a contamination.⁴⁵¹

^{447a} Memorandum from Milton Jones to Thomas Bishop, 3/12/69. [Emphasis in original.]

^{447b} Memorandum from SAC, Atlanta to Director, FBI, 4/3/69.

⁴⁴⁸ Memorandum from Director, FBI to SAC, Atlanta, 4/14/69.

⁴⁴⁹ Young, 2/19/70, pp. 25-26.

⁴⁵⁰ Wachtel, 2/27/70, pp. 81-82.

⁴⁵¹ Wachtel, 2/27/70, p. 49.

The SCLC leadership assumed that anything said in meetings or over the telephone would be intercepted by wiretaps, bugs, or informants. Ironically, the FBI memorandum reporting that a wiretap of the SCLC's Atlanta office was feasible stated:

In the past when interviews have been conducted in the office of Southern Christian Leadership Conference certain employees when asked a question, in a half joking manner and a half serious manner replied, "You should know that already, don't you have our wires tapped?" It is noted in the past, State of Georgia has conducted investigations regarding subject and Southern Christian Leadership Conference.⁴⁵²

Harry Wachtel commented on the impact constant surveillance on members of the SCLC:

When you live in a fishbowl, you act like you're in a fishbowl, whether you do it consciously or unconsciously. . . . I can't put specifics before you, except to say that it beggars the imagination not to believe that the SCLC, Dr. King, and all its leaders were not chilled or inhibited from all kinds of activities, political and even social.⁴⁵³

Wachtel also pointed out the ramifications stemming from the Government's advance knowledge of what civil rights leaders were thinking:

It is like political intelligence. It did not chill us from saying it, but it affected the strategies and tactics because the people you were having strategies and tactics about were privy to what you were about. They know your doubts. . . . Take events like strategies in Atlantic City. . . . Decision-making concerning which way to go, joining one challenge or not, supporting a particular situation, or not, had to be limited very strongly by the fact that information which was expressed by telephone, or which could even possibly be picked up by bugging, would be in the hands of the President.⁴⁵⁴

Perhaps most difficult to gauge is the personal impact of the Bureau's programs. Congressman Young told the Committee that while Dr. King was not deterred by the attacks which are now known to have been instigated in part by the FBI, there is "no question" but that he was personally affected:

It was a great burden to be attacked by people he respected, particularly when the attacks engendered by the FBI came from people like Ralph McGill. He sat down and cried at the New York Times editorial about his statement on Vietnam, but this just made him more determined. It was a great personal suffering, but since we don't really know all that they did, we have no way of knowing the ways that they affected us.⁴⁵⁵

⁴⁵² Memorandum, Special Agent in Charge, Atlanta, to Director, FBI, 10/10/63.

⁴⁵³ Wachtel, 2/27/70, pp. 10, 10.

⁴⁵⁴ Wachtel, 2/27/70, p. 10.

⁴⁵⁵ Young, 2/10/70, p. 16.

THE FBI'S COVERT ACTION PROGRAM TO DESTROY THE BLACK PANTHER PARTY

C O N T E N T S

	Page
Introduction.....	187
A. The effort to promote violence between the Black Panther Party and other well-armed, potentially violent organizations.....	188
1. The effort to promote violence between the Black Panther Party and the United Slaves (US), Inc.....	189
2. The effort to promote violence between the Blackstone Rangers and the Black Panther Party.....	195
B. The effort to disrupt the Black Panther Party by promoting internal dissention.....	198
1. General efforts to disrupt the Black Panther Party membership.....	198
2. FBI role in the Newton-Cleaver rift.....	200
C. Covert efforts to undermine support of the Black Panther Party and to destroy the party's public image.....	208
1. Efforts to discourage and to discredit supporters of the Black Panther Party.....	208
2. Efforts to promote criticism of the Black Panthers in the mass media and to prevent the Black Panther Party and its sympathizers from expressing their views.....	213
D. Cooperation between the Federal Bureau of Investigation and local police departments in disrupting the Black Panther Party.....	220



THE FBI'S COVERT ACTION PROGRAM TO DESTROY THE BLACK PANTHER PARTY

INTRODUCTION

In August 1967, the FBI initiated a covert action program—COINTELPRO—to disrupt and “neutralize” organizations which the Bureau characterized as “Black Nationalist Hate Groups.”¹ The FBI memorandum expanding the program described its goals as:

1. Prevent a coalition of militant black nationalist groups. . . .

2. Prevent the rise of a messiah who could unify and electrify the militant nationalist movement . . . Martin Luther King, Stokely Carmichael and Elijah Muhammad all aspire to this position. . . .

3. Prevent violence on the part of black nationalist groups. . . .

4. Prevent militant black nationalist groups and leaders from gaining respectability by discrediting them. . . .

5. . . . prevent the long-range growth of militant black nationalist organizations, especially among youth.”²

The targets of this nationwide program to disrupt “militant black nationalist organizations” included groups such as the Southern Christian Leadership Conference (SCLC), the Student Nonviolent Coordinating Committee (SNCC), the Revolutionary Action Movement (RAM), and the Nation of Islam (NOI). It was expressly directed against such leaders as Martin Luther King, Jr., Stokely Carmichael, H. Rap Brown, Maxwell Stanford, and Elijah Muhammad.

The Black Panther Party (BPP) was not among the original “Black Nationalist” targets. In September 1968, however, FBI Director J. Edgar Hoover described the Panthers as:

“the greatest threat to the internal security of the country.

“Schooled in the Marxist-Leninist ideology and the teaching of Chinese Communist leader Mao Tse-tung, its members have perpetrated numerous assaults on police officers and have engaged in violent confrontations with police throughout the country. Leaders and representatives of the Black Panther Party travel extensively all over the United States preaching their gospel of hate and violence not only to ghetto residents,

¹ For a description of the full range of COINTELPRO programs, see the staff report entitled “COINTELPRO: The FBI's Covert Action Programs Against American Citizens.”

² Memorandum from G. C. Moore to W. C. Sullivan, 2/20/68, pp. 3-4.

but to students in colleges, universities and high schools as well."³

By July 1969, the Black Panthers had become the primary focus of the program, and was ultimately the target of 233 of the total 295 authorized "Black Nationalist" COINTELPRO actions.⁴

Although the claimed purpose of the Bureau's COINTELPRO tactics was to prevent violence, some of the FBI's tactics against the BPP were clearly intended to foster violence, and many others could reasonably have been expected to cause violence. For example, the FBI's efforts to "intensify the degree of animosity" between the BPP and the Blackstone Rangers, a Chicago street gang, included sending an anonymous letter to the gang's leader falsely informing him that the Chicago Panthers had "a hit out" on him.⁵ The stated intent of the letter was to induce the Ranger leader to "take reprisals against" the Panther leadership.⁶

Similarly, in Southern California, the FBI launched a covert effort to "create further dissension in the ranks of the BPP."⁷ This effort included mailing anonymous letters and caricatures to BPP members ridiculing the local and national BPP leadership for the express purpose of exacerbating an existing "gang war" between the BPP and an organization called the United Slaves (US). This "gang war" resulted in the killing of four BPP members by members of US and in numerous beatings and shootings. Although individual incidents in this dispute cannot be directly traced to efforts by the FBI, FBI officials were clearly aware of the violent nature of the dispute, engaged in actions which they hoped would prolong and intensify the dispute, and proudly claimed credit for violent clashes between the rival factions which, in the words of one FBI official, resulted in "shootings, beatings, and a high degree of unrest . . . in the area of southeast San Diego."⁸

James Adams, Deputy Associate Director of the FBI's Intelligence Division, told the Committee:

None of our programs have contemplated violence, and the instructions prohibit it, and the record of turndowns of recommended actions in some instances specifically say that we do not approve this action because if we take it it could result in harm to the individual.⁹

But the Committee's record suggests otherwise. For example, in May 1970, after US organization members had already killed four BPP members, the Special Agent in Charge of the Los Angeles FBI office wrote to FBI headquarters:

Information received from local sources indicate that, in general, the membership of the Los Angeles BPP is physical-

³ New York Times, 9/8/68.

⁴ This figure is based on the Select Committee's staff study of Justice Department COINTELPRO "Black Nationalist" summaries prepared by the FBI during the Petersen Committee inquiry into COINTELPRO.

⁵ Memorandum from Chicago Field Office to FBI Headquarters, 1/18/69.

⁶ *Ibid.*

⁷ Memorandum from FBI Headquarters to Baltimore Field Office (and 18 other offices), 11/25/68.

⁸ Memorandum from San Diego Field Office to FBI Headquarters, 1/10/70.

⁹ James Adams testimony, 11/10/78, Hearings, Vol. 6, p. 76.

ly afraid of US members and take premeditated precautions to avoid confrontations.

In view of their anxieties, it is not resently 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. [Emphasis added.]¹⁰

This report focuses solely on the FBI's counterintelligence program to disrupt and "neutralize" the Black Panther Party. It does not examine the reasonableness of the basis for the FBI's investigation of the BPP or seek to justify either the politics, the rhetoric, or the actions of the BPP. This report does demonstrate, however, that the chief investigative branch of the Federal Government, which was charged by law with investigating crimes and preventing criminal conduct, itself engaged in lawless tactics and responded to deep-seated social problems by fomenting violence and unrest.

A. The Effort to Promote Violence Between the Black Panther Party and Other Well-Armed, Potentially Violent Organizations

The Select Committee's staff investigation has disclosed a number of instances in which the FBI sought to turn violence-prone organizations against the Panthers in an effort to aggravate "gang warfare." Because of the milieu of violence in which members of the Panthers often moved we have been unable to establish a direct link between any of the FBI's specific efforts to promote violence and particular acts of violence that occurred. We have been able to establish beyond doubt, however, that high officials of the FBI desired to promote violent confrontations between BPP members and members of other groups, and that those officials condoned tactics calculated to achieve that end. It is deplorable that officials of the United States Government should engage in the activities described below, however dangerous a threat they might have considered the Panthers; equally disturbing is the pride which those officials took in claiming credit for the bloodshed that occurred.

1. The Effort to Promote Violence Between the Black Panther Party and the United Slaves (US), Inc.

FBI memoranda indicate that the FBI leadership was aware of a violent power struggle between the Black Panther Party and the United Slaves (US) in late 1968. A memorandum to the head of the FBI's Domestic Intelligence Division, for example, stated:

On 11/2/68, BPP received information indicating US members intended to assassinate Leroy Eldridge Cleaver . . .

¹⁰ Memorandum from Los Angeles Field Office to FBI Headquarters, 5/26/70, pp. 1-2.

at a rally scheduled at Los Angeles on 11/3/68. A Los Angeles racial informant advised on 11/8/68 that [a BPP member] had been identified as a US infiltrator and that BPP headquarters had instructed that [name deleted] should be killed.

During BPP rally, US members including one [name deleted], were ordered to leave the rally site by LASS members (Los Angeles BPP Security Squad) and did so. US capitulation on this occasion prompted BPP members to decide to kill [name deleted] and then take over US organization. Members of LASS . . . were given orders to eliminate [name deleted] and [name deleted].¹¹

This memorandum also suggested that the two US members should be told of the BPP's plans to "eliminate" them in order to convince them to become Bureau informants.¹²

In November 1968, the FBI took initial steps in its program to disrupt the Black Panther Party in San Diego, California by aggravating the existing hostility between the Panthers and US. A memorandum from FBI Director Hoover to 14 field offices noted a state of "gang warfare" existed, with "attendant threats of murder and reprisals," between the BPP and US in southern California and added:

In order to fully capitalize upon BPP and US differences as well as to exploit all avenues of creating further dissention in the ranks of the BPP, recipient offices are instructed to submit imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP.¹³

As the tempo of violence quickened, the FBI's field office in San Diego developed tactics calculated to heighten tension between the hostile factions. On January 17, 1969, two members of the Black Panther Party—Apprentice "Buche" Carter and John Huggins—were killed by US members on the UCLA campus following a meeting involving the two organizations and university students.¹⁴ One month later, the San Diego field office requested permission from headquarters to mail derogatory cartoons to local BPP offices and to the homes of prominent BPP leaders around the country.¹⁵ The purpose was plainly stated:

The purpose of the caricatures is to indicate to the BPP that the US organization feels that they are ineffectual, inadequate, and riddled with graft and corruption.¹⁶

In the first week of March, the first cartoon was mailed to five BPP members and two underground papers, all in the San Diego area.¹⁷ According to a FBI memorandum, the consensus of opinion within

¹¹ Memorandum from G. C. Moore to W. C. Sullivan, 11/5/68.

¹² *Ibid.* An earlier FBI memorandum had informed headquarters that "sources have reported that the BPP has let a contract on Karenga [the leader of US] because they feel he has sold out to the establishment" (Memorandum from Los Angeles Field Office to FBI Headquarters, 9/25/68, p. 1.)

¹³ Memorandum from FBI Headquarters to Baltimore Field Office (and 13 other field offices), 11/25/68.

¹⁴ Memorandum from San Diego Field Office to FBI Headquarters, 1/20/69.

¹⁵ Memorandum from San Diego Field Office to FBI Headquarters, 2/20/69.

¹⁶ *Ibid.*

¹⁷ See memorandum from San Diego Field Office to FBI Headquarters, 3/12/69.

the BPP was that US was responsible and that the mailing constituted an attack on the BPP by US.¹⁸

In mid-March 1969, the FBI learned that a BPP member had been critically wounded by US members at a rally in Los Angeles. The field office concluded that shots subsequently fired into the home of a US member were the results of a retaliatory raid by the BPP.¹⁹ Tensions between the BPP and US in San Diego, however, appeared to lessen, and the FBI concluded that those chapters were trying "to talk out their differences." The San Diego field office reported:

On 3/27/69 there was a meeting between the BPP and US organization. . . . Wallace [BPP leader in San Diego] . . . concluded by stating that the BPP in San Diego would not hold a grudge against the US members for the killing of the Panthers in Los Angeles (Huggins and Carter). He stated that he would leave any retaliation for this activity to the black community. . . .

On 4/2/69, there was a friendly confrontation between US and the BPP with no weapons being exhibited by either side. US members met with BPP members and tried to talk out their differences.²⁰

On March 27, 1969—the day that the San Diego field office learned that the local BPP leader had promised that his followers "would not hold a grudge" against local US members for the killings in Los Angeles—the San Diego office requested headquarters' approval for three more cartoons ridiculing the BPP and falsely attributed to US. One week later, shortly after the San Diego office learned that US and BPP members were again meeting and discussing their differences, the San Diego field office mailed the cartoons with headquarters' approval.²¹

On April 4, 1969 there was a confrontation between US and BPP members in Southerest Park in San Diego at which, according to an FBI memorandum, the BPP members "ran the US members off."²² On the same date, US members broke into a BPP political education meeting and roughed up a female BPP member.²³ The FBI's Special Agent in Charge in San Diego boasted that the cartoons had caused these incidents:

The BPP members . . . strongly objected being made fun of by cartoons being distributed by the US organization (FBI cartoons in actuality) . . . [Informant] has advised on several occasions that the cartoons are "really shaking up the BPP." They have made the BPP feel that US is getting ready to move and this was the cause of the confrontation at Southcrest Park on 4/4/69.²⁴

¹⁸ Memorandum from San Diego Field Office to FBI Headquarters, 3/12/69, p. 4.

¹⁹ Memorandum from Los Angeles Field Office to FBI Headquarters, 3/17/69.

²⁰ Memorandum from San Diego Field Office to FBI Headquarters, 4/10/69.

²¹ Memorandum from San Diego Field Office to FBI Headquarters, 3/27/69.

²² Memorandum from San Diego Field Office to FBI Headquarters, 4/10/69, p. 4.

²³ *Ibid.*

²⁴ *Ibid.*

The fragile truce had ended. On May 23, 1969, John Savage, a member of the BPP in Southern California, was shot and killed by US member Jerry Horne, aka Tambuzi. The killing was reported in an FBI memorandum which stated that confrontations between the groups were now "ranging from mere harrassment up to and including beating of various individuals."²⁵ In mid-June, the San Diego FBI office informed Washington headquarters that members of the US organization were holding firearms practice and purchasing large quantities of ammunition:

Reliable information has been received . . . that members of the US organization have purchased ammunition at one of the local gun shops. On 6/5/69, an individual identified as [name deleted] purchased 150 rounds of 9 MM ammunition, 100 rounds of .32 automatic ammunition, and 100 rounds of .38 special ammunition at a local gun shop. [Name deleted] was tentatively identified as the individual who was responsible for the shooting of BPP member [name deleted] in Los Angeles on or about 3/14/69.²⁶

Despite this atmosphere of violence, FBI headquarters authorized the San Diego field office to compose an inflammatory letter over the forged signature of a San Diego BPP member and to send it to BPP headquarters in Oakland, California.²⁷ The letter complained of the killing of Panthers in San Diego by US members, and the fact that a local BPP leader had a white girlfriend.²⁸

According to a BPP bulletin, two Panthers were wounded by US gunman on August 14, 1969, and the next day another BPP member, Sylvester Bell, was killed in San Diego by US members.²⁹ On August 30, 1969, the San Diego office of US was bombed. The FBI believed the BPP was responsible for the bombing.³⁰

The San Diego office of the FBI viewed this carnage as a positive development and informed headquarters: "Efforts are being made to determine how this situation can be capitalized upon for the benefit of the Counterintelligence Program. . . ." ³¹ The field office further noted:

In view of the recent killing of BPP member Sylvester Bell, a new cartoon is being considered in the hopes that it will assist in the continuance of the rift between BPP and US.³²

The San Diego FBI office pointed with pride to the continued violence between black groups:

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*

²⁵ Memorandum from San Diego Field Office to FBI Headquarters, 6/5/69, p. 3.

²⁶ Memorandum from San Diego Field Office to FBI Headquarters, 6/13/69.

²⁷ Memorandum from FBI Headquarters to San Diego Field Office, 6/17/69.

²⁸ Memorandum from San Diego Field Office to FBI Headquarters, 6/6/69.

²⁹ Memorandum from San Diego Field Office to FBI Headquarters, 8/20/69.

³⁰ Memorandum from San Diego Field Office to FBI Headquarters, 9/18/69.

³¹ *Ibid.*, p. 3.

³² *Ibid.*, p. 1.

substantial amount of the unrest is directly attributable to this program. [Emphasis added.]³³

In early September 1969, the San Diego field office informed headquarters that Karenga, the Los Angeles US leader, feared assassination by the BPP.³⁴ It received permission from headquarters to exploit this situation by sending Karenga a letter, purporting to be from a US member in San Diego, alluding to an article in the BPP newspaper criticizing Karenga and suggesting that he order reprisals against the Panthers. The Bureau memorandum which originally proposed the letter explained:

The article, which is an attack on Ron Karenga of the US organization, is self-explanatory. It is felt that if the following letter be sent to Karenga, pointing out that the contents of the article are objectionable to members of the US organization in San Diego, the possibility exists that some sort of retaliatory action will be taken against the BPP. . . .³⁵

FBI files do not indicate whether the letter, which was sent to Karenga by the San Diego office, was responsible for any violence.

In January 1970, the San Diego office prepared a new series of counterintelligence cartoons attacking the BPP and forwarded them to FBI headquarters for approval.³⁶ The cartoons were composed to look like a product of the US organization.

The purpose of the caricatures is to indicate to the BPP that the US Organization considers them to be ineffectual, inadequate, and [considers itself] vitally superior to the BPP.³⁷

One of the caricatures was "designed to attack" the Los Angeles Panther leader as a bully toward women and children in the black community. Another accused the BPP of "actually instigating" a recent Los Angeles Police Department raid on US headquarters. A third cartoon depicted Karenga as an overpowering individual "who has the BPP completely at his mercy. . . ."³⁸

On January 29, 1970, FBI headquarters approved distribution of these caricatures by FBI field offices in San Diego, Los Angeles, and San Francisco. The authorizing memorandum from headquarters stated:

US Incorporated and the Black Panther Party are opposing black extremist organizations. Feuding between representatives of the two groups in the past had a tendency to limit the effectiveness of both. The leaders and incidents depicted in the caricatures are known to the general public, particularly among the Negroes living in the metropolitan areas of Los Angeles, San Diego and San Francisco.

The leaders and members of both groups are distrusted by a large number of the citizen within the Negro commu-

³³ *Ibid.*, p. 2.

³⁴ Memorandum from San Diego Field Office to FBI Headquarters, 9/3/69.

³⁵ Memorandum from San Diego Field Office to FBI Headquarters, 11/12/69.

³⁶ Memorandum from San Diego Field Office to FBI Headquarters, 1/23/70.

³⁷ *Ibid.*, p. 1.

³⁸ *Ibid.*, p. 2.

itics. Distribution of caricatures is expected to strengthen this distrust.²⁰

Bureau documents provided to the Select Committee do not indicate whether violence between BPP and US members followed the mailing of this third series of cartoons.

In early May 1970, FBI Headquarters became aware of an article entitled "Karenga King of the Bloodsuckers" in the May 2, 1970, edition of the BPP newspaper which "vilifies and debases Karenga and the US organization."²⁰ Two field offices received the following request from headquarters:

[s]ubmit recommendation to Bureau . . . for exploitation of same under captioned program. Consider from two aspects, one against US and Karenga from obvious subject matter; the second against BPP because inherent in article is admission by BPP that it has done nothing to retaliate against US for killing of Panther members attributed to US and Karenga, an admission that the BPP has been beaten at its own game of violence.²¹

In response to this request, the Special Agent in Charge in Los Angeles reported that the BPP newspaper article had already resulted in violence, but that it was difficult to induce BPP members to attack US members in Southern California because they feared US members.²² The Los Angeles field office hoped, however, that "internecine struggle" might be triggered through a skillful use of informants within both groups:

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 discretely 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.* [Emphasis added.]²³

The release of Huey P. Newton, BPP Minister of Defense, from prison in August 1970 inspired yet another counterintelligence plan. An FBI agent learned from a prison official that Newton had told an inmate that a rival group had let a \$3,000 contract on his life. The Los Angeles office presumed the group was US, and proposed that an anonymous letter be sent to David Hilliard, BPP Chief of Staff in Oakland, purporting to be from the person holding the contract on Newton's life. The proposed letter warned Hilliard not to be around when the "unscheduled appointment" to kill Newton was kept, and cautioned Hilliard not to "get in my way."²⁴

²⁰ Memorandum from FBI Headquarters to San Diego Field Office, 1/26/70.

²¹ Memorandum from FBI Headquarters to Los Angeles and San Francisco Field Offices, 5/15/70.

²² *Ibid.*

²³ Memorandum from Los Angeles Field Office to FBI Headquarters, 5/26/70.

²⁴ *Ibid.*, pp. 1-2.

²⁵ Memorandum from Los Angeles Field Office to FBI Headquarters, 8/10/70.

FBI headquarters, however, denied authority to send the letter to Hilliard. Its concern was not that the letter might cause violence or that it was improper action by a law enforcement agency, but that the letter might violate a Federal statute:

While Bureau appreciates obvious effort and interest exhibited concerning anonymous letter . . . studied analysis of same indicates implied threat therein may constitute extortion violation within investigative jurisdiction of Bureau or postal authorities and may subsequently be embarrassing to Bureau.⁴⁵

The Bureau's stated concern with legality was ironic in light of the activities described above.

2. The Effort To Promote Violence Between the Blackstone Rangers and the Black Panther Party

In late 1968 and early 1969, the FBI endeavored to pit the Blackstone Rangers, a heavily armed, violence-prone organization, against the Black Panthers.⁴⁶ In December 1968, the FBI learned that the recognized leader of the Blackstone Rangers, Jeff Fort, was resisting Black Panther overtures to enlist "the support of the Blackstone Rangers."⁴⁷ In order to increase the friction between these groups, the Bureau's Chicago office proposed sending an anonymous letter to Fort, informing him that two prominent leaders of the Chicago BPP had been making disparaging remarks about his "lack of commitment to black people generally." The field office observed:

Fort is reportedly aware that such remarks have been circulated, but is not aware of the identities of the individual responsible. He has stated that he would "take care of" individuals responsible for the verbal attacks directed against him.

Chicago, consequently, recommends that Fort be made aware that [name deleted] and [name deleted] together with other BPP members locally, are responsible for the circulation of these remarks concerning him. It is felt that if Fort were to be aware that the BPP was responsible, it would lend impetus to his refusal to accept any BPP overtures to the Rangers and *additionally might result in Fort having*

⁴⁵ Memorandum from FBI Headquarters to Los Angeles Field Office, 9/30/70.

⁴⁶ There is no question that the Blackstone Rangers were well-armed and violent. The Chicago police had linked the Rangers and rival gangs in Chicago to approximately 200 killings from 1965-69. Report of Captain Edward Buckney, Chicago Police Dept., Gang Intelligence Unit, 2/23/70, p. 2. One Chicago police officer, familiar with the Rangers, told a Committee staff member that their governing body, the Main 21, was responsible for several ritualistic murders of black youths in areas the gang controlled. (Staff summary of interview with Renault Robinson, 9/25/75.)

⁴⁷ Memorandum from Chicago Field Office to FBI Headquarters, 12/16/68. Forte also had a well-earned reputation for violence. Between September 1964 and January 1971, he was charged with more than 14 felonies, including murder (twice), aggravated battery (seven times), robbery (twice), and contempt of Congress. (Select Committee staff interview of FBI criminal records.) A December 1968 FBI memorandum noted that a search of Forte's apartment had turned up a .22 caliber, four-shot derringer pistol. (Memorandum from Chicago Field Office to FBI Headquarters, 12/12/68, p. 2.)

*active steps taken to exact some form of retribution toward the leadership of the BPP. [Emphasis added.]*⁴⁸

On about December 18, 1968, Jeff Fort and other Blackstone Rangers were involved in a serious confrontation with members of the Black Panther Party.

During that day twelve members of the BPP and five known members of the Blackstone Rangers were arrested on Chicago's South Side.⁴⁹ A report indicates that the Panthers and Rangers were arrested following the shooting of one of the Panthers by a Ranger.^{49a}

That evening, according to an FBI informant, around 10:30 p.m., approximately thirty Panthers went to the Blackstone Rangers' headquarters at 6400 South Kimbark in Chicago. Upon their arrival Jeff Fort invited Fred Hampton, Bobby Rush and the other BPP members to come upstairs and meet with him and the Ranger leadership.^{49b} The Bureau goes on to describe what transpired at this meeting:

... everyone went upstairs into a room which appeared to be a gymnasium, where Fort told Hampton and Rush that he had heard about the Panthers being in Ranger territory during the day, attempting to show their "power" and he wanted the Panthers to recognize the Rangers "power." Source stated that Fort then gave orders, via walkie-talkie, whereupon two men marched through the door carrying pump shotguns. Another order and two men appeared carrying sawed off carbines then eight more, each carrying a .45 caliber machine gun, clip type, operated from the shoulder or hip, then others came with over and under type weapons. Source stated that after this procession Fort had all Rangers present, approximately 100, display their side arms and about one half had .45 caliber revolvers. Source advised that all the above weapons appeared to be new.

Source advised they left the gym, went downstairs to another room where Rush and Hampton of the Panthers and Fort and two members of the Main 21 sat by a table and discussed the possibility of joining the two groups. Source related that Fort took off his jacket and was wearing a .45 caliber revolver shoulder holster with gun and had a small caliber weapon in his belt.

Source advised that nothing was decided at the meeting about the two groups actually joining forces, however, a decision was made to meet again on Christmas Day. Source stated Fort did relate that the Rangers were behind the Panthers but were not to be considered members. Fort wanted the Panthers to join the Rangers and Hampton wanted the opposite, stating that if the Rangers joined the Panthers, then together they would be able to absorb all the other Chicago gangs. Source advised Hampton did state that they couldn't let the man keep the two groups apart. Source ad-

⁴⁸ Memorandum from Chicago Field Office to FBI Headquarters, 12/16/68, p. 2.

⁴⁹ Letter Head Memorandum, 12/20/68.

^{49a} From confidential FBI interview with inmate at the House of Correction, 20th and California St. in Chicago, 11/12/69.

^{49b} Letterhead Memorandum, 12/20/68.

vised that Fort also gave Hampton and Rush one of the above .45 caliber machine guns to "try out."⁴⁹

Source advised that based upon conversations during this meeting, Fort did not appear over anxious to join forces with the Panthers, however, neither did it appear that he wanted to terminate meeting for this purpose.^{49c}

On December 26, 1968 Fort and Hampton met again to discuss the possibility of the Panthers and Rangers working together. This meeting was at a South Side Chicago bar and broke up after several Panthers and Rangers got into an argument.^{49d} On December 27, Hampton received a phone call at BPP Headquarters from Fort telling him that the BPP had until December 28, 1968 to join the Blackstone Rangers. Hampton told Fort he had until the same time for the Rangers to join the BPP and they hung up.^{49e}

In the wake of this incident, the Chicago office renewed its proposal to send a letter to Forte, informing FBI headquarters:

As events have subsequently developed . . . the Rangers and the BPP have not only not been able to form any alliance, but onmity and distrust have arisen, to the point where each has been ordered to stay out of the other territory. The BPP has since decided to conduct no activity or attempt to do recruiting in Ranger territory.⁵⁰

The proposed letter read:

Brother Jeff:

I've spent some time with some Panther friends on the west side lately and I know what's been going on. The brothers that run the Panthers blame you for blocking their thing and *there's supposed to be a hit out for you*. I'm not a Panther, or a Ranger, just black. From what I see these Panthers are out for themselves not black people. I think you ought to know what they're up to, I know what I'd do if I was you. You might hear from me again.

(sgd.) A black brother you don't know.
[Emphasis added.]⁵¹

The FBI's Chicago office explained the purpose of the letter as follows:

It is believed the above may intensify the degree of animosity between the two groups and occasion Forte to take retaliatory action which could disrupt the BPP or lead to reprisals against its leadership.

Consideration has been given to a similar letter to the BPP alleging a Ranger plot against the BPP leadership; however, it is not felt this would be productive principally because the BPP at present is not believed as violence prone as the Rangers to whom violent type activity—shooting and the like—is second nature.⁵²

⁴⁹ *Ibid.*, pp. 3-4.

^{49d} FBI Special Agent Informant Report, 12/30/68.

^{49e} *Ibid.*

⁵⁰ Memorandum from Chicago Field Office to FBI Headquarters, 1/10/69.

⁵¹ Memorandum from Chicago Field Office to FBI Headquarters, 1/13/69, p. 1.

⁵² *Ibid.*

On the evening of January 13, 1969, Fred Hampton and Bobby Rush appeared on a Chicago radio talk show called "Hot Line." During the course of the program Hampton stated that the BPP was in the "process of educating the Blackstone Rangers."^{52a} Shortly after that statement Jeff Fort was on the phone to the radio program and stated that Hampton had his facts confused and that the Rangers were educating the BPP.^{52b}

On January 16, Hampton, in a public meeting, stated that Jeff Fort had threatened to blow his head off if he came within Ranger territory.^{52c}

On January 30, 1969, Director Hoover authorized sending the anonymous letter.⁵³ While the Committee staff could find no evidence linking this letter to subsequent clashes between the Panthers and the Rangers, the Bureau's intent was clear.⁵⁴

B. The Effort To Disrupt the Black Panther Party by Promoting Internal Dissension

1. General Efforts to Disrupt the Black Panther Party Membership

In addition to setting rival groups against the Panthers, the FBI employed the full range of COINTELPRO techniques to create rifts and factions, within the Party itself which it was believed would "neutralize" the Party's effectiveness.⁵⁵

Anonymous letters were commonly used to sow mistrust. For example, in March 1969 the Chicago FBI Field Office learned that a local BPP member feared that a faction of the Party, allegedly led by Fred Hampton and Bobby Rush, was "out to get" him.⁵⁶ Headquarters approved sending an anonymous letter to Hampton which was drafted to exploit dissension within the BPP as well as to play on mistrust between the Blackstone Rangers and the Chicago BPP leadership:

Brother Hampton:

Just a word of warning. A Stone friend tells me [name deleted] wants the Panthers and is looking for somebody to get you out of the way. Brother Jeff is supposed to be interested. I'm just a black man looking for blacks working together, not more of this gang banging.⁵⁷

^{52a} Memorandum from Special Agent to SAC, Chicago, 1/15/69.

^{52b} *Ibid.*

^{52c} Memorandum from Special Agent to SAC, Chicago, 1/28/69, reporting on informant report.

⁵³ Memorandum from FBI Headquarters to Chicago Field Office, 1/30/69.

⁵⁴ There are indications that a shooting incident between the Rangers and the Panthers on April 2, 1969, in a Chicago suburb may have been triggered by the FBI. According to Bobby Rush, coordinator of the Chicago BPP at the time, a group of armed BPP members had confronted the Rangers because Panther William O'Neal—who has since surfaced as an FBI informant—had

td them that a Panther had been shot by Blackstone Rangers and had insisted that they retaliate. This account, however, has not been confirmed. (Staff summary of interview with Bobby Rush, 11/26/75.)

⁵⁵ The various COINTELPRO techniques are described in detail in the Staff Report on COINTELPRO.

⁵⁶ Memorandum from Chicago Field Office to FBI Headquarters, 3/24/69.

⁵⁷ Memorandum from FBI Headquarters to Chicago Field Office, 4/8/69.

Bureau documents indicate that during this time an informant within the BPP was also involved in maintaining the division between the Panthers and the Blackstone Rangers.^{57a}

In December 1968, the Chicago FBI Field Office learned that a leader of a Chicago youth gang, the Mau Mau's, planned to complain to the national BPP headquarters about the local BPP leadership and questioned its loyalty.⁵⁸ FBI headquarters approved an anonymous letter to the Mau Mau leader, stating:

Brother [deleted]:

I'm from the south side and have some Panther friends that know you and tell me what's been going. I know those two [name deleted] and [name deleted] that run the Panthers for a long time and those mothers been with every black outfit going where it looked like they was something in it for them. The only black people they care about is themselves. *I hra: d too they're sweethearts* and that [name deleted] has worked for the man that's why he's not in Viet Nam. Maybe that's why they're just playing like real Panthers. I hear a lot of the brothers are with you and want those mothers out but don't know how. The Panthers need real black men for leaders not freaks. Don't give up brothers. [Emphasis added.]⁵⁹

A black friend.

The FBI also resorted to anonymous phone calls. The San Diego Field Office placed anonymous calls to local BPP leaders naming other BPP members as "police agents." According to a report from the field office, these calls, reinforced by rumors spread by FBI informants within the BPP, induced a group of Panthers to accuse three Party members of working for the police. The field office boasted that one of the accused members fled San Diego in fear for his life.⁶⁰

The FBI conducted harassing interviews of Black Panther members to intimidate them and drive them from the Party. The Los Angeles Field Office conducted a stringent interview program

in the hope that a state of distrust [sic] might remain among the members and add to the turmoil presently going on within the BPP.⁶¹

The Los Angeles office claimed that similar tactics had cut the membership of the United States (US) by 50 percent.⁶²

^{57a} Memorandum from Chicago Field Office to FBI Headquarters, 1/28/69.

⁵⁸ Memorandum from Chicago Field Office to FBI Headquarters, 12/30/68.

⁵⁹ Memorandum from FBI Headquarters to Chicago Field Office, 1/30/69.

⁶⁰ Memorandum from San Diego Field Office to FBI Headquarters, 3/12/69.

The FBI had success with this technique in other cases. For example, the FBI placed another anonymous call to Stokely Carmichael's residence in New York City. Carmichael's mother was informed falsely that several BPP members were out to kill her son, and that he should "hide out." The FBI memorandum reporting this incident said that Mrs. Carmichael sounded "shocked" on hearing the news and stated that she would tell Stokely when he came home. The memorandum observed that on the next day, Stokely Carmichael left New York for Africa. (Memorandum from New York Field Office to FBI Headquarters, 9/9/68, p. 2.)

⁶¹ Memorandum from Los Angeles Field Office to FBI Headquarters, 3/17/69.

p. 1.

⁶² Memorandum from Los Angeles Field Office to FBI Headquarters, 2/8/69.

FBI agents attempted to convince landlords to force Black Panther members and offices from their buildings. The Indianapolis Field Office reported that a local landlord had yielded to its urgings and promised to tell his Black Panther tenants to relocate their offices.⁶³ The San Francisco office sent an article from the Black Panther newspaper to the landlord of a BPP member who had rented an apartment under an assumed name. The article, which had been written by that member and contained her picture and true name, was accompanied by an anonymous note stating, "(false name) is your tenant (true name)"⁶⁴ The San Francisco office secured the eviction of one Black Panther who lived in a public housing project by informing the Housing Authority officials that she was using his apartment for the BPP Free Breakfast Program.⁶⁵ When it was learned that the BPP was conducting a Free Breakfast Program "in the notorious Haight-Ashbury District of San Francisco," the Bureau mailed a letter to the owners of the building:

Dear Mr. (excised) :

I would call and talk to you about this matter, but I am not sure how you feel, and I do not wish to become personally embroiled with neighbors. It seems that the property owners on (excised) Street have had enough trouble in the past without bringing in Black Panthers.

Maybe you are not aware, but the Black Panthers have taken over (address deleted). Perhaps if you drive up the street, you can see what they are going to do to the property values. They have already plastered a nearby garage with big Black Panther posters.

—A concerned property owner.⁶⁶

The Bureau also attempted to undermine the morale of Panther members by attempting to break up their marriages. In one case, an anonymous letter was sent to the wife of a prominent Panther leader stating that her husband had been having affairs with several teenage girls and had taken some of those girls with him on trips.⁶⁷ Another Panther leader told a Committee staff member that an FBI agent had attempted to destroy his marriage by visiting his wife and showing photographs purporting to depict him with other women.⁶⁸

2. FBI Role in the Newton-Cleaver Rift

In March 1970, the FBI initiated a concerted program to drive a permanent wedge between the followers of Eldridge Cleaver, who was then out of the country and the supporters of Huey P. Newton, who

⁶³ Memorandum from San Diego Field Office to FBI Headquarters, 9/8/69. The FBI discovered that the Indianapolis BPP would have difficulty in new quarters because of its financial plight, a fact which was discovered by monitoring its bank account. (Memorandum from Indianapolis Field Office to FBI Headquarters, 9/23/69.)

⁶⁴ Memorandum from San Francisco Field Office to FBI Headquarters, 9/15/69.

⁶⁵ Memorandum from San Francisco Field Office to FBI Headquarters, 10/21/70.

⁶⁶ Memorandum from San Francisco Field Office to FBI Headquarters, 10/22/70.

⁶⁷ Memorandum from San Francisco Field Office to FBI Headquarters, 11/20/68.

⁶⁸ The Bureau documents presented to the Committee do not record of this contact.

was then serving a prison sentence in California.⁶⁹ An anonymous letter was sent to Cleaver in Algeria stating that BPP leaders in California were seeking to undercut his influence. The Bureau subsequently learned that Cleaver had assumed the letter was from the then Panther representative in Scandinavia, Connie Matthews, and that the letter had led Cleaver to expel three BPP international representatives from the Party.⁷⁰

Encouraged by the apparent success of this letter, FBI headquarters instructed its Paris Legal Attache to mail a follow-up letter, again written to appear as if Matthews was the author, to the Black Panther Chief-of-Staff, David Hilliard, in Oakland, California. The letter alleged that Cleaver "has tripped out. Perhaps he has been working too hard," and suggested that Hilliard "take some immediate action before this becomes more serious." The Paris Legal Attache was instructed to mail the letter:

At a time when Matthews is in or has just passed through Paris immediately following one of her trips to Algiers. The enclosed letter should be held by you until such an occasion arises at which time you are authorized to immediately mail it in Paris in such a manner that it cannot be traced to the Bureau.⁷¹

In early May, Eldridge Cleaver called BPP national headquarters from Algeria and talked with Connie Matthews, Elbert Howard, and Roosevelt Hilliard. A Bureau report stated:

Various items were discussed by these individuals with Hilliard. Connie Matthews discussed with Hilliard "those letters" appearing to relate to the counterintelligence letters, which have been submitted to Cleaver and Hilliard purportedly by Matthews. . . .

It appears . . . that [Elbert Howard] had brought copies of the second counterintelligence letter to David Hilliard with him to Algiers which were then compared with the . . . letter previously sent to Cleaver in Algiers and that . . . discussed this situation. . . .⁷²

The San Francisco Field Office reported that some BPP leaders suspected that the CIA or FBI had sent the letters, while others suspected the Black Panther members in Paris. A subsequent FBI memorandum indicated that suspicion had focused on the Panthers in Europe.⁷³

On August 13, 1970—the day that Huey Newton was released from prison—the Philadelphia Field Office had an informant distribute a fictitious BPP directive to Philadelphia Panthers, questioning New-

⁶⁹ In September 1969, FBI Headquarters had encouraged the field offices to undertake projects aimed at splitting the BPP on a nationwide basis. (Memorandum from FBI Headquarters to Newark, New York, and San Francisco Field Offices, 9/18/69.)

⁷⁰ Memorandum from FBI Headquarters to Legat, Paris and San Francisco Field Office, 4/10/70.

⁷¹ *Ibid.*, pp. 1-2.

⁷² Memorandum from San Francisco Field Office to FBI Headquarters, 5/8/70.

⁷³ Memorandum from San Francisco Field Office to FBI Headquarters 5/28/70.

ton's leadership ability.⁷⁴ The Philadelphia office informed FBI Headquarters that the directive:

stresses the leadership and strength of David Hilliard and Eldridge Cleaver while intimating Huey Newton is useful only as a drawing card.

It is recommended this directive . . . be mailed personally to Huey Newton with a short anonymous note. The note would indicate the writer, a Community Worker in Philadelphia for the BPP, was incensed over the suggestion Huey was only being used by the Party after founding it, and wanted no part of this Chapter if it was slandering its leaders in private.⁷⁵

Headquarters approved this plan on August 19, 1970.⁷⁶

FBI officials seized on several incidents during the following months as opportunities to advance their program. In an August 1970 edition of the BPP newspaper, Huey Newton appealed to "oppressed groups," including homosexuals, to "unite with the BPP in revolutionary fashion."⁷⁷ FBI headquarters approved a plan to mail forged letters from BPP sympathizers and supporters in ghetto areas to David Hilliard, protesting Newton's statements about joining with homosexuals, hoping this would discredit Newton with other BPP leaders.⁷⁸

In July and August 1970, Eldridge Cleaver led a United States delegation to North Korea and North Vietnam. *Ramparts* editor Robert Scheer, who had been a member of the delegation, held a press conference in New York and, according to the Bureau, glossed over the Panther's role in sponsoring the tour.⁷⁹ The New York office was authorized to send an anonymous letter to Newton complaining about Scheer's oversight to strain relations between the BPP and the "New Left."⁸⁰ On November 13, 1970, the Los Angeles field office was asked to prepare an anonymous letter to Cleaver criticizing Newton for not aggressively obtaining BPP press coverage of the BPP's sponsorship of the trip.⁸¹

In October 1970, the FBI learned that Timothy Leary, who had escaped from a California prison where he was serving a sentence for possessing marijuana, was seeking asylum with Eldridge Cleaver in Algiers. The San Francisco field office, noting that the Panthers were officially opposed to drugs, sent Newton an anonymous letter calling his attention to Cleaver "playing footsie" with Leary.⁸² In January when Cleaver publicly condemned Leary, FBI headquarters approved sending Newton a bogus letter from a Berkeley, California commune condemning Cleaver for "divorcing the BPP from white revolutionaries."⁸³

⁷⁴ Memorandum from Philadelphia Field Office to FBI Headquarters, 8/13/70.

⁷⁵ *Ibid.*, pp. 1-2.

⁷⁶ Memorandum from FBI Headquarters to Philadelphia and San Francisco Field Offices, 8/19/70.

⁷⁷ Memorandum from San Francisco Field Office to FBI Headquarters, 8/31/70.

⁷⁸ Memorandum from FBI Headquarters to San Francisco Field Office, 9/9/70.

⁷⁹ Memorandum from San Francisco Field Office to FBI Headquarters, 10/21/70.

⁸⁰ Memorandum from FBI Headquarters to San Francisco and New York Field Office, 10/29/70.

⁸¹ Memorandum from FBI Headquarters to Los Angeles Field Office, 11/3/70.

⁸² Memorandum from San Francisco Field Office to FBI Headquarters, 10/28/70.

⁸³ Memorandum from FBI Headquarters to San Francisco and New York Field Offices, 2/5/71.

In December 1970, the BPP attempted to hold a Revolutionary Peoples' Constitutional Convention (RPCC) in Washington, D.C. The Bureau considered the convention a failure and received reports that most delegates had left it dissatisfied.⁵⁴ The Los Angeles FBI field office suggested a letter to Cleaver designed to

provoke Cleaver to openly question Newton's leadership . . . It is felt that distance and lack of personal contact between Newton and Cleaver do offer 'a counterintelligence opportunity that should be probed.

In view of the BPP's un successful attempt to convene a Revolutionary People's Constitutional Convention (RPCC), it is suggested that each division which had individuals attend the RPCC write numerous letters to Cleaver criticizing Newton for his lack of leadership. It is felt that, if Cleaver received a sufficient number of complaints regarding Newton it might . . . create dissension that later could be more fully exploited.⁵⁵

FBI headquarters approved the Los Angeles letter to Cleaver and asked the Washington field office to supply a list of all organizations attending the RPCC.⁵⁶ A barrage of anonymous letters to Newton and Cleaver followed:

Two weeks later, the San Francisco office mailed Newton an anonymous letter, supposedly from a "white revolutionary," complaining about the incompetence of the Panthers who had planned the conference.⁵⁷ The New York office mailed a complaint to the BPP national headquarters, purportedly from a black student at Columbia University who attended the RPCC as a member of the University's student Afro-American Society.⁵⁸ The San Francisco office sent a letter containing an article from the *Berkeley Barb* to Cleaver, attacking Newton's leadership at the RPCC. Mailed with the article was a copy of a letter to Newton criticizing the RPCC and bearing the notation:

Mr. Cleaver,

Here is a letter I sent to Huey Newton. I'm sincere and hope you can do something to set him right and get him off his duff.^{59c}

In January 1971, the Boston office sent a letter, purportedly from a "white revolutionary," to Cleaver, stating in part:

⁵⁴ Memorandum from FBI Headquarters to Los Angeles, San Francisco, and Washington Field Offices, 12/15/70.

⁵⁵ Memorandum from Los Angeles Field Office to FBI Headquarters, 12/3/70, p. 2.

⁵⁶ Memorandum from FBI Headquarters to Los Angeles, San Francisco, and Washington Field Offices, 12/15/70. A list of 10 organizations whose members attended the RPCC was forwarded to the FBI offices in Atlanta, Boston, Chicago, Detroit, New York, and San Francisco. (Memorandum from FBI Headquarters to Atlanta (and 5 other Field Offices), 12/31/70.) There is no indication concerning how the Bureau obtained this list.

⁵⁷ Memorandum from FBI Headquarters to San Francisco Field Office, 12/16/70.

⁵⁸ Memorandum from New York Field Office to FBI Headquarters, 12/14/70.

^{59c} Memorandum from FBI Headquarters to San Francisco Field Office, 1/6/71.

Dear Revolutionary Comrade:

The people's revolution in America was greatly impeded and the stature of the Black Panther Party, both nationally and internationally, received a major setback as an outcome of the recent Revolutionary People's Constitutional Convention. . . .

The Revolutionary People's Constitutional Convention did little, if anything, to organize our forces to move against the evils of capitalism, imperialism and racism. Any unity or solidarity which existed between the Black Panther Party and the white revolutionary movement before the Convention has now gone down the tube. . . .

The responsibility of any undertaking as meaningful and important to the revolution . . . should not have been delegated to the haphazard ways of [name deleted] whose title of Convention Coordinator . . . places him in the . . . position of receiving the Party's wrath . . . Huey Newton himself (should) have assumed command. . . .

The Black Panther Party has failed miserably. No longer can the Party be looked upon as the "Vanguard of the Revolution."

Yours in Revolution,
Lawrence Thomas,
Students for a Democratic Society.

Memorandum from Boston Field Office to FBI Headquarters, 1/8/71. This letter was sent to Cleaver through Oakland BPP headquarters to determine whether the BPP in California would forward the letter to him. (*Ibid.*)

One letter to Cleaver, written to appear as if it had come from Conno Matthews, Newton's personal secretary read in part:

Things around headquarters are dreadfully disorganized with the comrade commander not making proper decisions. The newspaper is in a shambles. No one knows who is in charge. The foreign department gets no support . . . I fear there is rebellion working just beneath the surface. . . .

We must either get rid of the Supreme Commander [Newton] or get rid of the disloyal members."

In a January 28, 1971, evaluation, FBI headquarters noted that Huey Newton had recently disciplined high BPP officials and that he prepared "to respond violently to any question of his actions or policies." The Bureau believed that Newton's reaction was in part a "result of our counterintelligence projects now in operation."

"Memorandum from San Francisco Field Office to FBI Headquarters, 1/18/70. FBI headquarters authorized this letter on January 21, 1971 stating that the Bureau must now seize the time and "immediately" send the letter. (Memorandum from FBI Headquarters to San Francisco Field Office, 1/21/71, p. 2.) Shortly afterward, a letter was sent to Cleaver from alleged Puerto Rican political allies of the BPP in Chicago, The Young Lords.

What do we get. A disorganized Convention, apologetic speakers and slunkys who push us around, no leadership, no ideas, no nothing. . . . [Y]our talk is nice, but your ideas and action is nothing. . . . You a e gone, those you left behind have big titles but cannot lead, cannot organize, are afraid to even come out among the people. The oppressed of Amerikka cannot wait. We must move without you. . . . (Memorandum from Chicago Field Office to FBI Headquarters, 1/19/71; memorandum from FBI Headquarters to Chicago and San Francisco Field Offices, 1/27/71.)

The present chaotic situation within the BPP must be exploited and recipients must maintain the present high level of counterintelligence activity. You should each give this matter priority attention and immediately furnish Bureau recommendations . . . designed to further aggravate the dissension within BPP leadership and to fan the apparent distrust by Newton of anyone who questions his wishes.⁸⁸

The campaign was intensified. On February 2, 1971, FBI headquarters directed each of 29 field offices to submit within eight days a proposal to disrupt local BPP chapters and a proposal to cause dissension between local BPP chapters and BPP national headquarters. The directive noted that Huey Newton had recently expelled or disciplined several "dedicated Panthers" and

This dissension coupled with financial difficulties offers an exceptional opportunity to further disrupt, aggravate and possibly neutralize this organization through counterintelligence. In light of above developments this program has been intensified . . . and selected offices should . . . increase measurably the pressure on the BPP and its leaders.⁸⁹

A barrage of anonymous letters flowed from FBI field offices in response to the urgings from FBI headquarters. A fictitious letter to Cleaver, signed by the "New York 21," criticized Newton's leadership and his expulsion of them from the BPP.⁹⁰ An imaginary New York City member of the Youth Against War and Racism added his voice to the Bureau's fictitious chorus of critics of Newton and the RPCC.⁹¹ An anonymous letter was sent to Huey Newton's brother, Melvin Newton, warning that followers of Eldridge Cleaver and the New York BPP chapter were planning to have him killed.⁹² The FBI learned that Melvin Newton told his brother he thought the letter had been written by someone "on the inside" of the BPP organization because of its specificity.⁹³ Huey Newton reportedly remarked that he was "definitely of the opinion there is an informer in the party right in the ministry."^{93a}

On February 19, 1971, a false letter, allegedly from a BPP official in Oakland, was mailed to Don Cox, a BPP official close to Cleaver in Algeria. The letter intimated that the recent death of a BPP member in California was the result of BPP factionalism (which the Bureau knew was not the case.) The letter also warned Cleaver not to allow his wife, Kathleen, to travel to the United States because of the possibility of violence.⁹⁴

A letter over the forged signature of "Big Man" Howard, editor of the BPP newspaper, told Cleaver:

⁸⁸ Memorandum from FBI Headquarters to Boston, Los Angeles, New York, and San Francisco Field Offices, 1/28/71.

⁸⁹ Memorandum from FBI Headquarters to 29 Field Offices, 2/2/71.

⁹⁰ Memorandum from FBI Headquarters to New York and San Francisco Field Offices, 2/3/71.

⁹¹ Memorandum from FBI Headquarters to New York Field Office, 2/3/71.

⁹² Memorandum from FBI Headquarters to San Francisco Field Office, 2/10/71.

⁹³ Memorandum from San Francisco Field Office to FBI Headquarters, 2/12/71.

^{93a} The FBI was able to be specific because of its wiretaps on the phones of Huey Newton and the Black Panther headquarters.

⁹⁴ Memorandum from FBI Headquarters to San Francisco Field Office, 2/19/71.

Eldridge:

[Name deleted] told me Huey talked with you Friday and what he had to say. I'm disgusted with things here and the fact that you are being ignored. . . . It makes me mad to learn that Huey now has to lie to you. I'm referring to his fancy apartment which he refers to as the throne. . . .

I can't risk a call as it would mean certain expulsion. You should think a great deal before sending Kathleen. If I could talk to you I could tell you why I don't think you should.⁹⁵

The San Francisco office reported to headquarters that because of the various covert actions instituted against Cleaver and Newton since November 11, 1970:

fortunes of the BPP are at a low ebb. . . . Newton is positive there is an informant in Headquarters. Cleaver feels isolated in Algeria and out of contact with Newton and the Supreme Commander's [Newton's] secretary (Connie Matthews) has disappeared and been denounced.⁹⁶

On April 8, 1976 in Executive Testimony Kathleen Cleaver testified that many letters, written to appear as if they had come from BPP members living in California caused disruption and confusion in the relationship between the Algerian Section and the BPP leadership in Oakland. She stated:

We did not know who to believe about what, so the general effect, not only of the letters but the whole situation in which the letters were part was creating uncertainty. It was a very bizarre feeling.⁹⁷

On February 26, 1971, Eldridge Cleaver, in a television interview, criticized the expulsion of BPP members and suggested that Panther Chief-of-Staff David Hilliard be removed from his post. As a result of Cleaver's statements, Newton expelled him and the "Inter-communal Section of the Party" in Algiers, Algeria.⁹⁸

On March 25, 1971, the Bureau's San Francisco office sent to various BPP "Solidarity Committees" throughout Europe bogus letters on "facsimiles of BPP letterhead" stating:

⁹⁵ Memorandum from FBI Headquarters to San Francisco Field Office, 2/24/71. The phone call from Cleaver to Newton mentioned in this letter had been intercepted by the FBI. An FBI memorandum commented that the call had been prompted by an earlier Bureau letter purporting to come from Connie Matthews: "The letter undoubtedly provoked a long distance call from Cleaver to Newton which resulted in our being able to place in proper perspective the relationship of Newton and Cleaver to obtain the details of the Geronimo [Elmer Pratt] Group and learn of the disaffections and the expulsion of the New York group." (Memorandum from San Francisco Field Office to FBI Headquarters, 2/25/71.)

⁹⁶ Memorandum from San Francisco Field Office to FBI Headquarters, 2/25/71.

⁹⁷ Kathleen Cleaver testimony, 4/8/76, p. 34.

⁹⁸ Memorandum from San Francisco Field Office to FBI Headquarters, 3/2/71. FBI headquarters instructed the SAC, San Francisco to mail Cleaver a copy of the March 6 edition of the BPP newspaper which announced his expulsion from the BPP, along with an anonymous note saying, "This is what we think of punks and cowards." (Memorandum from FBI Headquarters to San Francisco Field Office, 3/10/71.)

To Black Panther Embassies.

You have received copies of February 13, 1971 issue of The Black Panther declaring [three BPP members] as enemies of the People.

The Supreme Servant of the People, Huey P. Newton, with concurrence of the Central Committee of the Black Panther Party, has ordered the expulsion of the entire Intercommunal Section of the Party at Algiers. You are advised that Eldridge Leroy Cleaver is a murderer and a punk without genitals. D.C. Cox is no better.

Leroy's running dogs in New York have been righteously dealt with. Anyone giving any aid or comfort to Cleaver and his jackanapes will be similarly dealt with no matter where they may be located.

[Three BPP international representatives, names deleted] were never members of the Black Panther Party and will never become such.

Immediately report to the Supreme Commander any attempts of these elements to contact you and be guided by the above instructions.

Power to the People
David Hilliard, Chief of Staff
For Huey P. Newton
Supreme Commander.⁹⁸

On the same day, FBI headquarters formally declared its counter-intelligence program aimed at "aggravating dissension" between Newton and Cleaver a success. A letter to the Chicago and San Francisco Field Offices stated:

Since the differences between Newton and Cleaver now appear to be irreconcilable, no further counterintelligence activity in this regard will be undertaken at this time and now new targets must be established.

David Hilliard and Elbert "Big Man" Howard of National Headquarters and Bob Rush of Chicago BPP Chapter are likely future targets. . . .

Hilliard's key position at National Headquarters makes him an outstanding target.

Howard and Rush are also key Panther functionaries; and since it was necessary for them to affirm their loyalty to Newton in "The Black Panther" newspaper of 3/20/71, they must be under a certain amount of suspicion already, making them prime targets.

San Francisco and Chicago furnish the Bureau their comments and recommendations concerning counterintelligence activity designed to cause Newton to expell Hilliard, Howard and Rush.⁹⁹

⁹⁸ This letter was contained in a memorandum from San Francisco Field Office to FBI Headquarters, 3/16/71, pp. 1-2.

⁹⁹ Memorandum from FBI Headquarters to San Francisco and Chicago Field Offices, 3/25/71.

C. Covert Efforts To Undermine Support of the Black Panther Party and to Destroy the Party's Public Image

1. Efforts To Discourage and To Discredit Supporters of the Black Panthers

The Federal Bureau of Investigation's program to "neutralize" the Black Panther Party included attempts to deter individuals and groups from supporting the Panthers and, when that could not be accomplished, often extended to covert action targeted against those supporters.

The Bureau made a series of progressively more severe efforts to destroy the confidence between the Panthers and one of their major California supporters, Donald Freed, a writer who headed an organization of white BPP sympathizers called "Friends of the Panthers." In July 1969, the Los Angeles Field Office sent the local BPP office a memorandum bearing Freed's name and address to "Friends of the Panthers." Written in a condescending tone and including a list of six precautions whites should keep in mind when dealing with Panthers, the memorandum was calculated to cause a "rift between the Black Panther Party and their assisting organizations."¹⁰⁰ A few days later, the Bureau had leaflets placed in a park near a BPP-sponsored national conference in Oakland, California, alleging that Freed was a police informant.¹⁰¹

The FBI viewed with favor an intensive local investigation of Freed for "harboring" and "possession of illegal firearms."

It is felt that any prosecution or exposure of either Freed or [name deleted] will severely hurt the BPP. Any exposure will not only deny the Panthers money, but additionally, would cause other white supporters of the BPP to withdraw their support. It is felt that the Los Angeles chapter of the BPP could not operate without the financial support of white sympathizers.¹⁰²

The Bureau's Los Angeles Division also arranged for minutes of a BPP support group to be provided to the BPP when it was learned that statements of members of the support group were critical of Panther leaders.¹⁰³

The FBI attempted to disaffect another BPP supporter, Ed Pearl of the Peace and Freedom Party, by sending him a cautionary letter bearing a fictitious signature. A Bureau memorandum describing the letter says:

The writer states that although he is not a member of the BPP, he is a Mexican who is trusted by BPP members. The writer advises that he has learned from BPP members that certain whites in the PFP who get in the way of the Panthers will be dealt with in a violent manner. The object sought in this letter is to cause a breach between the PFP and the BPP. The former organization had been furnishing money and support to the latter.¹⁰⁴

¹⁰⁰ Memorandum from FBI Headquarters to Los Angeles Field Office, 7/25/69.

¹⁰¹ Memorandum from San Francisco Field Office to FBI Headquarters, 7/28/69.

¹⁰² Memorandum from Los Angeles Field Office to FBI Headquarters, 9/24/69.

¹⁰³ Memorandum from Los Angeles Field Office to FBI Headquarters, 9/20/69.

D. 1.

¹⁰⁴ Memorandum from G. C. Moore to W. C. Sullivan, 12/27/68.

Famous entertainment personalities who spoke in favor of Panther goals or associated with BPP members became the targets of FBI programs. When the FBI learned that one well-known Hollywood actress had become pregnant during an affair with a BPP member, it reported this information to a famous Hollywood gossip columnist in the form of an anonymous letter. The story was used by the Hollywood columnist.¹⁰⁵ In June 1970, FBI headquarters approved an anonymous letter informing Hollywood gossip columnist Army Archerd that actress Jane Fonda had appeared at a BPP fund-raising function, noting that "It can be expected that Fonda's involvement with the BPP cause could detract from her status with the general public if reported in a Hollywood 'gossip column.'"¹⁰⁶ The wife of a famous Hollywood actor was targeted by the FBI when it discovered that she was a financial contributor and supporter of the BPP in Los Angeles.¹⁰⁷ A caricature attacking her was prepared by the San Diego FBI office.¹⁰⁸

A famous entertainer was also targeted after the Bureau concluded that he supported the Panthers. Two COINTELPRO actions against this individual were approved because FBI headquarters "believed" they:

would be an effective means of combating BPP fund-raising activities among liberal and naive individuals.¹⁰⁹

The Bureau also contacted the employers of BPP contributors. It sent a letter to the President and a Vice-President of Union Carbide in January 1970 after learning that a production manager in its San Diego division contributed to the BPP. The letter, which centered around a threat not to purchase Union Carbide stock, stated in part:

Dear Mr. [name deleted]:

I am writing to you in regards to an employee in your San Diego operation, [name deleted]. . . .

I am not generally considered a flag-waving exhibitionist, but I do regard myself as being a loyal American citizen. I, therefore, consider it absolutely ludicrous to invest in any corporation whose ranking employees support, assist, and encourage any organization which openly advocates the violent overthrow of our free enterprise system.

It is because of my firm belief in this self-same free enterprise, capitalistic system that I feel morally obligated to bring this situation to your attention.

Sincerely yours,

T. F. Ellis

Post Office Box _____

San Diego, California ¹¹⁰

¹⁰⁵ Memorandum from Los Angeles Field Office, to FBI Headquarters, 6/2/70.

¹⁰⁶ Memorandum from FBI Headquarters to Los Angeles Field Office, 6/25/70.

¹⁰⁷ Memorandum from San Diego Field Office to FBI Headquarters, 2/3/70.

¹⁰⁸ Memorandum from San Diego Field Office to FBI Headquarters, 3/2/70.

¹⁰⁹ Memorandum from FBI Headquarters to San Francisco Field Office, 3/5/70.

¹¹⁰ Memorandum from San Diego Field Office to FBI Headquarters, 1/22/70. The name "T. F. Ellis" is completely fictitious and the Post Office Box could not have been traced to the FBI.

The response of Union Carbide's Vice President was reported in a San Diego Field Office memorandum:

On 3/21/70, a letter was received from Mr. [name deleted], Vice President of the Union Carbide Corporation, concerning a previously Bureau-approved letter sent to the Union Carbide Corporation objecting to the financial and other support to the BPP of one of their employees, [name deleted]. The letter indicated that Union Carbide has always made it a policy not to become involved in personal matters of their employees unless such activity had an adverse affect upon that particular employee's performance.¹¹¹

One of the Bureau's prime targets was the BPP's free "Breakfast for Children" program, which FBI headquarters feared might be a potentially successful effort by the BPP to teach children to hate police and to spread "anti-white propaganda."¹¹² In an admitted attempt "to impede their contributions to the BPP Breakfast Program," the FBI sent anonymous letters and copies of an inflammatory Black Panther Coloring Book for children to contributors, including Safeway Stores, Inc., Mayfair Markets, and the Jack-In-The-Box Corporation.¹¹³

On April 8, 1976 in Executive Testimony a former member of the BPP Central Steering Committee stated that when the coloring book came to the attention of the Panther's national leadership, Bobby Seale ordered it destroyed because the book "did not correctly reflect the ideology of the Black Panther Party . . ."¹¹⁴

Churches that permitted the Panthers to use their facilities in the free breakfast program were also targeted. When the FBI's San Diego office discovered that a Catholic Priest, Father Frank Curran, was permitting his church in San Diego to be used as a serving place for the BPP Breakfast Program, it sent an anonymous letter to the Bishop of the San Diego Diocese informing him of the priest's activities.¹¹⁵ In August 1969, the San Diego Field Office requested permission from headquarters to place three telephone calls protesting Father Curran's support of the BPP program to the Auxiliary Bishop of the San Diego Diocese:

All of the above calls will be made from "parishioners" objecting to the use of their church to assist a black militant cause. Two of the callers will urge that Father Curran be removed as Pastor of the church, and one will threaten suspension of financial support of the church if the activities of the Pastor are allowed to continue.

Fictitious names will be utilized in the event a name is requested by the Bishop. It is felt that complaints, if they do not effect the removal of Father Curran . . . will at least result in Father Curran becoming aware that his Bishop is

¹¹¹ Memorandum from San Diego Field Office to FBI Headquarters, 6/1/70.

¹¹² Memorandum from FBI Headquarters to San Francisco Field Office, 7/30/69.

¹¹³ *Ibid.*; Memorandum from San Francisco Field Office to FBI Headquarters, 11/30/70.

¹¹⁴ K. Cleaver, 4/8/76, p. 16.

¹¹⁵ Memorandum from San Diego Field Office to FBI Headquarters, 8/20/69; memorandum from FBI Headquarters to San Diego Field Office, 9/9/69.

cognizant of his activities and will thus result in a curtailment of these activities.¹¹⁶

After receiving permission and placing the calls, the San Diego office reported: "the Bishop appeared to be . . . quite concerned over the fact that one of his Priests was deeply involved in utilization of church facilities for this purpose."¹¹⁷

A month later, the San Diego office reported that Father Curran had been transferred from the San Diego Diocese to "somewhere in the State of New Mexico for permanent assignment."

In view of the above, it would appear that Father Curran has now been completely neutralized.

The BPP Breakfast Program, without the prompting of Father Curran, has not been renewed in the San Diego area. It is not anticipated at this time that any efforts to re-establish the program will be made in the foreseeable future.¹¹⁸

In another case, the FBI sent a letter to the superior of a clergyman in Hartford, Connecticut who had expressed support for the Black Panthers, which stated in part:

Dear Bishop:

It pains me to have to write this letter to call to your attention a matter which, if brought to public light, may cause the church a great deal of embarrassment. I wish to remain anonymous with regard to the information because in divulging it I may have violated a trust. I feel, however, that what I am writing is important enough that my conscience is clear.

Specifically, I'm referring to the fact that Reverend and Mrs. [name deleted] are associating with leaders of the Black Panther Party. I recently heard through a close friend of Reverend [name deleted] that he is a revolutionist who advocates overthrowing the Government of the United States and that he has turned over a sizable sum of money to the Panthers. I can present no evidence of fact but is it possible Reverend [name deleted] is being influenced by Communists? Some statements he has made both in church and out have led me to believe he is either a Communist himself, or so left-wing that the only thing he lacks is a card.

I beseech you to counsel with Reverend [name deleted] and relay our concern over his political philosophies which among other things involves association with a known revolutionist, [name deleted], head of the Black Panther Party in New Haven. I truly believe Reverend [name deleted] to be a good man, but his fellow men have caused him to go overboard and he now needs a guiding light which only you can provide.

Sincerely,

A Concerned Christian.¹¹⁹

¹¹⁶ Memorandum from San Diego Field Office to FBI Headquarters, 8/20/60.

¹¹⁷ Memorandum from San Diego Field Office to FBI Headquarters, 9/18/60.

¹¹⁸ Memorandum from San Diego Field Office to FBI Headquarters, 10/3/60.

p. 3.

¹¹⁹ Memorandum from New Haven Field Office to FBI Headquarters, 11/12/60.

p. 3.

Anonymous FBI mailings were also sent to public officials and persons whose help might sway public opinion against the BPP. In December 1969, the FBI mailed Bureau-reproduced copies of BPP "Seasons Greetings" cards to ten FBI field offices¹²⁰ with the following instructions:

Enclosed for each office are 20 copies of reproductions of three types of Black Panther Party (BPP) "seasons greetings cards" which depict the violent propensities of this organization. You should anonymously mail these cards to those newspaper editors, public officials, responsible businessmen, and clergy in your territory who should be made aware of the vicious nature of the BPP.¹²¹

The San Francisco office mailed its cards to several prominent local persons and organizations.¹²²

The Bureau also targeted attorneys representing Black Panther members. In July 1969, the Los Angeles Field Office suggested that a break between the BPP membership and Charles Garry, an attorney who frequently represented BPP members, might be accomplished by planting a rumor that Garry, Bobby Seale, and David Hilliard were conspiring to keep BPP leader Huey Newton in jail.¹²³ This proposal was rejected by FBI headquarters out of concern that the Bureau might be recognized as the source of the rumor.¹²⁴ Headquarters did suggest, however:

Los Angeles should review the ideas set forth . . . especially as they pertain to Charles Garry, Bobby Seale, and David Hilliard, and prepare a specific counterintelligence proposal designed to create a breach between the BPP and Garry. Consider such things as anonymous communications and anonymous telephone calls as well as cartoons and other logical methods of transporting your idea.¹²⁵

When the San Francisco Division learned that Garry intended to represent Bobby Seale at the Chicago 7 trial, it sent the Chicago office transcripts of hearings before the House Committee on Un-American Activities and the California State Senate's Report on Un-American Activities, which allegedly showed that Garry was connected with the Communist Party. It was intended to distribute this material "to cooperative news media in that city."¹²⁶

¹²⁰ The offices were Baltimore, Boston, Chicago, Kansas City, Los Angeles, Newark, New Haven, New York, San Diego, and San Francisco.

¹²¹ Memorandum from FBI Headquarters to Baltimore (and 9 other Field Offices), 12/24/69, p. 1.

¹²² These included the Mayor; the Glille Foundation (church foundation); Catholic Archdiocese of San Francisco; Episcopal Diocese of California; Lutheran Church; Editor, *San Francisco Chronicle*; Editor, *San Francisco Examiner*; United Presbyterian Church, San Francisco Conference of Christians and Jews; San Francisco Chamber of Commerce; San Francisco Bar Association; and San Francisco Board of Supervisors. (Memorandum from San Francisco Field Office to FBI Headquarters, 1/12/70.)

¹²³ Memorandum from Los Angeles Field Office to FBI Headquarters, 7/1/69.

¹²⁴ Memorandum from FBI Headquarters to Los Angeles Field Office, 7/14/69.

¹²⁵ *Ibid.*

¹²⁶ Memorandum from San Francisco Field Office to FBI Headquarters, 10/0/69.

Similarly, when two local BPP leaders filed suit against the San Diego Police Department charging harassment, illegal arrest, and illegal searches, the San Diego Field Office reviewed its files

to determine if any public source information is available which describes [the attorney's] activities in behalf of CP (Communist Party) activities. If so, an appropriate request will be forwarded to the Bureau concerning a possible letter to the editor and/or an editorial.¹²⁷

The FBI also sought to destroy community support for individual BPP members by spreading rumors that they were immoral. This idea was originally advanced in an August 1967 memorandum from FBI headquarters to all major field offices:

Many individuals currently active in black nationalist organizations have backgrounds in immorality, subversive activity, and criminal records. Through your investigation of key agitators, you should endeavor to establish their unsavory backgrounds. Be alert to determine evidence of misappropriation of funds or other types of personal misconduct on the part of militant nationalist leaders so any practical or warranted counterintelligence may be instituted.¹²⁸

An example of "successful" implementation of this program was a 1970 report from the San Diego Field Office that it had anonymously informed the parents of a teenage girl that she was pregnant by a local Panther leader:

The parents showed extreme concern over a previously unknown situation and [name deleted] was forced to resign from the BPP and return home to live. It also became general knowledge throughout the Negro community that a BPP leader was responsible for the difficulty being experienced by [name deleted].¹²⁹

The field office also considered the operation successful because the mother of another girl questioned the activities of her own daughter after talking with the parent the agents had anonymously contacted. She learned that her daughter, a BPP member, was also pregnant, and had her committed to a reformatory as a wayward juvenile.¹³⁰

2. Efforts To Promote Criticism of the Black Panthers in the Mass Media and To Prevent the Black Panther Party and Its Sympathizers from Expressing Their Views

The FBI's program to destroy the Black Panther Party included a concerted effort to muzzle Black Panther publications to prevent Panther members and persons sympathetic to their aims from expressing their views, and to encourage the mass media to report stories unfavorable to the Panthers.

¹²⁷ Memorandum from San Diego Field Office to FBI Headquarters, 1/2/70.

¹²⁸ Memorandum from FBI Headquarters to Albany (and 22 other Field Offices), 8/25/67, p. 2.

¹²⁹ Memorandum from San Diego Field Office to FBI Headquarters, 2/17/70, p. 3.

¹³⁰ *Ibid.*, p. 5.

In May 1970, FBI headquarters ordered the Chicago, Los Angeles, Miami, Newark, New Haven, New York, San Diego, and San Francisco field offices to advance proposals for crippling the BPP newspaper, *The Black Panther*. Immediate action was deemed necessary because:

The Black Panther Party newspaper is one of the most effective propaganda operations of the BPP.

Distribution of this newspaper is increasing at a regular rate thereby influencing a greater number of individuals in the United States along the black extremist lines.

Each recipient submit by 6/5/70 proposed counterintelligence measures which will hinder the vicious propaganda being spread by the BPP.

The BPP newspaper has a circulation in excess of 100,000 and has reached the height of 139,000. It is the voice of the BPP and if it could be effectively hindered it would result in helping to cripple the BPP. Deadline being set in view of the need to receive recommendations for the purpose of taking appropriate action expeditiously.¹³¹

The San Francisco Field Office submitted an analysis of the local *Black Panther* printing schedules and circulation. It discouraged disruption of nationwide distribution because the airline company which had contracted with the Panthers might lose business or face a law suit and recommended instead:

a vigorous inquiry by the Internal Revenue Service to have "The Black Panther" report their income from the sale of over 100,000 papers each week. Perhaps the Bureau through liaison at SOG [seat of government] could suggest such a course of action. It is noted that Internal Revenue Service at San Francisco is receiving copies of Black Panther Party funds and letterhead memoranda.

It is requested that the Bureau give consideration to discussion with Internal Revenue Service requesting financial records and income tax return for "The Black Panther."¹³²

The San Diego Field Office, while noting that the BPP newspaper had the same legal immunity from tax laws and other state legislation as other newspapers, suggested three California statutes which might be used against *The Black Panther*. One was a State tax on printing equipment; the second a "rarely used transportation tax law"; and the third a law prohibiting business in a residential area.¹³³

The San Diego Field Office had a more imaginative suggestion; however; spray the newspaper printing room with a foul-smelling chemical:

The Bureau may also wish to consider the utilization of "Skatol", which is a chemical agent in powdered form and when applied to a particular surface emits an extremely noxious odor rendering the premises surrounding the point of application uninhabitable. Utilization of such a chemical of

¹³¹ Memorandum from FBI Headquarters to Chicago (and seven other Field Offices), 5/15/70.

¹³² Memorandum from San Francisco Field Office to FBI Headquarters, 5/22/70.

¹³³ Memorandum from San Diego Field Office to FBI Headquarters, 5/20/70.

course, would be dependent upon whether an entry could be achieved into the area which is utilized for the production of "The Black Panther."¹³¹

The San Diego Division also thought that threats from another radical organization against the newspaper might convince the BPP to cease publication:

Another possibility which the Bureau may wish to consider would be the composition and mailing of numerous letters to BPP Headquarters from various points throughout the country on stationary [sic] containing the national emblem of the Minutemen organization. These letters, in several different forms, would all have the common theme of warning the Black Panthers to cease publication or drastic measures would be taken by the Minutemen organization. . . .

Utilization of the Minutemen organization through direction of informants within that group would also be a very effective measure for the disruption of the publication of this newspaper.¹³²

On another occasion, however, FBI agents contacted United Airlines officials and inquired about the rates being charged for transporting the Black Panther magazine. A Bureau memorandum states that the BPP was being charged "the General Rate" for printed material, but that in the future it would be forced to pay the "full legal rate allowable for newspaper shipment." The memorandum continued:

Officials advise this increase . . . means approximately a forty percent increase. Officials agree to determine consignors in San Francisco and from this determine consignees throughout the United States so that it can impose full legal tariff. They believe the airlines are due the differences in freight tariffs as noted above for past six to eight months, and are considering discussions with their legal staff concerning suit for recovery of deficit. . . . (T)hey estimate that in New York alone will exceed ten thousand dollars.¹³³

In August 1970, the New York Field Office reported that it was considering plans:

directed against (1) the production of the BPP newspaper; (2) the distribution of that newspaper and (3) the use of information contained in particular issues for topical counter-intelligence proposals.

The NYO [New York Office] realizes the financial benefits coming to the BPP through the sale of their newspaper. Continued efforts will be made to derive logical and practical plans to thwart this crucial BPP operation.¹³⁷

A few months later, FBI headquarters directed 39 field offices to distribute copies of a column written by Victor Riesel, a labor columnist.

¹³¹ Memorandum from San Diego Field Office to FBI Headquarters, 5/20/70, p. 2.

¹³² *Ibid.*, p. 3.

¹³⁴ Memorandum from New York Field Office to FBI Headquarters and San Francisco Field Office, 10/11/69.

¹³⁷ Memorandum from New York Field Office to FBI Headquarters, 8/19/70.

calling for a nationwide union boycott against handling the BPP newspaper.

Enclosed for each office are 50 reproductions of a column written by Victor Riesel regarding the Black Panther Party (BPP).

Portions of the column deals with proposal that union members refuse to handle shipments of BPP newspapers. Obviously if such a boycott gains national support it will result in effectively cutting off BPP propaganda and finances, therefore, it is most desirable this proposal be brought to attention of members and officials of unions such as Teamsters and others involved in handling of shipments of BPP newspapers. These shipments are generally by air freight. The column also deals with repeated calls for murder of police that appear in BPP paper; therefore, it would also be desirable to bring boycott proposal to attention of members and officials of police associations who might be in a position to encourage boycott.

Each office anonymously mail copies of enclosed to officials of appropriate unions, police organizations or other individuals within its territory who could encourage such a boycott. . . .

Handle promptly and advise Bureau of any positive results noted. Any publicity observed concerning proposed boycott should be brought to attention of Bureau.

Be alert for any other opportunities to further exploit this proposal.¹²⁸

Bureau documents submitted to the Select Committee staff do not indicate the outcome of this plan.

On one occasion the FBI's Racial Intelligence Section concocted a scheme to create friction between the Black Panthers and the Nation of Islam by reducing sales of the NOI paper, *Muhammed Speaks* :

While both papers advocate white hate, a noticeable loss of revenue to NOI due to decreased sales of their paper caused by the BPP might well be the spark to ignite the fuel of conflict between the two organizations. Both are extremely money conscious.

We feel that our network of racial informants, many of whom are directly involved in the sale of the NOI and BPP newspapers, are in a position to cause a material reduction in NOI newspaper sales. Our sources can bring the fact of revenue loss directly to NOI leader, Elijah Muhammad, who might well be influenced to take positive steps to counteract the sale of BPP papers in the Negro community. We feel that with careful planning and close supervision an open dispute can be developed between the two organizations.¹²⁹

FBI headquarters promptly forwarded this suggestion to the field offices in Chicago, New York, and San Francisco with the express hope that Elijah Muhammed might be influenced "to take positive

¹²⁸ Memorandum from FBI Headquarters to SAC's in 30 cities, 11/10/70.

¹²⁹ Memorandum from G. C. Moore to W. C. Sullivan, 6/26/70.

steps to counteract the sale of BPP newspapers in the Negro community."¹⁰⁹ The following month, the Chicago Field Office advised against using informants for this project because animosity was already developing between the BPP and NOI, and any revelation of a Bureau attempt to encourage conflict might serve to bring the BPP and NOI closer together.¹¹⁰

Numerous attempts were made to prevent Black Panthers from airing their views in public. For example, in February 1969, the FBI joined with the Chicago police force to prevent the local BPP leader, Fred Hampton, from appearing on a television talk show. The FBI memorandum explaining this incident states:

the [informant] also enabled Chicago to further harass the local BPP when he provided information the afternoon of 1/24/69 reflecting that Fred Hampton was to appear that evening at local TV studio for video tape interview. . . . The tape was to be aired the following day.

Chicago was aware a warrant for mob action was outstanding for Hampton in his home town and the above information . . . was provided the Maywood Police Department with a suggestion that they request the Chicago Police Department to serve this arrest warrant. This was subsequently done with Hampton arrested at television studio in presence of 25 BPP members and studio personnel. This caused considerable embarrassment to the local BPP and disrupted the plans for Hampton's television appearance.¹¹²

Headquarters congratulated the Chicago Field Office on the timing of the arrest "under circumstances which proved highly embarrassing to the BPP."¹¹¹

The Bureau's San Francisco office took credit for preventing Bobby Seale from keeping a number of speaking engagements in Oregon and Washington. In May 1969, while Seale was traveling from a speaking engagement at Yale University to begin his West Coast tour, a bombing took place in Eugene, Oregon which the FBI suspected involved the Black Panthers. The San Francisco Field Office subsequently reported:

As this was on the eve of Seale's speech, this seemed to be very poor advance publicity for Seale. . . . It was . . . determined to telephone Mrs. Seale [Bobby Seale's mother] claiming to be a friend from Oregon, bearing the warning that it might be dangerous for Seale to come up. This was done.

Shortly thereafter, Mrs. Seale reported this to BPP headquarters, claiming an unknown brother had sent a warning to Bobby from Oregon. Headquarters took this very seriously and when Bobby arrived shortly thereafter, he decided not to go north with "all the action going on up there." He subsequently cancelled a trip to Seattle. It is believed that the

¹⁰⁹ Memorandum from FBI Headquarters to Chicago, New York, and San Francisco Field Offices, 6/26/70.

¹¹⁰ Memorandum from Chicago Field Office to FBI Headquarters, 7/15/70.

¹¹¹ Memorandum from Chicago Field Office to FBI Headquarters, 2/10/69.

¹¹² Memorandum from FBI Headquarters to Chicago Field Office, 2/20/69.

above mentioned telephone call was a pivotal point in persuading Seale to stay home.¹⁴³

The San Francisco office reported that not only had Seale been prevented from making his appearances, but that he had lost over \$1,700 in "badly needed" fees and that relations between Seale and "New Left" leaders who had been scheduled to appear with him had become strained.

In December 1969, FBI headquarters stressed to the San Francisco Field Office the need to prevent Black Panther speaking engagements:

Several recent communications received at the Bureau indicate the BPP is encouraging their branches to set up speaking engagements at schools and colleges and the showing of films in order to raise money. . . . San Francisco should instruct [local FBI] office covering to immediately submit to the Bureau for approval a counterintelligence proposal aimed at preventing the activities scheduled. . . .

The BPP in an effort to bolster its weak financial position is now soliciting speaking engagements and information has been developed indicating they are reducing their monetary requirements for such speeches. We have been successful in the past through contacts with established sources in preventing such speeches in colleges or other institutions.¹⁴⁵

In March 1970, a representative of a Jewish organization contacted the San Francisco FBI Field Office when it learned that one of its local lodges had invited David Hilliard, BPP Chief-of-Staff, and Attorney Charles Garry to speak. San Francisco subsequently reported to headquarters:

Public source information relating to David Hilliard, Garry, and the BPP, including "The Black Panther" newspaper itself, was brought to [source's] attention. He subsequently notified the [FBI] office that the [name deleted] had altered their arrangements for this speech and that the invitation to Hilliard was withdrawn but that Charles Garry was permitted to speak but his speech was confined solely to the recent case of the Chicago 7.¹⁴⁶

The FBI exhibited comparable fervor in disseminating information unfavorable to the Black Panthers to the press and television stations. A directive from FBI headquarters to nine field offices in January 1970 explained the program:

To counteract any favorable support in publicity to the Black Panther Party (BPP) recipient offices are requested to submit their observations and recommendations regarding contacts with established and reliable sources in the television and/or radio field who might be interested in drawing up a program for local consumption depicting the true facts regarding the BPP.

¹⁴³ Memorandum from San Francisco Field Office to FBI Headquarters, 5/26/69.

¹⁴⁴ Memorandum from FBI Headquarters to San Francisco Field Office, 12/4/69.

¹⁴⁵ Memorandum from San Francisco Field Office to FBI Headquarters, 3/18/70.

The suggested program would deal mainly with local BPP activities and data furnished would be of a public source nature. This data could be implemented by information on the BPP nationally if needed. . . .

All offices should give this matter their prompt consideration and submit replies by letter.¹⁴⁷

Soon afterward, the Los Angeles office identified two local news reporters whom it believed might be willing to help in the effort to discredit the BPP and received permission to

discreetly contact [name deleted] for the purpose of ascertaining his amenability to the preparation of a program which would present the true facts about the Black Panther Party as part of a counterintelligence effort.¹⁴⁸

Headquarters also suggested information and materials to give to a local newsman who expressed an interest in airing a series of programs against the Panthers.¹⁴⁹

In July 1970, the FBI furnished information to a Los Angeles TV news commentator who agreed to air a series of shows against the BPP, "especially in the area of white liberals contributing to the BPP."¹⁵⁰ In October, the Los Angeles Division sent headquarters a copy of an FBI-assisted television editorial and reported that another newsman was preparing yet another editorial attack on the Panthers.¹⁵¹

In November 1970, the San Francisco Field Office notified the Director that Huey Newton had "recently rented a luxurious lakeshore apartment in Oakland, California." The San Francisco office saw "potential counterintelligence value" in this information since this apartment was far more elegant than "the ghetto-like BPP 'pads' and community centers utilized by the Party." It was decided not to "presently" leak "this information to cooperative news sources," because of a "pending special investigative technique."¹⁵² The information was given to the *San Francisco Examiner*, however, in February 1971, and an article was published stating that Huey P. Newton, BPP Supreme Commander, had moved into a \$650-a-month apartment

¹⁴⁷ Memorandum from FBI Headquarters to San Francisco Field Office (and 8 other offices), 1/23/70. The San Diego office had already made efforts along the lines proposed in this memorandum. In November 1969 it requested permission from headquarters to inform two newscasters "for use in editorials" that the sister and brother-in-law of a Communist Party member were believed to be members of the local Black Panthers. The office also proposed preparing "an editorial for publication in the Copley press." (Airtel from SAC, San Diego to Director, FBI, 11/12/69.) The San Francisco office had also leaked information to a *San Francisco Examiner* reporter, who wrote a front-page story complete with photographs concerning "the conversion by the BPP of an apartment into a fortress." (Memorandum from San Francisco Field Office to FBI Headquarters, 1/21/70.)

¹⁴⁸ Memorandum from Los Angeles Field Office to FBI Headquarters, 2/6/70; memorandum from FBI Headquarters to Los Angeles Field Office 3/5/70 (this memorandum bears Director Hoover's initials).

¹⁴⁹ Memorandum from FBI Headquarters to Los Angeles and San Francisco Field Offices, 5/27/70.

¹⁵⁰ Memorandum from Los Angeles Field Office to FBI Headquarters, 9/10/70, p. 2.

¹⁵¹ Memorandum from Los Angeles Field Office to FBI Headquarters, 10/23/70.

¹⁵² Memorandum from San Francisco Field Office to FBI Headquarters, 11/24/70.

overlooking Lake Merritt in Oakland, California, under the assumed name of Don Penn.¹⁵³ Headquarters approved anonymously mailing copies of the article to BPP branches and ordered copies of the article for "divisions with BPP activity for mailing to newspaper editors."¹⁵⁴

The San Francisco office informed FBI headquarters later in February that

BPP Headquarters was besieged with inquiries after the printing of the San Francisco Examiner article and the people at headquarters refuse to answer the news media or other callers on this question. This source has further reported that a representative of the Richmond, Virginia BPP contacted headquarters on 2/18/71, stating they had received a xeroxed copy of . . . the article and believed it had been forwarded by the pigs but still wanted to know if it was true.¹⁵⁵

D. Cooperation Between the Federal Bureau of Investigation and Local Police Departments in Disrupting the Black Panther Party

The FBI enlisted the cooperation of local police departments in several of its covert action programs to disrupt and "neutralize" the Black Panther Party. The FBI frequently worked with the San Diego Police Department, supplying it with informant reports to encourage raids on the homes of BPP members, often with little or no apparent evidence of violations of State or Federal law.¹⁵⁶

Examples are numerous. In February 1969, the San Diego Field Office learned that members of the local BPP chapter were following each other to determine if police informants had infiltrated their organization. The field office passed this information to the San Diego police with the suggestion that BPP members engaged in these surveillances might be followed and arrested for violations of "local

¹⁵³ Memorandum from San Francisco Field Office to FBI Headquarters, 2/12/71.

¹⁵⁴ Memorandum from FBI Headquarters to San Francisco Field Office, 2/8/71.

¹⁵⁵ Memorandum from San Francisco Field Office to FBI Headquarters, 2/18/71. In a February 1971 report on recent COINTELPRO activity, the San Francisco Division described the *San Francisco Examiner* article as one of its "counterintelligence activities." This report said that because of the article, Newton had given an interview to another San Francisco daily to try to explain his seemingly expensive lifestyle. The report also states that copies of the article were sent to "all BPP and NCCF [National Committee to Combat Fascism] offices in the United States and to three BPP contacts in Europe." (Memorandum from San Francisco Field Office to FBI Headquarters, 2/25/71.)

¹⁵⁶ The suggestion of encouraging local police to raid and arrest members of so-called "Black Nationalist Hate Groups" was first put forward in a February 29, 1968 memorandum to field offices. This memorandum cited as an example of successful use of this technique: "The Revolutionary Action Movement (RAM), a pro-Chinese Communist group, was active in Philadelphia, Pa., in the summer of 1967. The Philadelphia office alerted local police who then put RAM leaders under close scrutiny. They were arrested on every possible charge until they could no longer make bail. As a result, RAM leaders spent most of the summer in jail and no violence traceable to RAM took place." (Memorandum from G. C. Moore to W. C. Sullivan, 2/29/68, p. 3.)

Motor Vehicle Code laws."¹⁵⁷ When the San Diego Field Office received reports that five BPP members were living in the local BPP headquarters and "having sex orgies on almost a nightly basis," it informed the local police with the hope that a legal basis for a raid could be found.¹⁵⁸ Two days later, the San Diego office reported to headquarters:

As a result of the Bureau-approved information furnished to the San Diego Police Department regarding the "sex orgies" being held at BPP Headquarters in San Diego, which had not previously been known to the Police Department, a raid was conducted at BPP Headquarters on 11/20/69. [Name deleted]. San Diego Police Department, Intelligence Unit, advised that, due to this information, he assigned two officers to a research project to determine if any solid basis could be found to conduct a raid. His officers discovered two outstanding traffic warrants for [name deleted], a member of the BPP, and his officers used these warrants to obtain entry into BPP Headquarters.

As a result of this raid [6 persons] were all arrested. Seized at the time of the arrests were three shotguns, one of which was stolen, one rifle, four gas masks and one tear gas canister.

Also as a result of this raid, the six remaining members of the BPP in San Diego were summoned to Los Angeles on 11/28/69. . . . Upon their arrival, they were informed that due to numerous problems with the BPP in San Diego, including the recent raid on BPP Headquarters, the BPP Branch in San Diego was being dissolved.

Also, as a direct result of the above raid [informants] have reported that [name deleted] has been severely beaten up by other members of the BPP due to the fact that she allowed the officers to enter BPP Headquarters the night of the raid.¹⁵⁹

A later memorandum states that confidential files belonging to the San Diego Panthers were also "obtained" during this raid.¹⁶⁰

In March 1969, the San Diego Field Office informed Bureau headquarters:

information was made available to the San Diego Police Department who have been arranging periodic raids in the

¹⁵⁷ The San Diego office reported to headquarters: "As of one week ago, the BPP in San Diego was so completely disrupted and so much suspicion, fear, and distrust has been interjected into the party that the members have taken to running surveillances on one another in an attempt to determine who the 'police agents' are. On 2/19/69, this information was furnished to the San Diego Police Department with the suggestion that possibly local Motor Vehicle Code laws were being violated during the course of these surveillances." (Memorandum from San Diego Field Office to FBI Headquarters 2/27/69.)

¹⁵⁸ Memorandum from San Diego Field Office to FBI Headquarters, 11/10/69. Headquarters told the San Diego office that if there was no legal basis for a raid, it should "give this matter further thought and submit other proposals to capitalize on this information in the counterintelligence field." (Memorandum from FBI Headquarters to San Diego Field Office, 11/18/69, p. 1.)

¹⁵⁹ Memorandum from San Diego Field Office to FBI Headquarters, 12/3/69, pp. 2-3.

¹⁶⁰ Memorandum from San Diego Field Office to FBI Headquarters, 2/17/70.

hope of establishing a possession of marijuana and dangerous drug charge [against two BPP members]. . . .

The BPP finally managed to rent the Rhodesian Club at 2907 Imperial Avenue, San Diego, which will be utilized for a meeting hall. A request will be forthcoming to have the San Diego Police Department and local health inspectors examine the club for health and safety defects which are undoubted by [sic] present.¹⁶¹

The San Diego office also conducted "racial briefing sessions" for the San Diego police. Headquarters was informed:

It is also felt that the racial briefing sessions being given by the San Diego Division are affording tangible results for the Counterintelligence Program. Through these briefings, the command levels of virtually all of the police departments in the San Diego Division are being apprised of the identities of the leaders of the various militant groups. It is felt that, although specific instances cannot be attributed directly to the racial briefing program, police officers are much more alert for these black militant individuals and as such are contributing to the over-all Counterintelligence Program, directed against these groups.¹⁶²

The Committee staff has seen documents indicating extensive cooperation between local police and the FBI in several other cities. For example, the FBI in Oakland prevented a reconciliation meeting between Huey Newton's brother and former Panthers by having the Oakland police inform one of the former Panthers that the meeting was a "set up." The San Francisco office concluded:

It is believed that such quick dissemination of this type of information may have been instrumental in preventing the various dissidents from rejoining forces with the BPP.¹⁶³

Another Bureau memorandum reflected similar cooperation in Los Angeles:

The Los Angeles office is furnishing on a daily basis information to the Los Angeles County Sheriff's Office Intelligence Division and the Los Angeles Police Department Intelligence and Criminal Conspiracy Divisions concerning the activities of the black nationalist groups in the anticipation that such information might lead to the arrest of these militants.¹⁶⁴

Information from Bureau files in Chicago on the Panthers was given to Chicago police upon request, and Chicago Police Department files were open to the Bureau.¹⁶⁵ A Special Agent who handled liaison between the FBI's Racial Matters Squad (responsible for monitoring BPP activity in Chicago) and the Panther Squad of the Gang Intelligence Unit (GIU) of the Chicago Police Department from 1967 through July 1969, testified that he visited GIU between three and

¹⁶¹ Memorandum from San Diego Field Office to FBI Headquarters, 3/20/69.

¹⁶² Memorandum from San Diego Field Office to FBI Headquarters, 12/15/69.

¹⁶³ Memorandum from San Francisco Field Office to FBI Headquarters, 4/21/69.

¹⁶⁴ Memorandum Los Angeles Field Office to FBI Headquarters, 12/1/69.

¹⁶⁵ Special Agent deposition, 2/20/75, p. p. 90.

five times a week to exchange information.¹⁶⁶ The Bureau and Chicago Police both maintained paid informants in the BPP, shared informant information, and the FBI provided information which was used by Chicago police in planning raids against the Chicago BPP.¹⁶⁷

According to an FBI memorandum, this sharing of informant information was crucial to police during their raid on the apartment occupied by several Black Panther members which resulted in the death of the local Chairman, Fred Hampton, and another Panther:

[Prior to the raid], a detailed inventory of the weapons and also a detailed floor plan of the apartment were furnished to local authorities. In addition, the identities of BPP members utilizing the apartment at the above address were furnished. This information was not available from any other source and subsequently proved to be of tremendous value in that it subsequently saved injury and possible death to police officers participating in a raid . . . on the morning of 12/4/69. The raid was based on the information furnished by the informant . . .¹⁶⁸ [Emphasis added.]

¹⁶⁶ Special Agent deposition, 2/20/75, p. 84. The Agent also testified that other FBI agents in the Racial Matters Squad were also involved in the "free flow of information between the Racial Matters Squad and GIU," and that "at one time or another, every agent had exchanged information with GIU."

¹⁶⁷ Memorandum from Chicago Field Office to FBI Headquarters, 12/3/69, p. 2; memorandum from Special Agent to Chicago Field Office, 12/12/69.

¹⁶⁸ Memorandum from Chicago Field Office to FBI Headquarters, 12/8/69.



THE USE OF INFORMANTS IN FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

CONTENTS

	Page
I. Introduction and Summary	227
A. Summary of facts	228
1. The extensive use of intelligence informants	228
2. The unpublished standards for the use of intelligence informants	228
B. Policy and constitutional issues raised by the use of intelligence informants	230
C. The lack of judicial treatment of intelligence informant issues	231
D. The scope of the committee's investigation	233
II. The Nature of the Intelligence Informant Technique	233
A. Case histories of particular informants	233
1. Mary Jo Cook—FBI informant in the Vietnam Veterans Against the War	235
a. Background	235
b. Cook's instructions	230
c. The scope of Cook's reporting	236
d. Cook's taking of VVAW documents	237
e. Reporting on non-VVAW groups and individuals	238
2. Gary Rowe—FBI informant in the Ku Klux Klan	239
a. The use of intelligence informants to report Klan violence and criminal activity	239
b. The scope of Rowe's reporting	241
c. The issue of participation in criminal or violent activity	243
B. Examples of intelligence informant coverage of groups subject to intelligence investigations	244
Case No. 1—Citizens panel on the merits of an anti-ballistic missile system (1966)	245
Case No. 2—Dr. Carl McIntyre's American Christian Action Council (1971)	246
Case No. 3—Detroit Black Panther Party (1970)	246
Case No. 4—National Conference on Amnesty (1974)	247
Case No. 5—Public meeting opposing U.S. involvement in Vietnam war (1968)	247
Case No. 6—Black Nationalist group (1968)	248
Case No. 7—Investigation of "free universities" (1966)	240
Case No. 8—Washington, D.C. Black Panther Party (1970-1971)	249
Case No. 9—Women's Liberation Movement (1969)	250
Case No. 10—Socialist Workers Party (1949 to date)	251
Case No. 11—Ku Klux Klan	251
C. Special FBI informant programs	252
1. The ghetto informant program	252
2. The plant informant program (1940-69)	255
3. The American Legion contact program (1940-54)	255
D. The use of informants at colleges and universities	255
1. Present FBI policy	255
2. The background to present policy	256
a. Initial guidelines for use of campus informers	256
b. The 1967 restrictions	257
c. Hoover's resistance to new pressure for relaxed restrictions on campus informants	257
d. The Huston plan's recommendation for expanded campus informant coverage	258
e. The removal of the age restriction	259

III. The Intelligence Informant Program--Size, Administration, and Standards.....	Page 260
A. The number of intelligence informants.....	260
B. The FBI administrative system for intelligence informants.....	261
C. Standards for the use of intelligence informants.....	262
1. Criteria for the decision to use informants.....	263
2. Limits on the information an informant may report..	264
3. Limits on an informant's conduct and behavior.....	266

THE USE OF INFORMANTS IN FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

I. INTRODUCTION AND SUMMARY

The dangers to a free society that are implicit in the use of secret intelligence informers have long been recognized. In his *Constitutional History of England*, written in the mid-19th century, Sir Thomas May observed:

Men may be without restraints upon their liberty: they may pass to and fro at pleasure: but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators—who shall say that they are free? ¹

May pointed to the use of informers by "continental despotisms," noting that "the freedom of a country may be measured by its immunity from this baleful agency."²

On the other hand, law enforcement officials see informants³ as a highly effective technique—one justified by the public's interest in the detection of crime and the prosecution of criminals. FBI officials testified to the Committee that informants "provide one of the best and most complete forms of coverage" in their investigations.⁴ Former Attorney General Katzenbach testified that the use of intelligence informants in the mid-1960s to infiltrate the Ku Klux Klan—a technique urged upon the FBI by President Johnson, Attorney General Robert Kennedy, and Mr. Katzenbach—was a principal factor in stopping repeated acts of criminal violence.

This Appendix, pursuant to the Committee's mandate under Senate Resolution 21, focuses on the use of informants in FBI intelligence investigations who are recruited, paid and directed by Bureau Special Agents. The Committee did not examine the use of informants in FBI criminal investigations nor did the Committee examine instances of the "walk-in" who volunteers information to the FBI on a one-time basis. As discussed in more detail below, paid and directed intelligence informants are extensively used in FBI domestic intelligence investigations of groups and individuals. These intelligence informants are the subject of this Appendix.

The use of informants to collect intelligence on Americans is not confined to the FBI. The Committee also examined the use of intelli-

¹ T. May, *Constitutional History of England* (1803), p. 276.

² Id.

³ The term "informant" is used throughout the remainder of this report. That is the term employed in the statute which provides that appropriations for the Department of Justice are available for payment of "informants," 28 U.S.C. § 524, and is also the term which the FBI employs in its directives.

⁴ Memorandum from the FBI to Senate Select Committee, 11/26/75, Exhibit 33, Hearings, Vol. 6, p. 444.

gence informants by other governmental agencies. In the late 1960s, informants and undercover agents were used by the CIA and Army Intelligence to secretly penetrate domestic groups. In 1968, about 1500 Army intelligence agents were engaged in monitoring and penetrating civilian activity in the United States; although a 1971 Defense Department directive now generally limits the military's collection of information about private groups and individuals, the directive permits the military to secretly penetrate civilian groups where approved by the Defense Department. See the Appendices on *Improper Surveillance of Private Citizens by the Military* and *CIA Intelligence Activities Regarding Americans*. In addition, the Internal Revenue Service uses informants for intelligence purposes. See the IRS Report: p. 863, "Selective Enforcement for Non-Tax Purposes."

A. Summary of Facts

1. The Extensive Use of Intelligence Informants

The paid and directed informant is the most extensively used technique in FBI domestic intelligence investigations. Informants were used in 85 percent of the domestic intelligence investigations analyzed in a recent study by the General Accounting Office.³ By comparison, electronic surveillance was used in only 5 percent of the cases studied. The FBI places strong emphasis on informant coverage in intelligence investigations, instructing agents to "develop reliable informants at all levels and in all segments" of groups under investigation.⁴

The Committee's investigation revealed that the FBI was using more than 1,500 domestic intelligence informants as of June 30, 1975.⁵

The FBI budget for Fiscal Year 1976 programmed a total of \$7,401,000 for the intelligence informant program, more than twice the amount allocated for the organized crime informant program.⁶

The number of intelligence informants has been substantially larger in previous years because of the "Ghetto Informant Program," which at its height comprised over 7,000 informants. The FBI began the Ghetto Informant Program in 1967 in the context of the urban riots and violence of the mid-1960's, and in response to instructions from the White House and the Attorney General. Although "ghetto" informants were initially used as "listening posts" to provide information on the planning or organizing of riots and civil disturbances, many were eventually given specific assignments to attend public meetings of "extremists" and to identify bookstores and others distributing "extremist literature". The FBI terminated the program in 1973 after sharp debate within the Bureau over the program's effectiveness and the propriety of the listening post concept.

Generally, there are two types of intelligence informants: those the FBI first recruits and then inserts into investigated group under investigation, and those who are already members of such a group and are "turned" or recruited as FBI informants.

³ General Accounting Office, *Domestic Intelligence Operations of the FBI* (2/24/76).

⁴ FBI Manual of Instructions Section 87 B(6), hereinafter cited as "FBI, MOI".

⁵ Memorandum to Senate Select Committee, 11/28/75.

⁶ Memorandum, "FBI overall Intelligence Program, FY 1977 compared to FY 1976." The intelligence informant program includes payments to informants for services and expenses as well as FBI personnel and support costs and overhead.

In addition to paid and directed informants, the FBI uses "confidential sources," defined in the FBI Manual of Instructions as persons who furnish the FBI information available to them through their position, such as "bankers, telephone company employees, and landlords."⁸ Confidential sources were used in 50 percent of the cases analyzed by the GAO, ranking behind informants and local law enforcement officials as the third most used techniques in intelligence cases. As of June 1975, there were 1,254 confidential sources approved by FBI headquarters for domestic intelligence purposes.^{9a}

2. *The Unpublished Standards for the Use of Intelligence Informants.*

The standards for the use of intelligence informants are contained in internal FBI directives that are not available to the public.

The FBI Manual of Instructions sets few limits on the scope of intelligence informant reporting. The Manual proscribes only the reporting of 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" in schools.¹⁰ The Manual contains no standard limiting an informant's reporting to information relating to the commission of criminal offenses or even to violent or potentially violent activity. In fact, intelligence informants report on virtually every aspect of a group's activity serving, in the words of both FBI officials and an informant, as a "vacuum cleaner" of information.¹¹

FBI officials recognized this broad scope of informant reporting as a problem area, pointing out that it produces "too much information" in FBI files.¹² They expressed their belief that an informant should report to some degree the lawful aspects of a group's activity in order to permit an accurate picture to be drawn. But they did recognize the need "to narrow down" informant reporting from its present broad scope.¹³

The Manual does not set independent standards which must be supported by facts before an organization can be the subject of informant coverage. Once the criteria for opening a regular intelligence investigation are met, and the case is opened, informants can be used without any restrictions.^{12a} There is no specific determination made as to whether the substantial intrusion represented by informant coverage is justified by the government's interest in obtaining information. There is nothing that requires that a determination be made of whether less intrusive means will adequately serve the government's interest. There is also no requirement that the decisions of FBI officials to use informants be reviewed by anyone outside the Bureau.¹⁴ In

⁸ FBI, MOI Sec. 107, A(4).

⁹ FBI deposition, 2/10/76, p. 12.

¹⁰ FBI, MOI, Secs. 107 D(2d), U(1b).

¹¹ James Adams testimony 12/2/75, Hearings, Vol. 6, p. 135; Mary Jo Cook testimony 12/2/75, Hearings, Vol. 6, p. 111.

¹² Adams, 12/2/75, Hearings, Vol. 6, p. 135.

¹³ Adams, 12/2/75, Hearings, Vol. 6, p. 135.

¹⁴ Under a Manual provision adopted in 1973, established informants may supply information in a preliminary investigation, but new informants may not be recruited. (FBI, MOI, Sec. 87, B(4c).) The Attorney General's draft guidelines for domestic intelligence investigation similarly provide that only established informants may be used in preliminary investigations. (*Draft Guidelines for Domestic Security Investigations*, 12/10/75, Sec. II (E)(G).)

short, intelligence informant coverage has not been subject to the standards which govern the use of other intrusive techniques such as wiretapping or other forms of electronic surveillance. (Compare the requirements for use of electronic surveillance and wiretaps discussed in "Intelligence Activities and the Rights of Americans": Part IV.)

B. Policy and Constitutional Issues Raised by the Use of Intelligence Informants

The use of informants and confidential sources in intelligence investigations of domestic groups and citizens can raise important policy and Constitutional issues. Unlike investigations of specific criminal activity, intelligence investigations frequently have involved continuous surveillance across a broad spectrum of activity. Where "intelligence" rather than evidence of particular criminal activity is collected, informants and confidential sources give the FBI a large amount of information dealing with the lawful political and personal activity of citizens. Former FBI informants infiltrated into organizations testified that they reported "any and everything" they saw or heard pertaining to the group's members,¹³ and that they took membership lists, financial data, and other records and gave them to the FBI. This testimony was confirmed by the FBI agents to whom they reported. As one agent testified, his informant "told me everything she knew" about the political organization she infiltrated.¹⁴

Under the Bill of Rights, particularly the First and Fourth Amendments, our Constitution protects freedom of speech and political association and the right to be secure against unreasonable searches and seizures.

In the light of the protections guaranteed by our Constitution, the use of informants for intelligence purposes raises three principal issues:

(1) The first issue concerns whether informants should be used at all in intelligence investigations,¹⁵ and, if so, under what circumstances. The use of informants in the investigation of groups and individuals involved in political activity may chill the exercise of First Amendment rights. For example, citizens interested in attending a meeting of a political group either to join or to express support for a lawful interest they share with the group, may be deterred by the fear that their attendance would mark them as a member in an informant's eyes. They may fear an informant's report will prevent their gaining a job requiring a security clearance, even though in fact they supported no unlawful activity. Although citizens may not know that a secret informant is reporting on a particular group, the mere existence of the FBI intelligence informant system can be sufficient to cause them to curtail their exercise of First Amendment rights for fear they will be reported to the FBI.

(2) The second issue concerns the scope of an informant's reporting. Should an informant report only indications of criminal or violent activity, or should he report all aspects of a group's activity and the

¹³ Rowe, 12/2/75, Hearings, Vol. 6, p. 110, Cook, 12/2/75, Hearings, vol. 6, p. 111.

¹⁴ Special Agent, 11/20/75, p. 55.

¹⁵ This Report focuses solely on the informant technique as used in intelligence investigations. It does not address the question of whether intelligence investigations are themselves consistent with Constitutional guarantees and sound law enforcement policy or can be made so by appropriate standards and controls. See the Committee's Report on Domestic Intelligence and the Findings, Conclusions and Recommendations in that Report.

personal lives of individuals in the interest of intelligence? In this connection, there is the further question of whether an informant should be permitted to take the confidential records and documents of a group or individual (such as membership lists or financial data) and give them to the FBI, when the Government cannot properly obtain them through statutory disclosure requirement, subpoena, or search warrant.

(3) Finally, there is the issue of an informant's conduct and behavior. The Committee heard testimony on the difficulties inherent in an informant reporting on violent and criminal activity. To be in a position to report, the informant may have to participate in the unlawful activity to some degree. As one FBI handling agent testified of an informant in a violence-prone element of the Ku Klux Klan, "he couldn't be an angel and be a good informant."¹⁵ Where such an informant is paid and directed by the FBI, the Government may be placed in the at least unseemly posture of involvement through its agents in the activity it is seeking to prevent. At the extreme, the Government's informant may be held to have acted as an agent provocateur, that is, an agent of the Government who has provoked illegal or violent activity.

C. The Lack of Judicial Treatment of Intelligence Informant Issues

These issues have rarely been before the courts. This is in part due to the nature of secret intelligence informant activity. Members of a group will seldom learn that an FBI intelligence informant has been in their midst or has copied their records for the FBI because intelligence investigations almost invariably do not result in prosecutions.¹⁷ Without knowledge of an informant's activity and in the absence of a prosecution, a group or its members will not come before a court to raise Constitutional objections. Consequently, there are few court decisions and those that do exist usually concern criminal, rather than intelligence informants. In *Hoffa v. United States*,¹⁸ a criminal case involving charges of bribing a jury, the Supreme Court held that an informant's testimony concerning a defendant's conversations could not be considered the product of a search where the defendant had consented to the presence of the individual who served as an informant. The facts did not, however, present the issue of whether an inform-

¹⁵ Special Agent, 11/21/75, p. 12.

¹⁷ Only 16 of the domestic intelligence cases reviewed by the General Accounting Office—or less than 3 percent—were referred to a U.S. attorney or to local authorities for possible prosecution. Of the 16 referrals for criminal violations, only 7 were prosecuted. (GAO Study, p. 33)

Even where there are grounds for prosecution in a domestic intelligence case, such as acts of violence, the decision may be made to forego prosecution rather than surface an informant. The informant's continued reporting from within an organization may be deemed more valuable than a particular prosecution. This in turn may lead to the use of illegitimate action to prevent violence, such as that employed in the FBI's "COINTELPRO" operation. (See COINTELPRO Report.)

¹⁸ 385 U.S. 293 (1966). The *Hoffa* court stated: "The risk of . . . being betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak." In another criminal case, *Levits v. United States* 385 U.S. 206 (1966), the Court, in declining to rule that the use of undercover agents is unconstitutional *per se*, stated: "In the detection of many types of crime, the Government is entitled to use decoys and to conceal the identity of its agents."

ant's surreptitious taking of documents for the Government constituted an unlawful search.

The Select Committee's investigation has revealed for the first time the extremely broad scope of FBI intelligence informant surveillance and reporting. The Supreme Court has yet to be presented with the types of factual situations—such as intensive informant coverage of lawful political activity and personal matters—which may produce the chilling of rights guaranteed by the First Amendment. Moreover, apart from particular cases which may come before a court, the overall effect on the exercise of First Amendment rights in the society at large may be very great where it is known that a large-scale intelligence informant system is operating. No court has seen the overall pattern of FBI intelligence informant coverage of citizens and groups. Consequently, courts have been unable to assess the full impact of the informant system on the exercise of constitutionally protected rights.

A U.S. Army surveillance system was challenged on First Amendment grounds in *Laird v. Tatum*, but the Court described the information gathered in that case as "nothing more than a good newspaper reporter would be able to gather by attendance at public meetings and the clipping of articles from publications available on any newsstand."¹⁹

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."²⁰ 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 intrusive on fundamental rights.²¹

¹⁹ In a 5-4 decision, the Court held only that a complaint that First Amendment rights were chilled by "the mere existence, without more" of an Army intelligence activity alleged to be broader than necessary did not present a justiciable controversy in Federal court. Because the complaint failed to allege more specific harm than mere subjection to governmental scrutiny, it failed to state a Federal claim. 408 U.S. 1, 9 (1972).

However, Justice Marshall, sitting as a Circuit Justice, held that a Federal claim under the First Amendment was stated in *Socialist Workers Party v. Attorney General*, 419 U.S. 1315 (1974). There, Justice Marshall found that allegations of a "chilling effect" on First Amendment rights were sufficiently specific to satisfy jurisdictional requirements where it was complained that FBI informants were to monitor a public meeting of the Socialist Workers Party. The complaint stated that FBI informant coverage would have the concrete effect of dissuading delegates from participating in the convention and lead to possible loss of employment for those identified by the informants as attending. Although Justice Marshall refused to grant an injunction against the use of informants at the convention, he did prohibit the Government from transmitting any information obtained at the convention to nongovernmental entities and left to a trial on the merits the question of whether the claimed "chill" was substantial enough to justify permanent injunctive and monetary relief.

²⁰ *White v. Davis*, 583 Pac. Rep. 2d, 222, 232 (California Supreme Court, 1975).

²¹ 533 Pac. Rep. 2d, at 232.

D. The Scope of the Committee's Investigation

Before turning to the discussion below, two points as to the Committee's investigation must be noted.

First, in recognition of the sensitive nature of the informant technique, including the risk of exposure or physical harm to present and former informants, the Committee worked out procedures with the cooperation of the Attorney General and the FBI to protect the integrity of the FBI's operations while assuring the Committee's ability to conduct a thorough investigation. For example, while materials on full FBI intelligence investigations were examined, including informant reports on target groups and particular incidents, the names and identities of informants were not revealed unless they had previously been made public through court proceedings or the informant's own choice.

Second, as noted above, the Committee's investigation focused on the use of FBI-paid and directed intelligence informants and FBI-approved confidential sources, not criminal informants, one-time "walk-ins" or citizens who provide information to FBI Special Agents on their own initiative. In short, the Committee's investigation dealt not with the citizen's right to communicate with a law enforcement agency, but with a specific and substantial government intelligence program employing individuals who are paid and directed by the FBI Intelligence Division. It is in this sense that the discussion that follows uses the term "intelligence informant."

The discussion below is in two parts. To illustrate the nature of the intelligence informant technique, Part One examines the case histories of two former FBI intelligence informants. Part One also sets out eleven additional examples of informant coverage in domestic intelligence investigations and describes the "Ghetto Informant Program," conducted from 1967 to 1973, as well as other past FBI informant programs directed towards specific concerns.

Part Two discusses the size and scope of the FBI intelligence informant program and the standards that exist for the use of intelligence informants.

II. THE NATURE OF THE INTELLIGENCE INFORMANT TECHNIQUE

A. Case Histories of Particular Informants

To provide an understanding of the intelligence informant technique, two case studies are presented. The first case study involves a former FBI "subversive" informant in the Vietnam Veterans Against the War, Mary Jo Cook. The second case study involves a former FBI "extremist" informant in the Ku Klux Klan, Gary Rowe. Before turning to those cases, the FBI's definitions of subversive and extremist informants are set forth below.

Subversive Informants.—The FBI classifies its paid and directed intelligence informants into two categories, "subversive" and "extremist," corresponding to the two types of domestic intelligence investiga-

tions. "Subversive"²² informants are those used in the investigation of "subversive activities," defined in Section 87 of the FBI Manual as "activities aimed at overthrowing, destroying, or undermining the Government of the United States or any of its political subdivisions" by illegal means.²³ Section 87 has been applied to the activities of the Communist Party and a wide variety of other organizations which the FBI believes have revolutionary characteristics. During the Vietnam War, investigations of individuals labeled "Key Activists" were conducted under Section 87, in which informant coverage was stressed. For example, in January 1968, instructions went out to ten major field offices to designate certain persons as "Key Activists." They were defined as "individuals in the Students for a 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."²⁴ There was to be "an intensive investigation" of each "key activist":

Because of their leadership and prominence in the "new left" movement, as well as the growing militancy of this movement, each office must maintain high-level informant coverage on these individuals so that the Bureau is kept abreast of their day-to-day activities as well as the organizations they are affiliated with, to develop information regarding their sources of funds, foreign contacts, and future plans.²⁵

Extremist Informants.—"Extremist" informants^{26a} are those used in the investigation of "extremist" activities, defined in Section 122 of the FBI Manual in the same way as subversive activities but also including "denying the rights of individuals under the Constitution."²⁶ In practice, "extremist" investigations have concerned violence-prone groups composed of members of one or another race. Section 122 is intended to cover what the Bureau calls "White Hate"

²² A subversive informant (sometimes referred to as an "internal security" informant), is defined in the FBI Manual as:

"Individual actively engaged in obtaining or furnishing current information on security or intelligence matters exclusively for Bureau whose identity must be protected. Such person should be member or attend meetings of subversive organization, or be in such position relative to subversive organization that he is able to provide current information of value. (FBI, MOI, Sec. 107, I, A(1).)"

²³ FBI, MOI, Sec. 87.A(4).

²⁴ Memorandum from FBI Headquarters to all SAC's, 1/30/68.

²⁵ *Ibid.*

^{26a} An extremist informant is defined in the FBI Manual as:

"An individual whose identity must be protected and who is actively engaged in obtaining and furnishing current information on extremist matters exclusively to the Bureau. Extremist informants include any individual:

"a. Who is a member of or attends meetings of an extremist group (white, black, or Indian) which has a propensity for violence or which strives to deny individuals certain constitutional rights through the use of force, violence, or intimidation;

"b. Who is in a position to obtain and provide current information of value concerning such organizations;

"c. Or who furnishes information on extremists who may or may not be members of extremist groups but are engaged in planning or carrying out any type of guerrilla warfare against established institutions, which may be in violation of local, state, or Federal laws." (FBI, MOI, Sec. 130, A(1).)

²⁶ FBI, MOI, Sec. 122 A(1-e).

groups, such as the Ku Klux Klan, and "Black Nationalist Hate" groups, such as the Black Panther Party and the Nation of Islam. It also applies to some American Indian groups such as the American Indian Movement, as well as a variety of terrorist organizations engaged in "urban guerrilla warfare."²⁷

In the case of organizations of blacks, informant coverage in Section 122 investigations extended beyond the Black Panthers. In the fall of 1970, the FBI decided to include "every Black Student Union and similar group regardless of their past or present involvement in disorders."²⁸ The initial proposal for informant coverage called for "preliminary inquiry through established sources and informants to determine background, aims and purposes, leaders and Key Activists."²⁹ It was estimated this would cause FBI field offices to open 4,000 cases on both groups and individuals. The subsequent instructions to the field offices stressed the need to investigate Black Student Unions and similar groups and to "target informants and sources to develop information regarding these groups on a continuing basis... and to develop such coverage where none exists."³⁰

The case histories illustrating the activity of FBI's subversive and extremist intelligence informants are presented below.

1. Mary Jo Cook—FBI Informant in the Vietnam Veterans Against the War

In June 1973, Mary Jo Cook was recruited by the FBI field office in Buffalo, New York to serve as a paid and directed informant in the Buffalo chapter of the Vietnam Veterans Against the War (VVAW).³¹

a. *Background.*—The FBI made limited investigations in 1967 and 1968 to determine if the Communist Party or other "subversive" elements were directing or controlling the VVAW but concluded that there was no such outside influence.³²

In August 1971, a full investigation of the VVAW was opened on the basis of reports that Communist youth groups were infiltrating the VVAW and the alleged involvement of some VVAW members in illegal demonstrations; militant antiwar activity by the VVAW, including reported links with foreign elements, was also a basis for the full investigation.³³ FBI concern centered on the national office

²⁷ FBI, MOI, Sec. 22(A).

²⁸ Memorandum of the Executives Conference 10/20/70.

²⁹ *Id.*

³⁰ Memorandum from FBI Headquarters to all SACs, 11/4/70.

³¹ Cook, 12/2/75, Hearings, Vol. 6 p. 112.

³² FBI Memorandum to Senate Select Committee, 12/2/75; Hearings, Vol. 6, Exhibit 72.

³³ In a Memorandum to the Committee, the FBI described the basis for the opening of the full investigation as follows:

"[In August 1971] information from a variety of sources dictated the need to determine the extent of control over VVAW by subversive groups and/or violence-prone elements in the antiwar movement. Sources had provided information that VVAW was stockpiling weapons, VVAW had been in contact with North Vietnam officials in Paris, France, VVAW was receiving funds from former CPUSA members and VVAW was aiding and financing U.S. military deserters. Additionally, information had been received that some individual chapters throughout the country had been infiltrated by the youth groups of the CPUSA and the SWP. A trend of increased militancy developed within the VVAW and the possibilities of violence escalated within the organization. During December 1971, VVAW members forcibly and illegally occupied or sur-

(Continued)

of the VVAW, which the FBI saw as adopting Marxist-Leninist doctrine and anti-imperialist positions.

The FBI's investigation of local VVAW chapters was, in part, designed to determine the extent to which they were following the position of the VVAW national office or were being infiltrated by Communist elements.³⁴

b. *Cook's Instructions*.—From her initial meeting with the FBI agent who recruited her, Cook understood that she was to serve as both a reporter of information and a moderating force in the VVAW. Cook testified that she understood she was to act as "a voice of reason . . . a guiding force in the organization and keep things calm, cool and collected."³⁵ Cook testified:

The major understanding that I got from the meeting was that VVAW-WSO was an organization primarily of veterans who were possible victims of manipulation. They had been through the Vietnam War. They had legitimate readjustment needs, and the Bureau was afraid that they could become violent or could become manipulated in a cause or social concern, and they wanted me to go in there and participate in the organization and make sure that the veterans didn't get "ripped off".³⁶

Cook's handling agent similarly testified that one of the main purposes of placing Cook in the VVAW chapter was to neutralize any violence or illegal activities, as well as to report them.³⁷

c. *The Scope of Cook's Reporting*.—As to her reporting function, Cook testified that she was to report virtually everything about the VVAW and its members. She stated that:

. . . I was 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.³⁸

The FBI Special Agent to whom Cook reported similarly testified as to the broad scope of Cook's reporting: "She told me everything she knew about the Buffalo chapter of the VVAW."³⁹

To obtain the type of information desired by the FBI, Cook testified that she took a leadership role in the VVAW. The FBI asked her to go to as many regional and national meetings of the VVAW as possible to "get a good sense of how the local chapter fit in [the] national organization".⁴⁰ Cook stated "it was a very democratic proc-

(Continued)

rounded public buildings and national monuments in New York City, Philadelphia, Austin, Texas, and Washington, D.C." FBI Memorandum to Senate Select Committee, 12/2/75, pp. 2-3; Hearings, Vol. 6, Exhibit 72.

³⁴ Adams, 12/2/75, Hearings, p. 135. Cook had expressed an interest in being an FBI informant to a close friend who was an informant with the VVAW for the FBI. Cook's friend put her in touch with an FBI agent. (Cook, 12/2/75, Hearings, p. 110.)

³⁵ Cook, 12/2/75, Hearings, p. 110, 111.

³⁶ *Ibid.*

³⁷ Special Agent, 11/20/75, p. 47.

³⁸ Cook, 12/2/75, Hearings, p. 111.

³⁹ Special Agent, 11/20/75, p. 55.

⁴⁰ Cook, 12/2/75, Hearings, p. 121.

ess [in the VVAW] so that there was no way that I could . . . fulfill the request of the FBI . . . without actually becoming elected leadership in the chapter".⁴¹

The scope of Cook's intelligence reporting, including identities of individuals, personal matters, and lawful political activity, is illustrated by the following FBI summaries⁴² of two reports given the FBI by Cook:

Report No. 1

Report concerns a meeting of the VVAW/WSO Women's Group held November 5, 1973, in Buffalo, New York. Nine women attended, all named in the report. One woman had been the girlfriend of an individual named in the report who was associated with the Martin Sostre Defense Committee and lived with him for a while. Report concluded with plans for a men's group meeting to be held later.

Report No. 2

Report concerns a meeting of the VVAW/WSO Steering Committee held 11/10/73. Five identified individuals were present. There was a discussion of finances and some displeasure at the financial record system. Plans for a benefit at a bar were discussed. Information was presented concerning a newsletter to be mailed out which will discuss the VVAW/WSO's position on amnesty, the upgrading of discharges, information about a strike at a Buffalo firm.

Some objections were raised concerning the wording of some VVAW/WSO objectives.

Plans for a future coalition meeting organized by two individuals were discussed, the same coalition that worked on the Impeach Nixon rally.

Matters concerning possible new members and/or attendees at future meetings were discussed. Plans for a VVAW/WSO team on a television sports quiz show were discussed.

One member raised four criticisms of the VVAW/WSO, all listed. One member wrote a regional newsletter.

d. *Cook's Taking of VVAW Documents.*—Besides reporting in detail on VVAW members and meetings, Cook also took VVAW documents and gave them to the FBI.⁴³ For example, Cook testified that she gave the FBI VVAW mailing lists, thus providing the FBI with the names of many individuals outside of the smaller number of people who attended VVAW meetings.⁴⁴

In addition to the mailing lists which Cook gave to the FBI, she also took a number of other VVAW documents, including papers re-

⁴¹ *Ibid.*

⁴² The Committee had full access at FBI Headquarters to the reports of the intelligence informants whose cases were examined. In view of the FBI's position that delivery to the Committee of these reports would endanger the security of the FBI's relations with present informants, it was agreed that FBI Special Agents would prepare summaries of those informant reports to be referred to at the public hearings or in the Committee's Report. The Committee staff verified these summaries for accuracy and completeness against the full informant reports.

⁴³ Cook, 12/2/75, Hearings, p. 112.

⁴⁴ *Ibid.*

lating to legal defense matters. As Cook's FBI handling agent testified:

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 Gainesville (Florida) 8 . . . the Camden (New Jersey) 9 . . . various documents from all of these groups.⁴⁴

Cook also gave the FBI a confidential legal manual prepared by VVAW attorneys as a guide for legal defense strategy and methods should VVAW members be arrested in demonstrations or other political activity.⁴⁵ As discussed in more detail below, the FBI Manual provides that legal defense matters are not to be reported by informants. However, the FBI interprets this provision as prohibiting only the reporting of privileged attorney-client communications or legal defense matters in connection with a specific trial. Since the VVAW legal manual was intended for general use, rather than in connection with a particular case, the FBI considered that the VVAW manual did not fall within the prohibition.

c. *Reporting on Non-VVAW Groups and Individuals.*—In addition to reporting on the VVAW itself, Cook also reported on those individuals and groups who worked on political issues in conjunction with the VVAW:

Senator HARR: . . . 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].^{45a}

As a result of this broad reporting scope, Cook estimated that she identified as many as 1,000 people to the FBI in the 18 months she worked as an informant.⁴⁶ Cook estimated that sixty to seventy percent of these 1,000 people were nonveterans who had participated with the VVAW in various political efforts.⁴⁷

In November 1974, Cook quit her work as an informant because of her belief that the VVAW was engaged in lawful political activity and her conclusion that she could not in conscience inform on its members and others working with them.⁴⁸ Cook concluded that the Buffalo VVAW Chapter was working towards ending the involvement of U.S. in Vietnam, amnesty for draft resisters, upgrading military discharges, and better health and drug treatment for Vietnam veterans.⁴⁹

⁴⁴ Special Agent 11/20/75, pp. 15-16.

⁴⁵ Cook deposition, 11/14/75, p. 36.

^{45a} Cook, 12/2/75, Hearings, p. 110.

⁴⁶ Cook, 12/2/75, Hearings, p. 112.

⁴⁷ Cook, 12/2/75, Hearings, p. 120.

⁴⁸ Cook, 12/2/75, Hearings, pp. 112-114.

⁴⁹ Cook, 12/2/75, Hearings, p. 110.

Cook testified:

. . . I started talking with the FBI about all of the contradictions that I was starting to see. I didn't understand what my involvement was anymore . . . I didn't see the reason for my continuance . . . [I said to the FBI] these people don't need me functioning in their midst, and if you can't give me assurances that the information that I am giving you, which you seem to strip the context away from isn't going to be used against these people, then I cannot continue . . . and they could not give me any assurance that this information would not be used against people. . . .⁵⁰

2. Gary Rowe—FBI Informant in the Ku Klux Klan

Gary Rowe worked as an FBI informant in the Birmingham, Alabama chapter of the Ku Klux Klan from 1959 until March 1965, when he surfaced to testify as an eyewitness to the killing of a civil rights worker, Mrs. Viola Liuzzo, by Klan members.⁵¹

Rowe's activity as an FBI informant illustrates the distinction between an informant's reporting of information relating to violence or criminal activity and the reporting of general intelligence. On the one hand, Rowe provided the FBI with a great deal of information on Klan violence and criminal activity. At the same time, however, Rowe reported virtually every aspect of Klan activity, regardless of its relation to actual or potential violence or criminal offenses. In addition, on a number of occasions Rowe participated in Klan violence in order to be in a position to report its occurrence to the FBI. Consequently, even though Rowe was able to report significant violence and criminal activity, his case highlights two principal issues: 1) the question of overbreadth in intelligence informant reporting, and 2) the government's participation or unseemly involvement through its paid and directed informants in the violent or criminal activity it is investigating.

a. *The Use of Intelligence Informants to Report Klan Violence and Criminal Activity.*—In testimony before the Committee, former Attorney General Nicholas Katzenbach emphasized the violent acts committed by some Ku Klux Klan members in the South during the years Rowe was an FBI informant:

The central point of . . . my testimony is that some Klan members in those states, using the Klan as a vehicle, were engaged in repeated acts of criminal violence. It had nothing to do with preaching a social point of view; it had to do with proven acts of violence.⁵²

⁵⁰ Cook, 12/2/75, Hearings, pp. 112-113. In 1974, investigations of a number of VVAW chapters were closed. The FBI Memorandum to the Committee stated: "In 1974, FBI field offices were instructed to analyze the chapters and regions in their respective territories. If the local organization did not subscribe to the policies of the National Office and were not Marxist-Leninist groups advocating the overthrow of the Government, the investigation of the local organization was to be terminated. . . . Many of the investigations of the various chapters were closed, not because they were no longer active, but because of their apparent failure to follow the Marxist-Leninist revolutionary posture of the National Office." (FBI Memorandum to Select Committee, 2/2/76, p. 5; Cook, Hearings, Exhibit 72.)

⁵¹ Rowe, 12/2/75, Hearings, Vol. 6, p. 115.

⁵² Katzenbach Testimony, 12/3/75, Hearings, Vol. 6, p. 207.

Katzenbach stated that to deal with the problem of Klan violence, Attorney General Robert Kennedy had suggested to President Johnson an intensified use of FBI informants in the Klan, along the lines employed by the FBI against Communist groups. Katzenbach quoted from a letter Robert Kennedy had sent to the President in mid-1964 just prior to the murders of three civil rights workers in Mississippi:

The unique difficulty as it seems to me to be presented by the situation in Mississippi (which is duplicated in parts of Alabama and Louisiana at least) is in gathering information on fundamentally lawless activities which have the sanction of local law enforcement agencies, political officials and a substantial segment of the white population. The techniques followed in the use of specially trained, special assignment agents in the infiltration of Communist groups should be of value. If you approve, it might be desirable to take up with the Bureau the possibility of developing a similar effort to meet this new problem.⁵¹

And Katzenbach pointed out that informants were critical to the solution of the murders of the three civil rights workers: "That case could not have been solved without acquiring informants who were highly placed members of the Klan."⁵²

Katzenbach emphasized his view that the use of FBI informants in the Klan should be viewed as a criminal investigation technique, pointing out that, in the case of the Klan, "these techniques were designed to deter violence—to prevent murder, bombings, and beatings. In my judgment, they were successful."⁵³ At the same time, he indicated the disruptive results that "an effective informant program"⁵⁴ may produce. He stated:

It is true that the FBI program with respect to the Klan made extensive use of informers. That is true of virtually every criminal investigation with which I am familiar. In an effort to detect, prevent, and prosecute acts of violence, President Johnson, Attorney General Kennedy, Mr. Allen Dulles, myself and others urged the Bureau to develop an effective informant program, similar to that which they had developed with respect to the Communist Party. It is true that these techniques did in fact disrupt Klan activities, sowed deep mistrust among the Klan members, and made Klan members aware of the extensive informant system of the FBI and the fact that they were under constant observation.⁵⁵

Rowe played a critical role in the solution of the murder of Mrs. Viola Liuzzo. Owing to his close relationship to Klan leaders, Rowe was asked to accompany several Klansmen in an unspecified mission against those participating in a civil rights march in Alabama in March, 1965. Rowe reported this invitation to his FBI handling agent, who told him to go and report what occurred.⁵⁶ As a result, Rowe

⁵¹ *Ibid.*, p. 214.

⁵² *Ibid.*, p. 216.

⁵³ *Ibid.*, p. 207.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Rowe deposition, 10/17/75, pp. 32-33.

was an eyewitness to the murder of Mrs. Liuzzo, and reported the crime to the FBI within hours of its occurrence. Subsequently, Rowe's testimony was a critical element in the ultimate conviction of the Klansmen responsible for the killing.⁵²

b. *The Scope of Rowe's Reporting.* Rowe's assignment, according to the FBI Special Agent who recruited him⁵³ and served as his first handling agent, was

to gather information as to members, leaders, because I did not know who they were, if he could get the number of Klaverns . . . in the Birmingham area, and just keep in touch with me as to the activities that occurred. That was his initial instruction.

I wanted information that would be of assistance to make a determination as to the violent nature of the organization. This would be, violations of civil rights, things of this nature . . . you certainly can't get it on the outside.⁵⁴

⁵²The murder of Mrs. Liuzzo took place in 1965; from the outset of his informant activity in 1961, Rowe provided the FBI with a great deal of information on planned and actual violence by the Klan throughout his years as an informant. (Rowe, 12/2/75, Vol. 6, pp. 117-118; Adams, 12/2/75, Vol. 6, 142-143). Only rarely, however, did Rowe's information lead to the prevention of violence or arrests of Klan members.

There were several reasons for this, including the difficulty of relying on local police to enforce the law against the Klan in the early 1960's, the failure of the Federal Government to initially mobilize its own resources, and the role of the FBI as an investigative rather than police organization.

Former Attorney General Katzenbach pointed out that, at the outset of the 1960s, when Rowe began his work as an informant, "neither the [Justice] Department nor the Bureau fully appreciated the significance or indeed the genesis of the repeated acts of violence and bloodshed" committed by the Klan and that Federal efforts against Klan violence "did not crystallize" until the murder in June 1964 of three civil rights workers in Mississippi. (Katzenbach, 12/3/75, Hearings, Vol. 6, pp. 213-214) and FBI Deputy Director Adams testified:

"We do not have police powers like the United States Marshalls do . . . We are the investigative agency of the Department of Justice and during these times the Department of Justice had us maintain the role of an investigative agency. We were to furnish the information, to the local police, who had an obligation to act. We furnished it to the Department of Justice." (Adams, 12/2/75, Vol. 6, pp. 142-143.)

Katzenbach and Adams pointed out that in the early 1960s, local police in parts of the South refused to act on information the FBI provided about Klan violence. Katzenbach testified:

". . . because local law enforcement organizations—the traditional first line of defense against (and the Bureau's primary source of information about) such violence—were infiltrated by the very persons who were responsible for much of the violence, the net effect was that there was in many sections of the South a total absence of any law enforcement whatsoever." (Katzenbach, 12/3/75, Hearings, Vol. 6, pp. 213-214.)

⁵³Rowe was not a member of the Klan or sympathetic with Klan objectives when he was recruited to serve as an informant. In his initial interviews with the FBI Special Agent who recruited him, Rowe indicated "he was not in favor of the things the Klan did". (Special Agent No. 1, 11/10/75, p. 7.) Rowe had previously served in the United States Marine Corps, enlisting at the age of 14. (Rowe, 12/2/75, Hearings, Vol. 6, p. 115.) During his initial talks with the FBI, Rowe stated he wanted to work in law enforcement and to serve his country; the FBI told Rowe that to serve as an FBI informant in the Klan would enable him to do both of these things. (Special Agent No. 1, 11/10/75, p. 6.)

⁵⁴Special Agent No. 1, 11/10/75, p. 8.

In practice, Rowe testified that he reported to the FBI "any and everything that I observed or heard pertaining to any Klansmen."⁶¹ This broad scope of Rowe's reporting was confirmed by the FBI agents to whom he reported. As one agent testified:

... he 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."⁶² Special Agent No. 3, 11-21/75, p. 7.

According to another of Rowe's FBI handling agents, Rowe's mission was "total reporting," including membership lists, financial matters, and political positions, as well as Klan violence.⁶³ Rowe also testified that, in line with his "total reporting" instructions he reported intimate details of the personal lives of Klan members.⁶⁴

Rowe was able to give the FBI extensive information about Klan membership as a result of his position in the "Klan Bureau of Investigation," the Klan's security and investigative arm.⁶⁵ Rowe did most of the investigation of prospective members in the Birmingham area, and would regularly make their applications available to his FBI handling agent, who would copy the applications before returning them to Rowe.⁶⁶

In addition, Rowe took Klan membership lists and gave them to the FBI. Rowe's handling agent testified as to the way such lists were taken:

I remember one evening during the course of a meeting that was going on . . . he 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.⁶⁷

Rowe also reported on political matters relating to the Klan.⁶⁸ During a campaign for mayor in Birmingham, Rowe was instructed to attend public political meetings to assess the candidates' position on integration, and to identify Klan members present and the extent to which they were actively engaged in the campaign.⁶⁹ Rowe also reported on "National Conventions" of the Klan, closed meetings at which officers were elected and Klan positions determined.⁷⁰

⁶¹ Rowe, 12/2/75, Vol. 6, p. 116.

⁶² Special Agent No. 3, 11/21/75, p. 7.

⁶³ Special Agent No. 2, 11/21/75, p. 4. Rowe also carried out certain activities designed to disrupt the Klan. In early 1964, Rowe testified, his FBI handling agent told him of the "COINTEL" or counterintelligence program of the FBI against the Klan. (See COINTELPRO Report). In connection with the COINTEL program, Rowe sought to disrupt the campaign of a Klansman who was a candidate for city police commissioner by spreading innuendo that the Klansman was a homosexual. (Rowe Deposition, 10/17/75, pp. 14-15.) Rowe also testified that he was instructed to plant stories calculated to cause divorces and marital problems among Klansmen. (*Ibid.*, p. 17.)

⁶⁴ Rowe, 12/2/75, Hearings, Vol. 6, p. 116.

⁶⁵ Rowe, 12/2/75, Vol. 6, p. 116.

⁶⁶ Rowe Deposition, 10/17/75, p. 21.

⁶⁷ Special Agent No. 1, 11/10/75, p. 10-11.

⁶⁸ Rowe, 12/2/75, Hearings, Vol. 6, p. 116; Special Agent No. 2, 11/21/75, p. 4.

⁶⁹ Rowe, 12/2/75, Hearings, Vol. 6, p. 116; Rowe deposition, 10/17/75, p. 11.

⁷⁰ Rowe deposition, 10/17/75, p. 28.

In addition to Klan activities, Rowe reported on the activities of other organizations to the FBI. As a member of the "Klan Bureau of investigation," Rowe was instructed by the Klan to attend and report on meetings of civil rights groups. Rowe gave the information he developed on these civil rights organizations to the FBI as well, even though this fell outside the area of reporting on Klan activities.⁷¹

c. *The Issue of Participation in Criminal or Violent Activity.*—In addition to general intelligence, Rowe was particularly instructed to report any instances of planned or actual violence by the Klan.⁷² Merely attending Klan meetings as an ordinary member did not put Rowe in a position to observe the planning for, or occasion of violence, by the Klan.⁷³ As Rowe's FBI handling agent testified, "to gather information [on violence] you have to be there."⁷⁴

Consequently, the FBI instructed Rowe to join a smaller group of Klan members, a so-called "Action Group", which conducted violent acts against blacks and civil rights workers.⁷⁵

At the outset, Rowe's handling agent had instructed him that "under no conditions should I participate in any violence whatsoever."⁷⁶ Although these instructions continued to be formally reiterated to Rowe, Rowe and his FBI handling agents understood that for Rowe to be able to report Klan violence, he would have to be present for—and at times might be involved in—that violence.

Rowe testified as to a number of instances where 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."⁷⁷

For example, on one occasion, Rowe gave the FBI advance warning that Klan members were planning to assault and beat blacks attending a country fair. His FBI handling agent instructed him "to go and see what happened."⁷⁸ To accomplish this, Rowe accompanied the Klansmen to the fair, where, to preserve his cover, he participated in the resulting violence.⁷⁹ On another occasion, Rowe's throat was cut while he was participating with other Klansmen in large-scale violence against Freedom Riders at the Birmingham bus depot in May, 1961.⁸⁰

Rowe described how he and other Klansmen used "baseball bats, clubs, chains, and pistols" in attacking the Freedom Riders (Rowe, 12/2/75, p. 1867). Rowe recalled that, when he asked why there was no apparent action on his reports of the impending violence, his FBI handling agent told him "who the hell are we going to report it to? . . . the [Birmingham] police department helped set [the violence] up.

⁷¹ Rowe, 12/2/75, Hearings, p. 110.

⁷² Special Agent No. 1, 11/19/75, p. 8; Rowe, Hearings, 12/2/75, p. 110.

⁷³ Rowe, 12/2/75, Hearings, p. 110-117.

⁷⁴ Special Agent No. 1, 11/19/75, p. 4.

⁷⁵ Adams, 12/2/75, Hearings, p. 144; Rowe, 12/2/75, Hearings, p. 110-117.

⁷⁶ Rowe, 12/2/75, Hearings, p. 110; Special Agent No. 1, 11/19/75, p. 9. Rowe's first FBI handling agent testified:

"My specific instructions to [Rowe] were that he was not to be involved in any violence. He was not to be involved in any criminal activity, that if he was involved in any such activity, that I nor anyone else would come to his rescue." (Special Agent No. 1, 11/19/75, p. 9).

⁷⁷ Rowe deposition, 10/17/75, p. 12.

⁷⁸ Rowe, 12/2/75, Hearings, p. 117.

⁷⁹ *Ibid.*

⁸⁰ Rowe, 12/2/75, Hearings, p. 118.

We are an investigating agency not an enforcement agency. All we do is gather information."²¹

The resulting dilemma was described by one of Rowe's FBI handling Agents:

... 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.

... I'm sure he was present many, many times, when he participated in things, and I'm sure he reported them at that time, but we certainly cautioned him against that."²²

Although Rowe's participation in Klan violence was practically an inherent feature of his informant's role, the FBI took particular care in at least one instance that Rowe did not suggest or lead violent activity. In April 1964, several years after Rowe joined the Klan "Action Group," the Birmingham Field Office reported that Rowe had become an Action Group squad leader. Bureau Headquarters ordered that Rowe resign this leadership position or be discontinued as an informant.²³ The Bureau further advised the Field Office:

in those cases where you have an informant who is a member of a violent squad . . . you should insure that the informant understands he is not to direct, lead, or instigate any acts of violence.²⁴

Nevertheless, even these instructions did not extend to ruling out Rowe's participation in violence, but rather only leading or directing violent acts. The essential characteristic of Rowe's status was expressed by the following testimony of his FBI handling agent:

If he happened to be with some Klansman and they decided to do something, he couldn't be an angel and be a good informant.²⁵

B. Examples of Intelligence Informant Coverage of Groups Subject to Intelligence Investigations

In addition to the case histories of the informants described above, the nature of the intelligence informant technique can also be illustrated by other examples of informant coverage in domestic intelligence investigations. The cases of informant coverage set out below indicate the types of information intelligence informants produce for FBI files.

In summary, these cases further demonstrate the extremely broad scope of informant reporting, including both lawful political activity and details of the personal lives of citizens. For example, informants

²¹ Rowe, 12/2/75, Hearings, p. 118. . . . The reasons for the lack of response by the FBI and the Federal Government to Klan violence at the outset of the 1960s have been described above. The 1961 violence at the Birmingham bus depot did lead to a decision by the Kennedy Administration to send U.S. marshals to Alabama to protect the Freedom Riders as they proceeded to other cities. (Adams, 12/2/75, Hearings, p. 142-143.)

²² Special Agent No. 3, 11/21/75, pp. 10-17.

²³ Memorandum from FBI Headquarters to Birmingham Field Office 4/17/64.

²⁴ Memorandum from FBI Headquarters to Birmingham Field Office 5/4/64.

²⁵ Special Agent No. 3, 11/21/75, p. 12.

in the Women's Liberation Movement (Case No. 9, below) reported the identities of women who belonged to Women's Liberation groups at several Midwest universities, and statements made by women concerning the personal reasons that motivated them to participate in the Women's Movement. Informant coverage of lawful political activity is also shown in Case No. 1 which involved a public meeting held by a citizens group to debate the merits of developing a certain U.S. missile. Several cases presented below involve instances where informants in violence-prone groups provided information that led to arrests and prosecutions or the prevention of violence. (See Case Nos. 3, 6, and 8 below.) The Socialist Workers Party (Case No. 10, below) is an example of informant coverage and intelligence surveillance that continued uninterrupted for many years, despite the fact that for more than three decades the group has committed no criminal acts.⁶⁶

Case No. 1—*Citizens Panel on the Merits of an Anti-Ballistic Missile System (1969)*

An FBI informant and two FBI confidential sources reported on a meeting of a Washington, D.C., group that expressed concern about the development of the Anti-Ballistic Missile System (ABM) in the late 1960s.⁶⁷ The meeting was targeted for informant coverage because the *Daily World*, a communist newspaper, had commented on the formation of the group.⁶⁸ The informant reported on plans for the meeting which was to be held in a high school auditorium where the merits of development of the ABM would be debated, and on publicity materials distributed at churches and schools. The informant also reported that the speakers for the debate would include, on the "pro side," a Defense Department official and a Defense Department consultant and on the "con side" a political science professor and a well-known scientist.⁶⁹ A confidential FBI source reported on the past and present residence of the person who had applied to rent the auditorium and on his current position in the military. Another confidential source informed the FBI of the anti-Vietnam war and anti-ABM articles being distributed at the meeting.⁷⁰ The informant and source reports on plans for the meeting and on the meeting itself were disseminated by teletype to the White House, the Vice President, the Attorney General, the Secret Service, the State Department, the CIA, and various military intelligence agencies.⁷¹ A subsequent report described plans for a similar meeting in the District of Columbia and included the names of prominent D.C. politicians who planned to attend.⁷²

⁶⁶ Shackelford, 2/2/76, p. 80.

⁶⁷ Adams, 12/2/75, Hearings, p. 137.

⁶⁸ Adams, 12/2/75, Hearings, p. 138.

⁶⁹ Memorandum from Alexandria Field Office to Washington Field Office 6/3/69.

⁷⁰ Memorandum from Alexandria Field Office to FBI Headquarters, 6/5/69.

⁷¹ Memorandum from Alexandria Field Office to FBI Headquarters 6/3/69. With respect to this intelligence investigation, FBI Deputy Associate Director Adams testified that, due to the notice in the *Daily World* communist newspaper, the FBI "took a quick look" at the group, and "the case apparently was opened on May 28, 1969, and closed June 5 saying there was no problem with this organization." (Adams, 12/2/75, Hearings, p. 138.)

⁷² Memorandum from Alexandria Field Office to FBI Headquarters, 6/5/69.

Case No. 2—*Dr. Carl McIntyre's American Christian Action Council (1971)*

An FBI confidential source and an informant reported information about the formation of this group by Dr. McIntyre. The group was established to act as a counter to various liberal groups and to the "Clergy and Laymen Concerned about Vietnam". The initial report from a confidential source mentioned plans to picket NBC-TV studios in Philadelphia, Baltimore and Washington, D.C., and named all the members of the Board of Directors.⁹³ Subsequent reports from an informant described the group's plans to oppose the President's trip to China and to support prayer in the public schools.^{93a} The informant also reported on the group's convention held jointly with Dr. McIntyre's missionary group and on plans for the group's future organization and activities.⁹³

Case No. 3—*Detroit Black Panther Party 1970*

An FBI extremist informant involved in an intelligence investigation of the Detroit Black Panther Party, (BPP) furnished advance information regarding a planned ambush of Detroit police officers which enabled the Detroit Police Department to take action to prevent injury or death to the officers. The information led to 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 BPP, which likely resulted in saving of lives and preventing property damage.⁹⁵

On June 20, 1970, the informant furnished the names of three BPP members who were supposed to carry out the ambush on June 27, 1970 and reported that others whose identity he did not know would also be involved. This information was furnished to the Detroit Police Department who in turn monitored the ambush site. On June 27, 1970, the informant advised that the planned ambush of police officers would definitely take place that night, shortly after midnight. On June 28, 1970, two Detroit police officers, while patrolling on the east side of Detroit a few minutes after midnight, were fired upon by snipers.

Immediately after the shooting, Detroit police officers arrested the three individuals identified by the informant and charged them with assault with intent to commit murder. In addition, three other individuals were arrested in connection with this shooting. A cache of weapons and ammunition was recovered from the residence of one of those arrested.⁹⁶

On July 25, 1970, the informant advised that a member of the Detroit National Committee to Combat Fascism, and another individual, whom he believed to be a member of the White Panther Party, stole some dynamite on or about July 11, 1970. The informant was directed to ascertain the location of this dynamite. He later determined that it had been stored at the farm of the second individual's mother. The inform-

⁹³ Memorandum from Washington Field Office to FBI Headquarters, 5/10/71.

^{93a} Memorandum from Tampa Field Office to FBI Headquarters, 5/10/72.

⁹⁴ *Ibid.*

⁹⁵ Joseph Deegan testimony, 2/13/70, p. 54.

⁹⁶ FBI Response to Select Committee Request for Documents.

ant further advised that the mother did not share her son's radical views and had no knowledge that the dynamite was on her farm. On September 16, 1970, the mother gave Bureau agents permission to search her property. Approximately fifty sticks of dynamite were discovered.⁹⁷

Case No. 4—National Conference on Amnesty (1974)

Several FBI informants provided information on a national conference held to support amnesty for veterans of the Vietnam war. The FBI targeted the conference for informant coverage because of other informant reports that the Vietnam Veterans Against the War were instrumental in organizing the conference and might attempt to take it over.⁹⁸ The informant's reports identified the various church and civil liberties groups who sponsored and organized the conference, as well as the participation of a draft evader and several "subversives."⁹⁹ The reports described the topics for workshops at the conference, and the organization of a steering committee which would include delegates from families of men killed in Vietnam and Congressional staff aides.¹⁰⁰

Case No. 5—Public Meeting Opposing U.S. Involvement in Vietnam War (1966)

Informants were used extensively in FBI investigations of possible Communist links to the antiwar movement. An example is the FBI's coverage of various antiwar teach-ins and conferences sponsored by the Universities Committee on Problems of War and Peace. A forty-one page report from the Philadelphia office—based on coverage by thirteen informants and confidential sources—described in detail a "public hearing on Vietnam."¹⁰¹ A Communist Party official had "urged all CP members" in the area to attend, and one of the organizers was alleged to have been a Communist in the early 1950's. Upon receipt from an informant of a list of the speakers, the FBI culled its files for data on their backgrounds. One was described by a source as a Young Socialist Alliance "sympathizer." Another was a conscientious objector to military service. A third had contributed \$5,000 to the National Committee to Abolish the House Committee on Un-American Activities. A speaker representing the W.E.B. DuBois Club was identified as a Communist.¹⁰² The FBI covered the meeting with an informant who reported practically verbatim the remarks of all the speakers, including the following:

the Chairman of the Philadelphia Ethical Society
a representative of the American Civil Liberties Union
a representative of the United Electrical Workers
a spokesman for the Young Americans for Freedom
a member of the staff of the "Catholic Worker"

⁹⁷ *Ibid.*

⁹⁸ Wannall, 12/2/75, p. 130-140.

⁹⁹ Memorandum from Louisville Field Office to FBI Headquarters, 11/21/74.

¹⁰⁰ *Ibid.*

¹⁰¹ Memorandum from Philadelphia Field Office to FBI Headquarters, 3/22/66.

¹⁰² *Ibid.*

a minister of the African Methodist Episcopal Church
 a minister of the Episcopal Church
 a representative of the Philadelphia Area Committee to
 End the War in Vietnam
 a Professor of Industrial Economics at Columbia
 University
 a representative of the Inter-University Committee for
 Debate on Foreign Policy
 a member of Women's Strike for Peace who had traveled
 to North Vietnam
 a member of Women's International League for Peace and
 Freedom who had visited South Vietnam
 a chaplain from Rutgers University
 a professor of political science from Villanova University
 another member of Young Americans for Freedom
 the former Charge d'Affaires in the South Vietnamese
 Embassy¹⁰³

This informant's report was so extensive as to be the equivalent of a tape recording, although the FBI report does not indicate that the informant was "wired." Another informant reported the remarks of the following additional participants:

an official of the Committee for a Sane Nuclear Policy
 a minister of the Church of the Brethren
 a Unitarian minister
 a representative of United World Federalists
 a member of Students for a Democratic Society
 a member of the Socialist Workers Party
 a spokesman for the W. E. B. DuBois Clubs¹⁰⁴

The report was prepared as a Letterhead Memorandum with fourteen copies for possible dissemination by the FBI to other Executive Branch agencies. Copies were disseminated to military intelligence agencies, the State Department, and the Internal Security and Civil Rights Divisions of the Justice Department.¹⁰⁵

Case No. 6—*Black Nationalist Group (1968)*

On July 22, 1968, in connection with an intelligence investigation of a Cleveland black nationalist group called "New Libya," an extremist informant reported that a cache of rifles and automatic weapons was in the hands of group members. The informant was later able to determine where these weapons were located and that the group was formulating plans for disturbances in Cleveland and other cities. On July 23, 1968, a racial disturbance broke out in Cleveland triggered by the Black Libya group. The riot lasted three days and resulted in a number of police and civilian deaths. The informant's information was relayed to appropriate agencies prior to the outburst of violence.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.

The informant's advance reports were instrumental in successful prosecutions on first degree murder charges against "New Libya" members.¹⁰⁶

Case No. 7—Investigation of "Free Universities" (1966)

The FBI used informants in investigations of "Free Universities" in proximity to college campuses to determine whether they were connected with "subversive" groups. For example, when an article appeared in a Detroit newspaper stating that a "Free University" was being formed in Ann Arbor, Michigan, and that it was "anti-institutional," FBI Headquarters instructed the Detroit field office to "ascertain through established sources [. . . informants already in place] the origin of this group and the identity of the individuals who are responsible for the formation of the group and whether any of these individuals have subversive backgrounds."¹⁰⁷ A note on the instruction pointed out that even if there was no specific prior indication of Communist involvement, established informants were to be used in investigations of such "free universities":

Several "Free Universities" have been formed in large cities recently by the Communist Party and other subversive groups. We are therefore conducting discreet investigations through established sources regarding all such "Free Universities" that come to the Bureau's attention to determine whether they are in any way connected with subversive groups.¹⁰⁸

Based on the reports of five informants and confidential sources, the field office prepared a ten-page letterhead memorandum describing in detail the formation, curriculum content, and associates of the group—including several members of Students for a Democratic Society and the Socialist Workers Party.¹⁰⁹ Although no further investigation was recommended, the report was disseminated to local military intelligence and Secret Service offices, military intelligence and Secret Service headquarters in Washington, the State Department, and Internal Security Division of the Justice Department.¹¹⁰

Case No. 8—Washington, D.C. Black Panther Party (1970-1971)

An informant of the Richmond FBI Field Office reported a conspiracy by leaders of the Washington, D.C., Chapter of the Black Panther Party (BPP) and leaders of the Richmond Information Center (RIC), an affiliate of the BPP, to steal and transport weapons from Richmond, Virginia, to Washington, D.C. Five persons were ultimately indicted by a federal grand jury. A subsequent trial resulted in the conviction of four of the individuals.

On May 14, 1970, the informant reported that in Richmond, Virginia, a leader of the Black Panther Party asked a leader of the

¹⁰⁶ FBI Memorandum in Response to Select Committee Request.

¹⁰⁷ Memorandum from FBI Headquarters to Detroit Field Office, 2/17/66.

¹⁰⁸ *Ibid.*

¹⁰⁹ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

¹¹⁰ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

Richmond Information Center if he was in a position to obtain guns for the Washington BPP chapter.¹¹¹ FBI investigation failed to develop any further information regarding guns. However, on January 8, 1971, a recently developed informant advised that around April 1970 four individuals from the Richmond area had burglarized a private residence. Seven weapons were stolen during the burglary. The informant advised that on November 3, 1970, the guns were then transported from the Richmond area to Washington, D.C., by rented automobile.¹¹²

Case No. 9—Women's Liberation Movement (1969)

Informants were a principal source of information in the FBI's investigation of the Women's Liberation Movement. For example, in the spring of 1969, the New York field office drew largely on informant reporting to describe the Movement's basic philosophy and to report particular meetings in the New York area. In describing one such meeting, the report stated:

On [] 69, informant, who has furnished reliable information in the past, advised that a WLM meeting was held on [] 69, at [] New York City. 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. The informant stated that a mailing list was passed around at this meeting for WLM and the "Red Stockings," another women's group.¹¹³

Similarly, the Kansas City Field Office used informant reports to describe the extent of Women's Liberation Movement activity and to identify individual members at three universities in the Field Office territory: the University of Missouri at Kansas City, the University of Missouri at Columbia, and the University of Kansas at Lawrence. The level of detail as to personal identities of persons participating in the Women's Movement at University of Missouri, Kansas City, is illustrated by the following passage from the Field Office Report:

[informant] indicates members of Women's Liberation Movement campus group who are now enrolled as students at University of Missouri, Kansas City, are [five names deleted]. Of these five, [informant] said [names deleted] are indicated to be at least potential "New Left Radicals." [Informant] noted that [names deleted], not currently students on the UMKC campus, are reportedly roommates at . . . Kansas City.¹¹⁴

¹¹¹ Memorandum from Alexandria Field Office to FBI Headquarters, 5/22/70.

¹¹² *Ibid.*

¹¹³ Memorandum from New York Field Office to FBI Headquarters, 5/28/69, p. 2.

¹¹⁴ Memorandum from Kansas City Field Office to FBI Headquarters, 10/20/70.

Case No. 10—*Socialist Workers Party (1940 to date)*

FBI informants are operating within the Socialist Workers Party (SWP) as part of the FBI's long-term intelligence investigation of the SWP.¹¹⁵ Informants report 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.¹¹⁶ To enable the FBI to develop background information on SWP leaders, informants report certain personal aspects of their lives, such as marital status.¹¹⁷ The informants also report on SWP cooperation with other groups who are not the subject of separate intelligence investigations.¹¹⁸

The intelligence investigation of the SWP began in 1940 as a result of the SWP's description of itself as a Marxist-Leninist "combat" organization which foresaw the inevitability or desirability of violence should revolutionary conditions arise in the United States.¹¹⁹ The FBI conceded, however, that since shortly after its formation the SWP has not committed any violent acts, nor have its expressions "constituted an indictable incitement to violence."¹²⁰ Nevertheless, the FBI's intelligence investigation of the SWP—and the use of informants against the party and its members—has continued from 1940 to the present day.

Case No. 11—*Ku Klux Klan*

As part of its COINTEL Program of using covert action against domestic groups,¹²¹ the FBI assisted an informant in the Ku Klux Klan in his efforts to set-up a new state-wide Klan organization independent of the regular Klan. The FBI saw the formation of a rival group as an opportunity to promote dissension in the regular Klan both at the state and national levels. In approving the operation, FBI headquarters stated its belief that "if a death-dealing blow can be dealt to the [state Klan], the entire Klan organization in the United States will collapse."¹²² The FBI indicated that if the new Klan organization was "successful in obtaining a sizable following," it would be "controlled" by the FBI "through our informant."¹²³

¹¹⁵ Shackelford, 2/2/76, p. 80.

¹¹⁶ *Ibid.*, p. 91.

¹¹⁷ *Ibid.*, p. 90.

¹¹⁸ *Ibid.*, p. 92.

¹¹⁹ *Ibid.*, pp. 88-89.

¹²⁰ *Ibid.*, p. 80. In 1942, the conviction a year earlier of 18 SWP members for violation of the Smith Act was upheld on appeal. *Dunne v. United States*, 138 F.2d 137 (8th Cir. 1943), cert. den. 320 U.S. 790 (1943). In upholding the conviction, however, the appellate court relied on a precedent which has since been expressly repudiated by the Supreme Court. In *Dennis v. United States*, 341 U.S. 404 (1951) the Supreme Court abandoned the "bad tendency" standard followed by the appellate court in *Dunne* in favor of a standard whereby speech must present a grave and probable danger of bringing about a prohibited act before a conviction may be sustained.

¹²¹ For a full treatment of the FBI's COINTEL (counterintelligence) program, which involved covert actions against groups and individuals, see COINTELPRO Report.

¹²² Brennan to Sullivan [date deleted for security reasons].

¹²³ Memorandum from field office to FBI Headquarters [date deleted for security reasons].

Two years after the formation of the new Klan group, a status report by the FBI Field Office described the operation as "successful" in capitalizing on the opportunity to "further disrupt [the regular Klan] and to entice members of the regular Klan into the new Klan organization. At that time, the new Klan group had issued several dozen charters (although in many instances no chapter was in fact organized) and included nearly 200 members. The report stated further that the new Klan organization would be phased out when it had "done its ultimate damage to the regular Klan."¹²³

The Committee's investigation revealed that this tactic risked increasing violence and racial tension. The Director of the State Bureau of Investigation testified that there were dangerous confrontations between the two Klan groups. He testified as to one such occasion "in which the two groups met in force, and both elements had . . . guns, including shotguns . . . they were physically armed and facing each other."¹²⁴ The FBI informant in the rival Klan group also called for violence against blacks. The State Bureau of Investigation Director further testified that he witnessed the FBI informant address a Klan rally attended by several thousand persons and heard the informant state: "We are going to have peace and order in America if we have to kill every Negro."¹²⁵

C. Special FBI Informant Programs

In addition to the use of informants in particular domestic intelligence investigations of groups or individuals, the FBI has conducted special programs to develop informants for general reporting purposes. These were (1) the Ghetto Informant Program (1967-1973); (2) the development of informants in defense industrial facilities under the Plant Informant Program (1940-1969) and (3) the American Legion Contact Program (1940-1954). These programs are outlined below.

1. The Ghetto Informant Program

This program was begun in 1967 to develop informants who would provide general intelligence on the potential for violence and civil unrest in black urban areas.¹²⁶ In July 1973, after considerable debate within the FBI over the program's propriety, value, and cost, the program was terminated by Director Kelley, with instructions to field offices that ghetto informants were to be either included in the regular FBI informant categories (subversive, extremist or criminal) or discontinued.¹²⁷

As of September 1972, there were 7,402 ghetto informants. Figures for previous years were: 1971—6,301; 1970—5,178; 1969—4,067.¹²⁸

FBI officials saw the Ghetto Informant Program as their response to the possibility that the urban riots and violence that occurred in the summer of 1967 might be repeated and the express desire of White House and Justice Department officials for advance warnings.¹²⁹ In

¹²³ Memorandum from field office to FBI Headquarters [date deleted for security reasons].

¹²⁴ Deposition of Director, State Bureau of Investigation, 4/1/76, p. 36.

¹²⁵ *Ibid.*, p. 62.

¹²⁶ Memorandum from Moore to Sullivan, 10/11/67; memoranda from FBI Headquarters to all SAC's, 10/17/67.

¹²⁷ Memorandum from FBI Headquarters to all SAC's, 7/31/73.

¹²⁸ FBI Memoranda in Response to Select Committee Request, 8/20/74.

¹²⁹ Memorandum from Moore to Sullivan, 10/11/67.

September 1967 Attorney General Ramsey Clark wrote to FBI Director Hoover:

There persists . . . a widespread belief that there is more organized activity in the riots than we presently know about. We must recognize, I believe, that this is a relatively new area of investigation and intelligence reporting for the FBI and the Department of Justice. We have not heretofore had to deal with the possibility of an organized pattern of violence, constituting a violation of federal law, by a group of persons who make the urban ghetto their base of operation and whose activities may not have been regularly monitored by existing intelligence sources.

In these circumstances, 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 pre-planned or organized; and, if so, to determine the identity of the people and interests involved; and to deter this activity by prompt and vigorous legal action.

As a part of the broad investigation which must necessarily be conducted . . . sources or informants in black nationalist organizations, SNCC 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, and also to determine the whereabouts of persons who might be involved in instigating riot activity in violation of federal law.¹²⁰ [Emphasis added.]

In announcing the program to FBI Field Offices, Director Hoover stated that "it is imperative and essential that the Bureau learn of any indications of advance planning or organized conspiracy on the part of individuals or organizations in connection with riots and civil disturbances."¹²⁰

As originally conceived, a "ghetto informant" was to act as a "listening post" rather than an informant who actively sought information or who infiltrated particular groups.¹²¹ The FBI defined a ghetto informant as "an individual who lives or works in a ghetto area and has access to information regarding the racial situation and racial activities in his area which he furnishes to the Bureau on a confidential basis."¹²² A 1972 Inspection Division memorandum noted that the concept of a ghetto informant "includes the proprietor of a candy store or barber-shop" in an urban ghetto area.¹²³

At the outset of the program, ghetto informants, in contrast to regular subversive or extremist informants, were not given specific assignments or directed to infiltrate groups. As the program developed, however, this changed. A Bureau document described this change:

The "listening post" concept was expanded and ghetto informants are now utilized to attend public meetings held by extremists, to identify extremists passing through or locating

¹²⁰ Memorandum from Attorney General Ramsey Clark to Director, FBI, 9/14/67.

¹²¹ Memorandum from FBI Headquarters to all SACs, 10/17/67, p. 8.

¹²² Memorandum from Moore to Miller, 9/8/72.

¹²³ Memorandum from Moore to Brennan, 10/27/70.

¹²⁴ Memorandum from Inspection Division, 11/24/72.

in the ghetto area, to identify purveyors of extremist literature as well as given specific assignments where appropriate.¹³⁴

In addition to specific assignments to report indications of potential violence, ghetto informants were focused on "Afro-American type bookstores." A Philadelphia Field Office directive to Special Agents listed the following such assignment as suitable for ghetto informants: "Visit Afro-America-type bookstores for the purpose of determining if militant extremist literature is available therein and, if so to identify the owners, operators, and clientele of such stores."¹³⁵

The "listening post" concept of the Ghetto Informant Program became the subject of sharp debate within the FBI in 1972. The FBI Inspection Division criticized the program for counting a ghetto informant's report that there was no indication of civil unrest in his area as "positive" information. The Inspection Division observed that "negative information is not counted as positive information in any other informant program."¹³⁶ The Inspection Division further stated:

Some Ghetto Informants have in the past furnished information in extremist or criminal matters. This has been recognized as a by-product of the Ghetto Informant Program. A more meaningful approach to this whole problem might be to concentrate more heavily in ghetto areas to develop proven Security, Extremist, Revolutionary Activities, and Criminal Informants upon whom we can then rely to keep us advised of civil disturbance plans as a steady by-product to the information they are regularly furnishing on domestic intelligence or criminal matters.¹³⁷

The Inspection Division further noted that there might be "justifiable apprehension" outside the FBI regarding the "listening post" concept.

. . . we have some concern of justifiable apprehension that might be expressed by the Congress or the public if this program were to be described in terms out of context with our real intentions. We could fully defend informants providing us regularly with information directly related to our jurisdictional responsibilities and using them for "by-product" information on civil unrest. It would be much more difficult to defend establishment of ghetto or urban listening posts all over the country with a possible by-product of information directly within our jurisdiction.¹³⁸

The Inspection Division concluded that ghetto informants who had proven to be productive informants "should be converted to the appropriate substantive informant program to which their services relate."¹³⁹

On July 31, 1973, Director Kelley terminated the Ghetto Informant Program, eliminating the category of "ghetto informant" and instructing that "no individual will be operated as an [extremist inform-

¹³⁴ Memorandum from Moore to Miller, 9/27/72.

¹³⁵ SAC memorandum, 8/12/68, re: Racial Informants.

¹³⁶ Memorandum from Inspection Division, 11/24/72.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

ant] solely because he is in a 'listening post' position."¹³⁹ Under the revised extremist informant program, extremist activity and potential violence were to be monitored through regular extremist informants.

2. *The Plant Informant Program (1940-1969)*

The program developed out of discussions in October, 1938 among the Army, Navy, and FBI as to which entity would have responsibility for the security of defense industries against espionage and sabotage.¹⁴⁰ As a result of these discussions, it was decided that the FBI would assume the responsibility.

The program was begun in September 1940, when FBI Field Offices were instructed to develop confidential sources in defense plants identified to the FBI on lists submitted by the Army and Navy.¹⁴¹ By September, 1942, there were 23,746 such confidential sources in 3,879 defense plants.¹⁴²

The program was cut back sharply after World War II, but continued in existence until its termination in March, 1969.¹⁴³ Generally, the confidential sources in the program were used as a point of contact and potential source of information in investigations of suspected espionage matters.¹⁴⁴

3. *The American Legion Contact Program (1940-1954)*

This program arose out of a proposal submitted by the American Legion to the Attorney General in 1939. When World War II broke out in Europe, the American Legion submitted to the Attorney General a proposal to use its local posts to investigate and report indications of subversive or espionage activity.¹⁴⁵ The Attorney General turned down the proposal but referred it to the FBI for comment. The FBI came forward with an alternative plan, which in essence called for the use of local American Legion post members as potential "confidential sources" in their communities.¹⁴⁶ After background checks, such sources were to be used to provide information without payment on domestic security matters.¹⁴⁷ The FBI proposal was approved by the Attorney General and the American Legion in November 1940.¹⁴⁸ The program was terminated on August 17, 1954. FBI Field Offices however were instructed to maintain contact with American Legion officials in their areas.¹⁴⁹

D. *The Use of Informants at Colleges and Universities*

1. *Present FBI Policy*

In the course of its domestic intelligence investigations, the FBI regularly uses students, teachers and school officials at colleges and universities as informants and confidential sources.

¹³⁹ Memorandum from FBI Headquarters to all SACs, 7/31/73.

¹⁴⁰ FBI deposition, 2/10/76, p. 22.

¹⁴¹ Memorandum from FBI Headquarters to all SACs, 9/23/40.

¹⁴² *Ibid.*, p. 24.

¹⁴³ Memorandum from FBI Headquarters to all SACs, 3/25/69.

¹⁴⁴ FBI deposition, 2/10/76, p. 23.

¹⁴⁵ *Ibid.*, p. 20.

¹⁴⁶ *Ibid.*, p. 20. As discussed in greater detail at p. 260 below, confidential sources are defined by the FBI manual as individuals who furnish information "available to them through their employment or position in the community."

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*, p. 21.

¹⁴⁹ Memorandum from FBI Headquarters to all SACs, 8/17/54.

Under present FBI policy, there are two measures that apply solely to the use of campus informants. Students under 18 years of age may not be used as informants in other than "highly unusual circumstances" and justification for their use must be submitted to Bureau Headquarters.¹⁵⁰ Second, student informants and confidential sources are requested to sign a statement that they are "voluntarily" submitting information because of their "concern over individuals and groups that may be inimical to interests of U.S. Government".¹⁵¹ The statement also provides that the student informant or source "understands [the] FBI has no interest in legitimate institution or campus activities."¹⁵² However, the Manual does not further explain or specify the distinction between relevant matters in intelligence investigations and such "legitimate activity."

The FBI Manual emphasizes that, despite these two measures requiring "care" in the use of campus informants, FBI Field Offices must have "well-planned [informant] coverage" at colleges and universities. The Manual provides:

Each office must have continuous and well-planned program to obtain necessary coverage at institutions of learning so that Bureau can fulfill its obligations. Care with which this must be done in no way lessens responsibility of each field office to have proper coverage.¹⁵²

2. The Background to Present Policy

FBI policy on the use of informants and sources at colleges and universities underwent a number of changes between 1965 and 1970, the period of campus unrest. In 1967 as a result of the Katzenbach Report on CIA involvement with student groups, FBI Director Hoover cut back sharply on the use of campus informants, imposing a number of restrictions on their use. Later, despite strong pressure from the Justice Department for more intelligence on campus groups, Hoover initially refused to relax these restrictions. Gradually, however, the restrictions were lifted and indeed in September 1970 the age limit for campus informants (and all informants) was lowered from 21 to 18.

The development of FBI policy on campus informants in the critical period 1965-1970 is reviewed below.

a. *Initial Guidelines for Use of Campus Informants.*—FBI field offices had been instructed as early as 1965 to intensify their investigation of "subversive activity" among student groups.¹⁵³ In 1967, however, the FBI became concerned that its intelligence activity on college campuses might be exposed by the controversy over CIA links with the National Student Association.¹⁵⁴ Therefore, field offices were

¹⁵⁰ FBI, MOI Sec. 107 U (1) (a).

¹⁵¹ FBI, MOI Sec. 107 U (1) (b).

¹⁵² *Ibid.*

¹⁵³ FBI, MOI Sec. 107, U (3).

¹⁵⁴ SAC Letter No. 65-44, 8/17/65.

¹⁵⁵ Referring to the exposure of CIA involvement with the National Student Association, the FBI informed its field offices:

"It is possible that this current controversy could focus attention on the Bureau's investigation of student groups on college campuses." (SAC Letter No. 67-13, 2/21/67.)

advised to conduct campus investigations in a "most discreet and circumspect" manner:

You should . . . bear in mind that in our continuing investigations to keep abreast of subversive influence on campus groups, in discharging our responsibilities in the internal security field, such investigations should be conducted in a most discreet and circumspect manner. Good judgment and common sense must prevail so that the Bureau is not compromised or placed in an embarrassing position.¹⁵⁵

Field offices were reminded that existing FBI policy required approval from headquarters before investigating individuals or groups "connected with an institution of learning," before interviewing students or faculty members, and before developing a student or faculty member "as an informant source." These interviews or contacts were also to "be made away from the campus."¹⁵⁶

b. *The 1967 Restrictions.*—When the Katzenbach Committee issued its report on CIA involvement with student groups, FBI Director Hoover canceled all outstanding authorizations "to contact students, graduate students, and professors of educational institutions in security matters . . . [including] established sources, informants, and other sources." Field Offices were instructed to request new authority from FBI headquarters "where contacts with such individuals are particularly important and necessary."¹⁵⁷

Shortly after the 1967 cutback in campus coverage, however, the FBI formally characterized the Students for a Democratic Society for the first time, stressing its "subversive" connections. As intelligence investigations of SDS chapters expanded, FBI officials realized that the restrictions on campus contacts "impose problems for the field."¹⁵⁸

Field Offices were advised to stress "the development of noncampus informants and sources" to maintain intelligence coverage of "subversive" activity at educational institutions.¹⁵⁹ Shortly thereafter, the restriction was lifted for contacts on campuses with "established sources functioning in an administrative capacity such as a Registrar, Director of Admissions, Dean of Men, Dean of Women and Security Officer, and their subordinates." Headquarters approval, however, was still required to contact students or professors.¹⁶⁰

c. *Hoover's Resistance to New Pressure for Relaxed Restrictions on Campus Informants.*—The urban riots of the summer of 1967 greatly intensified FBI domestic intelligence operations. Equally important, the Detroit and Newark riots brought other agencies of the Federal Government into the picture. A Presidential Commission was established to study civil disorders and the Attorney General reexamined statutes on sedition, conspiracy and insurrection. Consequently, the Internal Security Division asked the FBI:

¹⁵⁵ SAC Letter No. 67-13, 2/21/67.

¹⁵⁶ SAC Letter No. 67-13, 2/21/67.

¹⁵⁷ SAC Letter No. 67-20, 4/7/67.

¹⁵⁸ SAC Letter No. 67-24, 5/2/67.

¹⁵⁹ SAC Letter No. 67-24, 5/2/67.

¹⁶⁰ SAC Letter No. 67-20, 5/24/67.

to furnish us with the names of any individuals who appear at more than one campus either before, during, or after any active disorder or riot and the identities of those persons from outside the campus who might be instigators of these incidents.¹⁶¹

The FBI was asked to use not only its "existing sources," but also "any other source you may be able to develop . . ."¹⁶²

Despite the pressure for greater intelligence about campus groups, Director Hoover decided "that additional student informants cannot be developed."¹⁶³ Nevertheless, the FBI field offices were instructed to intensify their efforts: "It is . . . recognized that with the graduation of senior classes, you will lose a certain percentage of your existing student informant coverage. This decreasing percent of coverage will not be accepted as an excuse for not developing the necessary information."¹⁶⁴

One way to achieve this result without the FBI itself recruiting additional student informants was to have local police do so. Thus, when field officers were reminded of the need for gathering intelligence so that the Justice Department could be provided "data regarding developing situations having a potential for violence," FBI Headquarters stressed the need for "in-depth liaison with local law enforcement agencies."¹⁶⁵

In September 1969, the restriction on recruitment of new campus informants was finally relaxed, although field officers were still forbidden to develop informant: under the age of 21. Procedures were instituted, however, "for tight controls and great selectivity in this most sensitive area". Field offices were given the following instruction:

Upon initial contact with a potential student informant or source, informant or source should be requested to execute brief signed written statement for the field file to the effect that such individual has voluntarily furnished information to the FBI because of his concern of [sic] individuals and groups acting against the interests of his government and that he understands that the FBI is not interested in the legitimate activities of educational institutions.

Field offices were also to submit quarterly reports assessing the productivity of each student informant so as "to justify the continued utilization of the source."¹⁶⁶

d. *The Huston Plan's Recommendation for Expanded Campus Informant Coverage.*—FBI Intelligence Division officials were greatly dissatisfied with these restrictions, particularly the age restriction on

¹⁶¹ Memorandum from Assistant Attorney General J. Walter Yeagley to the Director FBI, 3/3/69.

¹⁶² *Ibid.*

¹⁶³ SAC Letter No. 69-10, 3/11/69.

¹⁶⁴ *Ibid.*

¹⁶⁵ SAC Letter 69-44, 8/19/69. Local police use of intelligence undercover agents in college classrooms in California was held by the California Supreme Court to likely "pose a substantial restraint upon the exercise of First Amendment rights." (*White v. Davis*, 538 Pac Rep. 2d., 222, 232. California Supreme Court, 1975.)

¹⁶⁶ SAC Letter No. 69-55, 9/20/69.

students informants.¹⁶⁷ This dissatisfaction surfaced in June 1970 as the Intelligence Community developed recommendations (the "Huston Plan") for President Nixon for the relaxing of restrictions on domestic intelligence operations.¹⁶⁸ Among other items, the Huston Plan recommended to the President:

Present restrictions should be relaxed to permit expanded coverage of violence-prone campus and student-related groups.¹⁶⁹

Over Hoover's specific objection, this recommendation had also been contained as an option in the earlier Special Report of the intelligence agencies which led to the Huston Plan. In the Special Report, Hoover noted his objection in the following words:

The FBI is opposed to removing any present controls and restrictions relating to the development of campus sources. To do so would severely jeopardize its investigations and could result in charges that investigative agencies are interfering with academic freedom.¹⁷⁰

c. *The Removal of the Age Restriction.*—Despite Hoover's recorded opposition in June 1970 to expanded campus informer coverage and President Nixon's ultimate decision not to implement the Huston Plan, in September 1970 the FBI lifted the principal restriction on campus informant use. On September 15, 1970, the FBI authorized its field offices "to develop student security and racial informants who are 18 years of age or older."¹⁷¹ FBI Headquarters pointed out to the field that the removal of the age restriction presented the field "with a tremendous opportunity to expand your coverage."¹⁷²

The expanded campus coverage called for by FBI Headquarters was quickly implemented at the Field Office level as part of the FBI's effort to have New Left campus groups think "there is an FBI agent behind every mailbox."¹⁷³ On September 16, 1970—the day following the Headquarters letter lifting the age restriction—the Philadelphia Field Office for example, advised its agents:

The Director has okayed PSI's [potential security informants] and SI's [security informants] age 18 to 21. We have been blocked off from the critical age group in the past. Let us take advantage of this opportunity.¹⁷⁴

¹⁶⁷ Special Report of the Interagency Committee on Intelligence (Ad Hoc), the "Huston Plan," 6/70, (Hearings, Vol. 2, Exhibit No. 1.) p. 34.

¹⁶⁸ See the Detailed Report on the Huston Plan.

¹⁶⁹ Huston Plan, p. 30.

¹⁷⁰ Huston Plan, p. 30.

¹⁷¹ SAC Letter 70-48, 9/15/70.

¹⁷² SAC Letter 70-48, 9/15/70.

¹⁷³ Memorandum from Philadelphia Field Office, to FBI Headquarters, 9/16/70. The Philadelphia Field Office pointed out that on September 10 and 11, 1970, a conference at FBI Headquarters on the New Left had reached a consensus that FBI interviews with persons on campuses might result in identification of new campus informants and "will further serve to get the point across there is an FBI agent behind every mailbox." (*Ibid.*)

¹⁷⁴ *Ibid.*

III. THE INTELLIGENCE INFORMANT PROGRAM—SIZE, SCOPE AND STANDARDS

A. The Number of Intelligence Informants

As of June 30, 1975, the FBI was using over 1,500 domestic intelligence informants.¹⁷⁵ There were 1,040 FBI regular informants approved by Bureau Headquarters (another 554 were in probationary status pending establishment of their reliability).¹⁷⁶ The FBI programmed a total of \$7,401,000 for its intelligence informants program in Fiscal Year 1976. This amount is more than double the amount the FBI programmed for its organized crime informant program in 1976.¹⁷⁷

In addition to paid and directed informants, the FBI uses confidential and panel sources in its intelligence investigations. Confidential sources are defined by the FBI as individuals who furnish the FBI information available to them through their employment or position in the community.¹⁷⁸ The FBI Manual cites as examples of confidential sources "bankers, telephone company employees, and landlords."¹⁷⁹

In practice, FBI Field Offices designate individuals as confidential sources who are logical and convenient points of contact and infiltration. The source then becomes a matter of administrative record and is available to all agents in the Field Office, minimizing the need for an agent to start from scratch in selecting persons to interview when the need arises.¹⁸⁰ Confidential sources are not usually informed that they have been so designated, nor are they usually paid for any information they provide.¹⁸¹ As of June 1975, there were 605 confidential extremist sources, and 649 confidential subversive sources. (By comparison, in 1973 there were 837 confidential sources and, in 1972, 684 confidential subversive sources.)^{181a}

Panel sources are defined as individuals who are not involved in an investigated group but who "will attend its public gatherings on behalf of FBI for intelligence purposes or as potential witnesses."^{181b} Panel sources were first developed to meet the need for witnesses in the course of Smith Act trials of Communist Party members in the 1950s. In those trials, it was necessary to prove, for example, simple facts as to the existence of the Communist Party, the dates and places of public meetings held by the Party, and similar matters. To avoid surfacing

¹⁷⁵ Memorandum from the FBI to the Senate Select Committee, 11/28/75.

¹⁷⁶ By comparison, in 1971 the FBI had 1,731 regular informants, nearly 700 more than in 1975, and, as of 1972, 7,482 informants in the Ghetto Informant Program. The decline since 1971 in the number of regular informants is largely attributable to the decline in dissident political activity with the end of the Vietnam War and the institution of somewhat stricter standards for the opening or continuation of domestic intelligence investigations. As discussed above, the Ghetto Informant Program was discontinued in 1973.

¹⁷⁷ FBI, Overall Intelligence Program, FY 1977 Budget Compared to FY 1976. The cost of the intelligence informant program comprises payments to informants and FBI personnel, and overhead costs.

¹⁷⁸ FBI, MOI Sec. 107, A(4).

¹⁷⁹ FBI, MOI Sec. 107, A(4).

¹⁸⁰ FBI deposition, 2/10/76, p. 13.

¹⁸¹ FBI deposition, 2/10/76, pp. 10-12.

^{181a} *Ibid.*

^{181b} FBI, MOI, Sec. 107, A.

regular informants within the Party to establish such facts, panel sources were developed. Panel sources are used for similar purposes today.¹⁸² As of 1975, there were approximately 200 panel sources.¹⁸³

As discussed in more detail above, there were 7,482 informants in the Ghetto Informant Program in 1972, the year before its termination.

B. The FBI Administrative System for Intelligence Informants

The FBI administers its intelligence informants through a centralized system from Bureau Headquarters. FBI Special Agents may not operate or pay informants and sources without approval of FBI Headquarters or the Special Agent in charge of a Field Office. FBI Headquarters approval is required to designate an individual as a potential subversive informant.¹⁸⁴

All potential informants are subjected to a background check. Military records, police files, and employment and credit history are typical items reviewed.¹⁸⁵ The results of this background investigation are submitted to Bureau Headquarters. Potential extremist informants may be operated on the personal authority of the Special Agent in Charge at the Field Office level, unless the individual is in a sensitive position where his disclosure as an informant "could cause inordinate concern to the Bureau," is a member of or may soon join an extremist organization, or has a criminal or other unsavory background.¹⁸⁶ In such instances, FBI Headquarters' authority must be obtained, along with a statement outlining the intended use of the informant.¹⁸⁷

Although titled "potential" informants, such individuals nevertheless provide the FBI with intelligence information during this initial stage and are paid for what they supply.¹⁸⁸

Special Agents in Charge may pay an informant up to \$400 on their own authority;¹⁸⁹ after that amount has been expended Bureau Headquarters authorization is required for any additional payments.¹⁹⁰ Although there is no formal ceiling on payments for services (i.e., information provided) FBI informant: average approximately \$100 a month, with the most valuable and productive informants, such as Rowe and Cook, earning in the range of \$300-\$400 monthly.¹⁹¹

FBI Headquarters approval is required to raise both potential subversive and extremist informants to regular informant status. The request must be initialed by the Field Office SAC or his Deputy.¹⁹²

In addition, every six months FBI Headquarters reviews a completed form on each informant submitted by the Field Office. The form summarizes the informant's activities, his pay, the type of information supplied (including the percentage verified from other sources) and an assessment of his value. On the basis of this report, and a

¹⁸² FBI deposition, 2/10/76, pp. 16-17.

¹⁸³ *ibid.*

¹⁸⁴ FBI, MOI Sec. 107, D(1).

¹⁸⁵ FBI, MOI, Sec. 107.C.

¹⁸⁶ FBI, MOI, Sec. 130, C(1 and 2).

¹⁸⁷ FBI, MOI, Secs. 107, C; 103, D(1).

¹⁸⁸ FBI, MOI, Sec. 107, D(5).

¹⁸⁹ FBI, MOI, Sec. 107, I(2a).

¹⁹⁰ FBI, MOI, Sec. 107, L(3).

¹⁹¹ FBI deposition, 2/10/76, p. 6; Cook, 12/2/76, Hearings, Vol. 6, p. 12.

¹⁹² FBI, MOI, Sec. 106, D(10).

comparison of the informant's information with that of others in similar circumstances, a monthly payment limit is established for the next six-month period.¹²³

There are periodic reviews of informant activities in addition to those described above. The FBI Manual provides that every sixty days the SAC or his deputy are to review each informant's file.¹²⁴ In addition, the Inspection Division reviews informant files during its annual inspections of each Field Office.¹²⁵

To operate confidential and panel sources, FBI Headquarters approval is also required. Background investigations are also performed on these sources and the results submitted to Bureau Headquarters.¹²⁶

Each informant is assigned a "handling agent," an FBI Special Agent who is in contact with the informant on a regular basis, receives the informant's information, and pays him, usually on a monthly basis. The Manual provides that the handling agent "should not only collect information, but direct the informant, be aware of his activities, and maintain such close a relationship that he knows informant's attitude towards the Bureau."¹²⁷

The FBI Manual contains detailed provisions for the correction of false information.¹²⁸ If it is learned an informant has given false information, "all communications which have been disseminated to (FBI HQs), other Bureau offices and to outside agencies must be corrected."¹²⁹ In addition, corrective letters are to be written to amend any reports which contain the incorrect information. Moreover, a control file is to be established and a letter to FBI HQs must be sent which is to be used "to check all pertinent Bureau files to see that necessary corrective action has been taken."¹³⁰

The Manual also provides that informants must submit written reports or sign transcriptions of their oral reports.^{130a} A limited exception to this rule exists for extremist informants who may submit oral reports in cases of imminent violence.^{130b}

C. Standards for the Use of Intelligence Informants

There are three types of standards for intelligence informants. These are (a) the criteria that govern the decision to use informants against groups and individuals; (b) the limits that are set on the type of information an informant may report to the FBI; and (c) the limits that are placed on an informant's conduct.

At present, the standards for intelligence informants are contained in internal FBI directives. There are no statutes or published government regulations to govern the use of intelligence informants.

¹²³ FBI, MOI, Sec. 107, L(3).

¹²⁴ Letter from the FBI to the Senate Select Committee, 12/2/75, Hearings, Vol. 6, Exh1b't 83.

¹²⁵ *Ibid.*

¹²⁶ FBI, MOI Secs. 107, R(5), S(2)

¹²⁷ FBI, MOI Secs. 107, R(5), S(2).

¹²⁸ The process for verifying any informant's information is a continuous one in which the Handling Agent cross checks an informant's reports through other sources and separate investigation. Memorandum from the FBI to the Senate Select Committee, 12/2/75, p. 4.)

¹²⁹ FBI, MOI Sec. 107, Q(4).

¹³⁰ FBI, MOI Sec. 107, Q(9).

^{130a} FBI, MOI Sec. 107(G), 180(M)

^{130b} FBI, MOI Sec. 180(M-1d)

Unlike wiretap and electronic surveillance, which are subject to an elaborate system of review and approval by the Department of Justice and the courts, there is no review outside the FBI of decisions on intelligence informants. Thus, decisions as to intelligence informant coverage—e.g., the number of informants to be used in an investigation, the scope and duration of their reporting—are made exclusively by FBI officials. In addition, since the standards for informant use are in internal FBI directives, it is also within the discretion of FBI officials to change these standards.

1 Criteria for the Decision to Use Informants

Under the FBI Manual, once a full intelligence investigation of a group or individual is opened, informants can be used without limitation. In a preliminary investigation, established informants may supply information, but new informants may not be recruited.²⁰⁰

Since September 1973, the FBI has distinguished between full intelligence investigations and preliminary ones, and has imposed differing limitations on the length, scope, and sources of information for preliminary investigations. A preliminary investigation may be undertaken when the subject's involvement in subversive or extremist activities is questionable or unclear to further define his involvement and to determine whether a statutory basis exists for a full investigation. A preliminary investigation is supposed to be confined to a review of public source documents, record checks, and established sources and informants. The General Accounting Office Study on FBI domestic intelligence operations found, however, that in practice, FBI Field Offices have not adequately distinguished between the two types of investigations.²⁰¹ In particular, the GAO found that the limits on the use of informants in preliminary investigations was subject to varying interpretations and loose observance. The GAO Study stated:

Although the Manual of Instructions confines the scope of preliminaries to the use of established sources, our review of the cases showed that the 10 field offices generally used the same sources in the preliminary cases as full-scale cases.

Most of the field offices interpreted "established sources" broadly and did not believe the type of investigation placed restrictions on who was contacted. An "established source" was generally described by the field offices as being any source previously used by the Bureau. In addition, some field offices indicated that information could come from whatever source—established or otherwise—which is necessary to establish a subject's identity and subversive or extremist affiliation.²⁰²

Under current standards, full domestic intelligence investigations may be opened on groups or individuals—and thus informants may be recruited and targeted against them—if (1) they have, or allegedly

²⁰⁰ FBI, MOI Sec. 87, (F).

²⁰¹ GAO Study, p. 27.

²⁰² GAO Study, pp. 118-114.

have, violated certain statutes;²⁰³ (2) they are "engaged in activities which *may* result in" a violation of these statutes, (3) they *advocate* activities which *may* result in a violation of these statutes.²⁰⁴

Informants may also infiltrate groups who are not the subject of intelligence investigations under certain circumstances. The FBI Manual provides that if a group which is the subject of a subversive investigation is seeking "to systematically infiltrate and control" another group, an intelligence investigation of the infiltration (as opposed to the second group itself) may be opened.²⁰⁵ Informants may join or participate in the activities of the second group if requested by the first group.

In addition, subversive investigations under Section 87 of the FBI Manual examine any significant connections or cooperation between a group under investigation and any other groups.²⁰⁶

Thus, under this standard, informants in the group under investigation may report on those who happen to work with the group or its members under investigation, even if the cooperation involves lawful activity.

In summary, the scope of informant coverage may extend to (1) groups that are the subject of intelligence investigations; (2) groups which an investigated group is attempting to infiltrate or control; and (3) groups having "significant connections," or which cooperate with investigated groups.

2. Limits on the Information an Informant May Report

There are few limits on the information an informant may report to the FBI. The FBI Manual does not limit an intelligence informant's reporting to information relating to the planning or commission of criminal offenses or violence. As indicated by the case histories examined earlier, informants are expected to report virtually everything they observe regarding a group or individual's activity to fulfill their intelligence purpose.

One rationale for this unlimited reporting was expressed by FBI officials in their testimony to the Committee. In response to a question as to the desirability of limiting an informant's reporting to information pertaining to violence or criminal activity, Deputy Associate Director Adams stated:

Here is the problem that you have with that. When you're looking at an organization, do you report only the violent

²⁰³ For subversive intelligence investigations, the principal statutes are 18 U.S.C. 2383-85 relating to rebellion or insurrection, seditious conspiracy, and advocating the overthrow of the government. The same statutes are involved in extremist investigations as well as the Civil Rights Act, 18 U.S.C. 241.

²⁰⁴ FBI Manual of Instruction, Section 87, A.(1)(4); Section 122, A.(1)(2). Section 87, A.(1) dealing with subversive investigations, provides, for example: "Investigations conducted under this section are to be directed to the gathering of material pertinent to a determination whether or not the subject has violated, or is engaged in activities which *may* result in a violation of [certain statutes] or in fulfillment of Departmental Instructions." [Emphasis added.]

The manual further provides that "subversive organization" or "subversive movement" denotes a (FBI, MOI Sec. 107.A(4)) group "which is known to . . . *advocate* subversive activities." [Emphasis added.] Subversive activities are defined in terms of activities which violate or may violate relevant statutes. (FBI, MOI Sec. 107.A(1).)

²⁰⁵ FBI, MOI, Sec. 87, B.4.

²⁰⁶ FBI, MOI Sec. 107, B(8-9)

statements made by the group or do you also show that you may have one or two violent individuals, but you have some of these church groups that were mentioned, and others, that the whole intent of the group is not in violation of the statutes. You have to report the good, the favorable along with the unfavorable, and this is a problem. We wind up with information in our files. We are accused of being vacuum cleaners, and [we] are a vacuum cleaner. If you want to know the real purpose of an organization, do you only report the violent statements made and the fact that it is by a small minority, or do you also show the broad base of the organization and what it really is? ²⁰⁷

However, FBI officials indicated that new limits on the scope of an informant's reporting were needed. As Adams stated ". . . we have to have guidelines . . . we have to narrow down [informant reporting] because we recognize we do wind up with too much information in our files."^{207a}

The FBI Manual does proscribe the reporting of certain types of information. First, informants are not to report certain legal defense information. The Manual states intelligence informants should decline to assist in legal defense matters or to "handle an assignment where such information is readily available."²⁰⁸ If an informant cannot avoid involvement, his handling agent is to instruct the informant "not to report any information pertaining to defense plans or strategy."²⁰⁹ The Manual's limitations on legal-related information are as follows:

If an informant is present in conversation between an attorney and individual under criminal indictment, he should immediately leave. If he is unable to do so and inadvertently learns of defense plans or strategy, he is not to report the substance of any conversation to the FBI. Additionally, the informant is not to engage in or report the substance of a conversation with a criminal defendant dealing with the offense for which the defendant is under indictment.²¹⁰

The FBI interprets these provisions as prohibiting only the reporting of privileged attorney-client communications or legal defense matters in connection with a specific proceeding. So-called "standard" legal defense information, such as manuals for general use in legal matters, can be taken by an informant and given to the FBI. The meaning of legal "defense plans or strategy" is not defined in the FBI Manual and can lead to varying interpretations of what can be reported. Thus, as indicated above, Cook's FBI handling agent testified he took from Cook papers discussing legal matters involving the VVAW.

She brought back several things . . . various position papers taken by various legal def. so groups, general statements of . . . the VVAW. legal thoughts on various trials, the Gaines-

²⁰⁷ James Adams testimony, 12/2/75, Hearings, Vol. 3, p. 135.

^{207a} *Ibid.*

²⁰⁸ FBI, MOI Sec. 107, A(12).

²⁰⁹ *Ibid.*

²¹⁰ FBI, MOI Sec. 107, F(12e)

ville (Florida) 8 . . . the Camden (New Jersey) 9. . . Various documents from all of these groups.²¹¹

Cook also testified that she gave the FBI a confidential legal manual prepared by VVAW attorneys as a guide for legal defense of VVAW members in the event of prosecution for dissident activity.²¹² Since this manual did not derive from an attorney-client communication in connection with a specific court proceeding, the FBI considered the VVAW legal defense manual could be taken.

Besides the above limit on legal information, the only other limitations in the FBI Manual on reporting concern informants in labor unions and at colleges and universities. The Manual states that if an informant "is connected in any manner with labor union, inform him that Bureau is not interested in employer-employee relationships as such and is only concerned with obtaining information on infiltration of unions by subversive elements."²¹³ Similarly, student informants or sources at colleges and universities are to be told that the FBI "has no interest in legitimate institution or campus activities."²¹⁴

3. Limits on an Informant's Conduct and Behavior

The FBI Manual contains provisions dealing with the "direction and control of informants." The Manual states:

Contacting Agent should not only collect information but direct informant, be aware of his activities. . . .

Close control must be exercised over activities of informants to obtain maximum results and prevent any possible embarrassment to Bureau.²¹⁵

The Manual speaks of exercising control in order to obtain "maximum results" and prevent "embarrassment" to the Bureau; it does not, however, contain any guidelines as to the limits on informant conduct with respect to violence or illegal conduct.

The FBI points to the limits on FBI Special Agents as the means by which guidelines for intelligence informants are applied. The FBI memorandum to the Committee states: "Specifically, informant development and handling are extensively discussed in the FBI's training programs and there is no question as to Special Agents being aware that informants cannot be directed to perform a function that the Special Agent may not legally perform."²¹⁶ The FBI memorandum also points to the FBI Rules and Regulations which state that FBI employees "must not engage in any investigative activity which could abridge in any way" constitutional rights of citizens.²¹⁷

These limits apply to FBI Agents and employees in their handling of informants. However, the FBI does not consider informants as FBI employees or "undercover agents," and informants are so advised.²¹⁸ Thus, these limits are not directly applicable to informants.

²¹¹ Special Agent 11/20/75, pp. 15-10.

²¹² Cook deposition, 11/14/75, p. 30.

²¹³ FBI, MOI Sec. 107D(2d).

²¹⁴ FBI, MOI, Sec. 107U(1-b).

²¹⁵ Manual, Section 107, F(4) (7).

²¹⁶ FBI Memorandum, 2/2/70, p. 3.

²¹⁷ *Ibid.*

²¹⁸ FBI, MOI Sec. 107, O(7).

On December 23, 1974, FBI Headquarters reiterated the rules for FBI employee conduct by the Director to all FBI Field Offices and further stated: "You are reminded that these instructions relate to informants in the internal security [domestic intelligence] field and no informant should be operated in a manner which would be in contradiction of such instructions."²¹⁰ This instruction appears to be the only written provision applying FBI employee conduct standards to informants.²¹⁰ Prior to the issuance of this instruction in 1974, there were no formal or specific provisions relating to informant conduct in FBI directives. The resulting effect on FBI agent direction of informants can be illustrated by two additional cases. The first case involved an FBI informant in a group of anti-war protestors. In August 1970, this group broke into the Camden, New Jersey, Draft Board, after several months of planning and preparation. The informant, Robert Hardy, testified that he provided essential direction and materials to the group, making the break-in possible. Hardy testified:

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 [FBI] got off their own agents.²¹¹

Second, in late 1966 or early 1967 the FBI Field Office in San Diego, California was approached by one Howard Berry Godfrey. Godfrey testified that he was "approached" by a member of a right-wing paramilitary group to join. The Committee received varying information concerning why Godfrey contacted the FBI and at whose initiative the informant relationship arose.²¹² In any event, Godfrey and the FBI entered into a relationship in 1967 by which Godfrey would provide the Bureau information. This relationship was formalized in August of 1967 when Godfrey was officially "approved" by the FBI's Washington Headquarters as an informant.

Godfrey's relationship with the FBI lasted over five years, terminating in November of 1972. Godfrey was paid varying amounts from 1967 through 1970 when he began to receive \$250 per month plus up

²¹⁰ Memorandum from FBI Headquarters to all SAC's, 12/23/74.

²¹¹ FBI officials testified, however, that it is unwritten 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. . . ." (Adams, 12/2/75, Hearings, Vol. 6, p. 150.)

²¹² Hardy testimony, 9/29/75, pp. 16-17.

²¹³ Staff summary of Howard Berry Godfrey interview, 1/18/76.

to \$100 per month in expenses.²²⁴ He continued at that level until his termination.²²⁵

Godfrey's case study, albeit dealt with here briefly, illustrated a number of the issues which wove their way through the Committee's inquiry into the FBI's use of informants. The first issue is control over the informant by the Bureau. In accord with FBI procedure, Godfrey always was assigned to a principal case agent. The Committee's investigation determined, however, that the actions of Godfrey and his cohorts in the San Diego area were rife with destruction and violence. There is little evidence, other than Godfrey's less than convincing claims, that he actually prevented any violence or destruction from occurring. As a member of the District Attorney's office told the Committee:

They [the FBI] couldn't control him [Godfrey]. Godfrey's actions went well beyond those which we would allow any informant operating under this office to become involved in.²²⁶

For a large part of his time as an FBI informant, the responsibility for monitoring Godfrey was in the hands of a single FBI agent. Moreover, under Bureau procedure, the reports of the informant are only sent to Washington every six months. And, the reports in the case of Godfrey were largely "form" type responses, providing an inadequate basis for any reviewing authority in Washington to determine Godfrey's usefulness.

The second overriding issue present in the Godfrey case study was how the Bureau could prevent the informant from actually inciting, encouraging or participating in violence and/or destruction without losing his utility as an informant. Godfrey admits to participating in some violence and destruction and the record suggests that he may have participated in even more than he now admits to.²²⁷

Examples of the types of actions Godfrey and/or the Secret Army were involved in include firebombing, smashing windows, placing stickers bearing SAO or Minutemen symbols on cars and buildings, propelling lug nuts through windows with sling shots, and breaking and entering.²²⁸

Upon questioning by the Committee, all FBI agents who dealt with Godfrey testified that while Godfrey was specifically instructed never to engage in illegal acts such as firebombings, etc., they recognized that this was often difficult if not impossible to accomplish. One FBI agent put it this way:

Weil, I remember almost on a daily basis, this matter would come up. What can I do such and such. And I've said, well, obviously you can't do that. Stay with them as long as you

²²⁴ It should be noted, however, that Godfrey did not always receive exactly \$250; it often depended upon the degree of his activity.

²²⁵ As earlier referenced, the average FBI informant salary was \$100 per month.

²²⁶ Staff summary of member of San Diego District Attorney's office interview, 1/22/76.

²²⁷ Staff summary of Godfrey interview, 1/18/76.

²²⁸ Indeed, the literature of the Secret Army features a pamphlet which instructs the public in the art of burglary complete with diagrams of "forced entry of building."

can and then find some logical excuse to bow out at the last minute. But he was never asked by me to participate in anything that I would consider illegal or that I think that he would consider illegal and to the best of my recollection, during our association. I can't recall anything specific . . . Now there were occasions when I know that he didn't get out of it. He might have been in one, he had to go and be involved or he would have been out of the group. I really don't remember anything right definite at this time but there were several of those cases, no question about it.²²⁹

And, Godfrey himself described his instructions as:

Q. Was there ever a conversation in which [you and the FBI agent] decided [that] while you would attempt to stay out of [a violent or destructive activity] if it came down to either getting involved in it, or having to just leave the scene [with] a number of questions [being] asked later, under those circumstances that you would go ahead and do the particular activity?

A. Yes.²³⁰

The SAO's actions escalated to a level of violence and destruction where Godfrey's name had to be revealed as an FBI informant. Two events precipitated this. The first was the shooting of Paula Tharp, who was in the residence of the San Diego State University professor Peter Bohmer. Briefly, while Godfrey and an SAO associate were "on a surveillance" of Bohmer's residence (instituted by Godfrey), the associate, according to Godfrey, picked up a gun Godfrey had under the seat of his car and fired shots into the Bohmer house, one of which struck Ms. Tharp.²³¹ Previously the SAO and Godfrey had singled out Professor Bohmer in their literature for special attention:

For any of our readers who may care to look up Red Scum, and say hello, here is some information that may help. His address is 5155 Muir, Ocean Beach, telephone number is 222-7243, he drives a dark blue 1968 VW Sedan, California licence DKY 147. Just to make sure you talk to the right guy here is his description: he has dark brown shoulder length hair, green eyes, weight is about 160 lbs. and he is 5'10" tall. Now in case any of you don't believe in hitting people who wear glasses, to be fair I guess we will have to tell you he wears contact lenses. [sic]

The significant factor for the Committee's analysis of FBI informants is that even this shooting incident did not immediately terminate Godfrey as an informant. Rather the FBI records show that Godfrey remained on the Bureau payroll until November, 1972.

²²⁹ Staff summary of FBI Agent #1 interview, 1/22/70, pp. 26-27.

²³⁰ Staff summary of Godfrey interview, 1/18/70, pp. 54-55.

²³¹ This incident is not only a matter of pending civil litigation but Godfrey's SAO associate was convicted in a criminal trial in San Diego. The details of the shooting are a matter of public record in the trial transcript.

And, it was not until the second major act of destruction that Godfrey was "surfaced" as an informant.²³²

The second major act of destruction which occurred was the bombing of the Guild theatre in San Diego. According to Godfrey, the bombing was perpetrated by his subordinate in the SAO, one William Yakopec.²³³ Godfrey participated in the SAO sale of some explosives to Yakopec. Yet, he promptly notified the FBI of Yakopec's alleged involvement in the Guild Theatre bombing. Yakopec, who maintains his innocence, was subsequently indicted and convicted of the bombing offenses in the local courts of San Diego.

Godfrey testified publicly at both the Yakopec and Hoover trials and was thereafter re-located to another part of California and ceased to serve as an FBI informant. Godfrey's use as a Government informant is now in litigation.

The intelligence informant technique is not a precise instrument. By its very nature, it risks governmental monitoring of Constitutionally-protected activity and the private lives of Americans. Unlike electronic surveillance and wiretaps, there are few standards and no outside review system for the use of intelligence informants. Consequently, the risk of chilling the exercise of First Amendment rights and infringing citizen privacy is increased. In addition, existing guidelines for informant conduct, particularly with respect to their role in violent organizations and FBI use of intelligence informants to obtain the private documents of groups and individuals, need to be clarified and strengthened.

²³² Godfrey did turn over the weapon to his FBI supervisor after the shooting. The FBI did tell a representative of the San Diego police department that they had an informer who was a witness to the shooting, but neither this information nor the existence of the gun was furnished to the unit of the San Diego Police Department which investigated the Sharp shooting for several months.

²³³ Godfrey testified before a San Diego grand jury that Yakopec was a "lieutenant in my—an assistant San Diego County commander."

WARRANTLESS FBI ELECTRONIC SURVEILLANCE

CONTENTS

	Page
I. Introduction.....	273
II. Presidential and Attorney General Authorization for Warrantless Wiretapping.....	277
A. Pre-1940.....	277
B. 1940 to 1968.....	279
1. The Roosevelt administration.....	279
2. The Truman administration.....	282
3. The Eisenhower administration.....	283
4. The Kennedy administration.....	285
5. The Johnson administration.....	285
C. The Omnibus Crime Control Act of 1968.....	288
D. Justice Department Criteria for Warrantless Wiretaps: 1968 to 1975.....	289
1. 1968-72.....	289
2. The <i>Keith</i> case: 1972.....	290
3. 1972-75.....	291
III. Presidential and Attorney General Authorization for Warrantless Microphone Surveillance.....	293
A. Pre-1952.....	294
1. 1931-1942.....	294
2. 1942-1952.....	294
B. 1952 to 1965.....	295
C. 1965 to the Present.....	298
IV. An Overview of FBI Electronic Surveillance Practice.....	300
A. Extent of FBI Electronic Surveillance: 1940 to 1975.....	300
1. Annual totals for wiretaps and microphone installations.....	301
2. FBI policy on the maximum number of simultaneous electronic surveillances.....	301
B. Requests, Approvals, and Implementation.....	303
1. The request and approval process.....	303
2. Implementation of wiretaps and bugs.....	304
C. The ELSUR Index.....	305
D. Congressional Investigation of FBI Electronic Surveillance Practices: The Long Subcommittee.....	307
V. Warrantless FBI Electronic Surveillance of Foreign Intelligence and Counterintelligence Targets within the United States.....	310
A. Purpose and Value as an Investigative Technique.....	311
B. Foreign Surveillance Abuse Questions.....	312
1. Dissemination of domestic intelligence from incidental overhears.....	313
2. Indirect targeting of American citizens through electronic surveillance of foreign targets.....	314
VI. Warrantless FBI Electronic Surveillance of American Citizens.....	315
A. Electronic Surveillance Predicated on Subversive Activity.....	316
B. Electronic Surveillance Predicated on Violent Activity.....	318
C. Electronic Surveillance Predicated on Leaks of Classified Information.....	321
D. Electronic Surveillance Predicated on Other Grounds.....	328

	Page
VII. Domestic Surveillance Abuse Questions.....	332
A. Questionable and Improper Selection of Targets.....	332
1. Wiretaps under the "domestic security" standard....	332
2. Microphone surveillance under the "national interest" standard.....	334
3. Wiretaps and microphone surveillances under the five criteria based on Section 2511(3).....	335
4. Electronic surveillance of journalists, attorneys, and persons involved in the domestic political process....	339
B. Procedural Violations.....	342
C. Collection and Dissemination of Information Irrelevant to Legitimate Governmental Objectives.....	344
1. Personal information.....	344
2. Political information.....	345

WARRANTLESS FBI ELECTRONIC SURVEILLANCE

I. INTRODUCTION

Technological developments in this century have rendered the most private conversations of American citizens vulnerable to interception and monitoring by government agents. The electronic means by which the Government can extend its "antennae" are varied: microphones may be secretly planted in private locations or on mobile informants; so-called "spike mikes" may be inserted into the wall of an adjoining room; and parabolic microphones may be directed at speakers far away to register the sound waves they emit. Telephone conversations may be overheard without the necessity of attaching electronic devices to the telephone itself or to the lines connecting the telephone with the telephone company. An ordinary telephone may also be turned into an open microphone—a "mikotel"—capable of intercepting all conversations within hearing range even when the telephone is not in use.

Even more sophisticated technology permits the Government to intercept any telephone, telegram, or telex communication which is transmitted at least partially through the air, as most such communications now are. This type of interception is virtually undetectable and does not require the cooperation of private communications companies.

Techniques such as these have been used, and continue to be used, by intelligence agencies in their intelligence operations. Since the early part of this century the FBI has utilized wiretapping and "bugging" techniques in both criminal and intelligence investigations. In a single year alone (1945), the Bureau conducted 510 wiretaps and 186 microphone surveillances (excluding those conducted by means of microphones planted on informants).¹ Until 1972, the Bureau used wiretaps and bugs against both American citizens and foreigners within the United States—without judicial warrant—to collect foreign intelligence, intelligence and counterintelligence information, to monitor "subversive" and violent activity, and to determine the sources of leaks of classified information. The FBI still uses these techniques without a warrant in foreign intelligence and counterintelligence investigations.

The CIA and NSA have similarly used electronic surveillance techniques for intelligence purposes. The CIA's Office of Security, for example, records a total of fifty-seven individuals who were targeted by telephone wiretaps or microphones within the United States between the years 1947 and 1968.² Of these, thirty were employees or former employees of the CIA or of another federal agency who were presumably targeted for security reasons; four were United States

¹ Attorney General Edward H. Levi testimony, 11/8/75, Hearings, Vol. 5, D. 68.

² Office of Security, Domestic Surveillance summary, undated.

citizens unconnected with the CIA or any federal agency.³ One of the primary responsibilities of the National Security Agency (NSA) is to collect foreign "communications intelligence." To fulfill this responsibility, it has electronically intercepted an enormous number of international telephone, telegram, and telex communications since its inception in the early 1950's.⁴

Electronic surveillance techniques have understandably enabled these agencies to obtain valuable information relevant to their legitimate intelligence missions. Use of these techniques has provided the Government with vital intelligence, which would be difficult to acquire through other means, about the activities and intentions of foreign powers, and has provided important leads in counterespionage cases.

By their very nature, however, electronic surveillance techniques also provide the means by which the Government can collect vast amounts of information, unrelated to any legitimate governmental interest, about large numbers of American citizens. Because electronic monitoring is surreptitious, it allows Government agents to eavesdrop on the conversations of individuals in unguarded moments, when they believe they are speaking in confidence. Once in operation, electronic surveillance techniques record not merely conversations about criminal, treasonable, or espionage-related activities, but all conversations about the full range of human events. Neither the most mundane nor the most personal nor the most political expressions of the speakers are immune from interception. Nor are these techniques sufficiently precise to limit the conversations overheard to those of the intended subject of the surveillance: anyone who speaks in a bugged room and anyone who talks over a tapped telephone is also overheard and recorded.

The very intrusiveness of these techniques implies the need for strict controls on their use, and the Fourth Amendment protection against unreasonable searches and seizures demands no less. Without such controls, they may be directed against entirely innocent American citizens, and the Government may use the vast range of information exposed by electronic means for partisan political and other improper purposes. Yet in the past the controls on these techniques have not been effective; improper targets have been selected and politically useful information obtained through electronic surveillance has been provided to senior administration officials.

Until recent years, Congress and the Supreme Court set few limits on the use of electronic surveillance. When the Supreme Court first considered the legal issues raised by wiretapping, it held that the warranted use of this technique was not unconstitutional because the Fourth Amendment's warrant requirement did not extend to the seizure of conversations. This decision, the 1928 case of *Olmstead v. United States*, 277 U.S. 438, arose in the context of a criminal prosecution, and it left agencies such as the Bureau of Prohibition and the Bureau of Investigation (the former name of the FBI) free to engage in the unrestricted use of wiretapping in both criminal and intelligence investigations.

³ Office of Security, Domestic Surveillance summary, undated.

⁴ See generally the Select Committee's Report on NSA.

Six years later, Congress imposed the first restrictions on wiretapping in the Federal Communications Act of 1934,⁵ which made it a crime for "any person" 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 ordinary citizens, and held that evidence obtained directly or indirectly from the interception of wire and radio communications was inadmissible in court.⁶ But Congress acquiesced in the Justice Department's interpretation that these cases did not prohibit wiretapping *per se*, only the divulgence of the contents of wire communications outside the federal establishment,⁷ and government wiretapping for purposes other than prosecution continued.

The Supreme Court reversed its holding in the *Olmstead* case in 1967, holding in *Katz v. United States*, 389 U.S. 347 (1967), that the Fourth Amendment's warrant requirement did apply to electronic surveillances. But it expressly declined to extend this holding to cases "involving the national security."⁸ Congress followed suit the next year in the Omnibus Crime Control Act of 1968,⁹ 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"¹⁰—a provision which has been relied upon by the Executive Branch as permitting "national security" electronic surveillances.

In 1972, the Supreme Court again addressed the issue of warrantless electronic surveillance. It held in *United States v. United States District Court*, 407 U.S. 297 (1972), that the constitutional power of the President did not extend to authorizing warrantless electronic surveillance in cases involving threats to the "domestic security." The Court distinguished—but remained silent on—the question of warrantless electronic surveillance where there was a "significant connection with a foreign power": its agents or agencies.¹¹

Without effective guidance by the Supreme Court or Congress, executive branch officials developed broad and ill-defined standards for the use of warrantless electronic surveillance. Vague terms such as "subversive activities," "national interest," "domestic security," and "national security" were relied upon to electronically monitor many individuals who engaged in no criminal activity and who, by any ob-

⁵ 47 U.S.C. 605.

⁶ *Yardone v. United States*, 302 U.S. 307 (1927); 308 U.S. 338 (1939).

⁷ See pp 278-279.

⁸ 389 U.S. at 358 n. 28.

⁹ 18 U.S.C. 2510-20.

¹⁰ 18 U.S.C. 2511(3).

¹¹ 407 U.S. at 309 n. 8. *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 Courts of Appeal 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*, 404 F.2d 593 (3d Cir. 1974), cert. denied *sub. n. v. 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. 980 (1974).) The Court of Appeals for the District of Columbia 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*, 510 F.2d 594 (D.C. Cir. 1975) (*en banc*)). See p. 202.

jective standard, represented no genuine threat to the security of the United States.

The secrecy which has enshrouded the warrantless use of this technique moreover, facilitated the occasional violation of the generally meager procedural requirements for warrantless electronic surveillance. Since the early 1940's, for example, Justice Department policy has required the approval of the Attorney General prior to the institution of wiretaps;¹² such approval has been required prior to the institution of microphone surveillances since 1965.¹³ This requirement has often been ignored for wiretaps and bugs,¹⁴ and it was not even applied to NSA's electronic monitoring system and its program for "Watch Listing" American citizens. From the early 1960's until 1973, NSA compiled a list of individuals and organizations, including more than one thousand 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. The Americans on the list, many of whom were active in the anti-war and civil rights movements, were placed there by the FBI, CIA, Secret Service, Defense Department, and the Bureau of Narcotics and Dangerous Drugs without judicial warrant, without prior approval by the Attorney General, and without a determination that they satisfied the executive branch standards for warrantless electronic surveillance.¹⁵ For many years in fact, no Attorney General even knew of this project's existence.¹⁶

Electronic monitoring by the National Security Agency and the CIA, however, is outside the scope of this Report. This Report focuses exclusively on the FBI's use of electronic surveillance; NSA's monitoring system is described at length in the Committee's Report on NSA. Because the legal issues and the FBI's policy and practice regarding consensual monitoring devices such as "body recorders" are distinct from those of nonconsensual wiretaps and microphone installations,¹⁷ the Report is also confined to the latter forms of electronic surveillance.

¹² See p. 288.

¹³ See p. 208.

¹⁴ S. pp. 842-843.

¹⁵ See generally, NSA Report: Sec. II.

¹⁶ NSA Report: Sec. II.

¹⁷ Consensual electronic surveillance, where one party to the conversation consents to the monitoring, has been held by the Supreme Court not to be covered by the Fourth Amendment. (*United States v. White*, 401 U.S. 745 (1971.)) However, the Committee has discovered that the FBI used such techniques in unjustified circumstances and with inadequate controls.

In 1970, all FBI field offices were instructed that "Special Agents in Charge (SACs) may, on their own initiative, authorize the use of concealed recording devices by a Special Agent or proven source in covering public appearances by black and New Left extremists except when such appearances are at educational institutions." (Memorandum from FBI Headquarters to all field offices, 11/5/70.)

In view of the broad meaning given the term "black and New Left extremists" by the Bureau at that time, this policy vested wide discretion in the field to use consensual electronic surveillance to record lawful political expression. Bureau informants could be "wired" to record everything they heard at a public

II. PRESIDENTIAL AND ATTORNEY GENERAL AUTHORIZATION FOR WARRANTLESS WIRETAPPING

FBI use of warrantless wiretapping for limited purposes has received the approval of Presidents and Attorneys General consistently—with only one three month exception in 1940—from 1931 to the present day. The legal theories advanced to justify the use of this technique, however, have been developed almost entirely by the executive branch itself, and have been "legitimized" largely by the reluctance of Congress and the Supreme Court to confront directly the arguments presented by executive officers.

The evolution of executive branch wiretapping policies from 1924 to 1975, and of the legislative and judicial reaction to these policies, is summarized below.

A. Pre-1940

Justice Department records indicate that the first time an Attorney General formally considered the propriety of warrantless wiretapping for either law enforcement or intelligence purposes, he found it to be "unethical:" in 1924, Attorney General Harlan Fiske Stone ordered a prohibition on the use of this technique by Justice Department personnel, including those of the Bureau of Investigation (the original name of the Federal Bureau of Investigation).⁸ To implement this policy, the Director of the Bureau of Investigation, with the approval of Stone's successor, Attorney General John G. Sargent, included the following section in the Bureau's *Manual of Rules and Regulations*:

Unethics! tactics: Wiretapping, entrapment, or the use of any other improper, illegal, or unethical tactics in procuring information in connection with investigative activity will not be tolerated by the Bureau.¹⁰

This prohibition only applied to the Justice Department. During the 1920's, wiretapping was extensively used by the Bureau of Prohibition, then a part of the Department of the Treasury, in its investigations of violations of the National Prohibition Act. In *Olmstead v. United States*, 277 U.S. 438 (1928), criminal defendants charged with violating this Act challenged the Bureau of Prohibition's use of this technique, but the challenge was unsuccessful. In that case, the Court held that evidence obtained from wiretapping which did not involve a

meeting, and there was no requirement that the technique be limited to the investigation of possible crime.

In 1972, however, Attorney General Richard Kleindienst issued a directive to all federal agencies, including the FBI, stating:

"All federal departments and agencies shall, except in exigent circumstances . . . obtain the advance authorization of the Attorney General or any designated Assistant Attorney General before using any mechanical or electronic device to overhear, transmit, or record private conversations other than telephone conversations without the consent of all the participants. Such authorization is required before employing any such device, whether it is carried by the cooperating participant or whether it is installed on premises under the control of the participant." (Memorandum from Attorney General Kleindienst to the Heads of Executive Departments and Agencies, 10/10/72.)

⁸ Memorandum from William Olson, Assistant Attorney General for Internal Security, to Attorney General Elliot Richardson, undated.

¹⁰ FBI *Manual of Rules and Regulations*, Rule change issued 8/1/28.

physical intrusion or trespass was admissible and that wiretapping was not unconstitutional because the Fourth Amendment's protections did not apply to the seizure of conversations. The Bureau of Prohibition continued thereafter to employ this technique in its investigations, but the restrictive policy of the Justice Department remained unchanged for the next three years.

In 1930, the Bureau of Prohibition was transferred from the Treasury Department to the Justice Department, and the differing policies regarding wiretapping posed a problem for Attorney General William B. Mitchell. "[T]he present condition in the Department cannot continue," he wrote. "We cannot have one Bureau in which wiretapping is allowed and another in which it is prohibited."²⁰ He ultimately resolved his dilemma by permitting both the Bureau of Investigation and the Bureau of Prohibition to engage in wiretapping with senior level approval for limited purposes.

On February 19, 1931, instructions were issued at the direction of Attorney General Mitchell stating that no wiretap should be instituted without the written approval of the Assistant Attorney General in charge of the particular case, and that such approval would only be given in cases "involving the safety of victims of kidnappings, the location and apprehension of desperate criminals, and in espionage and sabotage and other cases considered to be of major law enforcement importance."²¹ The *Manual*'s provision relating to wiretapping was consequently altered to read as follows:

Wiretapping: Telephone or telegraph wires shall not be tapped unless prior authorization of the Director of the Bureau has been secured.²²

Three years later, Congress' first pronouncement on wiretapping threatened to invalidate the policy enunciated by Mitchell: in June 1934, Congress enacted Section 605 of the Federal Communications Act, 47 U.S.C. 605, which made it a crime for "any person" to intercept and divulge or publish the contents of wire and radio communications. The Supreme Court construed this section in 1937 to apply to Federal agents and held that evidence obtained from the interception of wire and radio communications was inadmissible in court.²³ The Court elaborated on this decision two years later, holding that not only was evidence obtained from such interceptions inadmissible, but that evidence indirectly derived from such interceptions was equally inadmissible.²⁴

The Justice Department did not interpret these decisions as prohibiting the interception of wire communications *per se*, however; only the interception and divulgence of their contents outside the federal establishment was considered by the Department to be unlawful.²⁵ Even after the *Nardone* decisions, the Department continued to authorize warrantless wiretapping, albeit with the recognition

²⁰ Memorandum from William Olson to Elliot Richardson, undated.

²¹ *Ibid.*

²² *FBI Manual of Rules and Regulations*, Rule change issued 2/19/31.

²³ *Nardone v. United States*, 302 U.S. 397 (1937).

²⁴ *Nardone v. United States*, 308 U.S. 338 (1939).

²⁵ For example, letter from Attorney General Robert Jackson to Rep. Hatton Summers, 8/19/41. This interpretation was undercut by the Third Circuit in 1974. *United States v. Butenko*, 494 F.2d 693 (3d Cir., 1974), cert. denied sub nom. *Ivanov v. United States*, 419 U.S. 831 (1974).

that evidence obtained through the use of this technique would be inadmissible in court.

B. 1940 to 1968

1. The Roosevelt Administration

Shortly after taking office in 1940, Attorney General Robert H. Jackson reversed the existing Justice Department policy concerning wiretapping. By Order No. 3343, issued March 15, 1940, he prohibited all wiretapping by the Federal Bureau of Investigation, and the previously operative *Manual* section, which described wiretapping as an unethical practice, was reinstated at his direction.

Jackson's prohibition proved to be short-lived, however, for less than three months later President Franklin D. Roosevelt informed the Attorney General that he did not believe the Supreme Court intended the 1939 *Nar. lone* decision to prohibit wiretapping in "matters involving the defense of the nation."²⁰ The President sent the following memorandum to Attorney General Jackson, granting him authority to approve wiretaps on "persons suspected of subversive activities against the Government of the United States:"

I have agreed with the broad purpose of the Supreme Court decision relating to wiretapping in investigations. The Court is undoubtedly sound both in regard to the use of evidence secured over tapped wires in the prosecution of citizens in criminal cases; and it is also right in its opinion that under ordinary and normal circumstances wiretapping by Government agents should not be carried on for the excellent reason that it is almost bound to lead to abuse of civil rights.

However, *I am convinced that the Supreme Court never intended any dictum in the particular case which it decided to apply to grave matters involving the defense of the nation.*

It is, of course, well known that certain other nations have been engaged in the organization of propaganda of so-called "fifth column" in other countries and in preparation for sabotage, as well as in actual sabotage.

It is too late to do anything about it after sabotage, assassinations and "fifth column" activities are completed.

You are, therefore, authorized and directed in such cases as you may approve, after investigation of the need in each case, to authorize the necessary investigating agents that they are at liberty to secure information by listening devices directed to the conversation or other communications of *persons suspected of subversive activities against the Government of the United States, including suspected spies.* You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens.²⁰

²⁰ Franklin D. Roosevelt, Confidential Memorandum for the Attorney General, 3/21/40. [Emphases added.] Francis Biddle, who became Attorney General in 1941, stated later:

"The memorandum was evidently prepared in a hurry by the President personally, without consultation, probably after he had talked to Bob [Attorney General] (Continued)

In 1940 and 1941, several bills were introduced in Congress to authorize electronic surveillance for the purpose Roosevelt articulated in his letter to Jackson and for other purposes as well. One of these was a joint resolution introduced by Representative Emmanuel Celler authorizing the FBI "to conduct investigations, subject to the direction of the Attorney General, to ascertain, prevent, and frustrate any interference with the national defense by sabotage, treason, seditious conspiracy, espionage, violations of neutrality laws, or in any other manner."²⁷ This resolution would have lifted Section 605's ban on wiretapping for such investigations.

Both President Roosevelt and Attorney General Jackson endorsed such legislation. Roosevelt wrote to Representative Thomas Elliot on February 21, 1941, "I have no compunction in saying that wire tapping should be used against those persons, not citizens of the United States, and those few citizens who are traitors to their country, who today are engaged in espionage or sabotage against the United States . . ."²⁸

The Justice Department also informed Congress about the theory that had been developed to rationalize ongoing electronic surveillance under Section 605. Attorney General Robert Jackson advised Representative Hatton Summers on March 19, 1941, "The only offense under the present law is to intercept any communication and divulge or publish the same . . . Any person, with no risk of penalty, may tap telephone wires . . . and act upon what he hears or make any use of it that does not involve divulging or publication."²⁹

The import of these two statements was undoubtedly clear to the members of the House Judiciary Committee to whom they were addressed. The FBI would use wiretaps in the investigation of espionage and sabotage, despite the Federal Communications Act, since the results of the wiretaps would not be "divulged" outside the government. Legislation was needed only in order to use wiretap-obtained evidence or the fruits thereof in criminal prosecutions; a new statute was not necessary if the purpose of wiretapping was to gather intelligence that would not be used in court.³⁰

(Continued)

General Jackson). It opened the door pretty wide to wiretapping of anyone suspected of subversive activities. Bob didn't like it, and, not liking it, turned it over to Edgar Hoover without himself passing on each case. When it came to my turn I studied the applications carefully, sometimes requesting more information, occasionally turning them down when I thought they were not warranted." (Francis Biddle, *In Brief Authority*, Doubleday & Company, Inc., Garden City, N.Y. 1967, p. 167.)

²⁷ House Joint Resolution 553, 5/27/40.

²⁸ Letter from President Roosevelt to Rep. Thomas Elliot, 2/21/41.

²⁹ Letter from Attorney General Jackson to Rep. Hatton Summers, 3/19/41.

[Emphasis added.]

³⁰ FBI Director Hoover strongly opposed any legislation requiring a judicial warrant for wiretapping. He told Attorney General Jackson in 1941:

"Wire-tapping, in my estimation, should only be used in cases of kidnaping, extortion, espionage and sabotage. It is, therefore, imperative that the use of it not be known outside of a very limited circle if the best results are to be obtained. We are dealing with realities in this matter, and we must recognize that many times United States Attorneys' offices are not as close-mouthed as they should be and that matters handled therein do become known to certain favored representatives of the press, with the result that items appear in columns that are many times alarmingly correct. Likewise, we know that there are certain Federal Judges who are not as close-mouthed as they should be

This policy was explicitly acknowledged several months later. After an incident where labor leader Harry Bridges discovered he was under surveillance, Attorney General Francis Biddle announced that FBI agents were, in fact, authorized to tap wires in cases involving espionage, sabotage, and serious crimes such as kidnapping after first securing the permission of the FBI Director and the Attorney General.³¹ At the same time Attorney General Biddle advised FBI Director Hoover:

A good deal of my press conference yesterday was consumed in questions about wiretapping. I refused to comment on the Bridges incident, on the ground that it would be improper for me to comment on a case now pending before me.

I indicated that the stand of the Department would be, as indeed it had been for some time, *to authorize wiretapping in espionage, sabotage, and kidnaping cases, where the circumstances warranted.* I described Section 605 of the Communications Act, pointing out that under the Statute interception alone was not illegal; that there must be both interception and divulgence or publication; that the Courts had held only that evidence could not be used which resulted from wiretapping; that the Courts had never defined what divulgence and publication was; that I would continue to construe the Act, until the Courts decided otherwise, not to prohibit interception of communications by an agent, and his reporting the result to his superior officer, as infraction of the law; that although this could be said of all crimes, as a matter of policy wiretapping would be used sparingly, and under express authorization of the Attorney General.³²

about matters brought before them and certainly, in those cases in which wiretapping would be used, if limited to the few violations that I have referred to, they are so interesting and so mysterious that I fear it would encourage the Sherlock Holmes complex that many persons have, to whisper about what is being done, and then the value of the wiretapping would be completely lost. That is why I feel that the Attorney General of the United States should be the Executive Official designated to authorize the use of this procedure in certain specific types of investigations, and that these types of investigations should be very definitely limited and restricted." Memorandum from Director Hoover to the Attorney General, 1/27/41.

³¹ *New York Times*, 10/0/41. Former Attorney General Francis Biddle recalled a meeting with President Roosevelt regarding the FBI wiretap on Harry Bridges:

"When all this came out in the newspapers I could not resist suggesting to Hoover that he tell the story of the unfortunate tap directly to the President. We went over to the White House together. F.D.R. was delighted; and, with one of his great grins, intent on every word, slapped Hoover on the back when he had finished, 'By . . . Edgar, that's the first time you've been caught with your pants down!' The two men liked and understood each other." (Biddle, *In Brief Authority*, p. 168.)

³² Francis Biddle, Attorney General, Confidential Memorandum for Mr. Hoover, 10/0/41. [Emphasis added.]

In a memorandum to Attorney General Biddle shortly before this press conference, Director Hoover stated, "It was my understanding in our conversation with the President that the matter of establishing technical surveillance was to be continued . . ." (Memorandum from Hoover to Biddle, 10/2/41.)

Assistant Solicitor General Charles Fahy also wrote a memorandum to Attorney General Biddle prior to the press conference which attempted to justify
(Continued)

2. *The Truman Administration*

The permissible scope of wiretapping was expanded after World War II by President Truman to include "cases vitally affecting the domestic security, or where human life is in jeopardy." The documentary evidence suggests, however, that this expansion was inadvertent on Truman's part and that he actually intended simply to continue in force the policies articulated by President Roosevelt in 1940.

By memorandum of July 17, 1946, Attorney General Tom Clark asked President Truman to renew Roosevelt's authorization for warrantless wiretapping issued six years earlier. Attorney General Clark quoted from that authorization but omitted the portion of Roosevelt's letter which read: "You are requested furthermore to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens." He then stated to President Truman:

It seems to me that in the present troubled period in international affairs, accompanied as it is by an increase in subversive activity here at home, it is as necessary as it was in 1940 to take the in estigative measures referred to in President Roosevelt's memorandum. At the same time, the country is threatened by a very substantial increase in crime. While I am reluctant to suggest any use whatever of these special investigative measures in domestic cases, it seems to me imperative to use them in cases *vitally affecting the domestic security, or where human life is in jeopardy.*

As so modified, I believe the outstanding directive should be continued in force . . . In my opinion the measures proposed are within the authority of law, and I have in the files of the Department materials indicating to me that my two most recent predecessors as Attorney General would concur in this view.³³

Truman approved the Attorney General's 1946 memorandum, but four years later aides to President Truman discovered Clark's incomplete quotation and the President considered returning to the terms of the original 1940 authorization. A February 2, 1950, memorandum lo-

(Continued)

warrantless wiretaps not only on the interpretation of the 1934 Act, but also on the President's power as Commander in Chief. Fahy stated:

"What has been said . . . seems to me also to leave open the question whether the general purpose and content of this statute, notwithstanding the rigidity with which the Court has thus far construed its prohibitions, is intended by Congress to apply to the President as Commander in Chief of the Army and Navy. It is my opinion that the Commander in Chief as such may lawfully have divulged to him or to someone on his behalf intercepted information relative to the security of the nation. If our armies were in the field within the United States it seems to me very clear that the statute would not be construed to prohibit such divulgence. The fact is our Navy is in a sense 'in the field' now, engaged in perilous duty. Our general policy against interception and divulgence, the nature of the wiretapping, and the abuse to which its use lends itself, unite to require that the use to which I think it may be legally put, be most carefully circumscribed. But I conclude that divulgence to or on behalf of the Commander in Chief with respect to matters relating to the military security of the nation is not illegal." (Memorandum from Charles Fahy, Assistant Solicitor General, to the Attorney General, 10/6/41.)

³³ Letter from Tom C. Clark, Attorney General, to the President, 7/17/46. [Emphases added.]

cated in the Truman Presidential Library reflects that discovery: George M. Elsey, the Assistant Counsel to the President, wrote Truman that

Not only did Clark fail to inform the President that Mr. Roosevelt had directed the F.B.I. to hold its wiretapping to a minimum, and to limit it insofar as possible to aliens, he requested the President to approve very broad language which would permit wiretapping in any case 'vitaly affecting the domestic security, or where human life is in jeopardy.' This language is obviously a very far cry from the 1940 directive.²⁴

Elsey recommended in this memorandum that "the President consider rescinding his 1946 directive." An order was drafted which closely paralleled the Roosevelt's 1940 directive, but for reasons that are unclear it was never issued.²⁵

The wiretapping standards that were expressed in Clark's 1946 memorandum and approved by President Truman were continued under Attorney General J. Howard McGrath. In a 1952 memorandum to J. Edgar Hoover, McGrath also made explicit the requirement of prior approval by the Attorney General, which had been informally instituted by Attorney General Biddle in 1941:

There is pending, as you know, before the Congress legislation that I have recommended which would permit wiretapping under appropriate safeguards and make evidence thus obtained admissible. As you state, the use of wiretapping is indispensable in intelligence coverage of matters relating to espionage, sabotage, and related security fields. Consequently, I do not intend to alter the existing policy that wiretapping surveillance should be used under the present highly restrictive basis and when specifically authorized by me.²⁶

3. The Eisenhower Administration

The Government's perceived inability to prosecute in espionage and sabotage cases where electronic surveillance had been used, which stemmed from the *Nardone* decisions in the late 1930's, led Attorney General Herbert Brownell to press strongly in 1954 for legislation to authorize "national security" wiretapping without judicial warrant. Rejecting arguments for a warrant requirement, Brownell con-

²⁴ Memorandum from George M. Elsey to the President, 2/2/50. Harry S. Truman Library.

²⁵ Memorandum from "H. S. T." to the Attorney General, draft dated 2/7/50. Harry S. Truman Library.

²⁶ Memorandum from J. Howard McGrath to Mr. Hoover, 2/26/52.

McGrath added: "It is requested when any case is referred to the Department in which telephone, microphone or other technical surveillances have been employed by the Bureau or other Federal Agencies (when known) that the Department be advised of the facts at the time the matter is first submitted."

This passage may have referred to the problems that had arisen between the FBI and the Justice Department in the prosecution of Judith Coplon for attempting to deliver government documents to a Soviet agent. The FBI apparently failed to inform Federal prosecutors of electronic surveillance of Miss Coplon and the Soviet agent, and subsequent disclosure of the surveillance led to reversal of her conviction on the grounds that the trial judge improperly withheld the surveillance records from scrutiny by defense counsel. *United States v. Coplon*, 185 F. 2d 629 (2d Cir. 1950) On a second appeal her conviction was reversed because telephone conversations between the defendant and her attorney were intercepted during the trial. *Coplon v. United States*, 101 F. 2d 749 (D.C. Cir. 1931).

tended that responsibility should be centralized in the hands of the Attorney General.³⁷ He also saw a "strong danger of leaks if application is made to a court, because in addition to the judge, you have the clerk, the stenographer and some other officer like a law assistant or bailiff who may be apprised of the nature of the application."³⁸ Discussing the objectives of "national security" wiretapping, Brownell observed:

We might just as well face up to the fact that the communists are subversives and conspirators working fanatically in the interests of a hostile foreign power . . .

It is almost impossible to "spot" them since they no longer use membership cards or other written documents which will identify them for what they are. As a matter of necessity, they turn to the telephone to carry on their intrigue. The success of their plans frequently rests upon piecing together shreds of information received from many sources and many nests. The participants in the conspiracy are often dispersed and stationed in various strategic positions in government and industry throughout the country. Their operations are not only internal. They are also of an international and intercontinental character . . .

It is therefore neither reasonable nor realistic that communists should be allowed to have the free use of every modern communication device to carry out their unlawful conspiracies, but that law enforcement agencies should be barred from confronting these persons with what they have said over them.³⁹

The House Judiciary Committee accepted Brownell's reasoning and reported out warrantless wiretapping legislation in 1954.⁴⁰ The full House, however, rejected the arguments in support of warrantless wiretapping and amended the bill on the floor to require a prior judicial warrant.⁴¹ Without the support of the Justice Department, the House bill received no formal consideration in the Senate and no serious attempt was again made to enact electronic surveillance legislation until the 1960s.

Because of Congressional deliberations regarding wiretapping, J. Edgar Hoover wrote a memorandum to Attorney General Brownell on March 8, 1955, in which he outlined the current FBI policy in that area and stated that this policy was based on the May 21, 1940, letter from President Roosevelt and the July 17, 1946, memorandum from Attorney General Clark, which was signed by President Truman.⁴² Specifically, he noted that the current policy permitted wiretapping, with the prior written approval of the Attorney General, in "cases vitally affecting the domestic security or where human life is in jeopardy."

Hoover also asked Brownell if he believed the Roosevelt and Truman statements constituted sufficient legal authority for wiretapping at the

³⁷ Brownell, *The Public Security and Wiretapping*, 80 *Cornell L.Q.* 195 (1954).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ H. Rep. 1401, 4/1/54.

⁴¹ House Resolution 9840, 100 Cong. Rec. 4053, 4/8/54.

⁴² Memorandum from Director, FBI to the Attorney General, 3/8/55.

present time, and suggested that if Brownell did not believe they did, he "may want to present this matter to President Eisenhower to determine whether he holds the same view with respect to the policies of the Department of Justice with respect to wiretapping."⁴³ Brownell responded that he did not believe it necessary to obtain further approval of the existing practice from President Eisenhower as he was of the opinion that President Roosevelt's approval was sufficient. The Attorney General wrote, in part:

In view of the fact that I personally explained to the President, the Cabinet, the National Security Council and the Senate and House Judiciary Committees during 1954 the present policy and procedure on wiretaps, at which time I referred specifically to the authorization letter to the Attorney General from President F. D. Roosevelt, I do not think it necessary to reopen the matter at this time. . . . You will also remember that I made several public speeches during 1954 on the legal basis for the Department of Justice policy and procedure on wiretaps.⁴⁴

4. The Kennedy Administration

The existing policy and procedures for wiretapping continued in force through the Kennedy administration. On March 13, 1962, Attorney General Robert F. Kennedy issued Order No. 263-62, which finally rescinded Attorney General Jackson's March 15, 1940, order prohibiting wiretapping, and noted that this rescission was necessary "in order to reflect the practice which has been in effect since May 21, 1940."⁴⁵ This order also changed the *Manual* provisions relating to wiretapping to formally permit use of this technique and reaffirmed the vitality of "[e]xisting instructions to the Federal Bureau of Investigation with respect to obtaining the approval of the Attorney General for wiretapping. . . ."⁴⁶

5. The Johnson Administration

During the Johnson administration, the procedures for conducting wiretaps were tightened and the criteria for use of this technique were altered. Until March 1965, no requirement had existed for the periodic re-authorization of wiretaps by the Attorney General: some surveillances consequently remained in operation for years without review.⁴⁷ On March 30, 1965, Attorney General Katzenbach therefore suggested to J. Edgar Hoover that authorizations for individual telephone taps should be limited to six months, after which time a new request should

⁴³ *Ibid.*

⁴⁴ Memorandum from the Attorney General to the Director, FBI, 3/10/55.

⁴⁵ Memorandum from William Olson to Elliot Richardson, undated.

⁴⁶ Attorney General Order No. 263-62, 3/13/62.

⁴⁷ A wiretap on Elijah Muhammad leader of the Nation of Islam, which was originally approved by Attorney General Brownell in 1957, for example, continued until 1964 without subsequent re-authorization. (Memorandum from J. Edgar Hoover to the Attorney General, 12/31/66, initialed "Approved: HB 1/2/67.")

As former Attorney General Katzenbach recently 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, 11/12/76, p. 87.

be submitted for the Attorney General's reauthorization.⁴⁸ This suggestion was immediately implemented by the FBI.

One week later, on April 8, 1965, Katzenbach sent to the White House a proposed Presidential directive to all federal agencies on wiretapping.⁴⁹ This directive, formally issued by President Lyndon Johnson in slightly modified form on June 30, 1965,⁵⁰ revoked Attorney General Tom Clark's wiretapping standard of "cases vitally affecting the domestic security or where human life is in jeopardy." The new directive forbade the nonconsensual interception of telephone communications by federal personnel within the United States "except in connection with investigations related to the national security," and then only after first obtaining the written approval of the Attorney General. The President stated, in part:

I am strongly opposed to the interception of telephone conversations as a general investigative technique. I recognize that mechanical and electronic devices may sometimes be essential in protecting our national security. Nevertheless, it is clear that indiscriminate use of these investigative devices to overhear telephone conversations, without the knowledge or consent of any of the persons involved, could result in serious abuses and invasions of privacy. *In my view, the invasion of privacy of communications is a highly offensive practice which should be engaged in only where the national security is at stake.* To avoid any misunderstanding on this subject in the Federal Government, I am establishing the following basic guidelines to be followed by all government agencies:

(1) No federal personnel is to intercept telephone conversations within the United States by any mechanical or electronic device, without the consent of one of the parties involved (except in connection with investigations related to the national security.)

(2) No interception shall be undertaken or continued without first obtaining the approval of the Attorney General.

(3) All federal agencies shall immediately conform their practices and procedures to the provisions of this order.⁵¹

Despite this Presidential approval of "national security" wiretapping, Director Hoover informed Katzenbach on September 14, 1965, that he was restricting or eliminating the use of a number of investigative techniques by the Bureau

in view of the present atmosphere, brought about by the unrestrained and injudicious use of special investigative tech-

⁴⁸ Memorandum from J. Edgar Hoover to the Attorney General, 3/30/65.

⁴⁹ Memorandum from Nicholas Katzenbach to the President, 4/8/65.

⁵⁰ Directive from President Lyndon Johnson to Heads of Agencies, 6/30/65. The restriction on wiretapping in Katzenbach's draft order applied to "all federal agencies." In the final version, issued by President Johnson, the restriction applied to "federal personnel."

⁵¹ Directive from President Johnson to Heads of Agencies, 6/30/65. [Emphasis added.] Mr. Katzenbach testified that this order "required the specific approval of the Attorney General and referred to all agencies in the Government, and it was drafted [as] explicitly . . . as one could draft it, although it has proved rather difficult because of terms like national security to know precisely what you are dealing with." (Nicholas Katzenbach testimony, 5/11/76, p. 15.)

niques by other agencies and departments, resulting in congressional and public alarm and opposition to any activities which could in any way be termed an invasion of privacy.

With regard to wiretapping, Hoover wrote that

[w]hile we have traditionally restricted wiretap. to internal security cases and an occasional investigation involving possible loss of life, such as kidnapping, I have further cut down on wiretaps and I am not requesting authority for any additional wiretaps.⁵²

Katzenbach responded on September 27, with a memorandum setting forth what he believed to be appropriate guidelines for the use of the techniques Hoover had restricted or eliminated. He noted that "[t]he use of wiretaps and microphones involving trespass present more difficult problems because of the inadmissibility of any evidence obtained in court cases and because of current judicial and public attitudes regarding their use."⁵³ He continued:

It is my understanding that such devices will not be used without my authorization, although in emergency circumstances they may be used subject to my later ratification. At this time I believe it is desirable that all such techniques be confined to the gathering of intelligence in national security matters, and I will continue to approve all such requests in the future as I have in the past. I see no need to curtail any such activities in the national security field.

It is also my belief that there are occasions outside of the strict definition of national security (for example, organized crime) when it would be appropriate to use such techniques for intelligence purposes. However, in light of the present atmosphere, I believe that efforts in the immediate future should be confined to national security. I realize that this restriction will hamper our efforts against organized crime and will require a redoubled effort on the part of the Bureau to develop intelligence through other means.⁵⁴

While suggesting the possibility that warrantless wiretapping might appropriately be used at some future time in cases involving organized crime, in short, Katzenbach endorsed its use only in "the national security field."

On November 3, 1966, Attorney General Ramsey Clark circulated a memorandum to all United States Attorneys in which he reiterated the "national security" limitation on wiretapping contained in President Johnson's June 30, 1965, directive and in Katzenbach's September 27, 1965, letter to Hoover. He quoted as follows from the 1966 Supplemental Memorandum to the Supreme Court that had been filed in *Black v. United States*,⁵⁵ a criminal case which involved a microphone installation:

Present practice, adopted in July 1965 in conformity with the policies declared by President Johnson on June 30, 1965, for

⁵² Memorandum from J. Edgar Hoover to the Attorney General, 9/14/65.

⁵³ Memorandum from Nicholas Katzenbach to J. Edgar Hoover, 9/27/65.

⁵⁴ *Ibid.*

⁵⁵ 385 U.S. 26 (1966).

the entire Federal establishment, prohibits the installation of listening devices in private areas (as well as the interception of telephone and other wire communications) in all instances other than those involving the collection of intelligence affecting the national security. The specific authorization of the Attorney General must be obtained in each instance when this exception is invoked. Intelligence data so collected will not be available for investigative or litigative purposes.⁵⁶

Clark's subsequent guidelines for the use of wiretapping and electronic eavesdropping, issued in June 1967 to the heads of executive agencies and departments, reaffirmed the prohibition of wiretapping in all but "national security" cases.⁵⁷

C. *The Omnibus Crime Control Act of 1968*

Although Justice Department policy regarding wiretapping remained essentially constant from 1965 to 1968, two Supreme Court decisions during this period significantly altered the constitutional framework for electronic surveillance generally. In *Berger v. New York*, 388 U.S. 41 (1967), and *Katz v. United States*, 389 U.S. 347 (1967), the Supreme Court overruled *Olmstead* and held that the Fourth Amendment did apply to searches and seizures of conversations and protected all conversations of an individual as to which he had a reasonable expectation of privacy. *Katz* explicitly left open the question, however, whether or not a judicial warrant was required in cases "involving the national security."⁵⁸

In part as a response to the *Berger* and *Katz* decisions, Congress enacted Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-20. This Act established procedures for obtaining judicial warrants permitting wiretapping by government officials,⁵⁹ but the issue of "national security" wiretaps, which was left open in *Katz*, was similarly avoided. Section 2511 (3) of the Act stated that nothing in the Omnibus Crime Control Act or the Federal Communications Act of 1934 shall limit the constitutional power of the President in certain vaguely defined areas. The text of this subsection reads as follows:

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1143, 47 U.S.C. 605) shall limit the constitutional powers of the President

⁵⁶ Memorandum from the Attorney General to all United States Attorneys, 11/8/66, quoting the *Supplemental Memorandum to the Supreme Court in Black v. United States*, filed 7/13/66.

⁵⁷ Memorandum from the Attorney General to the Heads of Executive Departments and Agencies, 6/16/67.

As a matter of practice, Attorney General Clark was more restrictive in approving wiretaps than the stated policy suggested was necessary. He stated that his practice was "to confine the area of approval to international activities directly related to the military security of the United States." (Testimony of Ramsey Clark, Hearings before the Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, United States Senat. (1974).) See p. 849 for an example of a request involving purely domestic "national security" considerations which was turned down by Mr. Clark.

⁵⁸ 389 U.S. at 358 n. 28.

⁵⁹ Wiretapping by private citizens and unauthorized wiretapping by government employees was also made a criminal offense.

to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts 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 foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.⁶⁰

Significantly, this subsection does not define the scope of the President's constitutional power in the national security area. As the Supreme Court noted in the *Keith* case, it is merely a statement that to the extent such powers exist, if they exist at all they override the procedural requirements for electronic surveillance that are outlined in this statute and in the 1934 Act.⁶¹

D. Justice Department Criteria for Warrantless Wiretaps: 1968-1976

1. 1968-1972

In fields other than national security, the Justice Department was obligated to conform with the warrant procedures of the 1968 statute. But in national security cases, Justice Department policy permitted—and the Act did not forbid—warrantless wiretapping if the proposed surveillance satisfied one or more of the following criteria (which paralleled the standards enunciated in Section 2511(3)):

- (1) That it is necessary to protect the nation against actual or potential attack or any other hostile action of a foreign power;

⁶⁰ A bill drafted by the Justice Department in 1967 would have specifically authorized the President to use warrantless electronic surveillance, but it was limited to the three foreign-related purposes and would have barred the use of information obtained thereby in judicial or other administrative proceedings. (Hearings on H.R. 5346 before Subcommittee No. 5 of the House Judiciary Committee, 90th Cong., 1st Sess. 202 (1967).)

During the Senate debate on the 1968 Act, an amendment was proposed to eliminate the references to the domestic security purposes for warrantless electronic surveillance. Attorney General Ramsey Clark endorsed the amendment; and the Justice Department stated, "The concept of a domestic threat to the national security is vague and undefined. Use of electronic surveillance in such cases may be easily abused." (114 *Cong. Rec.* 14717, 90th Cong., 2d Sess. (1968).) The amendment was defeated.

⁶¹ *United States v. United States District Court*, 407 U.S. 297, 303-04 (1972). In so interpreting Section 2511(3), the Court relied in part on its legislative history, which made it clear that the section was not intended to confer any power upon the President. The Court quoted the remarks of Senator Philip Hart that "... [N]othing in Section 2511(3) even attempts to define the limits of the President's national security power under present law, which I have always found extremely vague. . . . Section 2511(3) merely says that if the President has such a power, then its exercise is in no way affected by Title III." (407 U.S. at 307.)

(2) That it is necessary to obtain foreign intelligence information deemed essential to the security of the United States;

(3) That it is necessary to protect national security information against foreign intelligence activities;

(4) That it is necessary to protect the United States against the overthrow of the Government by force or other unlawful means; or

(5) That it is necessary to protect the United States against a clear or present danger to the structure or the existence of its Government.⁶²

Existing procedures for warrantless wiretaps requiring the prior written authorization of the Attorney General and subsequent reauthorization after 90 days remained in effect after the passage of the 1968 Act.

2. *The Keith Case: 1972*

On June 19, 1972, the Supreme Court decided the so-called *Keith* case, *United States v. United States District Court*, 407 U.S. 297 (1972), which held that the Fourth Amendment required prior judicial approval for "domestic security" electronic surveillance. The Court acknowledged the constitutional power of the President to "protect our Government against those who would subvert or overthrow it by unlawful means,"⁶³ but it held that this power did not extend to the authorization of warrantless electronic surveillance directed at a domestic organization which was neither directly nor indirectly connected with a foreign power.⁶⁴

To conform with the *Keith* decision, the Justice Department thereafter limited warrantless wiretapping to cases involving a "significant connection with a foreign power, its agents or agencies."⁶⁵ A spokesman for the Department stated that such a connection might be shown by "the presence of such factors as substantial financing, control by or active collaboration with a foreign government and agencies thereof in unlawful activities directed against the Government of the United State."^{65a}

⁶² Letter from William Olson to Attorney General Elliot Richardson, undated.

⁶³ 407 U.S. at 310.

⁶⁴ 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 322), 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 322). The court noted:

"Given [the] potential distinctions between Title III criminal surveillances and those involving domestic security, Congress may wish to consider protective standards for the latter which differ from those already prescribed for specified crimes in Title III. Different standards may be complete with the Fourth Amendment if they are reasonable both in relation to the legitimate need of Government for intelligence information and the protected rights of our citizens." (407 U.S. at 322-23). 407 U.S. at 309, 321.

⁶⁵ Testimony of Deputy Assistant Attorney General Kevin Maroney, Hearings Before the Senate Subcommittee on Administrative Practice and Procedure 6/20/72, p. 10. This language paralleled that of the Supreme Court in *Keith*, 407 U.S. at 309, n. 8.

^{65a} Maroney Testimony, Hearings before the Senate Subcommittee on Administration Practice and Procedure, 6/20/72, p. 10.

3. 1972-1975

The Justice Department's criteria for warrantless electronic surveillance were next modified in 1975. On June 24, 1975, Attorney General Edward H. Levi wrote Senators Frank Church and Edward Kennedy a letter in which he set forth his standards for warrantless wiretaps. He wrote, in part:

Under the standards and procedures established by the President, the personal approval of the Attorney General is required before any non-consensual electronic surveillance may be instituted within the United States without a judicial warrant. All requests for surveillance must be made in writing by the Director of the Federal Bureau of Investigation and must set forth the relevant factual circumstances that justify the proposed surveillance. Both the agency and the Presidential appointee initiating the request must be identified. Requests from the Director are examined by a special review group which I have established within the Office of the Attorney General. Authorization will not be granted unless the Attorney General has satisfied himself that the requested electronic surveillance is necessary for national security or foreign intelligence purposes important to national security.

In addition, the Attorney General must be satisfied that the subject of the surveillance is *either assisting a foreign power or foreign-based political group, or plans unlawful activity directed against a foreign power or foreign-based political group*. Finally, he must be satisfied that the minimum physical intrusion necessary to obtain the information will be used.

All authorizations are for a period of ninety days or less, and the specific approval of the Attorney General is again required for continuation of the surveillance beyond that period. The Attorney General has also been directed to review all electronic surveillance on a regular basis to ensure that the aforementioned criteria are satisfied. Pursuant to the mandate of *United States v. United States District Court*, electronic surveillance without a judicial warrant is not conducted where there is no foreign involvement.⁶⁶

In his public testimony before the Senate Select Committee on Intelligence Activities on November 6, 1975, Attorney General Levi again articulated current Department of Justice criteria for the approval of warrantless electronic surveillance. His formulation on that date returned to the three foreign-related categories which were based on Section 2511 (3) of the 1968 Act, between 1972 and 1975, and a fourth category was also added. He stated:

Requests are only authorized when the requested electronic surveillance is necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power; to obtain foreign intelligence deemed essential to the security of the nation; to protect national security information against foreign intelligence activities; or to obtain information con-

⁶⁶ Letter from Attorney General Edward Levi to Senators Frank Church and Edward Kennedy, 6/24/75. [Emphasis added.]

tified as necessary for the conduct of foreign affairs matters important to the national security of the United States.⁶⁷

In his November 1975 testimony, the Attorney General also omitted the phrase in his June 24 letter which would have permitted warrantless electronic surveillance to be directed against American citizens or domestic groups which "plan[ne]d] unlawful activity directed against a foreign power or a foreign-based political group." Warrantless electronic surveillance, he said, would only be authorized when the subject of the proposed surveillance is "consciously assisting a foreign power or a foreign-based political group."⁶⁸ The elimination of this category was apparently due to the decision of the Court of Appeals for the District of Columbia in *Zweibon v. Mitchell*, 516 F. 2d 594 (D.C. Cir., 1975), (*en banc*), which held unconstitutional warrantless electronic surveillance of a domestic organization that was neither the agent of nor collaborator with a foreign power.⁶⁹

To date, neither Congress nor the Supreme Court has ever squarely faced the issue of whether the President may legitimately authorize warrantless electronic surveillance in "national security" cases involving the activities of foreign powers or their agents. As noted above, Section 2511(3) of the 1968 Omnibus Crime Control Act does not represent an affirmative grant of power to the President; it is simply an acknowledgement that Congress does not intend to limit or restrict whatever constitutional power the President may have in connection with "national security" cases. And the Supreme Court in *Keith* explicitly wrote that it only reached the question of the constitutionality of "national security" electronic surveillance in cases that involved "domestic security." While two federal circuit courts have determined that the President may constitutionally authorize warrantless electronic surveillance directed against foreign agents or collaborators,⁷⁰ the Supreme Court denied certiorari in both cases and has yet to decide the issue. In the absence of a mandate from Congress or the Supreme Court, the Justice Department has relied on these circuit court cases to support its current standards for warrantless electronic surveillance.⁷¹

⁶⁷ Edward H. Levi testimony, 11/6/75, Hearings, Vol. 5, pp. 70, 71.

Unlike the first three phrases, the last criterion—"to obtain information certified as necessary for the conduct of foreign affairs matters important to the national security of the United States"—does not parallel the language of Section 2511(3).

⁶⁸ *Ibid.*

⁶⁹ In *Zweibon*, the Court of Appeals rejected the defendant former Attorney General's theory that a wiretap on a domestic organization was justified as a proper exercise of the President's foreign affairs powers when the activities of that group adversely affected this country's relations with a foreign power.

⁷⁰ *United States v. Butenko*, 404 F.2d 593 (3d Cir., 1974), cert. denied sub nom. *Ivovov 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).

⁷¹ A Justice Department memorandum states that the current policy of the Attorney General is to authorize warrantless electronic surveillance "only when it is shown that its subjects are the active, conscious agents of foreign powers." This standard "is applied with particular stringency where the subjects are American citizens or permanent resident aliens."

In one instance during 1975, it was decided that there was not sufficient information to "meet these strict standards;" and the Department went to a court for "orders approving, for periods of twelve days each, wiretaps of the telephone of two individuals." The court issued the orders, according to this Justice Depart-

Legislation has recently been introduced, with the support of Attorney General Levi, to require a prior judicial warrant for electronic surveillance of an "agent of a foreign power." One of seven specially designated federal judges would be authorized to issue a warrant upon a finding that there is "probable cause to believe that the target of the electronic surveillance is a foreign power or an agent of a foreign power." The term "agent of a foreign power" is defined as

(i) a person who is not a permanent resident alien or citizen of the United States and who is an officer or employee of a foreign power; or

(ii) a person who, pursuant to the direction of a foreign power, is engaged in clandestine intelligence activities, sabotage, or terrorist activities, or who conspires with, assists or aids and abets such a person in engaging in such activities.⁷²

Thus, the legislation would not define the activities which could subject an American to electronic surveillance in terms of the federal criminal laws.

The new legislation also would not reach electronic surveillance of Americans abroad or other "facts and circumstances . . . beyond the scope" of its provisions. Authority for such surveillance would continue to be based on whatever may be "the constitutional power of the President." In other respects, however, the proposed statute is a significant step towards effective regulation of FBI electronic surveillance.

III. PRESIDENTIAL AND ATTORNEY GENERAL AUTHORIZATION FOR WARRANTLESS MICROPHONE SURVEILLANCE

Warrantless microphone surveillance, while perhaps the most intrusive type of electronic surveillance, has received significantly less attention from Presidents and Attorneys General than has warrantless wiretapping. The first documentary indication that microphone surveillance was separately considered by any Attorney General is not found until 1952, when Attorney General McGrath prohibited its use in cases involving trespass. Two years later, Attorney General Brownell issued a sweeping authorization for microphone surveillance, even when it involved physical trespass, in cases where the Bureau determined such surveillance was in the national interest; no prior approval by the Attorney General was required. This policy continued until 1965, when microphone surveillance was placed on an equal foot-

ment memorandum, even though "there was not probable cause to believe that any of the particular offenses listed in" the provisions of the 1968 Act for court-ordered electronic surveillance "was being or was about to be committed." The facts supporting the application showed, according to the Department, "an urgent need to obtain information about possible terrorist activities"; that the information was "essential to the security of the United States"; that the information was likely to be obtained by means of the surveillance; and that it "could not practicably be obtained by any other means." The Department has described this "ad hoc adjustment" of the 1968 statute as "extremely difficult and less than satisfactory." (Justice Department memorandum from Ron Carr, Special Assistant to the Attorney General, to Mike Shaheen, Counsel on Professional Responsibility, 2/26/76.)

⁷²S. 3107, introduced 3/23/76.

ing with telephone surveillance, and since that time the policies for both these forms of electronic surveillance have remained identical.

A. Pre-1952

1. 1931 to 1948

The legal status of microphone, as opposed to telephone, surveillance was not addressed by the Supreme Court until 1942, and it was not addressed by Congress until 1968. It is perhaps for this reason that the Justice Department developed no distinct policy on microphone surveillance during the first half of the century.

The *Olmstead* case in 1928 involved a wiretap rather than a microphone surveillance. Similarly, the Federal Communications Act of 1934 was addressed only to the interception of wire and radio communications; microphone surveillance was not within its ambit. Neither Attorney General Mitchell's nor Attorney General Jackson's instructions on wiretapping in 1931 and 1940, respectively, encompassed microphone surveillance, and President Roosevelt's 1940 authorization and President Truman's 1946 authorization were also limited to wiretapping.

An internal Justice Department memorandum from William Olson, former Assistant Attorney General for Internal Security, to Attorney General Elliot Richardson notes that "[d]uring the period 1931-1940, it appears safe to assume that microphone surveillances were utilized under the same standards as telephone surveillances—in those cases involving the safety of the victims of kidnapping, the location and apprehension of desperate criminals, and in espionage, sabotage, and other cases considered to be of major law enforcement importance."⁷³

2. 1942-1962

In 1942, the Supreme Court decided *Goldman v. United States*, 316 U.S. 129, which held in the context of a criminal case that a microphone surveillance was constitutional when it did not involve physical trespass. Thereafter, the test for the validity of a microphone surveillance appeared to be whether or not it involved a trespass.⁷⁴ There is no evidence, however, that an Attorney General gave any firm guidance to the FBI in this area until 1962. Although there did not appear to be any distinct articulated Justice Department policy

⁷³ Memorandum from William Olson to Elliot Richardson, undated.

⁷⁴ In 1944, Alexander Holtzoff, a Special Assistant to the Attorney General, prepared a memorandum on "admissibility of evidence obtained by trash covers or microphone surveillances" in response to a series of hypothetical questions submitted by the FBI. Holtzoff stated that "evidence obtained by an unlawful search and seizure in violation of the Fourth Amendment is not admissible as against . . . the person in control of the premises that have been illegally searched." He added that "the secret taking or abstraction of papers or other property from the premises without force is equivalent to an illegal search and seizure." However, Holtzoff expressed the view "that microphone surveillance is not equivalent to illegal search and seizure" and "that evidence so obtained should be admissible" even where "an actual trespass is committed." (Memorandum from Holtzoff to J. Edgar Hoover 7/4/44.)

Holtzoff disregarded the implication of *Goldman v. United States*, 316 U.S. 129 (1942), that microphone surveillance involving trespass would violate the Fourth Amendment. Nevertheless, the *Goldman* case did not deal directly with this issue, since it upheld the constitutionality of a microphone surveillance not installed by trespass.

on microphone surveillance for a decade after *Goldman*, J. Edgar Hoover summarized FBI practice since *Goldman* in a 1951 memorandum to Attorney General McGrath:

As you are aware, *this Bureau has also employed the use of microphone installations on a highly restrictive basis, chiefly to obtain intelligence information.* The information obtained from microphones, as in the case of wiretaps, is not admissible in evidence. In certain instances, it has been possible to install microphones without trespass, as reflected by opinions rendered in the past by the Department on this subject matter. In these instances, the information obtained, of course, is treated as evidence and therefore is not regarded as purely intelligence information.

As you know, in a number of instances it has not been possible to install microphones without trespass. In such instances the information received therefrom is of an intelligence nature only. Here again, as in the use of wiretaps, experience has shown us that intelligence information highly pertinent to the defense and welfare of this nation is derived through the use of microphones.⁷⁶

B. 1952 to 1965

The first clear instruction to the FBI from an Attorney General regarding microphone surveillance was issued in 1952. On February 26, 1952, Attorney General McGrath wrote to Mr. Hoover as follows:

The use of microphone surveillance which does not involve a trespass would seem to be permissible under the present state of the law, *United States v. Goldman*, 316 U.S. 129. Such surveillances as involve trespass are in the area of the Fourth Amendment, and evidence so obtained and from leads so obtained is inadmissible.

The records do not indicate that this question dealing with microphones has ever been presented before; therefore, please be advised that *I cannot authorize the installation of a microphone involving a trespass under existing law.*⁷⁷

As a result of this instruction, Hoover declared in a March 4, 1952, internal FBI memorandum that he would similarly not approve any request for a microphone surveillance in a case involving trespass.⁷⁸

The FBI evidently considered this policy on microphone surveillance to be too restrictive, however, especially in the area of internal security.⁷⁹ Under pressure from the FBI—and despite the 1954

⁷⁶ Memorandum from Director FBI to the Attorney General, Subject: "Technical Coverage," 10/6/51. [Emphasis added.]

⁷⁷ Memorandum from the Attorney General to J. Edgar Hoover, 2/26/52. [Emphasis added.]

⁷⁸ Memorandum from William Olson to Elliott Richardson, undated.

⁷⁹ A Justice Department memorandum from Thomas K. Hail, Smith Act Unit to William E. Foley, Chief, Internal Security Section, Subject: "Microphone Surveillances," 12/22/53, reflects a meeting between Justice Department officials and Alan Belmont and Carl Hennrich of the Bureau to determine how the use of this technique could be broadened.

Supreme Court decision in *Irvine v. California*⁶⁰—Attorney General Brownell reversed his predecessor's position. On May 22, 1954, he wrote Director Hoover:

The recent decision of the Supreme Court entitled *Irvine v. California*, 347 U.S. 128, denouncing the use of microphone surveillances by city police in a gambling case, makes appropriate a reappraisal of the use which may be made in the future by the Federal Bureau of Investigation of microphone surveillance in connection with matters relating to the internal security of the country.

It is clear that in some instances the use of microphone surveillance is the only possible way of uncovering the activities of espionage agents, possible saboteurs, and subversive persons. In such instances I am of the opinion that the national interest requires that microphone surveillance be utilized by the Federal Bureau of Investigation. This use need not be limited to the development of evidence for prosecution. The FBI has an intelligence function in connection with internal security matters equally as important as the duty of developing evidence for presentation to the courts and the national security requires that the FBI be able to use microphone surveillance for the proper discharge of both such functions. The Department of Justice approves the use of microphone surveillance by the FBI under these circumstances and for these purposes.

I do not consider that the decision of the Supreme Court in *Irvine v. California*, supra, requires a different course. That case is readily distinguishable on its facts. The language of the Court, however, indicates certain uses of microphones which it would be well to avoid, if possible, even in internal security investigations. *It is quite clear that in the Irvine case the Justices of the Supreme Court were outraged by what they regarded as the indecency of installing a microphone in a bedroom.* They denounced the utilization of such methods of investigation in a gambling case as shocking. The Court's action is a clear indication of the need for discretion and intelligent restraint in the use of microphones by the FBI in all cases, including internal security matters. Obviously, *the installation of a microphone in a bedroom or in some comparably intimate location should be avoided wherever 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.* It is my opinion that under such circumstances the installation is proper and not prohibited by the Supreme Court's decision in the *Irvine* case.

... It is realized that not infrequently the question of trespass arises in connection with the installation of a microphone.

⁶⁰ 347 U.S. 128 (1954). In *Irvine*, the Supreme Court held that evidence obtained in a criminal case from a warrantless microphone installation involving trespass was inadmissible in court. The fact that the microphone had been planted in a bedroom particularly offended the court.

The question of whether a trespass is actually involved and the second question of the effect of such a trespass upon the admissibility in court of the evidence thus obtained, must necessarily be resolved according to the circumstances of each case. The Department in resolving the problems which may arise in connection with the use of microphone surveillance will review the circumstances in each case in light of the practical necessities of investigation and of the national interest which must be protected. It is my opinion that the Department should adopt that interpretation which will permit microphone coverage by the FBI in a manner most conducive to our national interest. 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.*⁶¹

Brownell cited no legal support for this sweeping authorization. By not requiring prior approval by the Attorney General for specific microphone installations, moreover, he largely undercut the policy which 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.

On May 4, 1961, Director Hoover wrote a memorandum to Deputy Attorney General Byron R. White, in which he informed the Department that the FBI's policy with regard to microphone surveillance was based on the 1954 Brownell memorandum quoted above. Hoover stated that Brownell had "approved the use of microphone surveillances with or without trespass," and noted that "in the internal security field we are utilizing microphone surveillances on a restricted basis even though trespass is necessary to assist in uncovering the activities of [foreign] intelligence agents and Communist Party leaders." He continued: "In the interests of national safety, microphone surveillances are also utilized on a restricted basis, even though trespass is necessary, in uncovering major criminal activities. We are using such coverage in connection with our investigations of clandestine activities of top hoodlums and organized crime."⁶² This memorandum apparently did not lead to further reconsideration of microphone surveillance policy by Justice Department officials, and the practice articulated by Hoover continued without change until 1965.^{62a}

⁶¹ Memorandum from the Attorney General to the Director, FBI, 5/20/54. [Emphasis added.]

⁶² Memorandum from the Director, FBI to Mr. Byron R. White, Deputy Attorney General, 5/4/61. Less than three months earlier, however, the FBI had planted a bug in a hotel room occupied by a United States Congressman in connection with an investigation that was unrelated to either Communist activities or organized crime. See pages 320-330.

^{62a} For an account of a subsequent meeting between Attorney General Kennedy and the FBI's liaison to the Attorney General regarding certain FBI microphone surveillance practices in 1961, see the Committee's Report on Warrantless Surveillance Practices, Sec. II.

The Department later summarized the policy during these years in the Supplemental Memorandum to the Supreme Court in the case of *Black v. United States*,⁸³ referred to above.

The memorandum read, in part: "Under Department practice in effect for a period of years prior to 1963, and continuing until 1965, the Director of the Federal Bureau of Investigation was given authority to approve the installation of devices such as that in question [a microphone] for intelligence (and not evidentiary) purposes when required in the interest of internal security or national safety, including organized crime, kidnappings, and matters wherein human life may be at stake. Acting on the basis of the aforementioned Departmental authorization, the Director approved installation of the device involved in the instant case."⁸⁴

C. 1965 to the Present

On March 30, 1965, when Attorney General Katzenbach instituted the six month limitation on telephone taps, he also expressed the view that proposals for microphone surveillances should be submitted for the Attorney General's prior approval and that this type of surveillance should also be limited to six month periods.⁸⁵ While Attorneys General since the 1950s had sporadically given their prior approval to microphone surveillances, the requirement of such approval had never been a consistent policy of the Justice Department, as it had been with respect to wiretapping for more than two decades.^{85a} With the immediate implementation of Katzenbach's suggestions, therefore, the Justice Department procedures with regard to both wiretapping and microphone surveillance became identical.

President Johnson's June 30, 1965, directive to all federal agencies, which formally prohibited all wiretapping except in connection with "national security" investigations and then only with the prior approval of the Attorney General, referred to the issue of microphone surveillances only tangentially. It read:

Utilization of mechanical or electronic devices to overhear nontelephone conversations is an even more difficult problem, which raises substantial and unresolved questions of constitutional interpretation. I desire that each agency conducting such investigations consult with the Attorney General to ascertain whether the agency's practices are fully in accord with the law and with a decent regard for the rights of others.⁸⁶

⁸³ 385 U.S. 26 (1966).

⁸⁴ Supplemental Memorandum for the United States, *Black v. United States*, 385 U.S. 26 (1966), submitted by Solicitor General Thurgood Marshall, 7/13/63.

⁸⁵ Memorandum from J. Edgar Hoover to the Attorney General, 3/30/65.

^{85a} Mr. Katzenbach testified as follows concerning the requirement he imposed on microphone surveillance:

"Curiously, 'bugs,' which in my judgment are far more serious invasions of privacy than are taps, were not subject to the same authorization procedure in the Department of Justice until I so directed on March 30, 1965. Therefore, the Bureau had claimed an authority to install bugs at its sole discretion under a memorandum from then Attorney General Brownell dated May 20, 1954. I thought the claim that Attorney General Brownell's memorandum authorized the widespread use of bugs was extremely tenuous." (Katzenbach testimony, Hearings, Vol. 6, p. 200.)

⁸⁶ Directive from President Johnson to Heads of Agencies, 6/30/65.

Apparently, J. Edgar Hoover did not find his "consultations" with the Attorney General to be encouraging. It is noted above that on September 14, 1965, the Director informed Katzenbach that, "[i]n accordance with the wishes you have expressed during various recent conversations with me" and because of public alarm at alleged invasions of privacy by Federal agencies, he was severely restricting or eliminating the use of a number of investigative techniques. Specifically with regard to microphone surveillance, he wrote that "we have discontinued completely the use of" this technique⁸⁷—despite Katzenbach's approval of the limited use of microphone surveillance in March of that year and despite the absence of a prohibition on the use of the technique in the President's June directive.

It is also noted above in Section II that Katzenbach responded about two weeks later with a memorandum setting forth what he believed to be appropriate guidelines for the use of the techniques Hoover had restricted or eliminated. He gave virtually unrestricted authorization to the FBI to conduct microphone surveillances not involving trespass, writing, "[w]here such questions [i.e., of trespass] are not raised, I believe the Bureau should continue to use these techniques in cases where you believe it appropriate without further authorization from me."⁸⁸ With regard to microphone surveillances that did involve trespass, he again treated the use of this technique in a fashion identical to warrantless wiretapping: for both he required his prior approval (except in "emergency circumstances") and for both the legitimate purposes were limited to the gathering of intelligence in "national security matters." While he expressed the belief that both wiretaps and microphone surveillances involving trespass might at some future time be appropriate to use in the area of organized crime, he gave no authority for such use at that time.

The policy set out in Katzenbach's September 27 letter to Hoover was reaffirmed by the Justice Department at least three times prior to the 1967 *Katz* decision and the passage of the Omnibus Crime Control Act of 1968.

In the July 1966 Supplemental Memorandum filed in the *Black* case, the Justice Department stated that "[p]resent Departmental practice, adopted in July 1965, prohibits the use of such listening devices in all instances other than those involving the collection of intelligence affecting the national security. The specific authorization of the Attorney General must be obtained in each instance when this exception is involved." This language was quoted by Attorney General Ramsey Clark in his November 3, 1966 memorandum to all United States Attorneys⁸⁹ and reaffirmed in Clark's 1967 memorandum to heads of executive departments.⁹⁰

The *Katz* decision, in December 1967, held that a warrantless microphone installation on the side of a public telephone booth was unconstitutional in the context of a criminal case. Thus, Justice Department policy prohibiting microphone surveillances in non-"national security"

⁸⁷ Memorandum from the Director, FBI to the Attorney General, 9/14/65.

⁸⁸ Memorandum from Nicholas deB. Katzenbach to J. Edgar Hoover, 9/27/65.

⁸⁹ Memorandum from the Attorney General to all United States Attorneys, 11/3/66.

⁹⁰ Memorandum from the Attorney General to Heads of Executive Departments and Agencies, 6/16/67.

cases became a constitutional requirement as well—regardless of whether or not the installation involved trespass.^{90a} As noted above, however, the issue of electronic surveillance in “national security” cases was not addressed by the Supreme Court in *Katz*.

The 1968 Omnibus Crime Control Act, unlike the Federal Communications Act of 1934, applies to both telephone wiretaps and microphone surveillances. Because of this, and because the Justice Department policy regarding both techniques became virtually identical in 1965, the description of the evolution of wiretapping policy over the past decade applies equally to the technique of microphone surveillance. In recent years, for all practical purposes, there has been but a single policy for both forms of electronic surveillance.

IV. AN OVERVIEW OF FBI ELECTRONIC SURVEILLANCE PRACTICES

The preceding two sections have dealt with the legal framework and Justice Department policy regarding warrantless wiretapping and bugging. This section attempts to provide an overview of FBI electronic surveillance practices. Without purporting to explore the full range of FBI electronic surveillance practices, a limited number of key areas are highlighted in order to suggest the manner in which electronic surveillances are conducted. More specifically, this section discusses the frequency of FBI use of this technique since 1940; internal FBI restrictions on the maximum number of simultaneous electronic surveillances; the method by which requests have been initiated and approved; the manner in which wiretaps and bugs have been installed; the means by which the FBI has responded to the legal obligation to produce electronic surveillance records in criminal trials; and the traditional reluctance of the FBI to permit outside scrutiny of its electronic surveillance practices. A discussion of the application of the Justice Department's standards for wiretapping and bugging to particular cases is reserved for Section VII below.

A. Extent of FBI Electronic Surveillance: 1940-1976

While FBI use of warrantless electronic surveillance has not been as pervasive as many other investigative techniques such as informants, both wiretaps and bugs have been strategically utilized in a large number of intelligence investigations. The Bureau's reliance on these techniques was greatest during World War II and the immediate postwar period. During the 1960s and early 1970s, internal FBI policy placed a ceiling on the number of simultaneous electronic surveillances conducted by the Bureau. This self-restriction did not act to curtail all use of this technique, but it apparently frustrated intelligence officials in the FBI and other agencies who sought—unsuccessfully—a change in this policy through the Huston Plan in 1970. In recent years, judicial decisions have severely restricted the use of warrantless electronic surveillance against domestic targets, although wiretaps and bugs still continue to be commonly used in the area of foreign intelligence and counterintelligence.

^{90a} The Court in *Katz* rejected the distinction made in *Goldman*, between trespassory and nontrespassory microphone surveillances, and the resulting doctrine of “constitutionally protected areas.” “. . . [T]he Fourth Amendment,” the Court wrote in *Katz*, “protects people, not places.” 389 U.S. 347, 351 (1967).

1. Annual Totals for Wiretaps and Microphone Installations

According to Justice Department records, the annual totals of warrantless FBI wiretaps and microphones in operation between 1940 and 1974 were as follows:

Year	Telephone wiretaps	Microphones	Year	Telephone wiretaps	Microphones
1940.....	6	6	1958.....	166	70
1941.....	67	25	1959.....	120	75
1942.....	304	88	1960.....	115	74
1943.....	475	193	1961.....	140	85
1944.....	517	198	1962.....	198	100
1945.....	519	186	1963.....	244	83
1946.....	364	84	1964.....	260	106
1947.....	374	81	1965.....	233	67
1948.....	416	67	1966.....	174	10
1949.....	471	75	1967.....	113	0
1950.....	270	61	1968.....	82	9
1951.....	285	75	1969.....	123	14
1952.....	285	63	1970.....	102	19
1953.....	300	52	1971.....	101	16
1954.....	322	99	1972.....	108	32
1955.....	214	102	1973.....	123	40
1956.....	164	71	1974.....	190	42
1957.....	173	73			

¹ Attorney General Edward H. Levi testimony, Nov. 6, 1975, hearings, vol. 5, pp. 68-70. The statistics before 1968 encompass electronic surveillances for both intelligence and law enforcement purposes. Those after 1968, when the Omnibus Crime Control Act was enacted, include surveillances for intelligence purposes only; electronic surveillances for law enforcement purposes were thereafter subject to the warrant procedures required by the Act.

Comparable figures for the year 1975, through October 20, are: 121 telephone wiretaps and 24 microphone installations.⁹¹

It should be noted that these figures are cumulative for each year; that is, a wiretap on an individual in one year which continued into a second year is recorded in both years. The figures are also duplicative to some extent, since a telephone wiretap or microphone which was installed, then discontinued, and later reinstated is counted as a new surveillance upon reinstatement.

2. FBI Policy on the Maximum Number of Simultaneous Electronic Surveillances

From at least the early 1960s, J. Edgar Hoover placed a ceiling on the number of warrantless electronic surveillances that could be in operation at any one time. As expressed by Charles D. Brennan, who became Assistant Director in charge of the FBI's Domestic Intelligence Division in 1970, "... there was always a maximum figure which you were not allowed to exceed, and if you recommended an additional wiretap, it had to be done with the recognition that in another area you would take one off."⁹²

⁹¹ Levi, 11/6/76, Hearings, Vol. 5, p. 70.

⁹² Charles Brennan deposition, 9/23/75, p. 44. An example of this relatively frequent occurrence is reflected in an FBI memorandum dated June 25, 1962, which recommended that seven wiretaps should be instituted in connection with the Bureau's "Sugar Lobby" investigation (see pp. 328-330.)

"As mentioned in memorandum of 9/21/62, for each technical surveillance installed in instant matter, we will temporarily suspend coverage which we have for intelligence purposes on some other establishments so as not to increase total number of technical installations in operation." (Memorandum from W. R. Wannall to W. C. Sullivan, 6/25/62.)

Until the mid-1960s, the maximum figure was approximately eighty.⁹³ In response to the 1965 and 1966 investigation by the Senate Subcommittee on Administrative Practice and Procedure into the use of electronic surveillance and other techniques by federal agencies, however, Hoover instructed Bureau officials to reduce by one-half the number of warrantless electronic surveillances then in effect. According to Brennan, the ceiling was lowered out of a concern that this subcommittee's "inquiry might get into the use of that technique by the FBI. . . ."⁹⁴ The number of warrantless wiretaps in the "security field" was subsequently reduced from 76 to 38, and remained close to the latter figure for several years thereafter.⁹⁵

Intelligence officials both within the FBI itself and in other intelligence agencies clearly felt constrained by Hoover's policy, and through the Huston Plan in 1970 they attempted to raise or eliminate the internal limitations on the number of simultaneous electronic surveillances. The Report that was presented to President Nixon in June of 1970 noted: "The limited number of electronic surveillances and penetrations substantially restricts the collection of valuable intelligence information of material important to the entire intelligence community,"⁹⁶ and it presented the President with the option of modifying "present procedures" to "permit intensification of coverage of individuals and groups in the United States who pose a major threat to the internal security."⁹⁷ This option was specifically recommended to the President by Tom Charles Huston.⁹⁸

⁹³ Because this restriction applied only to *simultaneous* electronic surveillances, the ceiling figures are invariably lower than the annual statistics reflected in the chart on p. 301. The annual statistics include *all* electronic surveillances conducted for any length of time, however brief, during the year indicated.

⁹⁴ Brennan deposition, 6/28/75, p. 48.

⁹⁵ Brennan deposition, 9/23/75, p. 42. It has been alleged that the number of wiretaps was temporarily reduced for a brief period each year during J. Edgar Hoover's annual appearances before the House Appropriations Committee so that he could report, if asked, a relatively small number of wiretaps in operation. (See, e.g., Report of the Committee on the Judiciary, House of Representatives, 8/20/74, p. 149.) In one instance involving the so-called "17 wiretaps" in February 1971, Hoover did insist that ongoing surveillances should be discontinued prior to such an appearance. (Memorandum from W. S. Sullivan to Mr. Tolson, 2/10/71.)

But no general pattern of temporary suspensions or terminations during the Director's appearances before the House Appropriations Committee is revealed by Bureau records. The following figures represent the number of warrantless electronic surveillances in operation approximately thirty days prior to, during, and approximately thirty days after Hoover's testimony before that committee from 1967 to 1972:

Before	Date of Director's testimony	After
"Retrieval not practicable".....	Feb. 16, 1967 (38).....	Mar. 13, 1967 (42)
Jan. 15, 1968 (33).....	Feb. 23, 1968 (33).....	Mar. 22, 1968 (33)
Mar. 14, 1969 (46).....	Apr. 17, 1969 (49).....	May 15, 1969 (50)
Feb. 5, 1970 (38).....	Mar. 5, 1970 (36).....	Apr. 6, 1970 (37)
Feb. 18, 1971 (33).....	Mar. 17, 1971 (32).....	Apr. 17, 1971 (46)
Jan. 31, 1972 (32).....	Mar. 2, 1972 (34).....	Mar. 31, 1972 (35)

(Letter from FBI to Senate Select Committee, 6/8/73.)

⁹⁶ Special Report: Interagency Committee on Intelligence (Ad Hoc) June 1970, p. 20.

⁹⁷ *Ibid.*, p. 28.

⁹⁸ Memorandum from Tom Charles Huston to H. R. Haldeman, 7/70.

Director Hoover nonetheless remained strongly opposed to lifting restraints on the FBI's use of warrantless electronic surveillance. He added a footnote to the electronic surveillance section of the Huston Report which read:

The FBI does not wish to change its present procedure of selective coverage of major internal security threats as it believes this coverage is adequate at this time. The FBI would not oppose other agencies seeking authority of the Attorney General for coverage required by them and thereafter instituting such coverage themselves.⁹⁹

In part because of Hoover's opposition to the Huston Plan, President Nixon, who had originally endorsed the recommendations, withdrew his approval¹⁰⁰ and the maximum number of electronic surveillance stayed essentially constant until 1972.

The policy of placing an arbitrary ceiling on simultaneous warrantless electronic surveillances was apparently terminated after J. Edgar Hoover's death in 1972. With the apparent lifting of this self-restriction, the number of foreign-related surveillances increased¹⁰¹—a fact which is reflected in the annual totals listed above.

B. Requests, Approvals, and Implementation

1. The Request and Approval Process

Recommendations for the use of electronic surveillance in particular cases are typically initiated at the field level of the Bureau, although at times they have originated with the Attorney General, the White House, and the head of another agency.¹⁰² If Headquarters approves a field request, the appropriate field office then conducts a feasibility study to determine whether or not the surveillance can be conducted with complete security. Upon a favorable security finding, the Director personally sends the Attorney General a formal request for coverage, setting forth the name and address of the person or persons to be monitored as well as pertinent facts about the case.¹⁰³

According to former Attorney General William Saxbe, the "request must contain very detailed information."¹⁰⁴ In numerous cases in the past, however, the information supplied in the request has been minimal at best. For example, several of the so-called "17 wiretaps" during the Nixon administration were approved by Attorney General John Mitchell despite the lack of any data in the formal requests to support the need for the technique's use.¹⁰⁵ It is possible

⁹⁹ Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 28.

¹⁰⁰ Report on the Huston Plan: Sec. VI, Revision of the Huston Plan: A Time for Reconsideration.

¹⁰¹ The *Kelth* case, decided in 1972, inhibited a similar increase in warrantless electronic surveillances directed against American citizens connected with domestic organizations.

¹⁰² For examples of wiretap requests which have originated outside the Bureau, see pp. 312, 337.

¹⁰³ As noted above, the approval of the Attorney General has been required prior to the implementation of telephone wiretaps since the early 1940s and prior to the implementation of microphone surveillances since 1965.

¹⁰⁴ Attorney General William Saxbe testimony before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, excerpted in Department of Justice press release, 10/2/74, pp. 5, 6.

¹⁰⁵ See pp. 337-338.

that these and similarly defective requests submitted to other Attorneys General were supplemented by information imparted orally, but, as the District of Columbia Court of Appeals stated in *Zweibon v. Mitchell*:

... we nevertheless note the possibility of abuse when there are no written records of the justifications for instituting a surveillance. Such lack of records allows a search to be justified on information subsequently obtained from the surveillance and permits the assertion that more information was relied on than was in fact the case. Prior judicial approval for wiretapping, among other benefits, of course freezes the record as to the data upon which the surveillance was based.¹⁰⁶

2. Implementation of Wiretaps and Bugs

If the Director receives the written approval of the Attorney General for a particular surveillance, the field office is instructed to implement it. In the case of wiretapping, an agent from the field office generally contacts a representative of the local telephone company who acts as Government liaison. One such telephone company representative in Washington, D.C., testified that he was simply orally advised by an agent of the FBI's Washington Field Office that authority had been granted to tap a particular telephone number.¹⁰⁷

According to the Washington Field Office supervisor in charge of the employees who implemented and monitored "national security" wiretaps, the telephone company representative would then assign "pair numbers" in the cable connecting the FBI's Washington, D.C. Field Office with the company's central office in the city, and the recording and monitoring devices would be attached to the assigned cable pair at the field office, where the Bureau monitoring agents were located. After the supervisor verified the wiretap by determining that the intercepted line was the correct one, he would give the tap a symbol number to be used in lieu of the words "telephone surveillance" in any later communication.¹⁰⁸

Generally, two agents would conduct the monitoring operation in eight-hour shifts. These monitors typically tape-recorded all calls on the line and added supplementary notes concerning such items as the identity of the caller and the subject of the conversation if unclear from the tape.¹⁰⁹ Each day, they typed up log summaries, which included anything they believed was consequential. Because the monitors were not told specifically what to look for, however, the summaries tended to be over-inclusive rather than under-inclusive: the supervising agent noted, for instance, that any information obtained about the subject's sex life or drug use would usually be included in the log summaries.¹¹⁰ He also stated that he disliked having empty summaries for any day, and so issued a general instruction to his monitors that an attempt should be made to include at least one item in the log each

¹⁰⁶ *Zweibon v. Mitchell*, 516 F. 2d 504, 600 n. 24 (D.C. Cir. 1975).

¹⁰⁷ Horace R. Hampton, Former Director of Government Communications Service, Chesapeake and Potomac Telephone Co., 1/27/75, *Halperin v. Kinsinger*, Civ. No. 1187-78 (D.D.C.), pp. 12, 18.

¹⁰⁸ FBI Special Agent deposition, 4/7/75, *Halperin v. Kinsinger*, Civ. No. 1187-78 (D.D.C.), pp. 10, 11.

¹⁰⁹ FBI Special Agent deposition, 4/7/75, pp. 38, 39.

¹¹⁰ FBI Special Agent deposition, 4/7/75, pp. 40-42.

day.¹¹¹ Even if there was no activity, a monitor would still have to file a log summary stating "no activity" or "no pertinent activity."¹¹²

A special squad within the Washington Field Office was responsible for implementing microphone installations. According to one Bureau agent who served on this squad for a number of years, the authorizing document (which, he said, invariably bore J. Edgar Hoover's initials) would be transmitted to the field office and shown to him and the other members of the squad prior to the installation. This agent stated that in the majority of cases he was able to obtain a key to the target's premises, either from a landlord, hotel manager, or neighbor. In other cases, he simply entered through unlocked doors. He stated that only in a small proportion of the cases to which he was assigned was it necessary to pick a lock.¹¹³ Once the bug was planted, it was generally necessary for Bureau agents to monitor the conversations from a location close to the targeted premises.

C. The ELSUR Index

In the mid-1960s, the Justice Department established a policy of filing disclosures in the courts in cases where criminal defendants had been monitored by electronic surveillance.¹¹⁴ As a result, it became necessary to establish a general index of the names of all persons overheard on such surveillances. In September 1966, the Assistant Attorney General of the Criminal Division informed Director Hoover that:

In recent months the Department has been confronted with serious problems concerning the prospective or continued prosecution of individuals who have been the subject of prior electronic surveillance. These problems have sometimes arisen comparatively late in the investigative or prosecutive process. For example, we recently were forced to close an important investigation involving major gambling figures in Miami because we were advised that the evidence necessary to obtain a conviction was tainted. . . .

In view of these experiences, it appears necessary and desirable that the Department have full knowledge of the extent of any device problem at as early a stage of preparation for prosecution as possible in order to determine whether a particular case may or may not be tainted or what responses will be necessary with respect to a motion under Rule 16 to produce statements.

Accordingly, I feel it is imperative for us to establish between the Bureau and the Department . . . some sort of "early warning" system. *This may require the Bureau to set up and maintain appropriate indices with respect to electronic surveillance and the materials derived therefrom.*

I have discussed this suggestion with the Attorney General

¹¹¹ FBI Special Agent deposition, 4/7/75, pp. 45, 58-59.

¹¹² FBI Special Agent deposition, 4/7/75, pp. 58, 59.

¹¹³ Staff summary of former F. I Special Agent interview, 9/5/75.

¹¹⁴ In *Alderman v. United States*, 394 U.S. 165 (1969), the Supreme Court held that this policy was constitutionally required. The court held in this case that the Government is legally obligated to produce all materials generated by electronic surveillance for inspection by the court in criminal cases.

and the Deputy Attorney General. Both feel that the establishment of such indices is necessary. . . .¹¹⁵

In fact, for a number of years prior to this suggestion the Bureau had maintained rudimentary indices within each field office, although there was no central index and those which existed on the field level were believed to be inadequate by Justice Department officials. Because Hoover believed the existing system was adequate, he reacted defensively when Assistant Attorney General Fred Vinson requested a conference between the Department and the Bureau to discuss the details of the Justice Department's proposal. The Director penned the following notation on the Vinson memorandum: "Since [an indexing system] is already operating, I see no need for such a conference. . . . Tell him it is already done and see that it is meticulously operated."¹¹⁶

About one week later, however, Hoover directed officials at Headquarters to send a teletype to all field offices which had conducted electronic surveillances since January 1960.¹¹⁷ These offices were instructed to transmit to Headquarters the names of all individuals whose voices were monitored through electronic surveillance any time within the previous six years, as well as the initial date of the monitoring and the identity of the subject against whom the installation was directed. Each office was also informed that it had a continuing obligation to submit to Headquarters on a weekly basis the names of any additional individuals monitored in the future.¹¹⁸

The Bureau has since maintained a central index at Headquarters, referred to as the ELSUR Index, which contains the names of all individuals overheard, even incidentally, on both court-ordered and warrantless electronic surveillances. Additional information such as the initial date of the monitoring and the identity of the target of the surveillance is also included in the index. The method by which this index has been compiled, however, raises some questions as to its accuracy and completeness.

Although the ELSUR Index covers the period January 1, 1960, to the present, for example, the FBI's response to a request by the Senate Select Committee for the date and location of all electronic overhears of Martin Luther King, Jr., conceded that retrieval of some of the overhears of King may be impossible. Three factors contributing to this difficulty were set forth by the Bureau:

1. Prior to issuing instructions to field offices in October, 1966, directing them to submit the names of all individuals whose voices have been monitored through a microphone installed or a telephone surveillance operated by the offices any time since 1/1/60, additional surveillances on which King was monitored are unaccountable for as these surveillance logs may have been destroyed.

2. Prior to the instructions, personnel handling logs may have felt that overhears were of no substance or significance and consequently were not recorded.

¹¹⁵ Memorandum from Fred M. Vinson, Jr. to the Director, FBI, 9/27/60. [Emphasis added.]

¹¹⁶ Memorandum from Fred Vinson to the Director, FBI, 9/27/60.

¹¹⁷ Memorandum from W.C. Sullivan to C. D. DeLoach, 10/4/60.

¹¹⁸ *Ibid.*

3. The setting up of the ELSUR indices was a fieldwide project of large proportions and the instructions going to the field 10/5/66, were subject to broad interpretation, thus leading to possible misinterpretation of these instructions. Also, the factor of human error might be involved, thereby causing incomplete indices until the mechanics of the procedure were ironed out.¹¹⁹

In fact, several surveillances of King himself which were known to personnel at FBI headquarters were apparently not reflected in the ELSUR Index.

One Special Agent's description of the preparation of ELSUR Index cards by FBI monitors suggests that the Index may be incomplete even for the post-1966 period. According to this agent, the FBI monitors are under instructions to prepare ELSUR Index cards for each identifiable person who speaks over the intercepted line.¹²⁰ Since the cards must contain the proper names of these individuals rather than phonetic spellings, and since this information is often difficult to obtain from an overhear alone, the monitors maintain a separate index of phonetic spellings prior to their determination of the proper spelling and its entry into the ELSUR Index.¹²¹ The monitors then attempt to confirm the identity of the persons overheard from various research aids kept at their disposal, such as telephone books and Congressional and federal agency directories, and from discussions with the Bureau agents assigned to the substantive cases. In most cases, it is possible to make an accurate identification, but when this proves to be impossible, the names of unidentified individuals never get entered into the ELSUR Index.¹²² Sometimes no entry has been made in the ELSUR Index even though positive identification was subsequently obtained.¹²³ Thus, a person could be overheard and this fact would not be revealed by a check of the ELSUR Index.¹²³

D. Congressional Investigation of FBI Electronic Surveillance Practices: The Long Subcommittee

The Bureau has traditionally been reluctant to permit Congressional investigation into its electronic surveillance practices. During the 1965 and 1966 inquiry by the Senate Subcommittee on Administrative Practice and Procedure into the use of electronic surveillance and other techniques by federal agencies, the FBI took affirmative steps to avoid substantial exposure of such practices to the subcommittee. The Bureau's attempt to thwart this subcommittee's investigation into the use of mail covers in February and March of 1965 is described in the Senate Select Committee's Report on CIA and FBI Mail

¹¹⁹ Letter from the FBI to the Senate Select Committee, 10/3/75.

¹²⁰ FBI Special Agent deposition, *Halperin v. Kissinger*, 4/7/75, pp. 15, 16.

¹²¹ FBI Special Agent deposition, *Halperin v. Kissinger*, 4/7/75, p. 10.

¹²² FBI Special Agent deposition, *Halperin v. Kissinger*, 4/7/75, pp. 17-19.

¹²³ FBI Special Agent deposition, *Halperin v. Kissinger*, 4/7/75, pp. 53, 54.

¹²⁴ In at least two cases, certain very sensitive surveillances were consciously excluded from the ELSUR Index system. See p. 843. While such exclusion has been rare, the fact that it occurred twice shows that it is possible to circumvent the entire ELSUR Index system.

Opening; ¹²⁴ a similar attempt, apparently acquiesced in by the subcommittee, was made in the area of electronic surveillance.

The Bureau's wary attitude toward this investigation is reflected in an internal memorandum dated August 2, 1965:

Senator [Edward V.] Long [of Missouri] is Chairman of the Senate Subcommittee on Administrative Practice and Procedure. He has been taking testimony in connection with mail covers, wiretapping, and various snooping devices on the part of Federal agencies. He cannot be trusted and although the FBI has not become involved in these hearings, our name has been mentioned quite prominently on several occasions. . . . ¹²⁵

When the Subcommittee's investigation began to touch on the Bureau's electronic surveillance practices in connection with organized crime several months later, Assistant Director Cartha DeLoach and another ranking Bureau official personally visited the Subcommittee's chairman, Senator Edward Long of Missouri, to explain to him the FBI's practices in the area of electronic surveillance. ¹²⁶ This meeting lasted approximately one and one-half hours, ¹²⁷ and there is no indication in the documentary record that any other briefing occurred prior to this visit. Nonetheless, an FBI memorandum notes that after the Senator "stated that unfortunately a number of people were bringing pressure on him to look into the FBI's activities in connection with usage of electronic devices," ¹²⁸ DeLoach suggested to him:

that perhaps he might desire to issue a statement reflecting that he had held lengthy conferences with top FBI officials and was now completely satisfied, after looking into FBI operations, 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. ¹²⁹

According to this memorandum, Senator Long agreed, and when he "stated that he frankly did not know how to word such a release," ¹³⁰ DeLoach "told him that we won'd be glad to prepare the release for him on a strictly confidential basis." ¹³¹

The next day, Bureau agents prepared such a statement for Senator Long, noting that "it is written from the viewpoint of the Senator and his Committee in that it indicates they have taken a long, hard look at the FBI and have found nothing out of order—but that they will continue looking over our procedures and techniques from time to time in the future. Such an approach," it was stated, "is felt to be essential if the statement is to have the desired effect. A statement reflecting a stronger pro-FBI position might not only prove ineffective in thwarting those persons who are exerting pressure on the Sub-

¹²⁴ CIA and FBI Mail Opening Report: Sec. IV, FBI Mail Opening.

¹²⁵ Memorandum from M. A. Jones to Mr. DeLoach, 8/2/65.

¹²⁶ Memorandum from C. D. DeLoach to Mr. Tolson, 1/10/66.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

committee for a probe of our operations, but it could also bring criticism and additional pressure on Senator Long."¹²² The statement written by the Bureau for Senator Long reads in full:

As Chairman of the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, I instructed my staff at the outset of our activities to include the FBI, together with all other Federal agencies, among the organizations to be dealt with to ascertain if there had been invasion of privacy or other improper tactics in their operations. Toward this end, my staff and I have not only conferred at length with top officials of the FBI, but we have conducted exhaustive research into the activities, procedures, and techniques of this agency.

While my staff and I fully intend to carefully review FBI operations from time to time in the future, I am at the present time prepared to state, based upon careful study, that we are fully satisfied that the FBI has not participated in high-handed or uncontrolled usage of wiretaps, microphones, or other electronic equipment.

The FBI's operations have been under strict Justice Department control at all times. In keeping with a rigid system of checks and balances, FBI installation of wiretaps and microphones has been strictly limited, and such electronic devices have been used only in the most important and serious of crimes either affecting the internal security of our Nation or involving heinous threats to human life. Included among these are major cases of murder, kidnapping, and sadism perpetrated at the specific instruction of leaders of La Cosa Nostra or other top echelons of the extralegal empire of organized crime.

Investigation made by my staff has reflected no independent or unauthorized installation of electronic devices by individual FBI Agents or FBI offices in the field. We have carefully examined Mr. J. Edgar Hoover's rules in this regard and have found no instances of violation.¹²³

As noted above, there is no indication in the record that any briefing about electronic surveillance by the FBI occurred prior to the preparation of this statement by Bureau agents other than the ninety-minute briefing given by DeLoach. No Bureau agents had been called to testify before the Subcommittee. It does not appear that any Senator or staff members reviewed FBI files on electronic surveillances. Nor is there any indication in the record that the Subcommittee ever learned of the bugging of a Congressman's hotel room, the bugging and wiretapping of Martin Luther King, Jr., or the wiretapping of a Congressional staff member, two newsmen, an editor of a political newsletter, and a former Bureau agent—all of which had occurred within the previous five years.¹²⁴

¹²² Memorandum from M. A. Jones to Mr. Wick, 1/11/60.

¹²³ Memorandum from M. A. Jones to Mr. Wick (attachment), 1/11/60.

¹²⁴ The details of these cases are discussed in Section VI below.

Ten days after the statement was prepared for Senator Long, DeLoach again visited him and "asked him point blank whether or not he intended to hold hearings concerning the FBI at any time in the future." According to DeLoach's memorandum:

He stated he did not. I asked him if he would be willing to give us a commitment that he would in no way embarrass the FBI. He said he would agree to do this.¹³⁵

When the Subcommittee's Chief Counsel asked DeLoach at this meeting "if it would be possible for [DeLoach] or Mr. Gale [another FBI Assistant Director] to appear before the Long Subcommittee . . . and make a simple statement to the effect that the FBI used wiretaps only in cases involving national security and kidnapping and extortion, where human life is involved, and used microphones only in those cases involving heinous crimes and Cosa Nostra matters," DeLoach refused. He wrote that he informed the Chief Counsel:

that to put an FBI witness on the stand would be an attempt to open a Pandora's box, in so far as our enemies in the press were concerned [and] that such an appearance as only a token witness would cause more criticism than the release of the statement in question would ever cause.¹³⁶

DeLoach noted that Senator Long then stated "he had no plans whatsoever for calling FBI witnesses," but that the Chief Counsel indicated that he would like to call one former FBI agent who was known to DeLoach. According to DeLoach's memorandum regarding this meeting, he told the Chief Counsel that this agent "was a first class s.o.b., a liar, and a man who had volunteered as a witness only to get a public forum," and that the Chief Counsel then reconsidered. The memorandum concludes with the observation:

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.¹³⁷

Partly as a result of the Subcommittee's apparently willing "neutralization" by the Bureau, the FBI's electronic surveillance practices were protected from intensive Congressional and public scrutiny until the 1970s.

V. WARRANTLESS FBI ELECTRONIC SURVEILLANCE OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE TARGETS WITHIN THE UNITED STATES

Foreign agents and foreign establishments within the United States have often been, and continue to be, the targets of warrantless FBI electronic surveillance. In general, the Fourth Amendment questions raised by electronic surveillance of foreigners are not as serious as those raised by the targeting of American citizens; and surveillance of foreign targets may be less susceptible to the types of abuses that have often been associated with wiretapping and bugging of American

¹³⁵ Memorandum from C. D. DeLoach to Mr. Tolson, 1/21/66.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

citizens. Because Americans are often overheard on "foreign" taps and bugs, however, and because American citizens may also be the indirect targets of "foreign" surveillances, the rights of Americans may nonetheless be affected even by surveillance of foreign targets.

Apparently, most warrantless electronic surveillances conducted by the FBI in the past fifteen years have fallen into this broad category. Foreign establishments and foreigners living within the United States have been the subject of wiretaps and bugs far more frequently than have American citizens connected with domestic organizations, for purposes ranging from the collection of foreign intelligence and counterintelligence information to the detection of terrorist activity.¹³⁸ Since the 1972 *Keith* decision, which invalidated "domestic security" warrantless electronic surveillances, the proportion of foreign targets has been even greater. As of November 1975, for example, all existing warrantless electronic surveillances were directed against foreigners.¹³⁹

The purpose and value of electronic surveillance against foreign targets, as well as "domestic" abuse questions which have arisen in this context, are discussed below.

A. Purpose and Value as an Investigative Technique

Electronic surveillance of foreign targets has been used extensively by the FBI for the purpose of collecting foreign counterintelligence information. Within the past fifteen years, both wiretaps and bugs designed to collect such information have been directed against targets in the following categories: "Foreign Establishments," "Foreign Commercial Establishments," "Foreign Officials," "Foreign Intelligence Agents," "Foreign Intelligence Contacts," "Foreign Intelligence Agents Suspect," "Foreign Officials' Contact," and "Foreign Intelligence Agents Business Office." Wiretaps alone have been used against "Foreign Intelligence Contact Suspect" and "a [foreign] Exile Group;" bugs alone have been used against the "wife of a foreign intelligence contact," a "relative of a foreign intelligence agent suspect," a "foreign intelligence agent contact," another "[foreign] exile group," and for "coverage of foreign officials."¹⁴⁰

Electronic surveillance of targets such as these is clearly considered by FBI officials to be one of the most valuable techniques for the collection of counterintelligence information. According to W. Raymond Wannall, the former Assistant Director in charge of the Bureau's Domestic Intelligence Division, wiretaps and bugs directed against foreign targets:

give us a base line from which to operate. . . . Having the benefit of electronic surveillance, we are in a position to make evaluations, to make assessments, to make decisions as to [the conduct of counterintelligence operations]. . . . It gives us leads as to persons . . . hostile intelligence services are try-

¹³⁸ Letter from FBI to Senate Select Committee (attachment), 10/28/75. Some of the surveillances for these purposes targeted Americans, but the FBI has not until recently identified surveillance targets according to their citizenship or resident alien status.

¹³⁹ Attorney General Edward H. Levi testimony, 11/6/75, Hearings, Vol. 5, p. 71.

¹⁴⁰ Letter from FBI to Senate Select Committee (attachment), 10/28/75. These category descriptions are the FBI's, and some may include Americans.

ing to subvert or utilize in the United States, so certainly it is a valuable technique.¹⁴¹

Some of the surveillances in the categories listed above have also been conducted for the primary purpose of collecting "positive" foreign intelligence (which may include economic intelligence) rather than counterintelligence information.^{141a} While the collection of "positive" foreign intelligence is outside the FBI's intelligence mandate, such surveillances have been responsive to specific requests of the Attorney General by the State Department and the CIA, both of which have a responsibility for "positive" intelligence.¹⁴²

In addition, the Bureau has electronically monitored foreign targets for the purpose of detecting and preventing violent and terrorist activities by foreigners within the United States. Wiretaps have been used for such purposes against a "Foreign Militant Group," a "Foreign Revolutionary Group," a "Foreign Militant Group Official," and a "Propaganda Outlet of the League of Arab States." Microphone surveillances in the last two of these categories and of an "Arab Terrorist Activist," and an "Arab Terrorist Activist Meeting" have been used for similar purposes.¹⁴³

B. Foreign Surveillance Abuse Questions

Even properly authorized electronic surveillances directed against foreign targets for the purposes noted above may result in possible abuses involving American citizens. Because wiretaps and bugs are capable of intercepting all conversations on a particular telephone or in a particular area, American citizens with whom the foreign targets communicate are also overheard, and information irrelevant to the purpose of the surveillance may be collected and disseminated to senior administration officials.

It is also possible to institute electronic surveillance of a foreigner for the primary purpose of intercepting the communications of a particular American citizen with that target; since the "foreign" sur-

¹⁴¹ W. Raymond Wannall testimony, 10/21/75, pp. 20, 21. The legitimate counterintelligence benefit that accrues to the Bureau through the use of this technique would not be reduced if a form of judicial warrant were required prior to the implementation of electronic surveillances directed against foreign agents or collaborators. See Senate Select Committee Final Report, Book II, Recommendations 51 and 52.

^{141a} President Ford's Executive Order on foreign intelligence specifically authorizes FBI electronic surveillance for this purpose. (Executive Order 11500, 2/18/76.)

¹⁴² See, e.g., Memorandum from R. D. Cotter to W. C. Sullivan, 3/11/68; Draft of National Security Council Intelligence Directive No. 9, 5/6/75 version. In the early 1970's, for example, the FBI conducted surveillance of a foreign establishment within the United States at the specific request of the OIA and with clearance from the State Department. This installation received the prior approval of the Attorney General. (Staff summary of FBI memoranda.)

As noted above, Ramsey Clark testified that while he was Attorney General, his practice was "to confine the area of approval to international activities directly related to the military security of the United States." (Ramsey Clark testimony, Hearings before the Senate Subcommittee on Administrative Practice and Procedure (1974).) He 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." (*Ibid.*)

¹⁴³ Letter from FBI to the Senate Select Committee (attachment), 10/23/75.

veillance in this situation can accomplish indirectly what a surveillance of the American could accomplish directly, the former may be used to circumvent the generally more stringent requirements for surveillances of Americans.

Both of these practices, which clearly affect the rights of the Americans involved, have occurred in the past and are discussed below.

1. Dissemination of Domestic Intelligence from Incidental Overhears

Essentially political information—unrelated to the authorized purpose of the surveillance—has occasionally been obtained as a by-product of electronic surveillance of foreign targets and disseminated to the highest levels of government. In the early 1960s, for example, Attorney General Robert Kennedy authorized the FBI to institute electronic surveillances of certain foreign targets in Washington, D.C., in connection with the possibly unlawful attempts of a foreign government to influence Congressional deliberations over sugar quota legislation.¹⁴⁴ From these surveillances, the Attorney General was provided with significant information not merely about possible foreign influence but about the reaction of key members of the House Agriculture Committee to the administration's sugar quota proposal as well.¹⁴⁵

Through the Bureau's coverage of certain foreign establishments in Washington, it was also able to supply two Presidents with reports of the contacts between members of Congress and foreign officials. According to a 1975 FBI memorandum:

On March 14, 1966, then President Lyndon B. Johnson informed Mr. DeLoach [Cartha DeLoach, former Assistant Director of the FBI] . . . that the FBI should constantly keep abreast of the actions of representatives of these [foreign countries] in making contacts with Senators and Congressmen and any citizens 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].¹⁴⁶

As a result of the President's request, the FBI prepared a chronological summary—based in part on existing electronic surveillances—of the contacts of each Senator, Representative, or staff member who communicated with selected foreign establishments during the period July 1, 1964, to March 17, 1966. This summary—which comprised 67 pages—was transmitted to the White House on March 21, 1966. The cover letter noted that: "based upon our coverage, it appears that" certain foreign officials "are making more contacts with" four named United States Senators "than with other United States legislators."¹⁴⁷

A second summary was prepared on further contacts between Congressmen and foreign officials and was transmitted to the White House on May 13, 1966. From that date until January 1969, when the Johnson

¹⁴⁴ Memorandum from the Director, FBI for the Attorney General, 2/14/61. Six American citizens were also wiretapped in the course of this investigation. These surveillances are discussed at pp. 328-330.

¹⁴⁵ FBI summary memoranda, 2/10/61, 6/15/62.

¹⁴⁶ FBI summary memorandum, 2/3/75.

¹⁴⁷ FBI summary memorandum, 2/3/75.

administration left office, biweekly additions to the second summary were regularly prepared and disseminated to the White House.¹⁴⁸

This practice was reinstated during the Nixon administration. On July 27, 1970, Larry Higby, Assistant to H. R. Haldeman, informed the Bureau that Mr. Haldeman "wanted any information possessed by the FBI relating to contacts between [certain foreign officials] and Members of Congress and its staff."¹⁴⁹ Two days later, the Bureau provided the White House with a statistical compilation of such contacts from January 1, 1967 to July 29, 1970.^{149a} As in the case of the information provided to the Johnson White House, no members of Congress were targeted directly but many had been overheard on existing electronic surveillances of foreign officials in Washington, D.C.

2. Indirect Targeting of American Citizens Through Electronic Surveillance of Foreign Targets

There is also evidence that in at least one instance the FBI, at the request of the President, instituted an electronic surveillance of a foreign target for the purpose of intercepting telephone conversations of a particular American citizen. An FBI memorandum states that about one week before the 1968 Presidential election, President Johnson became suspicious that South Vietnamese Government might sabotage his peace negotiations in the hope that Presidential candidate Richard Nixon would win the election and take a "harder line" towards North Vietnam.¹⁵⁰ More specifically, the President believed that Mrs. Anna Chennault, widow of General Clair Chennault and a prominent Republican leader, was attempting to persuade South Vietnamese officials "from attending the Paris peace negotiations until after the election since it would devolve to the credit of the Republican Party."¹⁵¹

In order to determine the validity of this suspicion, the White House instructed the FBI to institute a physical coverage of Mrs. Chennault, as well as physical and electronic surveillance of the South Vietnamese Embassy.^{151a} The electronic surveillance of the Embassy was author-

¹⁴⁸ FBI summary memorandum, 2/3/75.

¹⁴⁹ FBI summary memorandum, 2/3/75.

^{149a} No individual Senators, Congressmen, or staff members were named in the statistical summary, however. Nor is there any indication that President Nixon or his aides were specifically concerned about the President's critics. Rather, the request grew out of concern about "an increase in [foreign] interest on Capitol Hill" which was expressed to President Nixon by at least one Senator. (FBI summary memorandum, 2/3/75.)

¹⁵⁰ FBI summary memorandum, 2/1/75.

¹⁵¹ FBI summary memorandum, 2/1/75.

^{151a} Summaries of the information obtained from the physical surveillance of Mrs. Chennault were subsequently disseminated to the White House "in strictest confidence." (Memorandum from C. D. DeLoach to Mr. Tolson, 11/4/68; Teletypes from Director, FBI to the White House situation room, 10/30/68, 10/31/68, 11/1/68, 11/2/68, 11/3/68, 11/4/68.)

According to an FBI memorandum, a White House official told Assistant Director Cartha DeLoach that "this situation may very well 'blow the roof off the political race yet.'" (Memorandum from C. D. DeLoach to Mr. Tolson, 11/4/68.)

In addition, the White House requested the FBI to obtain, and the Bureau did subsequently obtain, the outgoing telephone toll records of Vice Presidential candidate Spiro Agnew while he was campaigning in New Mexico. (Memorandum from C. D. DeLoach to Mr. Tolson, 11/10/68). The apparent purpose of this request was to determine whether or not Agnew had communicated with Mrs. Chennault or the South Vietnamese Embassy. (FBI summary memorandum, 2/1/75.)

ized by Attorney General Ramsey Clark on October 29, 1968, installed the same day, and continued until January 6, 1969.¹⁵²

Significantly, a Bureau memorandum indicates that FBI officials were ill-disposed toward direct surveillance of Anna Chennault because "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."¹⁵³ Thus, a "foreign" electronic surveillance was instituted to indirectly target an American citizen, who, it was apparently believed, should not be surveilled directly.

VI. WARRANTLESS FBI ELECTRONIC SURVEILLANCE OF AMERICAN CITIZENS

American citizens and domestic organizations have also been the direct targets of FBI wiretaps and bugs for intelligence purposes. Indeed, the use of these techniques against Americans for such purposes has a long history. In 1941, for example, Attorney General Francis Biddle approved a wiretap on the Los Angeles Chamber of Commerce under the standard of "persons suspected of subversive activities."¹⁵⁴ Four years later, a high official in the Truman administration¹⁵⁵ and a former aide to President Roosevelt¹⁵⁶ were both the subject of warrantless electronic surveillance.

Between 1960 and 1972 numerous American citizens and domestic organizations were targeted for electronic surveillance. Most of these

¹⁵² Memorandum from Director, FBI to the Attorney General, 10/29/68; Memorandum from Director, FBI to the Attorney General, 10/30/68; Memorandum from Director, FBI to the Attorney General, 3/27/69. Ramsey Clark testified that he was unaware of the physical coverage of Mrs. Chennault and did not receive reports on her activities. (Ramsey Clark testimony, 12/3/76, Hearings, Vol. 6, p. 252.) There is no indication in the request for this wiretap, which was sent to Attorney General Clark, that the White House or the FBI was specifically interested in intercepting telephone conversations between Mrs. Chennault and South Vietnamese officials. Mrs. Chennault's name does not appear on this request. (Memorandum from Director FBI to the Attorney General, 10/20/68).

¹⁵³ Memorandum from C. D. DeLoach to Mr. Tolson, 10/30/68. In the context of the memorandum, this quotation may relate more directly to close physical surveillance of Mrs. Chennault. Direct electronic surveillance of Mrs. Chennault was also considered (*ibid.*), however, and the reason stated in the quotation presumably applied to the rejection of the use of that technique against her.

¹⁵⁴ Memorandum from Francis Biddle to Mr. Hoover, 11/19/41. This was approved in spite of his comment to J. Edgar Hoover that the target organization has "no record of espionage at this time." Memorandum from Biddle to Hoover, 11/19/41.)

In 1941, J. Edgar Hoover also requested wiretaps on two Americans who were members of the Communist Party and on a bookstore which was "engaged in the sale of Communist literature and [was] opened by persons connected with the Communist Party." (Memorandum from J. Edgar Hoover to the Attorney General, 10/2/41). It appears that these requests were not approved by Attorney General Biddle. (Biddle to Hoover, 11/19/41).

¹⁵⁵ Memorandum from D. M. Ladd to J. Edgar Hoover, 5/28/45. Reports summarizing information from this wiretap were delivered to two of President Truman's White House aides. One of the reports included "transcripts of telephone conversations between [the official] and Justice Frankfurter, and between [the official] and Drew Pearson." Memorandum from Ladd to Hoover, 5/28/45. (There is apparently no record as to who authorized this wiretap.)

¹⁵⁶ 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 memorandum, 11/15/45.) More than 175 reports summarizing information overheard on this wiretap, which continued until 1948, were delivered to the Truman White House. (Memorandum from FBI to Senate Select Committee (attachment), 3/20/76.)

warrantless wiretaps and bugs were predicated on the need to protect the country against "subversive" and/or violent activities; many were based on the perceived need to discover the source of leaks of classified information; and an undetermined number¹⁵⁷ of American citizens were wiretapped for other reasons such as the desire to obtain foreign intelligence or counterintelligence information.¹⁵⁸

The *Keith* decision in 1972 sharply restricted the grounds for wiretapping and bugging which had been asserted previously, although it did not prohibit warrantless electronic surveillance of American citizens for foreign intelligence or counterintelligence purposes when a substantial connection is shown to exist between the American individual or group and a foreign power.¹⁵⁹ No Americans were the subjects of this technique as of November 1975,¹⁶⁰ but a small number of Americans have been electronically monitored since the *Keith* case on the basis of such a foreign connection.¹⁶¹

This section focuses on warrantless electronic surveillance of American citizens during the 1960 to 1972 period. It contains a general description of surveillances which were instituted because of the perceived "subversive" or violent nature of the targets, because of leaks of classified information, and on various other grounds. In Section VII, this Report elaborates on three types of abuse questions which have arisen in connection with warrantless electronic surveillance of American citizens.

A. *Electronic Surveillance Predicated on Subversive Activity*

Numerous American citizens and domestic organizations have been wiretapped and bugged because their activities, while not necessarily violent, were regarded as sufficiently "subversive" to constitute a threat to the security of the United States. In many of these cases, it was believed that the individuals or groups were controlled or financed by, or otherwise connected with, a hostile foreign power. In other cases, the surveillances were based only on the possibility that the targets, whether consciously or not, were being influenced by persons believed to be acting under the direction of a foreign power;

¹⁵⁷ Because the FBI has not always determined the citizenship of electronic surveillance targets, it is possible that American citizens are included among the "foreign" categories listed in Section V.

¹⁵⁸ These categories are meant to be descriptive only; they do not constitute the Justice Department standards for warrantless electronic surveillance during this period. As noted in Section II, the standard for wiretapping until 1965 was the "domestic security" standard first articulated by Attorney General Tom Clark in 1948; the microphone surveillance standard until 1965 was that established by Attorney General Herbert Brownell: the "national interest." From 1965 until 1968, both wiretapping and microphone surveillances were governed by the "national security" standard established by President Johnson and Attorney General Nicholas Katzenbach. From 1968 until 1972, the Justice Department relied on criteria based on the five categories set forth in Section 2511 (3) of the Omnibus Crime Control Act. These criteria applied to both wiretaps and bugs. The application of these standards to particular cases is discussed in Section VII.

¹⁵⁹ See the discussion of the *Keith* case, *United States v. United States District Court*, 407 U.S. 297 (1972) p. 299.

¹⁶⁰ Attorney General Edward H. Levi testimony, 11/6/75, Hearings, Vol. 5, p. 71.

¹⁶¹ For example, memorandum from Acting FBI Director L. Patrick Gray to the Attorney General, 10/10/72.

such surveillance typically occurred in the context of COMINFIL (Communist infiltration) investigations.¹⁶²

The Communist Party, USA, provides the clearest example of a group that was selected for electronic surveillance on the ground of foreign-connected "subversive" activities. In addition to a wiretap on the Headquarters of the Communist Party, the FBI conducted wiretaps in the following target categories:

- Communist Party Functionaries
- Communist Party Propaganda Outlet
- Communist Party Front Group
- Communist Party Member
- Communist Party Affiliate
- Communist Party Publication

Microphone surveillances are recorded in these categories:

- Communist Party Functionaries
- Communist Party Front Groups
- Communist Party Propaganda Outlets
- Communist Party Front Groups Organizer
- Communist Party Function
- Communist Party Members
- Communist Party Publications
- Coverage of Communist Party Meeting
- Communist Party Youth Activist
- Communist Party Labor Group
- Communist Party Youth Group
- Communist Party Affiliate
- Coverage of Communist Party Conference
- Communist Party Apologist¹⁶³

Other groups adhering to a communist ideology have also been electronically monitored for similar reasons. According to FBI records, wiretaps were used in cases involving a "Marxist-Leninist Group Affiliate," a "Marxist-Leninist Group Leader," and a "Marxist-Leninist Group Functionary." Microphone surveillances were also conducted against a "Basic Revolutionary Group Founder," a "Marxist-Oriented Youth Group," a "Trotskyite Organization," a "Basic Revolutionary Group," an "Organizer of a Basic Revolutionary Group," "Marxist-Leninist Groups," a "Basic Revolutionary Front Group," a "Basic Revolutionary Front Functionary," a "Marxist-Leninist Front Group," and a "Marxist-Oriented Racial Organization." One "Trotskyite Organization Meeting" was also bugged.¹⁶⁴

Several groups which were believed to have a connection with the Communist Party in Cuba and China have been targeted as well. Into this category fell wiretaps which were directed against a "Pro-Castro Organization," a "Pro-Castro Movement Leader," a "Pro-Castro Group Functionary," and a "Pro-Chicom [Chinese Communist] Prop-

¹⁶² See Report on the Development of FBI Domestic Intelligence Investigations for an analysis of COMINFIL investigations.

¹⁶³ Letter from FBI to Senate Select Committee (attachment), 10/28/76. The target category descriptions are the FBI's.

¹⁶⁴ *ibid*

aganda Outlet;" and microphones directed against "Pro-Castro Organizations," a "Pro-Chicom Group," and a "Pro-Cuban American Group which travelled to Cuba."¹⁶⁵

The "subversive activities" predicate was stretched furthest when used to support electronic surveillance of American citizens and domestic organizations not primarily because their own activities were considered to be subversive but because they were believed to be adversely influenced, whether consciously or not, by persons acting under the direction of a foreign power. One example of reliance on such a rationale is seen in the wiretapping and bugging of Dr. Martin Luther King, Jr., and several of his associates. In October 1963, Attorney General Robert Kennedy authorized wiretaps on the residence and two office telephones of Dr. King on the ground of possible Communist infiltration into the Southern Christian Leadership Conference, of which Dr. King was President.¹⁶⁶ The possibility that two of Dr. King's advisors may have been associated with the Communist Party, USA, led to four additional wiretaps on King and a total of fifteen microphone installations in his hotel rooms during 1964 and 1965.¹⁶⁷ Apparently as part of this COMINFIL (Communist infiltration) investigation, several of King's associates were also wiretapped and bugged.¹⁶⁸

At least three other organizations have been targeted for electronic surveillance primarily on the ground of possible Communist infiltration. One such organization, believed to have been influenced by the Communist Party, USA, was wiretapped in 1962.¹⁶⁹ In 1965, Attorney General Nicholas Katzenbach approved wiretaps on both the Student Non-Violent Coordinating Committee (SNCC)¹⁷⁰ and the Students for a Democratic Society (SDS) for similar reasons;¹⁷¹ the former group had also been the subject of a microphone surveillance in 1964.¹⁷²

B. Electronic Surveillance Predicated on Violent Activity

Allegations of violent activity, or the threat of violent activity, have also served as the predicate for numerous warrantless electronic surveillance of Americans.

Most of the wiretaps and bugs which were instituted for this reason have been directed against "black extremists" and "black extremist organizations." In 1957, for example, Attorney General

¹⁶⁵ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁶⁶ Memoranda from J. Edgar Hoover to the Attorney General, 10/7/63 and 10/18/63. See King Report: Sec. IV, Electronic Surveillance of Dr. Martin Luther King, Jr.

¹⁶⁷ See King Report: Sec. IV, Electronic Surveillance of Dr. Martin Luther King, Jr. FBI memoranda make clear, however, that at least some of the microphones were planted in Dr. King's hotel rooms for the express purpose of obtaining personal information about him. (For example, memorandum from Frederick Baumgardner to W. C. Sullivan, 2/4/64.) On the question of authorization for these wiretaps and bugs, see the King Report: Sec. IV, Electronic Surveillance of Dr. Martin Luther King, Jr.

¹⁶⁸ Letter from FBI to Senate Select Committee (attachment), 10/23/75. A 1964 wiretap and at least one of the 1965 bugs were on individuals other than the advisors to Dr. King who were believed to have been associated with the Communist Party, USA. Wiretaps on three advisors who had alleged Communist links were instituted in 1962 and 1963.

¹⁶⁹ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁷⁰ Memorandum from J. Edgar Hoover to the Attorney General, 6/15/65.

¹⁷¹ Memorandum from J. Edgar Hoover to the Attorney General, 5/25/65.

¹⁷² See p. 335.

Herbert Brownell authorized a wiretap on Elijah Muhammad, a leader of the Nation of Islam, because of the organization's alleged "violent nature."¹⁷³ This tap, which was never re-authorized until 1964, was finally terminated in 1966. A wiretap was also placed on Malcolm X, another Nation of Islam leader, in 1964 for essentially the same reason.¹⁷⁴ Similarly, Attorney General Katzenbach approved a wiretap on a "black extremist leader" of the Revolutionary Action Movement in 1965.¹⁷⁵ During the first half of the 1960's, microphone surveillances were also directed against a "black separatist group" (one surveillance in 1960 and 1961; two separate surveillances each year from 1962 until 1965) and a "black separatist group functionary" (from 1961 until 1965).¹⁷⁶

The possibility of violent activity also led to wiretaps on the Black Panther Party and one of its leaders in 1969.¹⁷⁷ Both of these taps continued into 1970, when wiretaps on a "black extremist group affiliate" and two (non-white) "racial extremist groups" were added to the list.¹⁷⁸ 1971 apparently represented the high point of wiretapping "black extremists;" in that year, there were wiretaps on the Black Panther Party (six separate taps as of March 29, 1971),¹⁷⁹ two (non-white) "racial extremist groups," two individuals described as "militant black extremist group members" (one of whom was a member of SNCC), two individuals described as "militant black extremist group functionaries," and a "racial group member." A wiretap was also authorized to cover a "meeting of a militant [black] group."¹⁸⁰ In 1972, wiretaps continued to be used against the Black Panther Party and one of its leaders, a (non-white) "racial extremist group," a "militant black extremist group member," and a "militant black extremist group functionary."¹⁸¹ Microphone surveillances during the Nixon Administration years were directed against the Black Panther Party in 1970 and a "Black Extremist Group Functionary" (Huey Newton, a leader of the Black Panther Party) from 1970 to 1972.¹⁸²

Electronic surveillance based on a "violent activity" predicate was certainly not confined to "black extremists," however. In the early and mid-1960's, wiretaps were placed on Ku Klux Klan members for similar reasons. Two "leaders of a racist organization," one of whom was a Klan member suspected of involvement in the bombing of a black church in Birmingham, Alabama, were wiretapped in 1963 and 1964.¹⁸³ Another Ku Klux Klan member was wiretapped in

¹⁷³ Memorandum from J. Edgar Hoover to the Attorney General, 12/31/66, initialed "Approved: HB, 1/2/67." In retrospect, however, one FBI supervisor noted that while the Nation of Islam had a "potential" for violence, it was not itself involved in violence. He stated that "Elijah Muhammad kept them under control, and he did not have them on the streets at all during any of the riots [in the 1960's]." George C. Moore deposition 11/8/75, pp. 80, 89.

¹⁷⁴ Memorandum from J. Edgar Hoover to the Attorney General, 4/1/64.

¹⁷⁵ Memorandum from J. Edgar Hoover to the Attorney General, 3/3/65.

¹⁷⁶ Letter from FBI to Senate Select Committee, 10/22/75.

¹⁷⁷ For example, memorandum from J. Edgar Hoover to the Attorney General, 3/20/69; Memorandum from J. Edgar Hoover to the Attorney General, 10/7/69.

¹⁷⁸ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁷⁹ Memorandum from W. R. Wannall to C. D. Brennan, 3/20/71.

¹⁸⁰ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*; Memorandum from W. R. Wannall to C. D. Brennan, 3/20/71.

¹⁸³ *Ibid.*; Memorandum from J. Edgar Hoover to the Attorney General, 10/0/69.

1964 and 1965.¹⁸⁴ FBI records also disclose the bugging of The National States Rights Party in 1962.¹⁸⁵

White radical organizations were also the subjects of electronic surveillance in the late 1960's and early 1970's on the grounds of violent or potentially violent activity. A "New Left Campus Group" was both wiretapped and bugged in 1969, and the wiretap continued into 1970.¹⁸⁶ Three anti-war organizations which were involved in planning the November 1969 "March on Washington" were also wiretapped in 1969.¹⁸⁷ In 1970, the Headquarters of the Worker Student Alliance (an affiliate of SDS)¹⁸⁸ and an individual who was a contact for the Weatherman organization were wiretapped.¹⁸⁹ The tap on the Worker Student Alliance continued into 1971 and was supplemented in that year by wiretaps on a "New Left Activist", a "domestic protest group," and a "violence prone faction of a domestic protest group" (two separate wiretaps).¹⁹⁰ Additional wiretaps and microphone surveillances during the years 1969 to 1972 fall into the categories: "Investigation of Clandestine Underground Group Dedicated to Strategic Sabotage;" "Weatherman Organization Publication;" "Publication of Clandestine Underground Group Dedicated to Strategic Sabotage;" "Leader of Revolutionary Group;" and "Weather Underground Support Apparatus."¹⁹¹

For several years during the 1960's, Puerto Rican nationalist groups and their members were also electronically monitored because of their alleged proclivity towards violence. FBI records reveal wiretaps on a "Puerto Rican Independence Group" in 1960 and 1962; and on a "Puerto Rican Independence Group Member" in 1965. Microphone surveillances were placed on a "Contact of Puerto Rican Nationalist Party" in 1960; a "Puerto Rican Independence Group Office" in 1963, 1964, and 1965; a "Puerto Rican Revolutionary" in 1963; and "Pro-Puerto Rican Independence Group Activists" in 1964 and 1965.¹⁹²

Other organizations were the subject of electronic surveillance because they were seen as violent advocates of the interests of a foreign power or group. (To the extent an actual connection with a hostile foreign power was perceived, they would also be considered "subversive.") These organizations, which were, or may have been, composed at least in part of American citizens, are described by the following categories: "Pro-Arab Group," "Arab Terrorist Affiliate" "Pro-Palestine Group," "Militant Pro-Chicom [Chinese Communist] Group," "West Coast Fundraising Front for Arab Terrorist Groups," "Arab Terrorist Activist Affiliates," and "Co-Conspirators in Plot to Kidnap a Prominent Anti-Castro Cuban Exile."¹⁹³

¹⁸⁴ Memorandum from J. Edgar Hoover to the Attorney General, 9/28/64; Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁸⁵ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁸⁶ *Ibid.*

¹⁸⁷ See p. 338.

¹⁸⁸ Memorandum from J. Edgar Hoover to the Attorney General, 8/16/70.

¹⁸⁹ Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.* The category descriptions are the FBI's.

¹⁹² Letter from FBI to Senate Select Committee (attachment), 10/23/75.

¹⁹³ *Ibid.*

C. Electronic Surveillance Predicated on Leaks of Classified Information

Another purpose of warrantless electronic surveillance of American citizens during the period 1960 to 1972 was to determine the source of perceived leaks of classified information. At least eight separate investigations into perceived leaks resulted in the wiretapping or bugging of nearly thirty American citizens, yet Bureau memoranda reveal no case in which the source of any leak was discovered by means of electronic surveillance. These investigations are described below.

*Lloyd Norman: 1961.*¹⁹⁴—On June 27, 1961, Attorney General Robert Kennedy informed FBI Director Hoover that the most recent issue of *Newsweek* magazine contained an article about American military plans in Germany, which, the administration believed, was based on classified information. According to an FBI memorandum, Kennedy stated that the President had called him to see if it would be possible to determine who was responsible for the apparent leak.¹⁹⁵ On the same day, and without specific authorization from the Attorney General, the FBI placed a wiretap on the residence of Lloyd Norman, the *Newsweek* reporter who wrote the article.¹⁹⁶ Kennedy was informed about the tap on June 28, and formally approved it on June 30. It was discontinued on July 3, 1961, when "Norman left Washington, D.C., for the west coast on a month's vacation [and] the only person left at Norman's residence [was] his son."¹⁹⁷

Hanson Baldwin: 1962.—A July 1962 *New York Times* article about Soviet missile systems by Hanson Baldwin, which the administration also believed was based on classified information, led to the installation of wiretaps on the residences of both Baldwin and a *New York Times* secretary. According to contemporaneous Bureau memoranda, these wiretaps were instituted without the 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.¹⁹⁸ Formal written approval for these wiretaps was obtained on July 31, 1962, however, three days after the tap on Baldwin

¹⁹⁴ This case is also discussed at p. 333.

¹⁹⁵ Memorandum from R. D. Cotter to Mr. W. C. Sullivan 12/15/66.

¹⁹⁶ Memorandum from J. Edgar Hoover to the Attorney General, 6/29/61. Since the early 1940's, the approval of the Attorney General had been required prior to the implementation of wiretaps. See p. 283. In a 1965 memorandum from Attorney General Katzenbach to J. Edgar Hoover, Mr. Katzenbach noted that: "It is my understanding that such devices [both wiretaps and bugs] will not be used without my authorization although in emergency circumstances they may be used subject to my later ratification." (Memorandum from Nicholas Katzenbach to J. Edgar Hoover, 9/27/65).

¹⁹⁷ Memorandum from Mr. S. B. Donahoe to Mr. W. C. Sullivan, 7/3/61.

¹⁹⁸ A July 27, 1962, memorandum from the "Director, FBI" to the Attorney General reads in part:

"In accordance with our discussion today, technical coverage will be effective on Baldwin on the morning of July 28, 1962, at his residence in New York. In addition, we have learned that Baldwin normally utilized [] of the 'New York Times' Washington office as his secretary to arrange appointments when he comes to Washington. Consequently, we have placed technical coverage on her residence . . ." (Memorandum from Director, FBI to the Attorney General, 7/27/62.)

was installed and four days after the tap on his secretary was installed.¹⁹⁹ The wiretap on the secretary continued until August 15, 1962; that on Baldwin until August 29, 1962.²⁰⁰

Former FBI Special Agent: 1962.—Warrantless electronic surveillance predicated on classified information leaks continued with the wiretapping of a former Bureau agent who "disclosed information of a confidential nature concerning investigations conducted by [the] Bureau" in a public forum on October 18, 1962.²⁰¹ According to an internal memorandum, the coverage lasted from October 18, 1962, until October 26, 1962, and was repeated in January 1963.²⁰² On October 19, 1962, Attorney General Kennedy was advised that the Bureau desired to place coverage on this agent; he was apparently not informed that coverage had already been effected the day before.²⁰³ Kennedy's written approval was granted on October 26, the day the surveillance was terminated.²⁰⁴ The surveillance was reinstated in January: a Bureau memorandum dated January 9, 1963, simply states:

Mr. Belmont called to say [FBI Assistant Director Courtney] Evans spoke to the Attorney General re placing the tech on [] again, and the Attorney General said by all means do this. Mr. Belmont has instructed New York to do so.²⁰⁵

The authorization for the second surveillance therefore appears to have been oral. Coverage of this agent was permanently suspended on September 9, 1963.^{205a}

High Executive Official: 1963.—Because of the possibility that a high-ranking executive official may have provided classified information not to the press but to a foreign intelligence officer, the FBI requested the Attorney General in February 1963 to authorize a wiretap on the residence telephone of this official.^{205b} According to the request which was sent to Attorney General Kennedy, "The President expressed personal interest in receiving information concerning the current relationship between [the official] and representatives of [a foreign country]."^{205c}

The Attorney General approved the request, and it was instituted three days later.^{205d} It was discontinued on June 14, 1963, when the target travelled abroad;^{205e} reinstated on July 14, 1963; and permanently discontinued on November 6, 1963, "because of lack of productivity."^{205f}

¹⁹⁹ Memorandum from J. Edgar Hoover to the Attorney General, 7/31/62; memorandum from W. R. Wannall to W. C. Sullivan, 8/13/62.

²⁰⁰ Wannall memorandum, 8/13/62; memorandum from W. R. Wannall to W. C. Sullivan, 8/28/62.

²⁰¹ Memorandum from J. Edgar Hoover to the Attorney General, 10/10/62.

²⁰² Unaddressed memorandum from A. H. Belmont, 1/9/63.

²⁰³ Memorandum from J. Edgar Hoover to the Attorney General, 10/19/62.

²⁰⁴ *Ibid.*

²⁰⁵ Unaddressed memorandum from "hwg." 1/9/63.

^{205a} Memorandum from New York Field Office to FBI Headquarters, 9/9/63.

^{205b} Memorandum from J. Edgar Hoover to the Attorney General, 2/11/63; memorandum from W. R. Wannall to W. C. Sullivan, 2/8/63.

^{205c} Memorandum from J. Edgar Hoover to the Attorney General, 2/11/63.

^{205d} Memorandum from J. Edgar Hoover to the Attorney General, 2/11/63; letter from FBI to the Senate Select Committee, 4/20/76.

^{205e} Letter from FBI to the Senate Select Committee, 4/20/76.

^{205f} *Ibid.*

Editor of an Anti-Communist Newsletter: 1965.—The publication in an anti-Communist newsletter of information believed to be classified led to the wiretapping of both the editor of the newsletter and an attorney in the Washington, D.C. area with whom the editor was in frequent contact. These surveillances were approved in writing by Attorney General Nicholas Katzenbach in April and June of 1965, respectively, and each began about three weeks after approval.²⁰⁵

In November 1965, the FBI recommended discontinuance of the taps because “[w]e have not developed any data since outset of investigation which would show that [the targets] are currently receiving information from individuals in the Executive Branch of the Government. In fact, we now believe that it is highly unlikely that our technical coverage will develop such information in the future.”^{206a}

According to a memorandum sent to the Attorney General, the tap on the lawyer was discontinued on November 2, 1965, and that on the editor on November 10, 1965.^{206b}

*Joseph Kraft: 1969.*²⁰⁷—The basic facts surrounding the wiretapping and microphone surveillance of columnist Joseph Kraft are a matter of public record. In June 1969, possibly in response to a leak from the National Security Council, John Ehrlichman instructed John Caulfield and John Ragan, two individuals associated with the White House “Plumbers” and unconnected with the FBI, to place a wiretap on the Washington, D.C. residence of Mr. Kraft. This tap was removed one week later, when the columnist left Washington on an extended trip to Europe. W. C. Sullivan, then Assistant Director of the FBI, subsequently followed Mr. Kraft abroad, apparently on instructions from Mr. Hoover and Mr. Ehrlichman. Overseas, Sullivan arranged with a foreign security agency to conduct electronic surveillance of Kraft in his hotel room: when the installation of a telephone tap proved to be impossible because of the “elaborate switchboard” of the hotel,²⁰⁸ a microphone was placed in his room instead.²⁰⁹ The results of this coverage, which lasted from July 3 to July 7, 1969, were transmitted back to Mr. Hoover personally through the FBI’s Legal Attache at the American Embassy.²¹⁰

In November and December of that year, Mr. Kraft was again the target of FBI surveillance: the Washington Field Office conducted physical surveillance of the columnist from November 5 until December 12.²¹¹ In addition, Director Hoover requested approval from Attorney General Mitchell for a wiretap on Mr. Kraft on November 5,²¹² but approval was never granted and the wiretap never installed.²¹³

*The “Seventeen Wiretaps:” 1969–1971.*²¹⁴—The wiretaps which were directed against seventeen government employees and newsmen be-

²⁰⁵ Memorandum from J. Edgar Hoover to the Attorney General, 4/19/65; Memorandum from J. Edgar Hoover to the Attorney General, 6/1/65.

^{206a} Memorandum from R. D. Cotter to W. C. Sullivan, 11/8/65.

^{206b} Memorandum from J. Edgar Hoover to the Attorney General, 11/10/65.

²⁰⁷ This case is also discussed at pp. 335–337.

²⁰⁸ Letter from W. C. Sullivan to Mr. Hoover, 6/30/69.

²⁰⁹ Letter from W. C. Sullivan to Mr. Hoover, 7/2/69.

²¹⁰ See generally, *Hearings before the Subcommittee on Administrative Practice and Procedure*, 6/10/74, pp. 380–400.

²¹¹ Memorandum from Mr. W. C. Sullivan to Mr. DeLoach, 11/5/69; Memorandum from J. Edgar Hoover to the Attorney General, 12/11/69.

²¹² Memorandum from Mr. W. C. Sullivan to Mr. DeLoach, 11/7/69.

²¹³ Hoover memorandum, 12/11/69.

²¹⁴ These wiretaps are also discussed at pp. 337–338 and 340–351.

tween May 1969 and February 1971 have been the subject of civil litigation and extensive Congressional inquiries. In view of the pending civil litigation, the Committee has not attempted to duplicate the depositions which bear on the authorization of these wiretaps. The basic facts as recorded in FBI documents and public record testimony, however, may be summarized as follows:

On May 9, 1969, a story by William Beecher concerning American bombing raids in Cambodia appeared in the *New York Times*. According to a contemporaneous internal memorandum from J. Edgar Hoover to senior FBI officials, Henry Kissinger telephoned him that morning requesting the Bureau to "make a major effort to find out where [the story] came from."²¹⁵ Kissinger called Mr. Hoover twice more that day, once to request that additional articles by Beecher be included in the inquiry and once to request that the investigation be handled discreetly "so no stories will get out."²¹⁶ Before 5:00 p.m. on May 9, Hoover telephoned Kissinger to inform him that initial FBI inquiries suggested that Morton Halperin, a staff member of the National Security Council, could have been in a position to leak the information upon which Beecher was believed to have based his article: Hoover noted that Halperin "knew Beecher and that he [Hoover] considered [Halperin] a part of the Harvard clique, and, of course, of the Kennedy era."²¹⁷

According to Hoover, "Dr. Kissinger said he appreciated this very much and he hoped I would follow it up as far as we can take it and they will destroy whoever did this if we can find him, no matter where he is."²¹⁸

Dr. Kissinger has testified that he had been asked at a White House meeting, which, he believed, may have occurred in late April 1969 and which was attended by the President, the Attorney General, and J. Edgar Hoover, "to supply the names of key individuals having access to sensitive information which had leaked [even before the Cambodia story]."^{218a} He noted that at this meeting "Director Hoover identified four persons as security risks and suggested that these four be put under surveillance initially."^{218b} Among the persons so identified was Morton Halperin. Kissinger said that when the Cambodia story was published on May 9, "I called Mr. Hoover at President Nixon's request to express the President's and my concern about the seriousness of the leak appearing that date and to request an immediate investigation."^{218c} He also stated that in these telephone conversations, "I do not recall any discussion of wiretapping. At that time, my understanding was that the wiretapping program had been authorized and that, therefore, Mr. Hoover or his staff had the right

²¹⁵ Memorandum from J. Edgar Hoover to Messrs. Tolson, DeLoach, Sullivan, and Bishop, 5/9/69, 10:35 a.m.

²¹⁶ Memorandum from J. Edgar Hoover to Messrs. Tolson, DeLoach, Sullivan, and Bishop, 5/9/69, 11:05 a.m. and 1:05 p.m., respectively.

²¹⁷ Memorandum from J. Edgar Hoover to Messrs. Tolson, DeLoach, Sullivan, and Bishop, 5/9/69, 5:05 p.m.

²¹⁸ Hoover memorandum, 5/9/69, 5:05 p.m.

^{218a} Dr. Kissinger's Responses to Plaintiff's First Set of Interrogatories, *Halperin v. Kissinger*, Civ. No. 1187-73 (D.D.C.), 1/12/76, p. 18.

^{218b} *Ibid.*

^{218c} *Ibid.*, p. 28.

to use wiretapping in their investigations. I do not recall any discussions as to when the program would actually be put into effect."^{218d} He further testified that "[i]n view of the President's authorization, Mr. Hoover evidently chose to institute the wiretaps after my calls to him on May 8, regarding the national security significance of the Beecher story in the *New York Times* of the same date."^{218e}

The wiretap on Halperin was installed without the written approval of the Attorney General, in late afternoon on May 9, 1969.²¹⁹ The next morning, Alexander Haig personally visited William Sullivan at FBI Headquarters. According to a memorandum from Sullivan to Cartha DeLoach, Haig requested that wiretaps be placed on four individuals, including Halperin, who were members of the National Security Council staff and Defense Department employees.²²⁰ Haig stated that this request "was being made on the highest authority" and "stressed that it is so sensitive it demands handling on a need-to-know basis, with no record maintained."²²¹ According to Sullivan, Haig said that "if possible, it would be even more desirable to have the matter handled without going to the [Justice] Department."²²²

Alexander Haig testified that Dr. Kissinger had instructed him to see Mr. Sullivan and to act as the "so-called liaison as this program was instituted, I believe, authorized by the President, the Director, and the Attorney General."^{222a} He further stated that Dr. Kissinger provided him with the names to take to Sullivan^{222b} and that he had the "impression" that the names were "cleared and concurred in by" the President or his representative, the Director, and the Attorney General.^{222c} Haig denied that he requested the Bureau not to maintain a record of the surveillances, noting that "the point I would recall making very clearly was the extreme sensitivity of this thing, and the avoidance of unnecessary paperwork, which would make this program subject to compromise."^{222d} He also testified that he does not recall urging Sullivan to avoid going to the Justice Department.^{222e}

^{218d} *Ibid.*

^{218e} *Ibid.*, p. 25. Former President Nixon stated that "I told Dr. Kissinger that he should inform Mr. Hoover of any names that he considered prime suspects [in the Cambodia leak]. . . . It was Dr. Kissinger's responsibility not to control the program but solely to furnish the information to Mr. Hoover. Mr. Hoover was then to take it from there and then to get appropriate authority from the Attorney General before, of course, installing any electronic surveillance which Mr. Hoover needed." (Deposition of Richard M. Nixon, *Halperin v. Kissinger*, Civ. No. 1187-78 (D.D.C.), 1/15/76, pp. 34, 35.)

The former President also stated: "I do not know the contents of the telephone calls that Dr. Kissinger had with Mr. Hoover at that time except that I later learned he did furnish Mr. Hoover the names of certain individuals that he thought might be potential leakers of this information." (Nixon deposition, 1/15/76, p. 23).

²¹⁹ FBI Special Agent deposition, *Halperin v. Kissinger*, Civ. No. 1187-78 (D.D.C.), pp. 64, 65; House Judiciary Committee Report, 8/20/74, p. 147.

²²⁰ Memorandum from W. C. Sullivan to Mr. C. D. DeLoach, 5/11/69.

²²¹ *Ibid.*

²²² *Ibid.*

^{222a} Alexander M. Haig deposition, *Halperin v. Kissinger*, Civ. No. 1187-78 (D.D.C.), 10/25/74, pp. 0, 10.

^{222b} *Ibid.*, p. 10.

^{222c} *Ibid.*, p. 11.

^{222d} *Ibid.*, p. 18.

^{222e} *Ibid.*, p. 10.

On May 12, a formal request was sent by the Director to Attorney General Mitchell for wiretaps on all four individuals (one of which had been in operation for three days); Mitchell approved; and the additional taps were subsequently instituted.²²³

Over the course of the next one and one-half years, thirteen more individuals became the subjects of wiretaps in this same program. Bureau documents reflects the following authorizations from Attorney General Mitchell:

- May 20, 1969: Two members of the staff of the National Security Council
- May 29, 1969: A reporter for the *London Sunday Times*
- June 4, 1969: A reporter for the *New York Times*
- July 23, 1969: A White House domestic affairs adviser
- August 4, 1969: A White House speech writer
- September 10, 1969: A correspondent for CBS News
- May 4, 1970: A Deputy Assistant Secretary of State; a State Department official of "Ambassador" rank; and a Brigadier General with the Defense Department
- May 18 1970: Two additional staff members of the National Security Council
- December 14, 1970: A second White House domestic affairs adviser.²²⁴

The longest of these wiretaps was the one on Halperin: it continued for twenty-one months, until February 10, 1971, and was apparently terminated at the insistence of Director Hoover, who was about to testify before the House Appropriations Committee.²²⁵ Other wiretaps lasted for periods of time varying from six weeks to twenty months.

Charles Radford: 1971-1972 —The December 1971 publication of an article by Jack Anderson which described private conversations between President Nixon and Henry Kissinger led to a total of four wiretaps on American citizens to determine the source of this apparent leak. According to an internal Bureau memorandum, Attorney General Mitchell personally contacted Deputy Associate FBI Director W. Mark Felt on December 22, 1971, and orally instructed him to institute a wiretap on Charles E. Radford II.²²⁶ Radford, a Navy Yeoman who was assigned to the Joint Chiefs of Staff, was apparently a primary suspect because he had frequent contact with the White House and the National Security Council and belonged to the same church as Jack Anderson.²²⁷ Mitchell informed Felt that this request originated with the President and noted that no prosecution was contemplated.²²⁸ The FBI was not requested to conduct a full investigation of the leak, only to wiretap Radford.²²⁹ After obtaining approval from J. Edgar

²²³ Memorandum from J. Edgar Hoover to the Attorney General, 5/12/69.

²²⁴ Memoranda from J. Edgar Hoover to the Attorney General on the date indicated.

²²⁵ Memorandum from W. C. Sullivan to Mr. Tolson, 2/10/71. See p. 302 n. 65.

²²⁶ Memorandum from T. J. Smith to E. S. Miller, 2/26/73.

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ *Ibid.*

Hoover, Felt secured the institution of the wiretap on Radford's residence on December 23.

On the basis of certain telephone contacts Radford subsequently made, additional wiretaps were placed on the residences of two of Radford's friends, one a former Defense Attache, the other a State Department employee. These wiretaps were instituted on January 5 and January 14, respectively, and both continued until February 17.²³⁰ When Radford was transferred to the Naval Reserve Training Center near Portland, Oregon, the Attorney General requested a wiretap on the home of Radford's step-father,^{230a} with whom he was to stay until he could locate a home of his own. This coverage was instituted immediately,²³¹ and although Radford moved into his own residence by February 15, when another wiretap was installed on his new home,²³² the tap on his step-father was not terminated until April 11, 1972.²³³ Coverage was also instituted on the training center where Radford worked on February 7, 1972, and like the tap on his step-father it continued until April 11.²³⁴

The tap on Radford's Oregon residence was not terminated until June 20, 1972—one day after the Supreme Court's decision in the *Keith* case. One Bureau official wrote that "it was not discontinued on 6/19/72, as others falling under the *Keith* rule had been, since we were awaiting a decision from the White House."²³⁵

In violation of Justice Department procedures, none of these Radford wiretaps was ever authorized by the Attorney General in writing.²³⁶ Two of the wiretaps apparently did not even receive the explicit oral approval of the Attorney General. An internal Bureau memorandum states that the surveillance of the State Department employee and the wiretap on the Naval Reserve Training Center were both requested by David Young, an assistant to John Ehrlichman, who merely informed the Bureau that the requests originated with Ehrlichman and had the Attorney General's concurrence.²³⁷

Thus, between 1960 and 1972, nearly thirty American citizens ostensibly suspected of leaking classified information were wiretapped by the FBI without a warrant in the United States; another was the subject of an FBI microphone surveillance abroad. No fewer than seven of these targets were journalists or newsmen. At least ten of the wiretaps were instituted without the prior written approval of the Attorney General, which was required in every case. Although the taps generated a significant amount of both personal and political information—much of which was disseminated to the highest levels in the White House—Bureau memoranda do not reveal that the wiretaps succeeded in identifying a single person who had leaked national security information.

²³⁰ Memorandum from T. J. Smith to E. S. Miller, 6/14/73.

^{230a} The Committee's Final Report inaccurately states that this tap was on Radford's father-in-law. (Final Report, Book II, p. 187, note 10.)

²³¹ Blind memorandum captioned "Charles E. Radford, II," 1/13/72.

²³² Memorandum from T. J. Smith to E. S. Miller, 6/14/73.

²³³ *Ibid.*

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

D. Electronic Surveillance Predicated on Other Grounds

In the course of at least three separate investigations between 1960 and 1972, Americans were the targets of FBI electronic surveillance for purposes which cannot easily be categorized as collecting information about subversive or violent activities or about leaks of classified material. Two of these cases—the “Sugar Lobby” and the Jewish Defense League surveillances, described below—related to foreign concerns. The Sugar Lobby investigation was apparently instituted to gather foreign intelligence information seen as necessary for the conduct of foreign affairs and to detect alleged attempts of foreign representatives to influence American officials. A wiretap on the Jewish Defense League (JDL) and one of its members, while requested primarily on the ground of “violent activities,” was defended in a subsequent civil action as similarly necessary to gather information important to United States foreign relations.

The third case occurred in connection with the Warren Commission’s review of events surrounding President John F. Kennedy’s assassination. In 1964, the FBI installed one wiretap (with the approval of the Attorney General) and two microphone surveillances at the specific request of this Commission in order to obtain information about the assassination.²³⁸

*The “Sugar Lobby” Wiretaps: 1961–1962.*²³⁹—On February 9, 1961, Attorney General Robert Kennedy requested the FBI to initiate an investigation for the purpose of:

develop[ing] 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.²⁴⁰

This investigation lasted for approximately nine weeks, and was reinstated for a three-month period in mid-1962. At its height, the investigation involved a total of twelve telephone wiretaps, three microphone surveillances, and physical surveillances of eleven separate individuals.²⁴¹ Six of the wiretaps were directed against American citizens, who included three executive branch employees, a Congressional staff member, and two registered lobbying agents for foreign interests, one of whom was an attorney whose office telephone was wiretapped. One of the microphone surveillances was directed at a United States Congressman.

The expiration of existing import quotas for sugar in 1961 provided the backdrop against which these events were set. In early 1961, the intelligence community had learned that officials of a foreign government “intensely desired passage of a sugar bill by the U.S. Congress which would contain quotas favorable to [that government].”²⁴² This fact had significant ramifications on American foreign policy. Accord-

²³⁸ FBI letter to Senate Select Committee (attachment) 10/28/75.

²³⁹ This case is also discussed at pp. 345–346.

²⁴⁰ Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/60.

²⁴¹ *Ibid.*

²⁴² *Ibid.*

ing to a CIA memorandum addressed to the President's national security advisor:

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.²⁴³

There was also a possibility that unlawful influence was involved. In early February, the FBI discovered that representatives of the foreign government might have made monetary payments or given gifts to influence certain Congressmen, Senators, and executive branch officials.²⁴⁴

Because of the foreign intelligence interest involved, and on the ground that "the administration has to act if money or gifts are being passed by the [foreign representatives],"²⁴⁵ Robert Kennedy authorized a number of wiretaps on foreign targets and domestic citizens who were believed to be involved in the situation. Specifically, he approved wiretaps on the following American citizens: three officials of the Agriculture Department (residence telephones only);²⁴⁶ the clerk of the House Agriculture Committee (residence telephone only);²⁴⁷ and a registered agent of the foreign country (both residence and business telephones).²⁴⁸

In the course of this investigation, the Bureau determined that Congressman Harold D. Cooley, the Chairman of the House Agriculture Committee, planned to meet with representatives of the foreign country in a hotel room in New York City, in mid-February 1961.²⁴⁹ At the instruction of Director Hoover, the New York Field Office installed a microphone in Cooley's hotel room to record this meeting,²⁵⁰ and the results were disseminated to the Attorney General.²⁵¹

Under the Justice Department policy that was in effect at this time, the Bureau was not required to obtain the prior written approval of the Attorney General for microphone surveillance, and none was obtained in this case. It is not certain, moreover, that Attorney General Kennedy was ever specifically informed that Congressman Cooley was the target of a microphone surveillance: a review of this case by Bureau agents in 1966 concluded that "our files contain no clear indication that the Attorney General was specifically advised that a microphone surveillance was being utilized. . . ."²⁵² 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—the Director spoke with the Attorney General and, according to Hoover's contemporaneous memorandum, advised him that the

²⁴³ Memorandum from Richard Blissell to Mr. Bundy, 2/16/61.

²⁴⁴ FBI summary memorandum, 2/2/61.

²⁴⁵ Memorandum from A. H. Belmont to Mr. Parsons, 2/14/61.

²⁴⁶ Memorandum from J. Edgar Hoover to the Attorney General, 2/14/61.

²⁴⁷ Memorandum from J. Edgar Hoover to the Attorney General, 2/16/61.

²⁴⁸ *Ibid.*

²⁴⁹ FBI summary memorandum, 2/15/61.

²⁵⁰ FBI summary memorandum, 2/15/61; Memorandum from D. E. Moore to A. H. Belmont, 2/16/61.

²⁵¹ Memorandum from Director, FBI to the Attorney General, 2/18/61.

²⁵² Memorandum from W. R. Wannall to W. C. Sullivan, 12/21/66.

Cooley meeting was to take place that day and that "we are trying to cover it."²⁰³ Hoover also wrote that he "stated [to the Attorney General] this New York situation is interesting and if we can get it covered we will have a full record of it," and that "the Attorney General asked that he be kept advised. . . ."²⁰⁴ As noted above, Kennedy did receive a summary of the results of the meeting, although no specific reference was made to the technique employed.²⁰⁵

The 1961 "Sugar Lobby" investigation did discover that 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 legislative branch official. All of the electronic surveillances but two (both of which were on foreign targets) were discontinued in April 1961, about two weeks after the administration's own sugar bill passed the Senate.

The investigation was reinstated in June 1962, however, when the Bureau learned that representatives of the same foreign country might be influencing Congressional deliberations concerning an amendment to the sugar quota legislation.²⁰⁶ On June 26, 1962, the Bureau requested authority for wiretaps on five foreign establishments plus the office telephones of an attorney who was believed to be an agent for the foreign country and, again, the residence telephone of the Clerk of the House Agriculture Committee. Robert Kennedy approved all of these taps on July 9,²⁰⁷ and they were instituted about one week later.²⁰⁸

After one month of operation, the wiretaps on one foreign establishment and the Clerk of the House Agriculture Committee had "produced no information of value" and were consequently discontinued.²⁰⁹ While there is no indication that the other wiretaps 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 another sixty days,²¹⁰ after which time they were presumably terminated.²¹¹

Jewish Defense League: 1970 and 1971.—On September 14, 1970, the FBI requested a wiretap on six telephone lines of the New York Headquarters of the Jewish Defense League, an organization composed of American citizens who opposed, through both peaceful and violent means, the Soviet Union's treatment of Jewish citizens.²¹² Attorney General John Mitchell approved the wiretap on September 15;²¹³ it was instituted on October 1 and continued for one month.²¹⁴ It was re-authorized for two three-month periods on

²⁰³ Memorandum from J. Edgar Hoover to Messrs. Tolson, Parsons, Mohr, Belmont, and DeLoach, 2/17/61.

²⁰⁴ *Ibid.*

²⁰⁵ Memorandum from Director, FBI to the Attorney General, 2/18/61.

²⁰⁶ FBI summary memoranda, 6/15/62; 6/18/62; 6/19/62.

²⁰⁷ Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62.

²⁰⁸ Memorandum from W. R. Wannall to W. C. Sullivan, 8/16/62.

²⁰⁹ *Ibid.*

²¹⁰ Memorandum from W. R. Wannall to W. C. Sullivan, 8/16/62.

²¹¹ Available documents do not reflect the termination date of these wiretaps.

²¹² Memorandum from J. Edgar Hoover to the Attorney General, 9/14/70. According to FBI records, a "militant pro-Israeli group member" was also wiretapped in 1971 and 1972. (Letter from FBI to Senate Select Committee (attachment), 10/23/75.)

²¹³ *Ibid.*

²¹⁴ Letter from FBI to Senate Select Committee, 4/20/76.

January 4, 1971, and March 31, 1971.²⁶³ Coverage was terminated July 3, 1971.^{263a}

According to Attorney General Mitchell, the JDL wiretap was "deemed essential to protect this nation and its citizens against hostile acts of a foreign power and to obtain foreign intelligence information deemed essential to the security of the United States."²⁶⁴ More specifically, he contended that the activities of the Jewish Defense League toward official representatives of the Soviet Union, which had allegedly included acts of violence such as bombing the offices of a Soviet trade organization and the Soviet airlines, risked "the possibility of international embarrassment or Soviet retaliation against American citizens in Moscow," especially in light of vigorous protests by the Soviet Union.²⁶⁵ The wiretap was approved in order to obtain "advance knowledge of any activities of the JDL" which might have such repercussions;^{265a} its re-authorization was sought and obtained on the ground that it had "furnished otherwise unobtainable information, well in advance of public statements by the JDL, thereby allowing for adequate countermeasures to be taken by appropriate police and security forces."²⁶⁶

Criminal indictments were returned against several JDL members in May 1971, and shortly thereafter the prosecution revealed the existence of the wiretap to the defendants. In the context of the criminal case, the Government characterized the JDL wiretap as a "domestic security wiretap" and conceded that it was unlawful.²⁶⁷ The "foreign intelligence" predicate, however, was raised by Attorney General Mitchell and other civil defendants in the civil action—*Zweibon v. Mitchell*—subsequently filed by sixteen members of JDL who were overheard on the wiretap.

The District Court in the *Zweibon* case agreed with Attorney General Mitchell that the JDL wiretap was in fact related to United States foreign affairs and held that its authorization by the Attorney General was a proper exercise of the constitutional power of the President and his designees. On appeal, the Court of Appeals did not reexamine the District Court's finding that the wiretap was originally predicated on foreign affairs needs²⁶⁸ because it held that even if one accepts the foreign relationship predicate, the wiretapping of American citizens who are neither the agents of nor collaborators

²⁶³ Memoranda from J. Edgar Hoover to Attorney General, 1/4/71 and 3/31/71.

^{263a} Letter from FBI to Senate Select Committee, 4/20/76.

²⁶⁴ Affidavit of Attorney General Mitchell, filed with the Eastern District Court of New York in *United States v. Bieber*, 71-CR-479 (E.D.N.Y. 1971), 6/12/71.

²⁶⁵ The quoted language is that of District of Columbia Court of Appeals Judge J. Skelly Wright, summarizing the rationale of the former Attorney General in approving the wiretap against the JDL. (*Zweibon v. Mitchell*, 516 F. 2d 594 [D.C. Cir. 1975].)

^{265a} Memorandum from J. Edgar Hoover to the Attorney General, 9/14/70.

²⁶⁶ Memorandum from J. Edgar Hoover to the Attorney General, 3/31/71.

²⁶⁷ See *United States v. Huss*, 482 F. 2d 38, 42 (2d Cir. 1973).

²⁶⁸ The court, nonetheless, found it "curious that surveillances which were merely a 'domestic security wiretap' which the 'government concede[d] . . . were unlawful' when a contempt citation was involved . . . have become 'foreign' security wiretaps now that personal liability in damages is alleged." (*Zweibon v. Mitchell*, 516 F. 2d 594, 606-07 n. 16 [D.C. Cir. 1975].)

with a foreign power is unconstitutional under the Fourth Amendment.²⁶⁹

VII. DOMESTIC SURVEILLANCE ABUSE QUESTIONS

The possibilities for abuse of warrantless electronic surveillance have clearly been greatest when this technique is directed against American citizens and domestic organizations. The application of vague and elastic standards for wiretapping and bugging has resulted in electronic surveillances which, by any objective measure, were improper and seriously infringed the Fourth Amendment rights of both the targets and those with whom the targets communicated. Americans who violated no criminal law and represented no genuine threat to the "national security" have been targeted, regardless of the stated predicate. In many cases, the implementation of wiretaps and bugs has also been fraught with procedural violations, even when the required procedures were meager, thus compounding the abuse. The inherently intrusive nature of electronic surveillance, moreover, has enabled the Government to generate vast amounts of information—unrelated to any legitimate governmental interest—about the personal and political lives of American citizens. The collection of this type of information has, in turn, raised the danger of its use for partisan political and other improper ends by senior administration officials.

A. Questionable and Improper Selection of Targets

Judged against the principles established in the 1972 *Keith* case, nearly all of the Americans, unconnected with a foreign power, who were targets of warrantless electronic surveillance were improperly selected. Even without retrospective Fourth Amendment analysis of pre-*Keith* electronic surveillances, however, a close review of some of the particular cases^{269a} outlined above suggests that (regardless of whether the ostensible predicate was violence, "subversion," or any other basis) the standards for approval of electronic surveillances were far too broad to restrict the use of this technique to cases which involved a substantial threat to the nation. Moreover, the use of warrantless electronic surveillance against certain categories of individuals, such as attorneys, Congressmen and Congressional staff members, and journalists, has revealed an insensitivity to the values inherent in the Sixth Amendment and in the doctrines of "separation of powers" and "freedom of the press."

1. Wiretaps Under the "Domestic Security" Standard

In 1940, President Roosevelt approved the use of wiretapping against "persons suspected of subversive activities against the Government of the United States."²⁷⁰ As discussed in Section II, this formulation was supplemented by President Truman in 1946 to include "cases vitally affecting the domestic security, or where human life is in

²⁶⁹ See p. 202.

^{269a} The omission of other cases from the discussion which follows is not intended to suggest the conclusion that the use of electronic surveillance was justified or appropriate in such cases under the standards which existed at the time of the surveillance.

²⁷⁰ Memorandum from President Roosevelt to the Attorney General, 5/21/40.

jeopardy."²⁷¹ Several cases from the period 1960 to 1965 (when the "domestic security" standard was replaced by President Johnson's "national security" standard) suggest the ease with which the term "domestic security" was stretched to cover the targeting of Americans who posed no substantial threat to the internal security of the country.

Prior to the institution of the 1961 and 1962 "Sugar Lobby" wiretaps,²⁷² for example, the Government did possess some evidence of possibly unlawful influence by foreign officials and some evidence of the importance of the sugar quota legislation to the foreign nation involved. But there was clearly no evidence that "human life" was in jeopardy, and neither the possibility of unlawful influence nor the desire to gain information relevant to our relations with the foreign country had a significant impact on the domestic security. The documentary record of the investigation, moreover, contains no suggestion that the three Agriculture Department employees, one Congressional staff aide, and two lobbyists who were tapped represented any internal security threat.

In the case of the 1961 wiretap on Lloyd Norman,²⁷³ the FBI apparently had no information beyond the fact of his authorship of the "suspect" article that Norman had obtained any classified material or that a leak had actually occurred. Norman himself told Bureau agents when interviewed that "he based his article on speculation and conjecture . . ." ²⁷⁴ and a Pentagon source indicated that he "had no factual information as to who leaked the information or that Norman was actually the person who obtained the information." ²⁷⁵ The wiretap subsequently produced no information which suggested that Norman had received any classified information.²⁷⁶ According to an internal summary of the final FBI report on the "leak": "The majority of those interviewed thought a competent, well-informed reporter could have written the article without having reviewed or received classified data."²⁷⁷ This wiretap, in short, was approved by Robert Kennedy without any apparent evidence that the target had actually obtained classified information: the wiretap results, Norman's personal interview with the FBI, and the entire investigation all suggested, in fact, that he had not.

In April 1964, Kennedy approved "technical coverage" (electronic surveillance) on Malcolm X after the FBI advised him that the Nation of Islam leader was "forming a new group" which would be "more aggressive" and would "participate in racial demonstrations and civil rights activities."²⁷⁸ The only indication of possible danger reflected in the wiretap request, however, was that Malcolm X had "recommended the possession of firearms by members for their self-protection."²⁷⁹

²⁷¹ Memorandum from Attorney General Tom C. Clark to President Truman, 7/17/46.

²⁷² See pp. 328-330.

²⁷³ See p. 321.

²⁷⁴ Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66.

²⁷⁵ Memorandum from D. E. Moore to W. C. Sullivan, 6/28/61.

²⁷⁶ An internal FBI memorandum states: "We did not obtain information from this wiretap which assisted us in determining the identity of the person responsible for leaking classified information." (Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66).

²⁷⁷ Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66.

²⁷⁸ Memorandum from J. Edgar Hoover to the Attorney General, 4/1/64.

²⁷⁹ *Ibid.*

The wiretaps, discussed above, which were placed between 1962 and 1965 as part of COMINFIL investigations, also show the lengths to which the "domestic security" standard could be stretched. Most of these wiretaps were based not on specific actions of the targets that threatened the domestic security but on the *possibility* that the targets, consciously or even unwittingly encouraged by communists, would engage in such activities in the future. While the Attorney General and the FBI may properly have been concerned about certain advisors to Dr. Martin Luther King, Jr., for example, no serious argument can be made that Dr. King himself jeopardized the nation's security. Yet King was the target of no fewer than five wiretaps between 1963 and 1965, and an associate of his (who was not one of his suspected advisors) was also wiretapped in 1964.

In the case of the Student Non-Violent Coordinating Committee, even *potential* communist infiltration was apparently seen as sufficient to justify a wiretap under the "domestic security" standard. The request for a wiretap on SNCC which was sent to Attorney General Katzenbach in 1965 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."²⁸⁰ The FBI presented no substantial evidence, however, that SNCC was in fact infiltrated by Communists—only that the organization was allegedly a target for such infiltration in the future.

2. Microphone Surveillances Under the "National Interest" Standard

Between 1954 and 1965, the prevailing standard for the approval of microphone surveillances was that established by Attorney General Brownell in 1954. "Considerations of internal security and the national safety are paramount," he then wrote, "and, therefore, may compel the unrestricted use of this technique in the national interest."²⁸¹

Under this standard, J. Edgar Hoover approved the bugging of Congressman Cooley's hotel room in February 1961, in connection with the "Sugar Lobby" investigation. Law enforcement purposes and the need to gather foreign intelligence information may arguably have supported this surveillance,^{281a} but the documentary record of the Sugar Lobby investigation reveals no genuine "internal security" or "national safety" justification for the Cooley bug.²⁸²

²⁸⁰ Memorandum from J. Edgar Hoover to the Attorney General, 6/15/65.

²⁸¹ Memorandum from the Attorney General to the Director, FBI, 5/20/54.

^{281a} As noted above, however, the Sugar Lobby investigation did not show that any money was passed between foreign representatives and American executive or legislative branch officials.

²⁸² Less than three months after the bug was installed in Congressman Cooley's hotel room, J. Edgar Hoover wrote Deputy Attorney General Byron White that the FBI was "utilizing microphone surveillances on a restricted basis even though trespass is necessary to assist in uncovering the activities of [foreign] intelligence agents and Communist Party leaders. In the interests of national safety, microphone surveillances are also utilized on a restricted basis, even though trespass is necessary, in uncovering major criminal activities. We are using such coverage in connection with our investigations of clandestine activities of top hoodlums and organized crime." (Memorandum from J. Edgar Hoover to Byron A. White, 5/4/61.) No mention was made of the microphone surveillance of the United States Congressman.

This standard was also used to justify the fifteen microphone surveillances of Dr. Martin Luther King, Jr., between January 1964 and October 1965. Significantly, FBI internal memoranda with respect to some of these installations, make clear that they were planted in Dr. King's hotel rooms for the express purpose of obtaining personal information about him rather than for internal security purposes.²⁸³ The validity of the "national interest" rationale for the other bugs—and for the microphone surveillances of certain associates of Dr. King—is also open to serious question.²⁸⁴

At the 1964 Democratic National Convention in Atlantic City, New Jersey, the FBI also planted a microphone in the joint headquarters of the Student Non-Violent Coordinating Committee and the Congress on Racial Equality.²⁸⁵ The only reason for the SNCC bug expressed in contemporaneous FBI documents was the following:

Sixty members of the SNCC from Jackson, Mississippi, plan to attend the Convention to assist in seating the Mississippi Freedom Democratic Party delegation. This group also reportedly will utilize walkie-talkies in connection with their planned demonstrations.²⁸⁶

A 1975 Inspection Report on the FBI's activities at the 1964 Convention speculated that the bug may have been installed because the Bureau had information at that time that "an apparent member of the Communist Party, USA, was engaging in considerable activity, much in a leadership capacity in the Student Non-Violent Coordinating Committee."²⁸⁷ CORE appears to have been an incidental target of the SNCC bug, since the two groups shared offices in Atlantic City.

3. Wiretaps and Microphone Surveillances Under the Five Criteria Based on Section 2511(3)

Improper and questionable selection of targets continued after the Justice Department altered the criteria under which wiretaps and bugs could be authorized to conform with the five categories set forth by Congress in Section 2511(3) of the 1968 Omnibus Crime Control Act. (These categories are discussed at p. 288-290.)

There does not appear to have been any genuine national security justification, for example, supporting the "Plumbers" wiretap on Joseph Kraft's Washington residence or the FBI's bug in his hotel room abroad. John Ehrlichman testified before the Senate Watergate

²⁸³ For example, memorandum from Frederick Baumgardner to W. C. Sullivan, 2/4/64; King Report, Sec. IV, Electronic Surveillance on Dr. Martin Luther King, Jr.

²⁸⁴ King Report: Sec. IV, Electronic Surveillance on Dr. Martin Luther King, Jr.

²⁸⁵ One of the wiretaps on Dr. King also occurred while he was attending this convention. Beyond the fact of the ongoing investigation of Dr. King, the only recorded reason for instituting this particular tap in Atlantic City 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." (Memorandum from Mr. W. C. Sullivan to Mr. A. H. Belmont, 8/21/64.)

²⁸⁶ Memorandum from W. C. Sullivan to A. H. Belmont, 7/21/64.

²⁸⁷ FBI summary memorandum, 1/30/75.

Committee that the "national security" was involved, but did not elaborate further.²⁸⁸ According to the transcript of the White House tapes, President Nixon stated to John Dean, on April 16, 1973 that

... What I mean is I think in the case of the Kraft's 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 . . .²⁸⁹

Beyond these claims, 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: "I did review the information on which the effort was made from one of the operations out of the White House to put a tap on Mr. Kraft and, frankly, I could never see any national security justification for doing so."²⁹⁰ Of the hotel room bug, Mr. Ruckelshaus stated: "The justification would have been that he was discussing with some—asking questions of some members of the North Vietnamese Government, representatives of that government. My own feeling is that this just is not an adequate national security justification for placing any kind of surveillance on an American citizen or newsmen. It just is not an adequate justification . . ."²⁹¹ Mr. Kraft stated in a 1974 Congressional hearing that he was in contact with North Vietnamese officials while he was overseas in 1969, but he noted that this was a common practice among journalists and that he never knowingly published any classified information on the basis of these or any other contacts he made there.²⁹² He further stated that Henry Kissinger, then the President's Special Adviser for National Security, informed him that he had no contemporaneous knowledge of either the wiretap or the hotel room bug, and that former Attorney General Elliot Richardson indicated to him that "there was no justification for these activities."²⁹³ Attorney General Edward Levi recently wrote Mr. Kraft that the FBI's 115-document file on the columnist "did not indicate that Mr. Kraft's activities posed any risk to the national interest."²⁹⁴

There is also no evidence of a "national security" justification for the physical surveillance or the proposed electronic surveillance of

²⁸⁸ Testimony of John Ehrlichman before the Senate Watergate Committee, 7/28/78, p. 2635.

²⁸⁹ Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, 4/30/74, p. 802.

²⁹⁰ William Ruckelshaus testimony, Hearings before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.

²⁹¹ *Ibid.*

²⁹² Joseph Kraft testimony, Hearings before the Subcommittee on Administrative Practice and Procedure, 5/10/74, p. 331.

²⁹³ Joseph Kraft testimony, Hearings before the Subcommittee on Administrative Practice and Procedure, 5/10/74, p. 331.

²⁹⁴ *The Washington Post*, 3/31/76, p. 1.

Kraft in the fall of 1969. A Bureau memorandum suggests that the Attorney General did desire some type of coverage of Kraft,²⁹⁵ but the record reveals no purpose for this coverage.

Perhaps significantly, the physical surveillance was discontinued after five weeks because it had "not been productive."²⁹⁶ 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.

The "Seventeen Wiretaps" in 1959, 1970, and 1971 clearly reveal the relative ease with which improper targets can be selected for wiretapping. Shortly after these wiretaps were revealed publicly, President Nixon stated that they had been justified by the need to prevent leaks of classified information harmful to the "national security."²⁹⁷ In the cases of several of these taps, however, no "national security" claim was advanced in the supporting documents that went to the Attorney General requesting authorization. Two of the targets were domestic affairs advisers at the White House, who had no foreign affairs responsibilities and apparently had no access to classified foreign policy materials. According to Bureau memoranda, their coverage was not requested through the President's National Security Advisor or his assistant, as Bureau memoranda indicate others in this series were,²⁹⁸ but by the White House directly: John Mitchell approved the first of these two taps at the request of "higher authority;"²⁹⁹ the second of these two was requested by H. R. Haldeman.³⁰⁰

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 concerning not foreign policy but revenue sharing and welfare reform.³⁰¹ This tap was also requested by the White House directly. The reinstatement of the tap on one National Security Council staff member was apparently requested by H. R. Haldeman simply because "they have some concern [about him]; they may have a bad apple and have to get him out of the basket."³⁰² The last four requests which were sent to the Attorney General, including that for reinstatement of the tap on the NSC staff member, do not mention any national security justification to support the requests.³⁰³ While national security issues were at least arguably involved in some of the taps, in short, additional targets were selected with no national security basis at all. As 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,

²⁹⁵ Memorandum from Mr. W. C. Sullivan to Mr. DeLoach, 11/4/69.

²⁹⁶ Memorandum from Mr. Sullivan to Mr. DeLoach, 12/11/69.

²⁹⁷ Public statement of President Nixon, 5/22/73.

²⁹⁸ Memoranda from J. Edgar Hoover to the Attorney General, 5/12/69, 5/20/69, 5/29/69, 6/4/69, 8/4/69, 5/4/70, and 5/13/70.

²⁹⁹ Memorandum from J. Edgar Hoover to the Attorney General, 7/28/69.

³⁰⁰ Memorandum from J. Edgar Hoover to the Attorney General, 12/14/70.

³⁰¹ Memorandum from W. C. Sullivan to C. D. DeLoach, 8/1/69.

³⁰² Memorandum from J. Edgar Hoover to Messrs. Tolson, Sullivan, and C. D. Brennan, 10/16/70.

³⁰³ Memoranda from J. Edgar Hoover to the Attorney General, 5/18/70 (two separate memoranda), 10/16/70, and 12/14/70.

relationship to any claim of a national security tie . . . 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 those kinds of considerations [i.e., genuine national security justifications] were considerably relaxed as the program went on.³⁰⁴

As noted in Section VI above, wiretaps were also placed on three antiwar organizations which were involved in planning the "March on Washington" in November 1969. The first of these three wiretaps, approved by Attorney General Mitchell on November 6, was directed against the New Mobilization Committee to End the War in Vietnam (NMC).³⁰⁵ The FBI's request for coverage of this group noted that the anticipated size of the demonstration was cause for "concern" should violence break out, but it made no claim that NMC members in particular engaged in or were likely to engage in violent activity. The entire "justification" portion of the memorandum sent to John Mitchell reads as follows:

The New Mobilization Committee to End the War in Vietnam (NMC) is coordinating efforts for a massive antiwar manifestation to take place in Washington, D.C., November 12-16, 1969. This group maintains a Washington, D.C., office at 1020 Vermont Avenue, Northwest, where the planning takes place.

This demonstration could possibly attract the largest number of demonstrators ever to assemble in Washington, D.C. The large number is cause for major concern should violence of any type break out. It is necessary for this Bureau to keep abreast of events as they occur, and we feel that in this instance advance knowledge of plans and possible areas of confrontation would be most advantageous to our coverage and to the safety of individuals and property. Accordingly, we are requesting authorization to install a telephone surveillance on the Washington office of the NMC.³⁰⁶

Five days after he approved the first tap, the Attorney General authorized wiretaps on the Vietnam Moratorium Committee and a third antiwar organization, both of which were "closely coordinating their efforts with NMC in organizing the demonstration."³⁰⁷ The only additional justification given for the wiretap on the Vietnam Moratorium Committee was that the group "has recently endorsed fully the activities of the NMC concerning the upcoming antiwar demonstrations."³⁰⁸

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 work-

³⁰⁴ Ruckelshaus testimony. Hearings before the Subcommittee on Administrative Practice and Procedure, 5/0/74, pp. 311-312.

³⁰⁵ Memorandum from J. Edgar Hoover to the Attorney General, 11/5/69.

³⁰⁶ *Ibid.*

³⁰⁷ Memorandum from J. Edgar Hoover to the Attorney General, 11/7/69.

³⁰⁸ *Ibid.*

ers 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."³⁰⁹

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 prior three months.³¹⁰ 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.³¹¹

4. Electronic Surveillance of Journalists, Attorneys and Persons Involved in the Domestic Political Process

As the preceding three subsections indicate, the elasticity of the standards for instituting electronic surveillance has permitted this technique to be directed against American citizens with little or no adequate justification in the particular case. In addition, the targeting of individuals in certain categories, such as journalists, attorneys, and persons involved in the domestic political process, is an inherently questionable practice because of the special concerns which affect these groups.

Between 1961 and 1972, at least six American journalists and newsmen were electronically surveilled by the FBI: Lloyd Norman in 1961;³¹² Hanson Baldwin in 1962;³¹³ the editor of an anti-Communist newsletter in 1965;³¹⁴ Joseph Kraft in 1969;³¹⁵ and two American

³⁰⁹ 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 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.)

³¹⁰ 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." (The excised words have been deleted by the FBI.)

³¹¹ 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.)

³¹² See p. 321.

³¹³ See pp. 321-322.

³¹⁴ See p. 323.

³¹⁵ See p. 323.

newsmen in connection with the "Seventeen Wiretaps" during the period 1960 to 1971.³¹⁰ All of these surveillances were ostensibly conducted to determine the source of leaks of classified information.

The wiretapping of journalists in the investigation of "leaks," however has proven to be a fruitless enterprise. As former Secretary of State Dean Rusk stated:

Tapping newsmen will not stop leaks and for the most part is not even going to uncover leaks. There are so many different ways in which leaks can be made and from so many different quarters that there is no way to get at the business of leaks and on sheer practical grounds this is rather foolish policy to pursue.³¹⁷

Aside from matters of practicality, the Constitution gives special protection to "freedom of the press." The precedent set by wiretapping newsmen inevitably tends to undermine the Constitutional guarantee of a free and independent press.

During the 1960s there were also numerous wiretaps on the office telephones of attorneys. In the course of the Sugar Lobby investigation in 1962, ten telephone lines of a Washington, D.C., law firm were wiretapped in order to intercept the conversations of a single lawyer who was believed to be acting as a lobbyist for foreign interests.³¹⁸ In that same year, the office telephone of an advisor to Dr. Martin Luther King, Jr.—also a lawyer—was wiretapped and his office was bugged;³¹⁹ his telephone was wiretapped again in 1965.³²⁰ A second attorney who advised Dr. King was wiretapped in 1963;³²¹ and the office telephone of an attorney who was in frequent contact with the editor of an anti-Communist newsletter was wiretapped in 1965.³²² Attorneys have also been frequently overheard on wiretaps not specifically directed at them. The wiretap on the headquarters of the Jewish Defense League in 1970 and 1971, for instance, intercepted the conversations between Bertram Zweibon, an attorney for several JDL members, and his clients.³²³

Both direct and indirect electronic surveillances of attorneys, such as those listed above, inevitably jeopardize the Sixth Amendment-based attorney-client privilege, because this technique, by its intrusive nature, is capable of providing the means by which the FBI and the Justice Department can learn the legal strategy to be used by actual and potential defendants as well as other information given in confidence by clients to their attorneys. In order to minimize the possibility of violating the attorney-client privilege, FBI monitoring agents in court-ordered electronic surveillance cases are currently

³¹⁰ See p. 826.

³¹⁷ Testimony of Dean Rusk, Hearings Before the Senate Foreign Relations Committee, 7/23/74, p. 232.

³¹⁸ Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62.

³¹⁹ Memorandum from J. Edgar Hoover to the Attorney General, 3/6/62; Memorandum from J. F. Blem to W. C. Sullivan, 3/2/62. See also King Report, Sec. II.

³²⁰ Memorandum from J. Edgar Hoover to the Attorney General, 5/24/65.

³²¹ Memorandum from J. Edgar Hoover to the Attorney General, 5/24/65. See also King Report, Sec. II.

³²² Memorandum from J. Edgar Hoover to the Attorney General, 6/7/65.

³²³ *Zweibon v. Mitchell*, 510 F.2d 594, 611 (D.D.C. 1975).

under instructions to shut off interception equipment upon the commencement of conversations between a client and his attorney concerning a "pending criminal case."³²⁴ This policy is also applied to warrantless electronic surveillances.³²⁵ As a practical matter, however, it is difficult, if not impossible, to comply fully with this requirement since the monitoring agent must listen to the beginning of such a conversation even to recognize it.

In the Jewish Defense League case, the wiretap continued for more than a month after federal criminal indictments were returned against several JDL members. In violation of a specific instruction from the Attorney General to suspend the overhearing and recording of conversations between "individuals who are or may be defendants or attorneys in pending Federal cases,"³²⁶ Bureau agents overheard and recorded conversations between some of the indicted JDL members and their attorney, Mr. Zweibon. The District of Columbia Court of Appeals wrote in regard to this matter:

When criminal indictments have already been returned against some subjects of a surveillance, as was true in this case, . . . surreptitious surveillance may . . . deny those subjects effective assistance of counsel in derogation of their Sixth Amendment rights . . . We do not mean to suggest that appelles [Attorney General Mitchell and other government officials] were even partially motivated by a desire to overhear privileged attorney-client communications concerning pending criminal trials . . . However, we note that such motivations may prompt surveillance in other situations and thus constitute another abuse which prior judicial authorization may help to curb.³²⁷

Electronic surveillance of persons involved in the domestic political process, such as Congressmen, lobbyists, and Congressional aides, also raises special problems. Information is often the key to power; and

³²⁴ *Agent's Manual for Conduct of Electronic Surveillance Under Title III of Public Law 90-351*, Section VII. If the attorney-client conversation concerns a matter other than a pending criminal case, it is the responsibility of the supervising attorney to determine whether or not the conversation is privileged. If he determines it is not, the interception is treated no differently from any other overheard conversation. If evidence of crimes other than those specified in the court's order is obtained, the FBI may disseminate this information both within the Bureau and to other Federal or state agencies to the same extent that it could disclose the contents of conversations relating to the crime specified in the order authorizing interception.

³²⁵ For example, SAC Letter, 8/18/69.

The "pending criminal case" requirement has been interpreted less strictly with respect to some warrantless electronic surveillances, however. On the May 25, 1966, order authorizing a wiretap on an attorney who was an advisor to Dr. King, for example, Attorney General Katzenbach wrote: "You should discontinue if at any time he is acting as attorney for clients litigating with the U.S." (Memorandum from J. Edgar Hoover to the Attorney General, 5/25/66). Katzenbach therefore left open the possibility that information obtained from conversations which related to a state rather than a federal case could be overheard, recorded, and presumably disseminated to a state prosecutor. See also the similar instruction in the Jewish Defense League case, quoted in the text.

³²⁶ Memoranda from J. Edgar Hoover to the Attorney General, 9/14/70, 1/4/71; *Zweibon v. Mitchell*, 510 F.2d 504, 610-11 (D.C. Cir. 1975).

³²⁷ *Zweibon v. Mitchell*, 510 F.2d 504, 634 n. 100 (D.C. Cir. 1975).

the ability of high executive officials to use electronic surveillance to obtain information about their political opponents can give the President and his aides enormous influence. Apart from violating the rights of the surveillance targets, wiretapping and bugging on behalf of the President's political interests destroys the Constitutional system of checks and balances designed to limit the exercise of arbitrary power.

Electronic surveillance has been used to serve the interests of Presidents in almost every political arena; it has been a resource for executive power that has tempted administrations of both political parties. Officials succumbed to the temptation with a consistency which demonstrates the immense danger of vesting authority over the use of such techniques solely within the Executive Branch.

B. Procedural Violations

Frequent violations of the internal procedural requirements for warrantless electronic surveillance have compounded the abuses to which this technique is prone. Wiretaps and bugs have often been installed without the prior authorization of the Attorney General and at times without prior authority from Bureau Headquarters, thus defeating one of the few checks on the unrestricted use of electronic surveillance. Certain very sensitive surveillances have also been intentionally excluded from the ELSUR Index, rendering impossible the retrieval of overhears and other information about the surveillances through a regular file search. In two cases, surveillance records were physically removed from FBI Headquarters and stored at the White House. The occurrence of procedural violations such as these have doubtlessly facilitated the improper use of electronic surveillance of American citizens.

The failure of the FBI to secure the necessary prior approval of the Attorney General in a number of wiretapping cases has been described above. Wiretaps directed against Lloyd Norman, Hanson Baldwin's secretary, a former FBI agent, and Morton Halperin were all instituted and continued for a period of days without any approval or in some cases, apparently even knowledge, on the part of Attorneys General.³²⁰ No explicit approval was ever secured from the Attorney General for two of the four wiretaps in the Charles Radford series and, also in violation of existing regulations, no written approval was granted for the other two. After the requirement of prior Attorney General approval for microphone surveillance was imposed in 1965, the FBI installed at least three bugs in hotel rooms occupied by Dr. Martin Luther King, Jr., without advising the Attorney General before the fact.³²⁰ Nor was the Attorney General's approval ever sought for the FBI's bugging of columnist Joseph Kraft in 1969. Both the SNCC bug in 1964 and an attempted microphone surveillance of Dr. King in 1966, moreover, occurred without even the approval of FBI Director Hoover: a 1975 Inspection Report on the Bureau's activities at the 1964 Democratic National Convention states that "a thorough review of Bureau rec-

³²⁰ The "Plumbers" wiretap against Joseph Kraft was similarly installed without the prior—or subsequent—approval of the Attorney General.

³²⁰ Attorney General Katzenbach was apparently given after the fact notification, however. See King Report: Sec. IV, Electronic Surveillance of Dr. Martin Luther King, Jr.

ords fails to locate any memorandum containing authorization for [the bug planted at SNCC headquarters];"³³¹ and on a January 1966 memorandum reflecting the New York Office installation of a microphone in Dr. King's room, Associate Director Clyde Tolson wrote, "No one here approved this. I have told [FBI Assistant Director William C.] Sullivan [who had authorized the New York office to install the bug] again not to institute mike surveillance without the Director's approval."³³²

Violations of the requirement of periodic re-authorization of electronic surveillances, imposed in 1965, have also magnified this technique's abuses in the domestic area. Despite the lack of any evidence of a "national security" leak obtained from any of the "Seventeen Wiretaps," for example,—the President himself privately admitted that the taps were unproductive and useless in determining the source of leaks³³³—ten of them remained in operation for periods longer than ninety days and none was ever re-authorized. After the tap on Halperin had been in place for two months, William C. Sullivan wrote the Director that "Nothing has come to light [on this tap] that is of significance from the standpoint of the leak in question,"³³⁴ yet that tap continued for another nineteen months without re-authorization. The Halperin tap, and that on another National Security Council staff member, moreover, remained in operation long after both of these targets left the employ of the National Security Council and became advisors to Senator Edmund Muskie, then the leading Democratic prospect for the Presidency. These targets no longer had access to classified information but they were clearly in a position to provide political intelligence to the White House unwittingly.³³⁵ The wiretap on Charles Radford was similarly never re-authorized, although it continued for nearly six months after it was instituted in December 1971.

Because of their perceived sensitivity, the records of some wiretaps and bugs were purposefully not contemporaneously integrated into the regular FBI files for warrantless electronic surveillance. When the Bureau was first advised of the "Seventeen Wiretaps," for example, it was told that their sensitivity precluded the maintenance of multiple records;³³⁶ consequently, only one copy of the records was retained and no entries were made in the ELSUR Index. According to a 1978 FBI memorandum regarding the Radford wiretaps, "Our records have been kept completely isolated from other FBI records, and there are no indices whatsoever relating to this project."³³⁷ And in the case of Joseph Kraft, most of the summaries which W. C. Sullivan sent to J. Edgar Hoover from abroad were marked "DO NOT FILE" to make their retrieval through a normal file search impossible.³³⁸ In both the

³³¹ FBI summary memorandum, 1/30/75.

³³² Memorandum from W. C. Sullivan to Mr. DeLoach, 1/21/66.

³³³ Report of the House Judiciary Committee, 8/20/74, p. 150; p. 345.

³³⁴ Memorandum from W. C. Sullivan to Mr. Hoover, 7/8/69.

³³⁵ In fact a great deal of political information was obtained from these and other wiretaps in this series. See pp. 340-350.

³³⁶ See p. 325.

³³⁷ Memorandum from T. J. Smith to E. S. Miller, 2/20/78.

³³⁸ Staff review of letters sent from W. C. Sullivan to J. Edgar Hoover regarding the Kraft surveillance.

"Seventeen Wiretaps" case and the Kraft case, moreover, the limited surveillance records that were maintained were physically removed from the FBI headquarters and taken by Assistant Attorney General Robert Mardian to John Ehrlichman at the White House, apparently at the instruction of President Nixon.³⁴⁰ On May 12, 1973, these files were discovered by Acting FBI Director William Ruckelshaus in a safe in Ehrlichman's outer office and returned to Bureau Headquarters.³⁴⁰

The circumvention of normal approval and filing requirements, in short, accompanied and facilitated the improper wiretapping and bugging of American citizens. The knowledge that these requirements could, in secrecy, be ignored inevitably increased the likelihood that wiretaps and bugs would be employed without substantial justification.

C. Collection and Dissemination of Information Irrelevant to Legitimate Governmental Objectives

Wiretaps and microphones, by their nature, inevitably intercept conversations which are totally unrelated to the authorized purpose of the surveillance. Virtually all conversations are overheard, no matter how trivial, personal, or political they might be. In addition, the techniques are incapable of a surgical precision which would permit the FBI to overhear only the target's conversations. Anyone using a tapped telephone or conversing in a bugged room can be overheard. These characteristics of electronic surveillance have directly resulted in another type of abuse: the collection of information, including purely personal and political information, for dissemination to the highest levels in the Government.

1. Personal Information

One extreme example of the collection and dissemination of personal information is found in the surveillance of an American citizen at the direct request of the White House.³⁴¹ Among the items of interest that the FBI obtained from a wiretap on this individual—and delivered in utmost secrecy to a Presidential aide—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."³⁴² Even the FBI evidently realized that this type of information was unrelated to national security: for the last four months of the surveillance, most of the summaries that were disseminated to the White House began, "The following is a summary of non-pertinent information concerning captioned individual as of..."

From the bug planted in Joseph Kraft's hotel room, John Ehrlichman learned about this columnist's social contacts there and his views about the activities of an American politician.³⁴³

³⁴⁰ Report of the House Judiciary Committee, 8/20/74, p. 153.

³⁴¹ Memorandum from T. J. Smith to E. S. Miller, 6/8/73.

³⁴² The name of this individual and identifying details are withheld for privacy reasons.

³⁴³ Staff summary of FBI file review, 8/22/75.

³⁴⁴ Letter from J. Edgar Hoover to John Ehrlichman, 7/15/69.

The "Seventeen Wiretaps" supplied the White House with a wealth of information about the personal lives of the targets and the people with whom they communicated. In the private words of President Nixon, these wiretaps produced "just gobs and gobs of material: gossip and bull."³⁴⁴ The White House did not learn that any of them were responsible for any national security leaks, but it did learn about their social contacts, their vacation plans, their employment satisfactions and dissatisfactions, their marital problems, their drinking habits, and even their sex lives.³⁴⁵ The fact that an Associate Justice of the United States Supreme Court was overheard on one of these wiretaps and intended to review a manuscript written by one of the subjects was also disseminated to the White House.³⁴⁶

The most blatant example of the collection of entirely personal information and its dissemination to high-ranking government officials occurred in connection with the FBI's investigation of Dr. Martin Luther King, Jr. As noted above, the Bureau installed at least fifteen bugs in hotel rooms occupied by Dr. King, some of which were installed for the express purpose of collecting personal information. In December 1964, the FBI, with the approval of the White House, disseminated a monograph on alleged communist influence in the civil rights movement to the heads of intelligence agencies as well as the State Department, the Defense Department, and USIA.³⁴⁷ This monograph contained a section on the personal life of Dr. King that was apparently based in part on the information obtained from these bugs.³⁴⁸ Between 1965 and 1968, at least two updated versions of the monograph, including the section on King's personal life, were similarly distributed.³⁴⁹ Other FBI summaries about Dr. King which were based in part on microphone surveillance were also disseminated to executive branch officials outside the FBI.³⁵⁰

2. Political Information

Political information useful to the administration in power has also been obtained from electronic surveillance of American citizens and disseminated to Attorneys General and Presidents. While the generation of this type of information was incidental, in most cases, to the purpose of the wiretap, its dissemination has armed key officials with knowledge of the strategies of their political opponents.

The "Sugar Lobby" Investigation.—The "Sugar Lobby" wiretaps and microphone bugging during the Kennedy administration serve as one example of the collection and dissemination of essentially political information. Beyond the Attorney General's concern about American foreign policy and the possibility of bribery, it is clear that at the time the initial wiretaps were placed, the Kennedy administration opposed any sugar bill that provided for the favorable quotas sought by the foreign government in question. The administration wanted

³⁴⁴ Transcript of Presidential tapes, 2/28/73 (House Judiciary Committee. Statement of Information, Book VII, Part 4, p. 1754).

³⁴⁵ For example, Letters from Hoover to the Attorney General and John Mitchell, 7/21/69, and 7/25/69; Letters from Hoover to H.R. Haldeman, 9/22/70 and 12/17/70.

³⁴⁶ Letter from Hoover to Haldeman, 6/25/70.

³⁴⁷ King Report: Sec. IV, Electronic Surveillance on Dr. Martin Luther King, Jr.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ *Ibid.*

a bill that would give the "Executive Branch necessary flexibility in establishing country quotas, ostensibly for the purpose of denying quotas to countries (such as [this particular foreign country]) whose foreign policy was at odds with ours."³⁵⁰ Even if the 1961 and the 1962 series of wiretaps were arguably legitimate under electronic surveillance law of the early 1960s, they generated some information that was potentially useful to the Kennedy administration in terms of this legislative objective. Given the nature of the techniques used and the targets they were directed against, the collection of such information is not surprising.

One summary of an overhear that was disseminated to the Attorney General noted that a particular lobbyist "mentioned he is working on the Senate and has the Republicans all lined up . . ." ³⁵¹ This same lobbyist was also reported to have said that "he had seen two additional representatives on the House Agriculture Committee, one of whom was 'dead set against us' and who may reconsider, and the other was neutral and 'may vote for us.'" ³⁵² Robert Kennedy further learned that the "friend" of one of the foreign officials "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."³⁵³ From the bug in Congressman Cooley's hotel room, the Attorney General was informed that among other matters Mr. Cooley believed he "had not accomplished anything" and that "he had been fighting over the Rules Committee and this had interfered with his attempt to 'organize.'" ³⁵⁴

In general, coverage of the entire situation was "intensified . . . during the time preceding the passage of the sugar quota law," ³⁵⁵ and was apparently terminated in 1961 when the bill desired by the administration passed the Senate. According to a memorandum of a meeting between Attorney General Kennedy and Courtney Evans, an Assistant Director of the FBI, Kennedy stated that "now [that] the law has passed he did not feel there was justification for continuing this extensive investigation."³⁵⁶ The Bureau's own evaluation of these wiretaps in 1966 reads in part: "Undoubtedly, data from our coverage contributed heavily to the administration's success in [passage of the bill it desired]." ³⁵⁷

The 1964 Democratic National Convention.—The dissemination of political information from electronic surveillance was repeated during the Johnson administration. At the request of the White House, the FBI sent a special squad to the Democratic National Convention site in Atlantic City, New Jersey, on August 22, 1964, ostensibly to assist the Secret Service in protecting President Lyndon Johnson and to ensure that the convention itself would not be marred by civil disruption. Approximately thirty Special Agents, headed by Assistant Director Cartha DeLoach, "were able to keep the White House fully ap-

³⁵⁰ Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/60.

³⁵¹ FBI summary memorandum, 6/16/62.

³⁵² *Ibid.*

³⁵³ FBI summary memorandum, 2/16/62.

³⁵⁴ Memorandum from Director, FBI to the Attorney General, 2/18/61.

³⁵⁵ Memorandum from C. A. Evans to Mr. Parsons, 4/15/61.

³⁵⁶ *Ibid.*

³⁵⁷ Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/60.

prised 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 . . ." Among the "confidential techniques" were two electronic surveillances: a wiretap on the hotel room occupied by Martin Luther King, Jr., and a microphone surveillance of SNCC and CORE.³⁵⁹

The White House apparently did not know of the existence of either of these electronic surveillances. Walter Jenkins, an Administrative Assistant to President Johnson who was present at the Convention and the recipient of information developed by the Bureau, stated that he was unaware that any of the intelligence was obtained by wiretapping or bugging.³⁶⁰ DeLoach has testified that he is uncertain whether he ever informed Jenkins of these sources.³⁶¹ It is clear, however, that Jenkins, and presumably President Johnson, nonetheless, received a significant volume of information from the King tap and the SNCC bug—much of it purely political and only tangentially related to possible civil unrest.

One of the most important issues that might have disturbed President Johnson at the Atlantic City Convention was the seating challenge of the regular, all-white Mississippi delegation by the predominantly black Mississippi Freedom Democratic Party (MFDP). From the electronic surveillances of King and SNCC, the White House was able to obtain the most sensitive details of the plans and tactics of individuals supporting the MFDP's challenge. On August 24, 1964, for example, Cartha DeLoach, the FBI official who was in charge of the Bureau's special squad in Atlantic City, reported to Jenkins that:

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. The MFDP wanted to get the issue before the full convention but because of the President's actions, this will be impossible.³⁶²

The next day another associate of King's contacted (on the telephone in King's room) 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.³⁶³

³⁵⁹ Memorandum from C. D. DeLoach to Mr. Mohr, 8/20/64.

³⁶⁰ Memorandum from C. D. DeLoach to Mr. Mohr, 8/20/64; Cartha DeLoach testimony, 12/3/75, Hearings, Vol. 6, p. 177.

³⁶¹ Staff summary of Water Jenkins interview, 12/1/75.

³⁶² DeLoach testimony, 11/30/75, p. 114.

³⁶³ Memorandum from DeLoach to Walter Jenkins, 8/24/64.

³⁶⁴ Memorandum from DeLoach to Jenkins, 8/25/64.

DeLoach noted that "the purpose of King's seeing these individuals is to urge them to call the White House directly and put pressure on the White House in behalf of the MFDP."³⁶⁵ Jenkins was also informed that:

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.³⁶⁵

Significantly, a 1975 FBI Inspection Report stated that "several Congressmen, Senators, and Governors of states . . ." were overheard on this King tap.³⁶⁶

DeLoach reported, too, that an SCLC staff member told a representative of the MFDP: "Off the record, of course, you know we will accept the Green compromise proposed;" and, for Jenkins' benefit, added that "[t]his refers to the proposal of Congresswoman Edith Green of Oregon."³⁶⁷

On August 23, 1964, King was overheard conferring with another civil rights leader on a number of matters relating to the convention. The report that was sent to Jenkins on this conversation included the following paragraph:

Discussion of a Vice-Presidential nominee came up and King asked what [the other leader] thought of Hugh [sic] Humphrey, and [the other individual] said Hugh Humphrey is not going to get it, that Johnson needs a Catholic . . . to go into the ghettos [sic] where Johnson will not journey and, therefore, the Vice-President will be Muskie of Maine . . .³⁶⁸

According to both Cartha DeLoach and Walter Jenkins, the Bureau's coverage in Atlantic City did not serve political ends.³⁶⁹ From the examples cited above, however, it is clear that the FBI's electronic surveillance did generate a great deal of potentially useful political intelligence, as well as political commentary that was totally unrelated to the possibility of civil unrest. A document located at the Lyndon B. Johnson Presidential Library, moreover, suggests that

³⁶⁴ *Ibid.*

³⁶⁵ *Ibid.*

³⁶⁶ Memorandum from H. N. Bassett to Mr. Callahan, 1/20/75.

³⁶⁷ Memorandum from DeLoach to Jenkins, 8/25/64.

³⁶⁸ Memorandum from C. D. DeLoach to Mr. Walter Jenkins, 8/20/64.

³⁶⁹ DeLoach testified that:

"I was sent there to provide information . . . which would 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 . . ." (DeLoach testimony, 11/26/75, p. 130.)

Jenkins agreed that the mandate of the FBI's special unit did not encompass the gathering of political intelligence and stated that if any such intelligence was disseminated it was probably due to the inability of Bureau agents to distinguish between dissident activities which might or might not result in violence. (Staff summary of Jenkins interview, 12/1/75.) He added that he did not believe the White House ever made any use of the incidental political intelligence that might have been received.

at least one actual political use was made of the FBI reports. This unsigned memorandum, which Walter Jenkins said was clearly intended for the President (although he disclaimed authorship),³⁷⁰ disclosed Martin Luther King's strategy in connection with a meeting to be attended by President Johnson. Among other items, this memorandum reports that:

Deac DeLoach called me this morning to say that his information was that King had been advised by Joe Rauh [an attorney for the MFDP] that in this morning's meeting you were not going to let the group discuss seating of the "freedom party" delegation, but would take the initiative. King was, last night, pondering on whether to refuse to come to the meeting on the grounds of short notice . . .

Deac's information was that if King did show . . . he was instructed to "speak up to the President."³⁷¹

Although FBI and White House officials claimed it was implemented to prevent violence at the Convention site, in short, the Bureau's coverage in Atlantic City—including two electronic surveillances—undeniably provided useful political intelligence to the President as well.³⁷²

The "Seventeen Wiretaps."—In more recent years, FBI wiretaps have supplied political information to the Nixon administration as well. Since many of the "Seventeen Wiretaps" targets were personally involved in the domestic political process—as White House aides, reporters, and Congressional consultants—this program inevitably collected large amounts of essentially political information, much of

³⁷⁰ Staff summary of Walter Jenkins interview, 12/1/75.

³⁷¹ Blind memorandum bearing the handwritten date 9/26/69 and the typewritten date 8/19/64.

³⁷² In contrast to the use of electronic surveillance at the 1964 Democratic Convention, Attorney General Ramsey Clark refused to permit any use of this technique during the Democratic National Convention in Chicago in 1968. A request for a wiretap on the "National Mobilization Office for Demonstrations" was sent to Attorney General Clark as early as March 1968 on the grounds that: "A telephone surveillance on this office would provide extremely valuable information regarding the plans of [numerous] groups to disrupt the National Democratic Convention. It would also furnish advance notice of any possible activity by these groups which would endanger the safety of the President or other Government officials while in Chicago." (Memorandum from J. Edgar Hoover to the Attorney General, 3/11/68.)

Clark refused to approve the tap. He informed Director Hoover the day after the request was made that:

" . . . There has not been an adequate demonstration of a direct threat to the national security. Should further evidence be secured of such a threat, or reevaluation desired, please resubmit.

"Other investigative activities should be undertaken to provide intelligence necessary to the protection of the national interest." (Memorandum from Ramsey Clark to J. Edgar Hoover, Director, 3/12/68.)

A total of three more requests for a wiretap on the same proposed target were submitted during the next three months: on March 22 (Memorandum from J. Edgar Hoover to the Attorney General, 3/22/68); on April 24 (Memorandum from J. Edgar Hoover to the Attorney General, 4/24/68); and for a final time on June 7 (Memorandum from J. Edgar Hoover to the Attorney General, 6/7/68). None of them were signed by the Attorney General and Bureau records indicate that no electronic surveillance was conducted in connection with the 1968 Convention.

which was disseminated to the White House. Among the examples of such items are the following:

--That one of the targets told a friend it "is clear the administration will win on the ABM by a two-vote margin." Two Senators who apparently supported the administration's position were named.³⁷³

--That one of the targets "recently stated that he was to spend an hour with [one Senator's] Vietnam man, as [that Senator] is giving a speech on the 15th."³⁷⁴

--That one of the targets said Congressional hearings on Vietnam were being postponed because a key Senator did not believe they would be popular at that time.³⁷⁵

--That a well-known television news correspondent "was very depressed over having been 'singled out' by the Vice President."³⁷⁶

--That a friend of one of the targets wanted to see if a particular Senator would "buy a new [antiwar] amendment" and stated that "'They' are going to meet with [another influential Senator]."³⁷⁷

--That a friend of one of the targets said the *Washington Star* planned to publish an article critical of Henry Kissinger.³⁷⁸

--That a friend of one of the targets described one Senator as "marginal" on the Church-Cooper Amendment but noted that another Senator might be persuaded to support it.³⁷⁹

--That one of the targets helped a former Ambassador write a press release criticizing a recent speech by President Nixon in which the President "attacked" certain Congressmen.³⁸⁰

--That one of the targets said Senator Mondale was in a "dilemma" over the "trade bill."³⁸¹

--That the 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."³⁸²

At least one example of a political use which was made of information such as this has also been documented. After J. Edgar Hoover informed the President that former Secretary of Defense Clark Clifford planned to write a magazine article criticizing President Nixon's Vietnam policy,³⁸³ Jeb Stuart Magruder wrote John Ehrlichman and H. R. Haldeman that "We are in a position to counteract this article in any number of ways . . ." ³⁸⁴ Ehrlichman then noted to Haldeman

³⁷³ Letter from J. Edgar Hoover to President Nixon and Henry Kissinger, 7/18/69.

³⁷⁴ Letter from J. Edgar Hoover to President Nixon, Henry Kissinger, and the Attorney General, 10/9/69.

³⁷⁵ Letter from J. Edgar Hoover to President Nixon and Henry Kissinger, 12/8/69.

³⁷⁶ Letter from J. Edgar Hoover to President Nixon and Henry Kissinger, 2/20/70.

³⁷⁷ Letter from J. Edgar Hoover to H. R. Haldeman, 5/19/70.

³⁷⁸ Letter from J. Edgar Hoover to H. R. Haldeman, 6/2/70.

³⁷⁹ Letter from J. Edgar Hoover, to H. R. Haldeman, 6/23/70.

³⁸⁰ Letter from J. Edgar Hoover to H. R. Haldeman, 9/4/70.

³⁸¹ Letter from J. Edgar Hoover to H. R. Haldeman, 11/24/70.

³⁸² Letter from J. Edgar Hoover to H. R. Haldeman, 12/22/70.

³⁸³ Letter from J. Edgar Hoover to President Nixon, Henry Kissinger, and the Attorney General, 12/20/69.

³⁸⁴ Memorandum from Jeb S. Magruder to H. R. Haldeman and John D. Ehrlichman, 1/15/70.

that "This is the kind of early warning we need more of—your game planners are now in an excellent position to map anticipatory action—" ³⁸⁵ and Haldeman responded, "I agree with John's point. Let's get going." ³⁸⁶

Perhaps significantly, after May 1970, copies of the letters summarizing the results of these wiretaps were no longer sent to Henry Kissinger, the President's national security advisor, but to H.R. Haldeman, the President's political advisor.

* * * * *

In summary electronic surveillance has proven to be a valuable technique for the collection of foreign intelligence and counterintelligence information within the legitimate mandate of the FBI. But the history of the use of this technique by the Bureau also proves that its dangers are equally great: without precise standards and effective checks to restrain its use, innocent American citizens may be its victims; without rigid means of restricting the dissemination of information generated through electronic surveillance, Government officials may learn the most personal—and the most political—expressions and beliefs of its targets.

³⁸⁵ Memorandum from "E" (John Ehrlichman) to "H" (H. R. Haldeman), undated.

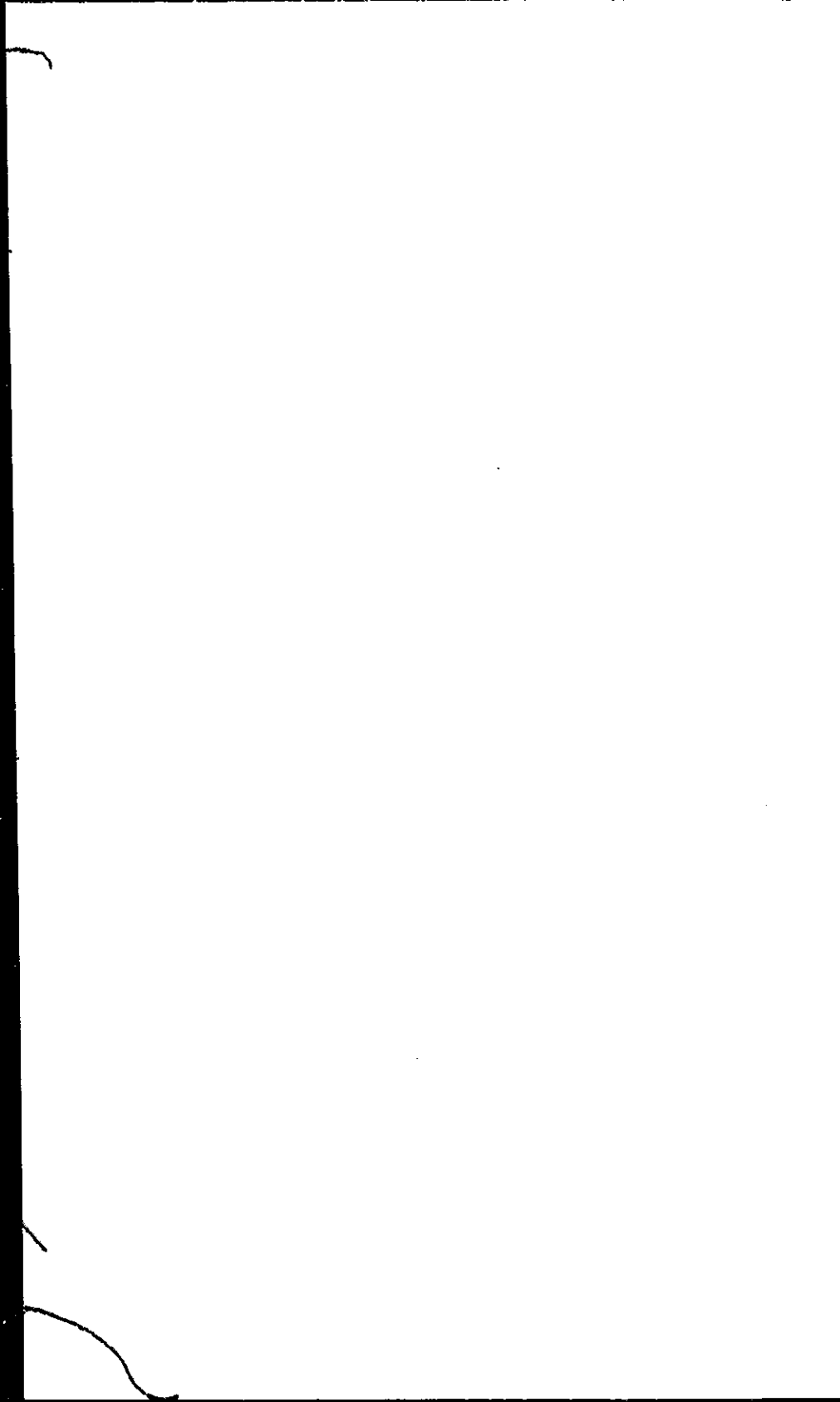
³⁸⁶ Memorandum from "H" (H. R. Haldeman) to "M" (apparently Jeb S. Magruder), undated.



WARRANTLESS SURREPTITIOUS ENTRIES: FBI "BLACK BAG" BREAK-INS AND MICROPHONE INSTALLATIONS

CONTENTS

	Page
I. Introduction.....	355
A. FBI policy and practice.....	355
B. The legal context: <i>United States v. Ehrlichman</i>	358
II. Operational Procedure, Authorization, and Targeting.....	358
A. Internal procedure and authorization.....	358
B. Targets: Counterintelligence and domestic subversives.....	358
C. Operations directed against the Socialist Workers Party.....	361
III. FBI Policy and the Question of Authorization Outside the Bureau...	365
A. FBI policy: The Hoover termination of "black bag jobs".....	365
B. Presidential and Attorney General authorization.....	365
1. The Huston plan: Proposal to lift the ban.....	365
2. Justice Department policy.....	366
a. Historical development.....	366
b. FBI briefings of Attorney General Robert Kennedy.....	366
c. Present policy.....	369
Appendix: Surreptitious Entries for the Installation of Microphones in Criminal Investigations.....	371



WARRANTLESS SURREPTITIOUS ENTRIES: FBI "BLACK BAG" BREAK-INS AND MICROPHONE INSTALLATIONS

I. INTRODUCTION

A. FBI Policy and Practice

Since 1948 the FBI has conducted hundreds of warrantless surreptitious entries to gather domestic and foreign intelligence, despite the questionable legality of the technique and its deep intrusion into the privacy of targeted individuals. Before 1966, the FBI conducted over two hundred "black bag jobs."¹ These warrantless surreptitious entries were carried out for intelligence purposes *other than* microphone installation, such as physical search and photographing or seizing documents. Since 1960, more than five hundred warrantless surreptitious *microphone installations* against intelligence and internal security targets have been conducted by the FBI, a technique which the Justice Department still permits. Almost as many surreptitious entries were conducted in the same period against targets of criminal investigations.²

Although several Attorneys General were aware of the FBI practice of break-ins to install electronic listening devices, there is no indication that the FBI informed any Attorney General about its use of "black bag jobs."

Surreptitious entries were performed by teams of FBI agents with special training in subjects such as "lock studies." Their missions were authorized in writing by FBI Director Hoover or his deputy, Clyde Tolson. A "Do Not File" procedure was utilized, under which most records of surreptitious entries were destroyed soon after an entry was accomplished.

The use of surreptitious entries against domestic targets dropped drastically after J. Edgar Hoover banned "black bag jobs" in 1966. In 1970, the relaxation of restraints on domestic intelligence techniques such as surreptitious entries was proposed in the Huston Plan. Hoover opposed this proposal, although he expressed a willingness to follow the Huston Plan, if directed to do so by the Attorney General.³

¹ Memorandum from FBI to Senate Select Committee, 1/13/76.

Throughout this report, the FBI's term "black bag job" will be used, as in FBI memoranda, to refer to warrantless surreptitious entries for purposes other than microphone installation, e.g., physical search and photographing or seizing documents. The term "surreptitious entries" will be used to refer to all warrantless entries by the FBI, including both "black bag jobs" and entries for the purpose of microphone installation. Surreptitious entries of either type often involved breaking and entering the targeted premises. See the Committee's report on FBI Electronic Surveillance for a general treatment of microphone installations.

² Memorandum from FBI to Senate Select Committee, 10/17/75, p. 3.

³ Memorandum from J. Edgar Hoover to Attorney General Mitchell, 7/27/70.

B. The Legal Context: United States v. Ehrlichman

The legality of warrantless surreptitious entries for intelligence purposes is highly questionable. An FBI official who administered "black bag" operations in the 1960s expressed the opinion that they were "clearly illegal,"³ even though a 1954 memorandum from Attorney General Herbert Brownell to J. Edgar Hoover had provided the color of legal authority for surreptitious entries to install microphones.⁴

U.S. v. Ehrlichman is the only judicial decision on the legality of a warrantless surreptitious entry and physical search where the action was justified by the claim that it was "in the national interest."⁵ In that case—which did not involve intelligence agencies—President Nixon's assistants, John Ehrlichman and Charles Colson, were among five defendants accused of conspiring to deprive a Los Angeles psychiatrist of his Fourth Amendment rights "by entering his offices without a warrant for the purpose of obtaining the doctor's medical records relating to one of his patients, Daniel Ellsberg, then under Federal indictment for revealing top secret documents."⁶

Ruling on the defendant's discovery motions, Federal District Judge Gerhard Gesell found the break-in and search of the psychiatrist's office "clearly illegal under the unambiguous mandate of the Fourth Amendment" because no search warrant was obtained:

[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.⁷

Gesell also pointed to a passage in the landmark "Keith" case to emphasize that surreptitious entries should be viewed by the courts as more intrusive than other forms of search such as wiretapping:

physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.⁸

Despite the national security defense raised by the defendants, Judge Gesell concluded that "as a matter of law . . . the President . . .

³ Memorandum from William C. Sullivan to C. D. DeLoach, 7/19/66. This memorandum was written by Section Chief F. J. Baumgardner and approved on Sullivan's behalf by his principal deputy, J. A. Sizoo.

⁴ Memorandum from Brownell to Hoover, 5/20/54.

⁵ *U.S. v. Ehrlichman*, 376 F. Supp. 20, 31 (1974).

⁶ *U.S. v. Ehrlichman*, 376 F. Supp. 20, 31 (1974).

⁷ *Ibid.*, p. 33. Gesell wrote: "Defendants contend that, over the last few years, the courts have begun to carve out an exception to this traditional rule for purely intelligence-gathering searches deemed necessary for the conduct of foreign affairs. However, the cases cited are carefully limited to the issue of wiretapping, a relatively nonintrusive search, *United States v. Butenko*, 404 F.2d 593 (3rd Cir. 1974); *United States v. Brown*, 484 F.2d 418 (5th Cir. 1973); *Zircobon v. Mitchell*, 308 F. Supp. 930 (D.D.C. 1973), and the Supreme Court has reserved judgment in this unsettled area. *United States v. United States District Court*, 407 U.S. 297, 322 n. 20, 92 S. Ct. 2125, 32 L. Ed. 2d 762 (1972)." *Ibid.*, p. 33.

⁸ *U.S. v. Ehrlichman*, *supra* at 33, n. 8 citing *U.S. v. U.S. District Court*, *supra* at 318. This decision, known as the Keith case, after its author, Judge Damon Keith, is discussed in detail in the report on FBI Electronic Surveillance.

lacked the authority to authorize the Fielding break-in." ⁹ Gesell commented that break-ins in the interest of "national security" cannot be excepted from the requirement of a judicial warrant; the Fourth Amendment cannot be obviated, he wrote,

... whenever the President determines that an American citizen, personally innocent of wrongdoing, has in his possession information that may touch upon foreign policy concerns. Such a doctrine, even in the context of purely information-gathering searches, would give the Executive a blank check to disregard the very heart and core of the Fourth Amendment and the vital privacy interests that it protects. Warrantless criminal investigatory searches—which this break-in may also have been—would, in addition, undermine vital Fifth and Sixth Amendment rights."¹⁰

Judicial decisions on electronic surveillance have encompassed surreptitious entries for the purpose of installing electronic listening devices. The leading case, *Katz v. United States*,¹¹ abandoned previous judicial decisions in which the legality of microphone surveillance depended upon whether or not a "constitutionally protected area," such as a home or office, had been physically invaded.¹² Instead, the Court declared that "the Fourth Amendment protects people, not places," wherever they have a "reasonable expectation of privacy."¹³ In *Katz* the Court recognized a possible exception to the warrant requirement for "a situation involving the national security"—an exception which might apply to all forms of electronic surveillance, including surveillance accomplished by trespass to install a microphone.¹⁴

The possible exception to the warrant requirement, articulated by the Supreme Court and sustained by some lower courts in electronic surveillance cases,¹⁵ probably would not apply to surreptitious entries conducted for the purpose of physical search. As Attorney General Edward H. Levi testified:

The nature of the search and seizure can be very important. An entry into a house to search its interior may be viewed as more serious than the overhearing of a certain type of conversation. The risk of abuse may loom larger in one case than the other.¹⁶

⁹ *U.S. v. Ehrlichman*, *supra*, at 84.

¹⁰ *Ibid.*, pp. 83-84. The *Ehrlichman* decision has been appealed and the Justice Department has filed a memorandum in the Court of Appeals contesting Judge Gesell's ruling on the President's power. The Justice Department's position is set forth later in this report at pp. 369-370.

¹¹ *Katz v. United States*, 389 U.S. 347 (1967).

¹² For example, *Goldman v. United States*, 316 U.S. 120 (1942).

¹³ *Katz v. United States*, 389 U.S. at 351, 360.

¹⁴ 389 U.S., at 358 n. 28.

¹⁵ Although the Supreme Court has never held that there is such an exception, at least two lower courts have so held in the foreign intelligence and counterintelligence field. *United States v. Butenko*, 404 F.2d 593 (3rd Cir. 1974), *United States v. Brown*, 484 F.2d 418 (5th Cir. 1973); but cf., *Zweibon v. Mitchell*, 618 F.2d 594 (D.C. Cir. 1976, en banc).

¹⁶ Levi testimony, 11/6/76, Hearings, Vol. 5, p. 97.

II. OPERATIONAL PROCEDURE, AUTHORIZATION, AND TARGETING

A. Internal Procedure and Authorization

The only internal FBI memorandum located by the Select Committee which discussed the policy for surreptitious entries stated:

We do not obtain authorization for "black bag" jobs from outside the Bureau. Such a technique involves trespassing 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 combating subversive activities of a clandestine nature aimed directly at undermining and destroying our nation.¹⁷

The FBI described the procedure for authorization of surreptitious entries as follows:

When a Special Agent in Charge (SAC) of a field office considered surreptitious entry necessary to the conduct of an investigation, he would make his request to the appropriate Assistant Director at FBIHQ, justifying the need for an entry and assuring it could be accomplished safely with full security. In accordance with instructions of Director J. Edgar Hoover, a memorandum outlining the facts of the request was prepared for approval of Mr. Hoover, or Mr. Tolson, the Associate Director. Subsequently, the memorandum was filed in the Assistant Director's office under a "Do Not File" procedure, and thereafter destroyed. In the field office, the SAC maintained a record of approval as a control device in his office safe. At the next yearly field office inspection, a review of these records would be made by the Inspector to insure that the SAC was not acting without prior FBIHQ approval in conducting surreptitious entries. Upon completion of this review, these records were destroyed.¹⁸

One FBI agent who performed numerous "black bag jobs" stated that he obtained approval from some officer at FBI headquarters, although not always the Director, before performing a study of the feasibility of an entry.¹⁹ He said that a feasibility study was intended to determine: whether the entry could be accomplished in a secure manner, who owned the building and whether a key could be obtained. Floor plans of the building were often procured. If a building owner appeared to be a "patriotic citizen," FBI agents would approach him for assistance in entering a unit of his building—"show our credentials and wave the flag."²⁰ If the FBI agents decided that they would be unable to obtain the building owner's con-

¹⁷ Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/60, Subject: "Black Bag" Jobs.

¹⁸ Memorandum from the FBI to the Senate Select Committee, September 23, 1975.

¹⁹ Staff summary of interview with former FBI Agent 1, 9/5/75, p. 3.

²⁰ *Ibid.*, p. 4.

sent to enter the target's premises, the agents would examine the building and the area to determine the feasibility of a break-in.²¹

The FBI agent stated that if an entry was considered feasible he would write a memorandum to "Director, FBI" and, in response, would invariably receive an authorizing memorandum from headquarters initialled "JEH" [J. Edgar Hoover].²² Another FBI agent who frequently participated in break-ins, stated that the directives for such operations were sometimes initialled by Hoover and usually initialled by the Assistant Director in charge of the Domestic Intelligence Division.²³

One agent, who served on a special squad responsible for installing electronic surveillance devices, stated that in the majority of cases he was able to obtain a key to the target's premises, either from a landlord, hotel manager, or neighbor. In other cases, he simply entered through unlocked doors. He stated that only in a small proportion of the cases to which he was assigned was it necessary to pick a lock.^{23a} Once a bug was planted, it was generally necessary for Bureau agents to monitor the conversations from a location close to the targeted premises.

Selected FBI agents received training courses in the skills necessary to perform surreptitious entries. An FBI technician provided formal instruction in "lock studies" as in-service training for experienced agents; "specialized lock-training" was also provided to each agent who received training in electronic surveillance at "sound school."²⁴ These courses were conducted at the direction of the Assistant Director in charge of the Bureau Laboratory. The Unit Chief who taught the courses stated that he had participated in numerous "black bag jobs" in which his only role was to open locks and safes; all other activities were performed by other agents accompanying him. He said that he would ordinarily receive an incentive award for a successful entry.²⁵

One agent involved in surreptitious entries stated that he never knowingly conducted an entry for, or with the assistance of, a local police force; nor was he aware of any information being provided by the FBI to local police about an entry.²⁶

The agent said that he performed two microphone installations against CIA employees at the request of the CIA. He also stated that he was never accompanied on an entry operation by a CIA officer.²⁷

B. Targets: Counterintelligence and Domestic Subversives

The FBI has identified two broad categories of targets for surreptitious entries from 1942 to April 1968: (1) groups and individ-

²¹ *Ibid.*, p. 4.

²² Staff Summary, FBI Special Agent 1 Interview, 9/5/75, p. 4; FBI Special Agent 1 Interview, 6/27/75, p. 4.

²³ Staff Summary, FBI Special Agent 2 Interview, 9/10/75, p. 2.

^{23a} FBI Special Agent 1 interview, 9/5/75.

The Committee did not conduct a detailed examination of all operational techniques and procedures involved in surreptitious entry operations.

²⁴ Unaddressed memorandum from J. Edgar Hoover, Director, 6/22/64.

²⁵ FBI Special Agent 2 Interview, 9/10/75, pp. 1-4.

²⁶ FBI Special Agent 1 Interview, 9/5/75, p. 5.

²⁷ FBI Special Agent 1 Interview, 9/5/75, pp. 5, 8.

uals connected with foreign intelligence and espionage operations; and (2) "domestic subversive and white hate groups."²⁸

A Domestic Intelligence Division memorandum summarized the fruits obtained from surreptitious entries against domestic groups:

We have 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.²⁹

The memorandum also cited a warrantless surreptitious entry against the Ku Klux Klan as an example of the utility of the technique:

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.³⁰

A former FBI agent has stated that the locations of break-in operations included the residences of targets of investigation as well as organizational headquarters.³¹

The FBI was "unable to retrieve an accurate accounting" of the number of warrantless surreptitious entries from their files: "there is no central index, file, or document . . . no precise record of entries" due to the "Do Not File procedure."³² Relying upon a general review of files and upon the recollections of FBI agents at headquarters, the Bureau estimated that, in the "black bag job" category (warrantless surreptitious entries for purposes other than microphone installation):

There were at least 239 surreptitious entries 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 1966.³³

"An entry against one white hate group" was also reported.³⁴ One example of a "domestic subversive target" against whom numerous entries were conducted is the Socialist Workers Party, which may have

²⁸ Memorandum from the FBI to the Select Committee, 9/23/75, p. 1. 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 Bureau admits that this list is "incomplete."

The Select Committee has reviewed this list and has determined that the specific targets listed fell within what was understood at the time of the surreptitious entries to be the "domestic subversive" category, as defined in FBI Manual Section 87 as permissible targets for full investigations (Committee Staff Memorandum, September 25, 1975.) [See the discussion of the overbreadth of FBI full investigations in the Report on the Development of FBI Domestic Intelligence Investigations; 1916-1976.]

²⁹ Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/60, p. 2.

³⁰ Memorandum from W. C. Sullivan to C. D. DeLoach, p. 2.

³¹ Staff Summary, Interview of Former FBI Special Agent 8, 5/21/75, p. 4.

³² Memorandum from the FBI to Senate Select Committee, 9/23/75.

³³ Memorandum from the FBI to Senate Select Committee, 1/13/76.

³⁴ Memorandum from the FBI to Senate Select Committee, 1/13/76.

been targeted for as many as ninety-two break-ins during the period from 1960 to 1966.³⁵

To have a more complete picture of the extent of "black bag" operations, two other FBI estimates, also based on incomplete records, must be considered along with this partial accounting of the number of "black bag job" entries against domestic subversive groups. First, the Bureau estimated that between 1960 and 1975, 500 surreptitious microphone installations took place against 420 separate "targets of counter-intelligence, internal security, and intelligence collection investigations."³⁶ It is impossible to determine from the FBI estimates exactly how many of these installations involved a surreptitious entry because other techniques were also utilized, such as installing a microphone prior to the occupancy of the target or encapsulating it in an article which was sent into the premises. It is also impossible to determine the number of these targets who were American citizens.

Second, the FBI estimated that between 1960 and 1975, there were 491 surreptitious entries to install electronic surveillance devices against 398 targets of criminal investigations.³⁷

C. Operations Directed Against the Socialist Workers Party

Recently disclosed FBI memoranda pertaining to surreptitious entries directed at the Socialist Workers Party (SWP) in 1960-1966 provide additional details on FBI procedures.³⁸ Most of the documents were to be filed in the "Personal Folder" of the Special Agent in Charge of the New York field office.³⁹

The "purpose of assignment" for surreptitious entries against an SWP affiliate, the Young Socialist Alliance (YSA), was described as follows:

To locate records and information relating to the national organization of the YSA, [and] the identity of national members located throughout the country. Also it is anticipated that records of the local organization will be made available.⁴⁰

³⁵ Sixth Supplementary Response to Requests for Production of Documents of Defendant Director of the Federal Bureau of Investigations, *Socialist Workers Party, et al, v. Attorney General, et al*, 78 Civ. 3160 (S.D.N.Y.), 3/24/76.

³⁶ Memorandum from the FBI to Senate Select Committee, 10/17/75, p. 8. The FBI reporting of these statistics does not make clear how many of these installations, if any, were included in the estimate of the number of surreptitious entries cited above.

³⁷ Memorandum from the FBI to Senate Select Committee, 10/17/75, pp. 4-5. See Appendix for the complete yearly breakdown of these statistics.

³⁸ These materials have been described by the FBI as a response to the Socialist Workers Party request for "documents relating to any intelligence gathering burglaries perpetrated by or with knowledge of the F.B.I. against the S.W.P., the Y.S.A. (Young Socialist Alliance) or anyone suspected to be a leader or member thereof." (Sixth Supplementary Response to Requests for Production of Documents of Defendant Director of the Federal Bureau of Investigation, *Socialist Workers Party, et al, v. Attorney General, et al*, 78 Civ. 3160 (S.D.N.Y.), 3/24/76.)

³⁹ This method of filing of documents relating to the operational details of surreptitious entries should be distinguished from the "Do Not File" procedure which led to the destruction of documents recording the authorization of surreptitious entries.

⁴⁰ Memoranda from New York Field Office to FBI Headquarters, 6/28/60 and 9/26/62.

To carry out this assignment, the FBI prepared memoranda which contained detailed plans for post-midnight burglarizing of YSA headquarters. The FBI's entry plans included descriptions of "security aspects" such as building floor plans, locks, lighting, surrounding streets, entrances, and the occupants' living habits.⁴¹

The FBI's Los Angeles field office obtained "photographs of material maintained in the office of James P. Cannon, National Chairman of the SWP," including letters to and from Cannon.⁴² The field office reports about this material carried the warning:

"Several memoranda describe the "security aspects" of the FBI agents' plans for securing entry into the headquarters of the Young Socialist Alliance. One reads as follows:

"The headquarters entrance is a store front on the street level. There is only one entrance to the headquarters. The door is locked with a Master padlock only.

"The entrance to the building is located approximately 75 feet on the north side of [the] Street from Second Avenue. The headquarters is a street front located adjacent to the entrance to the apartment building. . . . East of the headquarters store front are located 4 similar store fronts within the same building. These are described as follows from the headquarters going east: New York Telephone Company; empty store front; law office; empty store front.

"There are 4 floors of apartment dwellings above these store fronts in the building.

"There is a street light located on the north side of [the] Street, approximately five store fronts east of the headquarters. Inasmuch as the nearest other street light is located on the southeast corner of [the street] and Second [street], the immediate area of the headquarters is reasonably dark in evening hours.

"Previous spot checks on numerous occasions have shown that there is a very limited amount of pedestrian and automobile traffic after 12 Midnight. These spot checks have also shown that the lights of the apartments in the building are darkened.

"Entrance will be made between the hours of 12 Midnight and 4 AM, June 30, 1960." (Memorandum from FBI Headquarters to New York Field Office, 6/23/60.)

When the YSA headquarters moved in 1962, the "security aspects" of the FBI's entry plans were re-evaluated:

"This building is a three-story edifice approximately 25 feet wide by 75 feet in depth. The second and third floors are loft premises. The first floor is occupied by [a paint company]. The entrance to the second and third floors of the building is a door located beside the paint store. This door leads directly to stair flights to the second and third floors and is secured with a cylinder lock. This entrance does not connect with the paint store on the street level. . . .

"The third floor loft of this building is occupied by an artist . . . who maintains a studio. This individual pursues his profession, together with holding occasional art classes, in this loft. This activity transpires during the daytime. [The artist] does not reside on these premises and is not known to frequent the premises in the evening hours.

"The YSA Headquarters are located on the second floor loft space. The YSA moved into these headquarters on 9/21/62. Numerous spot checks of the area have shown very limited pedestrian and automobile traffic after midnight. The buildings adjacent to this location . . . on both sides of the street, are commercial establishments and lofts, and contain no residence.

"It has been ascertained that the paint store at this building closes at 6:00 p.m. and that all of the commercial establishments in this area close business between 6:00 and 6:00 p.m. . . .

"Entrance will be made between the hours of twelve midnight and 4:00 a.m., on 9/28/62." Memorandum from FBI Headquarters to New York Field Office, 9/26/62.

⁴¹ Memorandum from Los Angeles Field Office to New York Field Office, 6/16/60; memorandum from Los Angeles Field Office to FBI Headquarters, 6/17/60.

EXTREME CAUTION SHOULD BE EXERCISED IN UTILIZING INFORMATION FURNISHED BY [DELETED] IN ORDER THAT THE IDENTITY OF THIS HIGHLY CONFIDENTIAL SOURCE IS NOT COMPROMISED.⁴⁸

Several of the reports were "classified" because disclosure could "compromise effectiveness of the source."⁴⁹ Moreover, upon receipt of this information, FBI headquarters advised the Los Angeles field office:

Due to the sensitive nature of [deleted], which may become a further source of valuable information concerning the Socialist Worker's Party, any data obtained from that source should be paraphrased when submitted to the Bureau or other offices in memorandum form suitable for dissemination.⁴⁵

The Bureau apparently required such paraphrasing because it contemplated the dissemination outside the FBI of data obtained from surreptitious entries.

The material photographed by the FBI included membership lists, photographs of members, contribution lists, and correspondence concerning members' public participation in United States presidential campaigns, academic debates, and civil rights and antiwar organizing. For example, the following items were among those photographed by Bureau agents at the national offices of the Socialist Worker's Party:

—"Items of correspondence between SWP National Headquarters and various branches detailing plans to obtain petition signatures to get on the ballot in 1960 elections."

—"Letter sent by [SWP leader] to President Eisenhower (1/21/60) against loyalty program."⁴⁶

—"SWP members active in trade unions—identity of union and members disclosed."⁴⁷

—"Letter dated 6/1/60 setting forth the topic of speech to be given by . . . SWP Vice-Presidential candidate at opening of tour at Detroit, and listing complete schedule of cities to be visited thereafter in nationwide tour."⁴⁸

—"Correspondence identifying contributors to SWP election campaign fund."

—"Letter proposing picket activity at Democratic Convention."⁴⁹

—"List naming all students at each session of Trotsky School from beginning in 1947 to the present."⁵⁰

—"Letter setting forth that [deleted] was cancelling balance of her national tour because her husband . . . had suffered a stroke."⁵¹

⁴⁸ For example, memorandum from Los Angeles Field Office to New York Field Office, 6/16/60. (Deletion by FBI.)

⁴⁹ For example, memorandum from Los Angeles Field Office to FBI Headquarters, 6/17/60.

⁵⁰ Memorandum from FBI Headquarters to Los Angeles Field Office, 7/1/60. (Deletion by FBI.)

⁵¹ Memorandum from FBI Headquarters to New York Field Office, 1/20/60.

⁵² Memorandum from FBI Headquarters to New York Field Office, 3/25/60.

⁵³ Memorandum from FBI Headquarters to New York Field Office, 6/8/60.

⁵⁴ Memorandum from FBI Headquarters to New York Field Office, 7/11/60.

⁵⁵ Memorandum from FBI Headquarters to New York Field Office, 9/26/60.

⁵⁶ Memorandum from FBI Headquarters to New York Field Office, 10/24/60.

—"Correspondence re arrangements for [deleted] to debate at Yale University."

—"Letter announcing death of [deleted] . . . and plans for NY memorial meeting. . . ." ⁵²

—"Letter of Young Socialist Alliance (YSA) of 5/23/61 organizing Northern support for Southern students in integration struggle." ⁵³

—"Note from SWP member . . . requesting new key to headquarters so he could continue delivering newspapers there when he finished work at night." ⁵⁴

—"Letter . . . detailing health status of . . . Nat'l Chairman." ⁵⁵

—"Several current items of correspondence to and from SWP members active in integration activities in Georgia." ⁵⁶

—"Letters from National office to all branches re March on Washington." ⁵⁷

—"Voluminous correspondence from many areas re SWP getting on the ballot in 1964 Presidential elections." ⁵⁸

—"Complete tour schedule for SWP Presidential candidates Sept.-Oct. 1964." ⁵⁹

—"Plans of [deleted] to write a book." ⁶⁰

—"Reports on SWP participation in March on Washington (against the Vietnam War)." ⁶¹

—"Correspondence re new veterans anti-war organization."

—"Current photographs of SWP members."

—"Correspondence re new anti-war front in Cleveland." ⁶²

—"Confidential address book of National-international Trotskyites." ⁶³

In addition to these items, the FBI obtained information about other activities of SWP members, leaders and affiliates, including publishing plans, financial status, international travels and contacts, legal defense strategy, ⁶⁴ and the political conflicts within the party. For example, information about "proposed legal maneuvers" by a committee to aid indicted Young Socialist Alliance members in Bloomington, Indiana, was obtained by the FBI.

The number of documents photographed during a single operation reached as high as 220 ⁶⁵ and regularly was above 100.

⁵² Memorandum from FBI Headquarters to New York Field Office, 12/16/60.

⁵³ Memorandum from FBI Headquarters to New York Field Office, 6/6/61.

⁵⁴ Memorandum from FBI Headquarters to New York Field Office, 9/15/61.

⁵⁵ Memorandum from FBI Headquarters to New York Field Office, 11/3/61.

⁵⁶ Memorandum from FBI Headquarters to New York Field Office, 8/24/62.

⁵⁷ Memorandum from FBI Headquarters to New York Field Office, 8/16/63.

⁵⁸ Memorandum from FBI Headquarters to New York Field Office, 2/10/64.

⁵⁹ Memorandum from FBI Headquarters to New York Field Office, 7/10/64.

⁶⁰ Memorandum from FBI Headquarters to New York Field Office, 10/30/64.

⁶¹ Memorandum from FBI Headquarters to New York Field Office, 4/30/65.

⁶² Memorandum from FBI Headquarters to New York Field Office, 12/17/65.

⁶³ Memorandum from FBI Headquarters to New York Field Office, 4/22/66.

⁶⁴ Memorandum from FBI Headquarters to New York Field Office, 7/10/64;

memorandum from FBI Headquarters to New York Field Office, 5/14/65;

memorandum from FBI Headquarters to New York Field Office, 7/16/65.

⁶⁵ Memorandum from FBI Headquarters to New York Field Office, 4/30/65.

III. FBI POLICY AND THE QUESTION OF AUTHORIZATION OUTSIDE THE BUREAU

A. FBI Policy: The Hoover Termination of "Black Bag Jobs"

After apparently approving hundreds of warrantless surreptitious entries, J. Edgar Hoover changed the FBI policy in 1966. In response to a Domestic Intelligence Division memorandum of July 19, 1966, outlining the procedures used for approval and reporting on "black bag jobs," Hoover appended the following handwritten note: "No more such techniques must be used."⁶⁷ Six months later, Hoover formalized this directive in a memorandum:

I note that requests are still being made by Bureau officials for the use of "black bag" techniques. I have previously indicated that I do not intend to approve any such requests in the future, and, consequently, no such recommendations should be submitted for approval of such matters. This practice, which includes also surreptitious entrances upon premises of any kind, will not meet with my approval in the future.⁶⁸

The FBI's accounting of surreptitious entries indicated that Hoover's prohibition applied only to "black bag jobs." Break-ins to install microphones were not banned.⁶⁹ Moreover, Hoover's order did not finally terminate "black bag jobs" against foreign targets.⁷⁰ Despite Hoover's directive, there is evidence that at least one "black bag job" directed against a "domestic subversive target" took place between 1966 and 1968.⁷¹

B. Presidential and Attorney General Authorization

1. The Huston Plan: Proposal to Lift the Ban

In 1970, a plan for the inter-agency coordination of domestic intelligence activity was presented to President Nixon. The "Huston Plan" proposed, among other things, that restrictions against "black bag" entries "should be modified to permit selective use of this technique against foreign intelligence targets, and other urgent and high priority internal security targets."⁷² Presidential assistant Tom Charles Huston, the proponent of this plan, which received the support of many high officials in the intelligence community, was of

⁶⁷ Memorandum from W. C. Sullivan to C. DeLoach, 7/19/66, p. 3.

⁶⁸ Memorandum from Hoover to Tolson and DeLoach, 1/6/67. Hoover's motivation for issuing this order in 1966 is unclear. His order came during the same period in which the Bureau's mail opening programs were halted. (See the report on "CIA and FBI Mail Opening", Sec. III--Termination of the FBI Mail Opening Programs, for a discussion of the possible motivation for Hoover's termination of both mail opening activities and surreptitious entries.) One agent who participated in "black bag" operations indicated that he was unaware of any previous FBI opposition to them. (FBI Special Agent 1 Interview, 9/5/75, p. 8)

⁶⁹ Memorandum from Director, FBI, to Attorney General, 6/26/75, p. 1. Even today Justice Department policy permits warrantless surreptitious entries both to install microphones and for other purposes in the area of "foreign espionage or intelligence." See pp. 369-371.

⁷⁰ See pp. 369-371.

⁷¹ Memorandum from the FBI to Senate Select Committee, 9/28/75.

⁷² Memorandum from Tom Charles Huston to H. R. Haldeman, 7/70, p. 2.

the opinion that "black bag jobs" were illegal but should be utilized nonetheless:

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.

The FBI, in Mr. Hoover's younger days, used to conduct such operations with great success and with no exposure. The information secured was invaluable.

Surreptitious entry of facilities occupied by subversive elements can turn up information about identities, methods of operation, and other invaluable investigative information which is not otherwise obtainable. This technique would be particularly helpful if used against the Weathermen and Black Panthers.¹³

In a memorandum to Attorney General John Mitchell, J. Edgar Hoover expressed his "clear-cut opposition to the lifting of the various restraints" proposed in the Huston Plan, but he also indicated a willingness to participate in the plan if it were adopted:

[T]he 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.¹⁴

Although President Nixon granted approval for the Huston Plan, he revoked this approval within five days, in part because of Hoover's opposition.¹⁵

2. Justice Department Policy

(a) *Historical Development.*—There is no indication that any Attorney General was informed of FBI surreptitious entries for domestic intelligence purposes other than microphone installation.¹⁶

During World War II Alexander Holtzoff, a Special Assistant to the Attorney General, submitted a memorandum to Director Hoover on the "admissibility of evidence obtained by trash covers or microphone surveillance," in response to a series of hypothetical questions posed by an FBI official. Holtzoff declared flatly:

The secret taking or abstraction of papers or other property from the premises without force is equivalent to an illegal

¹³ Memorandum from Huston to H.R. Haldeman, 7/70, p. 3.

¹⁴ Memorandum from Hoover to Mitchell, 7/27/70, p. 3.

¹⁵ See report on The Huston Plan: Sec. VI, Rescission of the Huston Plan: A Time for Reconsideration.

¹⁶ For a full treatment of memoranda between FBI Director Hoover and successive Attorneys General on microphone installation policy and an analysis of legal developments in the field of electronic surveillance, see Report on FBI Electronic Surveillance.

search and seizure, if the taking or abstraction is effected by a representative of the United States. Consequently, such papers or other articles are inadmissible as against a person whose rights have been violated, i.e., the person in control of the premises from which the papers or other property has been taken, *Gouled v. United States*, 255 U.S. 298.

However, Holtzoff interpreted prevailing court decisions as permitting a "microphone installation . . . where an actual trespass is committed." He stated that:

evidence so obtained should be admissible, although no precise case decided by the courts involving such a situation has been found. The basic principle governing the situation is . . . that microphone surveillance is not equivalent to an illegal search and seizure, *Goldman v. United States*, 316 U.S. 129.¹⁷

In fact, the *Goldman* decision did not support Holtzoff's conclusion, since the microphone surveillance in the case did not involve trespass; and the Court did not address the question of microphone surveillance accomplished by surreptitious entry.

In 1952, Attorney General J. Howard McGrath advised Director Hoover that he could not "authorize the installation of a microphone involving a trespass under existing law." McGrath added, "Such surveillances as involve trespass are in the area of the Fourth Amendment, and evidence so obtained and from leads so obtained, is inadmissible."¹⁸

A 1954 directive from Attorney General Brownell provided at least the color of legal authority for microphone surveillance involving trespass, but did not deal with surreptitious entries for other purposes.¹⁹

The Justice Department policy toward warrantless surreptitious entry for the purpose of microphone installation apparently remained unchanged until 1965, when Attorney General Katzenbach required the FBI to seek his prior approval for microphone surveillances in-

¹⁷ Memorandum from Holtzoff to Hoover, 7/4/44. Holtzoff also advised the FBI that it could legally use cooperating sources or informants to obtain access to private materials:

"Where a person (A), having possession of the membership records of an organization, is told by a person (B) who is a member of the same organization but who is working in conjunction with the Bureau, that a particular place is a safe one in which to leave the membership records of the organization. After the records have been so left agents of this Bureau who have the legal permission of (B) enter the premises where the material was left, obtain the records and remove them to another place where they are completely photographed. The records are then returned to their original place where they are subsequently obtained by the depositor (A). It can be assured that both the Agent and the person (B) can testify on behalf of the Government.

The foregoing evidence is probably admissible. No entry to the subject's premises was involved, nor was the property abstracted from him. He left it voluntarily in the possession of (B) whose possession was lawful and who thereafter was in a position to grant permission to Bureau Agents to photograph it."

¹⁸ Memorandum from McGrath to Hoover, 2/26/52.

¹⁹ Memorandum from Brownell to Hoover, 6/20/54. See full discussion in Report on FBI Electronic Surveillance.

volving trespass, and he restricted the purpose of such operations to the collection of intelligence affecting the national security.⁸⁰

(b) *FBI Briefings of Attorney General Robert Kennedy.*—In 1961, the FBI reiterated to the Justice Department that the Bureau's practice was to install microphones, sometimes by trespass, without informing the Justice Department. In May 1961, Byron White, Deputy Attorney General under Robert Kennedy, was told by Director Hoover that:

in the internal security field we are utilizing microphone surveillances on a restricted basis even though trespass is necessary to assist in uncovering the activity of [foreign] intelligence agents and Communist Party leaders. . . . In the interest of national safety, microphone surveillances are also utilized on a restricted basis, even though trespass is necessary, in uncovering major criminal activities.⁸¹

A memorandum by Courtney Evans, Assistant Director of the FBI for the Special Investigative Division, indicates that he discussed microphones in "organized crime cases" with Attorney General Kennedy in July 1961:

It was pointed out to the Attorney General that we had taken action with regard to the use of microphones in (organized crime) cases and . . . we were nevertheless utilizing them in all instances where this was technically feasible and where valuable information might be expected. The strong objections to the utilization of telephone taps as contrasted to microphone surveillances was stressed. The Attorney General stated he recognized the reasons why telephone taps should be restricted to national-defense-type cases and he was pleased we had been using microphone surveillances, where these objections do not apply, wherever possible in organized crime matters.⁸²

Evans testified that the purpose of this meeting was to secure the Attorney General's approval for the leasing of a telephone line from a private company for a wiretap operation.⁸³

Evans stated that he was "purposely vague" in this conversation and did not describe to the Attorney General the kinds of technical surveillance the Bureau was using or their methods for installing surveillance devices.⁸⁴ He explained that his "purposely vague" briefing was consistent with Director Hoover's policy.

Mr. Evans. Mainly because of a feeling the Director had expressed, that one shouldn't discuss confidential techniques used by the Bureau any more than was absolutely necessary.

⁸⁰ Memorandum from Katzenbach to Hoover, 9/27/65. See full discussion in Report on FBI Electronic Surveillance.

⁸¹ Memorandum from Director, FBI, to Attorney General Byron White, 5/4/61.

⁸² Memorandum from C. A. Evans to A. Belmont, 7/7/71.

⁸³ Courtney Evans, testimony, 12/1/76, p. 24.

⁸⁴ Evans, 12/1/76, p. 26.

Question. It was your understanding that the admonition applied to the Attorney General as well as all other persons outside the Bureau?

Mr. EVANS. It was my understanding that if exceptions were to be made, the Director was going to make them himself.⁸⁵

Evans, who was responsible for the FBI's liaison with Attorney General Kennedy, testified that it was "entirely possible" that the Attorney General did not understand that surreptitious entries might be used in connection with the "microphone surveillance" and leased telephone line taps which he subsequently authorized. Evans himself understood that the operation for which the Attorney General's signature was obtained "could have in some instances" included microphone installation by means of surreptitious entry, although Evans indicated that there were several methods by which the Bureau could make a "legal entry to a location and effect a microphone installation."⁸⁶

(c) *Present Policy.*—The Justice Department under Attorney General Edward H. Levi has addressed, for the first time, the legal issues arising from "black bag jobs." This occurred in a statement submitted by Acting Assistant Attorney General John C. Keeney in the appeal of the conviction of John Ehrlichman for the break-in by the White House "plumbers" at the office of Daniel Ellsberg's psychiatrist. Assessing the "plumbers" break-in, the Justice Department declared:

The physical entry here was plainly unlawful . . . because the search was not controlled as we have suggested it must be. There was no proper authorization, there was no delegation to a proper officer, and there was no sufficient predicate for the choice of the particular premises invaded.⁸⁷

At the same time, however, the Justice Department defended the President's constitutional authority to conduct warrantless surreptitious entries in limited circumstances and with proper executive authorization:

It is the position of the Department that such activities must be 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. The Department believes that activities so controlled are lawful under the Fourth Amendment.

In regard to warrantless searches related to foreign espionage or intelligence, the Department does not believe there is a constitutional difference between searches conducted by wire-

⁸⁵ Evans, 12/1/75, pp. 25, 29.

⁸⁶ Evans, 12/1/75, p. 31; Memorandum from Evans to Belmont, 8/17/61.

⁸⁷ Department of Justice Letter, Acting Assistant Attorney General John C. Keeney to Hugh B. Kline, Clerk of U.S. Court of Appeals for the District of Columbia, 5/9/75.

tapping and those involving physical entries into private premises. One form of search is no less serious than another. It is and has long been the Department's view that warrantless searches involving physical entries into private premises are justified.⁸⁸

The Justice Department and the FBI have not terminated the use of warrantless surreptitious entry for electronic surveillance purposes in cases of "foreign espionage or intelligence". Warrantless surreptitious entry for other forms of search is not presently being conducted but, as indicated in the Justice Department statement, has not been ruled out as a matter of policy in foreign intelligence cases.

The FBI has stated that "microphone surveillances have been continued and in some instances physical entry of the premises has been necessary" against foreign counterintelligence targets. In addition, "a small number" of surreptitious entries which apparently did not involve microphone installation "were conducted in connection with foreign counterintelligence investigations having grave impact on the security of the nation." Entries for the purpose of installing electronic surveillance devices have also provided an opportunity to conduct other forms of search. The Bureau has stated:

Based on available records and discussions with FBI personnel, it has been determined that in connection with microphone surveillances in the United States, there have been occasions when observations and recordings were made of pertinent information contained within the premises.⁸⁹

According to the FBI, this "opportunity" has been "exploited" exclusively against foreign agents.⁹⁰

Warrantless surreptitious entries against American citizens who have "no significant connection with a foreign power, its agents or agencies" are undoubtedly unconstitutional.⁹¹ The constitutional issues arising from warrantless surreptitious entries against foreign agents within the United States have not been definitely resolved by the courts. The Committee recommends as a matter of policy that all governmental search and seizure "should be conducted only upon authority of a judicial warrant" issued in narrowly defined circumstances

⁸⁸ Letter from Keeney to Hugh Kline, clerk of U.S. Court of Appeals for the District of Columbia, 5/9/75.

⁸⁹ Memorandum from the FBI to Senate Select Committee, 7/16/75.

⁹⁰ Memorandum from the FBI to Senate Select Committee, 6/20/75.

In contrast to the surreptitious entries conducted against "domestic subversive" targets until 1958, one such foreign intelligence operation studied by the Committee demonstrated an FBI pattern of conscientiously obtaining authorization from executive branch officials outside the Bureau: the CIA initially requested the aid of the FBI in performing the operation; the FBI secured State Department approval and then submitted the plan to the Attorney General for his authorization. (Committee staff summary of FBI memoranda.)

⁹¹ 407 U.S. 207, 300, n. 8 (1972). The *Katz* case did not specifically address the question of the legality of "black bag jobs." However, by holding that the President's constitutional powers do not enable him to authorize warrantless electronic surveillance of domestic organizations, the logic of the decision compels the conclusion that warrantless surreptitious entries are unconstitutional.

and with procedural safeguards "to minimize the acquisition and retention of non-foreign intelligence information about Americans."⁹³

APPENDIX I

SURREPTITIOUS ENTRIES FOR THE INSTALLATION OF MICROPHONES IN CRIMINAL INVESTIGATIONS

	1. Entries since since 1960	2. Separate targets each year since 1960
1960.....	11	11
1961.....	69	49
1962.....	106	84
1963.....	84	66
1964.....	83	67
1965.....	41	35
1966.....	0	0
1967.....	0	0
1968.....	0	0
Subtotal.....	394	312
According to the FBI, the following entries were conducted pursuant to judicial warrants issued under Title III of the Omnibus Crime Control and Safe Streets Act of 1968:		
1968.....	3	3
1970.....	8	8
1971.....	7	6
1972.....	19	18
1973.....	27	20
1974.....	22	21
1975.....	11	8
Total.....	491	396

¹ FBI memorandum from the FBI to Senate Select Committee, Oct. 17, 1975, re request pertaining to surreptitious entries for installation of electronic surveillance.

⁹³ Senate Select Committee Report on "Intelligence Activities and the Rights of Americans," Recommendations 51-54, pp. 327-328.

The Committee made the following recommendation to restrict the use of the technique of warrantless surreptitious entry (referred to as "unauthorized entry"—entry unauthorized by the target):

"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 consular agents of a foreign power should be permitted upon judicial warrant under the standards which apply to electronic surveillance described in Recommendation 52." (Recommendation 54, p. 328.)

This recommendation on "unauthorized entry" incorporates by reference the standards set forth in Recommendation 52 on electronic surveillance:

"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

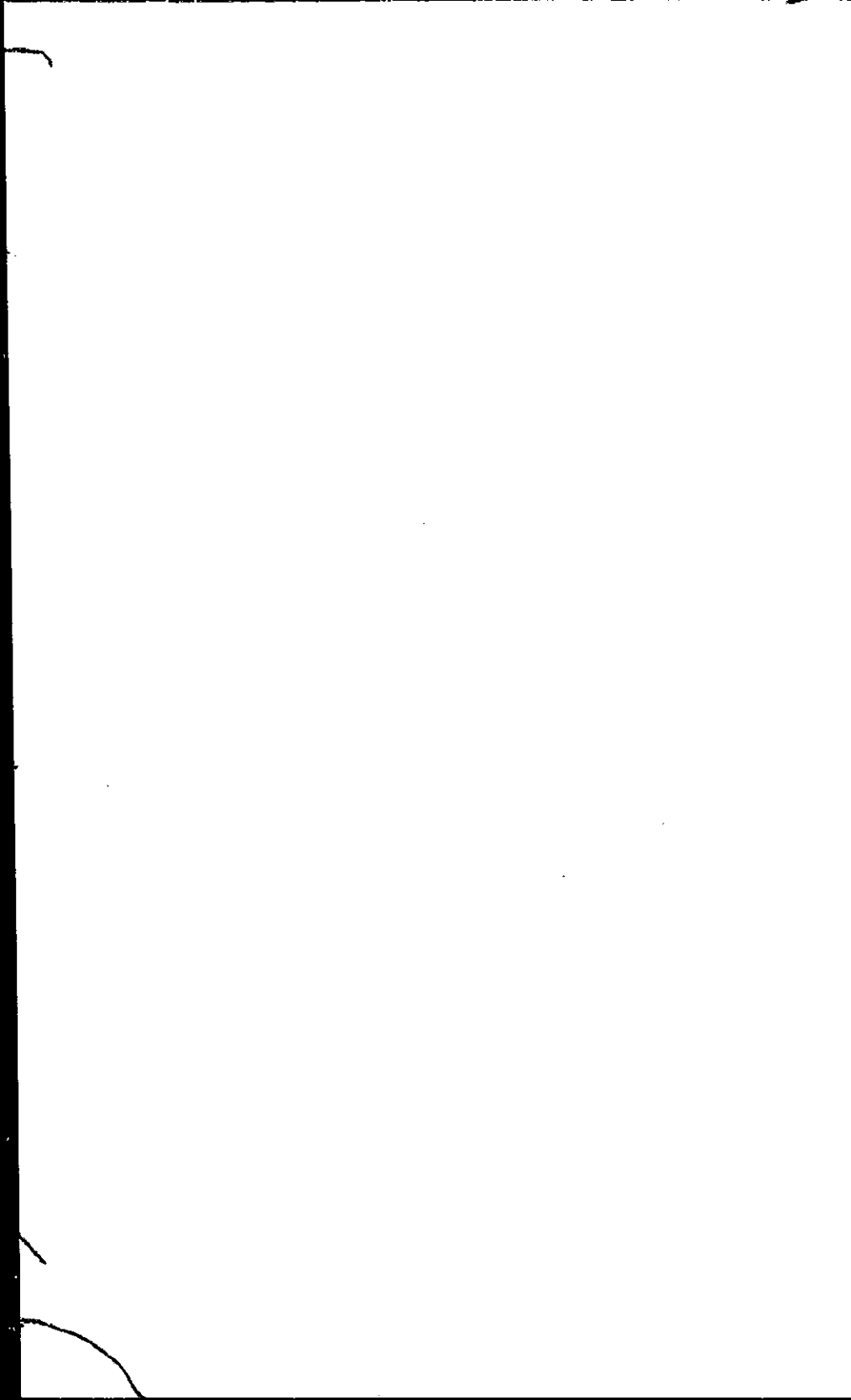
"(a) There is probable cause that the target is an officer, employee or consular agent of a foreign power.

"(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.

"(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 (except where disclosure is called for in connection with the defense in the case of criminal prosecution)." (Recommendation 54, pp. 327-28.)

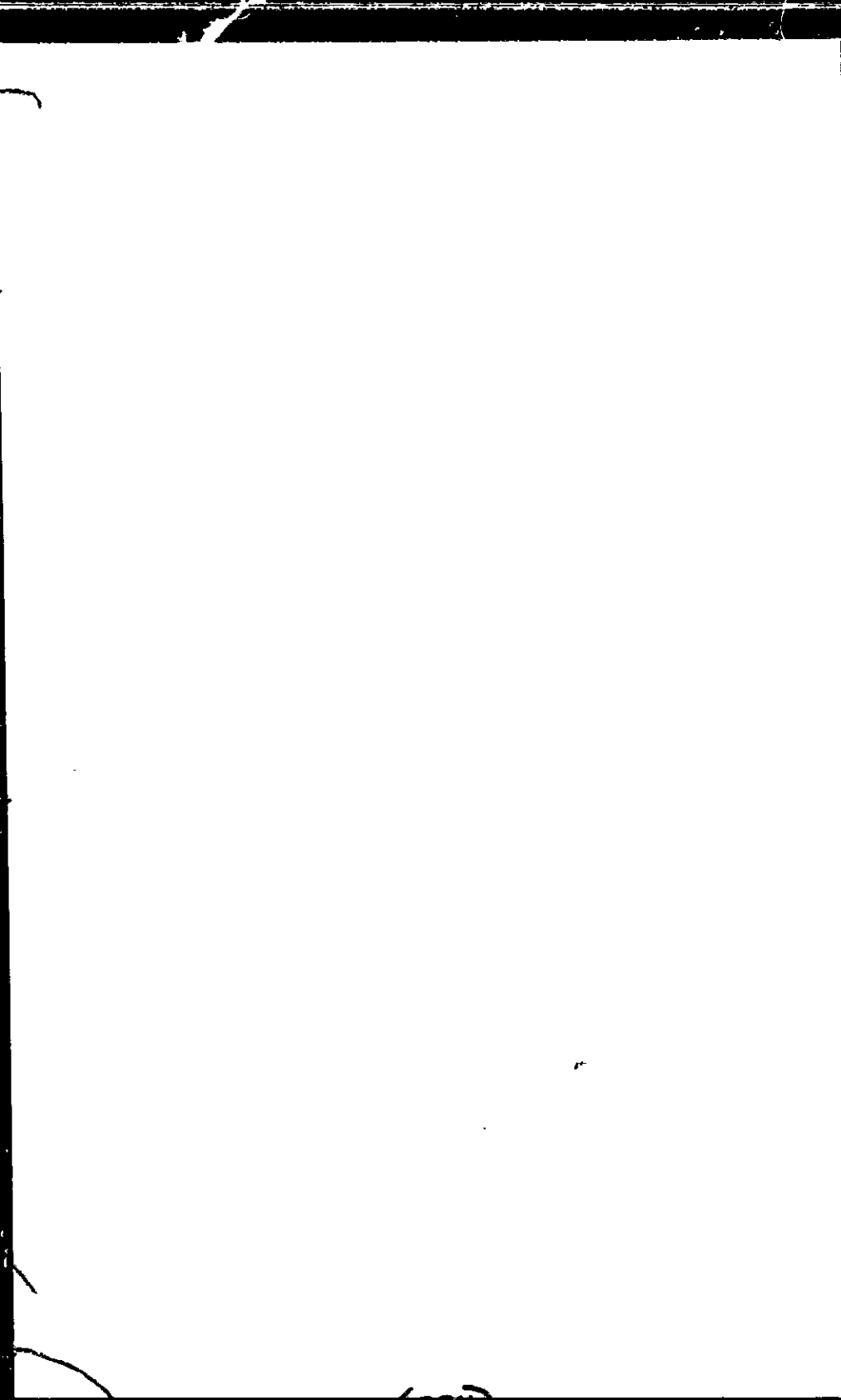
It should be noted that there are well established exceptions to the warrant requirement for searches in exigent circumstances.



THE DEVELOPMENT OF FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

CONTENTS

	Page
I. Introduction.....	375
A. Scope of the report.....	375
B. Issues presented.....	377
II. Historical Antecedents—World War I, the “Red Scare,” and Attorney General Harlan Fiske Stone’s Reforms.....	378
A. Pre-World War I programs.....	378
B. Domestic intelligence in World War I.....	380
C. The post-war “Red scare” and the “Palmer raids”.....	382
D. Attorney General Stone’s reforms.....	388
III. The Establishment of a Permanent Domestic Intelligence Structure, 1936–45.....	391
A. The 1936 Roosevelt directive.....	392
B. The original legal authority for domestic intelligence.....	395
C. The FBI intelligence program, 1936–38.....	396
D. FBI intelligence authority and “subversion”.....	400
E. Congress and FBI intelligence.....	407
F. The scope of FBI domestic intelligence.....	412
G. The custodial detention program.....	417
H. FBI wartime operations.....	422
IV. Domestic Intelligence in the Cold War Era: 1945–63.....	427
A. The anti-Communist consensus.....	427
B. The postwar expansion of FBI domestic intelligence.....	429
C. The Federal loyalty-security program.....	431
D. The emergency detention program, 1946–50.....	436
E. The Emergency Detention Act of 1950 and FBI/Justice Department noncompliance.....	442
F. The scope of FBI “subversion” investigations.....	448
G. The Justice Department and FBI intelligence investigations.....	452
H. FBI investigations of “hate groups” and “racial matters”.....	454
I. Legal authority for domestic intelligence.....	457
J. FBI intelligence and international tension, 1961–63.....	464
V. FBI Intelligence and Domestic Unrest: 1964–74.....	469
A. Klan intelligence.....	470
B. FBI intelligence and the black community.....	475
C. COMINFIL investigations—“Racial matters”.....	479
D. COMINFIL investigations—The antiwar movement and student groups.....	483
E. Civil disturbance intelligence.....	489
F. The Justice Department and the IDIU.....	495
G. “New Left” intelligence.....	505
H. Target lists and the security index.....	510
I. Investigations of “foreign influence” on domestic unrest.....	519
J. Intensifications after the 1970 “Huston plan”.....	525
K. The 1971 inspection reports.....	531
L. The “new” Internal Security Division and turmoil in the FBI, 1971.....	536
M. The “administrative index”.....	542
N. Curtailment of FBI domestic intelligence.....	548
O. Reauthorization of FBI domestic intelligence.....	554



THE DEVELOPMENT OF FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

I. INTRODUCTION

During the past forty years, FBI intelligence investigations have been one of the federal government's main resources for the protection of domestic security. The executive branch, not the Congress, too, the initiative in 1936 to establish the Bureau's intelligence structure. Until this Committee's investigation, there has never been a substantial inquiry by the Congress into the policies and practices of the FBI and the executive for the conduct of domestic intelligence investigations. The purpose of this report is to set forth chronologically the development of these policies and practices, as shown by the materials obtained by the Committee from the FBI and the Justice Department.

A. Scope of the Report

There are several major limits on the scope of this report and of the inquiry it represents. Since it spans sixty years of American history, the report does not purport to be an exhaustive discussion of all the outside events which were the setting for policy decisions and the development of Bureau programs. Nor does this report touch on many of the most controversial cases in the FBI's past, such as the Hiss and Rosenberg cases, which have recently been the subject of extensive historical reconsideration on the basis of materials made public under the Freedom of Information Act. Rather, the narrative which follows concentrates on the Bureau's general policies and formal programs, with specific illustrations of what appear to be typical applications of these investigative standards.¹

Furthermore, the Committee has not attempted to secure from the FBI and the Justice Department an exhaustive compilation of all policy materials relating to domestic intelligence over the entire period since 1936. For example, the Committee has reviewed all versions of the FBI Manual Sections pertaining to intelligence only as far back as 1960. The same cut-off date was used in the Committee's requests for such basic policy documents as the "SAC Letters" (regular instructions to the Special Agents in Charge of all FBI field offices from Bureau headquarters) and memoranda recording decisions of the FBI's Executive Conference (composed of all Bureau executives at the level of Assistant Director and above). However, substantial information about pre-1960 intelligence policies was obtained in con-

¹ Separate Committee Reports deal with the most intrusive investigative techniques (Electronic Surveillance, Surreptitious Entry, Mail Opening and Informants), FBI programs going beyond investigation to the disruption of targeted groups and individuals (COINTELPRO), and one specific case study combining all types of Bureau operations (Dr. Martin Luther King, Jr.).

nection with the Committee's review of the FBI's Security Index and related programs going back to 1939. Other materials on the FBI's overall policy mandate from the President were located in the various Presidential libraries; and the Bureau volunteered to the Committee an extensive collection of documents on its operations as part of an analysis of the origins of its legal authority to conduct domestic intelligence investigations.²

The most significant omission from this report is the FBI's foreign counterintelligence policies. While they are mentioned from time to time as part of the larger context for the Bureau's intelligence operations as a whole, they are not considered in the same depth as FBI domestic intelligence investigations not directed specifically at the activities of hostile foreign intelligence services in this country.³

Nevertheless, it is essential to examine the nature of foreign counterintelligence investigations in order to understand the origins of FBI domestic intelligence. Counterintelligence investigations are a necessary response to the threat of espionage and related hostile intelligence activities of foreign governments. Foreign espionage is a tangible and obvious danger; and clandestine investigations of foreign agents are a minimal intrusion upon the rights of Americans (even if some foreign agents are citizens). The crimes a foreign agent may commit on behalf of his principal are extraordinarily serious, for they may result in disclosure of the nation's most sensitive defense information to a foreign adversary. The positive foreign intelligence by-product of counterintelligence may have great significance, since it can alert the United States to impending hostilities and provide information about the larger intentions and objectives of other nations.

Before World War II the governments of Nazi Germany, Japan, and the Soviet Union mounted intelligence efforts directed at the United States. While their extent was not fully known at the time, there were sufficient indications as early as the mid-1930s. Given the international climate and the activities of German and Soviet officials in the United States, there was every reason to believe that this country needed a counterintelligence capability to identify and possibly disrupt the work of hostile intelligence services.

From today's perspective it is harder to understand the nature of the domestic threats to security which, along with foreign espionage, were the reasons for establishing the FBI's intelligence program in the 1930s. President Roosevelt and the Congress were not just concerned about spies and foreign agents in the pre-World War II period. They saw a threat which combined both foreign and domestic elements, and FBI intelligence was assigned to deal with it. Only by a closer examination of the historical record can this assignment be fully explained. Factors of political belief and association, group membership and nationality affiliation, became the criteria for intelligence investigations

² FBI Intelligence Division, Position Paper on Jurisdiction, 2/18/75; FBI Intelligence Division, *An Analysis of FBI Domestic Security Intelligence Investigations: Authority, Official Attitudes, and Activities in Historical Perspective*, 10/28/75.

³ A separate Committee report considers the subject of foreign counterintelligence as it relates to both the FBI and U.S. foreign and military intelligence agencies.

before the war; and they continued to be used through the Cold War period to the 1960s and early 1970s.

Therefore, this report describes how the policy assumptions behind FBI domestic intelligence were established in 1930s and 1940s and became unquestioned dogma as the years went by. In the 1960s, new and unexpected events occurred which did not fit these established concepts. There was no longer a consensus among Americans as to the nature of government's proper response to home-grown dissidents who might engage in violence as a form of political protest, to racist groups using force to deprive others of their civil rights, to civil disorders growing out of minority frustrations, or to large-scale protest demonstrations. Presidents and Attorneys General turned to the FBI for intelligence about these matters without adequate controls. The resulting confusion and mistakes of the past ten years called into question some of the fundamental assumptions underlying the FBI intelligence programs of the previous three decades.

B. Issues Presented

Domestic intelligence investigations involve much more than the neutral collection of information. Intelligence-gathering is a *process* including many kinds of activity. The ordinary means of collecting information inevitably has an adverse impact on the rights of individuals. The recruitment of informants paid to supply information about their acquaintances is a fundamental tool of intelligence. By arranging for what is in effect a government agent to intrude into the private relationships among people, the FBI substantially interferes with free association.⁴ Moreover, like all investigations, intelligence collection involves extensive interviews with the subjects of investigation, their friends, employers, neighbors, school officials, sources of credit, and anyone else who may know something about their background and activities. The interview is not a neutral event. The way a person is looked upon by those around him can be significantly affected when they know he is someone "of interest" to the government.

These consequences are the necessary price of investigations of crime, and they may be justified to satisfy other compelling governmental interests. But FBI domestic intelligence gathering has gone far beyond criminal investigation and, in many instances, beyond a reasonable definition of compelling necessity. No act of Congress has supplied clear legal standards against which to measure the propriety of domestic intelligence investigations. Instead, the executive branch has been on its own with vague legal concepts of "emergency power" or "war power" or other imprecise doctrines of inherent presidential authority. These problems have been compounded by practices of secrecy. Congress was often not informed or did not seek information. Even within the executive branch, the FBI assumed it had a general mandate and thus frequently did not advise its superiors of specific policies. The judiciary had no role at all because clandestine investigations did not lead to prosecutions.⁵

⁴ See Committee Report on FBI Informants.

⁵ Instead, the investigations often led to covert actions to disrupt and discredit the targets. (See Committee Report on COINTELPRO.)

The FBI's experience in the conduct of domestic intelligence investigations over the past forty years, as it is set forth in this report, argues strongly for discarding outdated ideas and striking a new balance between security and liberty. The dangers of domestic intelligence are real, not imaginary. They underscore the need to circumscribe carefully any intelligence operations carried out by the federal government within the United States or against Americans anywhere else in the world. Equally important, they demonstrate the need for Congress to assert its lawmaking power, for the executive to abandon inflated doctrines of presidential authority, and for an end to the excessive secrecy which destroys the effectiveness of the rule of law.

II. HISTORICAL ANTECEDENTS—WORLD WAR I, THE "RED SCARE," AND ATTORNEY GENERAL HARLAN FISKE STONE'S REFORMS

A. Pre-World War I Programs

The first federal domestic intelligence programs originated shortly before the United States entered World War I in 1917. The initial threat perceived by federal officials was the activity of German agents, including sabotage and espionage directed at the United States in the period before America entered the war. Although the neutrality laws were on the books, no federal statute made espionage or sabotage a crime. Attorney General Thomas W. Gregory proposed such legislation in 1916, but Congress took no action before American entry into the war. Nonetheless, the Executive Branch went ahead with development of a domestic security intelligence capability.

Several federal agencies expanded their operations. The Secret Service, which was established in the Treasury Department to investigate counterfeiting in 1865, had served as the main civilian intelligence agency during the Spanish-American War. With \$50,000 in War Department funds, the Secret Service had organized an emergency auxiliary force to track down Spanish spies, placed hundreds of civilians under surveillance, and asked the Army to arrest a number of alleged spies.⁶ After the assassination of President McKinley by an anarchist in 1901, the Secret Service was authorized to protect the President. Its agents were also assigned to the Justice Department as investigators until 1908 when Congress forbade the practice. In 1915 Secretary of State William Jennings Bryan decided that German diplomats should be investigated for possible espionage, and he requested and received President Wilson's permission to use the Secret Service.⁷

The military had performed extensive security intelligence functions during the Civil War, although operations were largely delegated to commanders in the field. When the military discontinued its surveillance program after the Civil War, Allan Pinkerton who had worked for the War Department under President Lincoln founded a private detective agency. The Pinkerton agency and other private detective forces served both government and private employers in later years, frequently to spy upon labor organizing activities.⁸ In

⁶ Joan M. Jensen, *Military Surveillance of Civilians in America*, (Morristown, N.J.: General Learning Press 1976), p. 5.

⁷ Joan M. Jensen, *The Price of Vigilance* (Chicago: Rand McNally, 1968), p. 12.

⁸ Jensen, *Military Surveillance*, pp. 4-5.

the years immediately before American entry into World War I, military intelligence lacked the resources to engage in intelligence operations. Therefore, preparation for war rested largely with the Secret Service and its main competitor, the Justice Department's Bureau of Investigation.

The Justice Department's investigative authority stemmed from an appropriations statute first enacted in 1871, allowing the Attorney General to expend funds for "the detection and prosecution of crimes against the United States."⁹ The Attorney General initially employed several permanent investigators and supplemented them with either private detectives or Secret Service agents. When Congress prohibited such use of Secret Service personnel in 1908, Attorney General Charles J. Bonaparte issued an order authorizing creation of the Bureau of Investigation. There was no formal Congressional authorization for the Bureau, but once it was established its appropriations were regularly approved by Congress. Members of the House Appropriations Committee debated with Attorney General Bonaparte over the need for safeguards against abuse by the new Bureau. Bonaparte emphasized, "The Attorney General knows, or ought to know, at all times what they are doing." Some Congressmen thought more limits were needed, but nothing was done to circumscribe the Bureau's powers.¹⁰

Passage of the Mann Act and other federal statutes prohibiting interstate traffic in stolen goods, obscene materials, and prizefight films soon expanded the criminal investigative responsibilities of the Justice Department and its Bureau of Investigation.

By 1916 Attorney General Gregory had expanded the Bureau's personnel from 100 to 300 agents, primarily to investigate possible violations of the neutrality laws. The Attorney General objected to the Secret Service's investigations of activities which did not involve actual violations of federal laws. However, when President Wilson and Secretary of State Robert Lansing expressed continued interest in such investigations, Attorney General Gregory went to Congress for an amendment to the Justice Department's appropriations statute which would allow the Bureau to do what the Secret Service had already begun doing. With the agreement of the State Department, the statute was revised to permit the Attorney General to appoint officials not only to detect 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."¹¹ This amendment to the appropriations statute was intended to be an indirect form of authorization for investigations by the Bureau of investigations, although a State Department request was seen as a prerequisite for such inquiries.¹²

Under the direction of A. Bruce Bielaski, the Bureau concentrated at first on investigations of potential enemy aliens in the United

⁹ 41st Cong., Sess. III, Ch. 14.

¹⁰ Max Lowenthal, *The Federal Bureau of Investigation*, (New York: Harcourt Brace Jovanovich, 1950), pp. 10-18.

¹¹ 28 U.S.C. 533(3).

¹² Jensen, *The Price of Vigilance*, 15; Homer Cummings and Carl McFarland, *Federal Justice* (New York: MacMillan Co., 1937), pp. 415-416.

States. According to the authoritative history of the Justice Department,

The Bureau of Investigation made an index of aliens under suspicion. At the end of March 1917, just before the entrance of the United States into the war, the chief of the Bureau submitted a list of five classes of persons. One class, ninety-eight in number, should be arrested immediately on declaration of war. One hundred and forty should be required to give bond. Five hundred and seventy-four were strongly suspected. Five hundred and eighty-nine had not been fully cleared of suspicion. Three hundred and sixty-seven had been cleared of specific offenses. Others, after investigation, had been eliminated from the lists.¹³

Theoretically, the threat of dangerous aliens was the responsibility of the Immigration Bureau in the Labor Department. As early as 1903 Congress had enacted legislation requiring the deportation within three years of entry of persons holding anarchistic beliefs or advocating "the overthrow by force or violence of the Government of the United States."¹⁴ In early 1917 the immigration laws were amended to eliminate the three-year limit and require deportation of any alien "found advocating or teaching the unlawful destruction of property . . . or the overthrow by force or violence of the Government of the United States."¹⁵ Nevertheless, the Immigration Bureau lacked the men, ability, and time to conduct the kind of investigations contemplated by the statute.¹⁶

As the United States entered World War I, domestic security investigations were the province of two competing civilian agencies—the Secret Service and the Bureau of Investigation—soon to be joined by military intelligence and an extensive private intelligence network called the American Protective League.

B. Domestic Intelligence in World War I

Shortly after the declaration of war, Congress considerably strengthened the legal basis for federal investigations by enacting the Espionage Act of 1917, the Selective Service and Training Act, and other statutes designed to use criminal sanctions to assist the war effort. But Congress did not clarify the jurisdiction of the various civilian and military intelligence agencies. The Secretary of War established a Military Intelligence Section under Colonel Ralph Van Deman, who immediately began training intelligence officers and organizing civilian volunteers to protect defense plants. By the end of 1917 the MIS had branch offices throughout the United States to conduct investigations of military personnel and civilians working for the War Department. MIS agents cooperated with British intelligence in Mexico, with their joint efforts leading to the arrest of a German espionage agent during the war.¹⁷

¹³ Cummins and McFarland, *Federal Justice*, p. 416.

¹⁴ 33 U.S. Statutes at Large 1214.

¹⁵ 39 U.S. Statutes at Large 830.

¹⁶ William Preston, *Aliens and Dissenters* (Cambridge: Harvard University Press, 1963), p. 84.

¹⁷ Jensen, *The Price of Vigilance*, pp. 118-119.

A major expansion of federal intelligence activity took place with the formation of the American Protective League, which worked directly with the Bureau of Investigation and military intelligence. A recent FBI study recounts how the added burdens of wartime work led to the creation of the League:

To respond to the problem, Attorney General Thomas W. Gregory and then Bureau Chief A. Bruce Bielski, conceived what they felt might suffice to answer the problem. The American Protective League (APL) composed of well-meaning private individuals, was formed as a citizens auxiliary to "assist" the Bureau of Investigation. In addition to the authorized auxiliary, ad hoc groups took it upon themselves to "investigate" what they felt were un-American activities. Though the intentions of both groups were undoubtedly patriotic and in some instances beneficial, the overall result was the denial of constitutional safeguards and administrative confusion. To see the problem, one need only consider the mass deprivation of rights incident to the deserter and selective service violator raids in New York and New Jersey in 1918, wherein 35 Agents assisted by 2,000 APL operatives, 2,350 military personnel, and several hundred police rounded up some 50,000 men without warrants of sufficient probable cause for arrest. Of the 50,000 arrestees, approximately 15,000 were inducted into the military service and 15,000 were referred to draft boards.¹⁸

The FBI study also cites the recollections of an Agent of the Bureau of Investigation during World War I regarding the duplication of effort:

How did we function with relation to other agencies, both federal and state? In answering this query, I might say that while our relationship with the Army and Navy Departments, was extremely cordial at all times, nevertheless there was at all times an enormous overlapping of investigative activities among the various agencies charged with winning the war. 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.¹⁹

The Secret Service opposed the utilization of American Protective League volunteers and recommended, through Treasury Secretary McAdoo, establishment of a centralized body to coordinate domestic intelligence work. The Treasury Department's proposal was rejected in early 1918, because of the objections of Colonel Van Deman, Bureau

¹⁸ FBI Intelligence Division—*An Analysis of FBI Domestic Security Intelligence Investigations: Authority, Official Attitudes, and Activities in Historical Perspective*, 10/28/76.

¹⁹ Memorandum of F. X. O'Donnell, 10/24/88.

Chief Bielaski, and the Attorney General's Special Assistant for war matters, John Lord O'Brien. Thereafter the role of the Secret Service in intelligence operations diminished in importance.²⁰

During World War I the threat to the nation's security and the war effort was perceived by both government and private intelligence agencies as extending far beyond activities of enemy agents. Criticism of the war, opposition to the draft, expression of pro-German or pacifist sympathies, and militant labor organizing efforts were all considered dangerous and targeted for investigation and often prosecution under federal or state statutes. The federal Espionage Act forbade making false statements with intent to interfere with the success of military, attempting to cause insubordination, and obstructing recruitment of troops.²¹ With little guidance from the Attorney General, the United States Attorneys across the country brought nearly 2,000 prosecutions under the Espionage Act for disloyal utterances.²² Not until the last month of the war did Attorney General Gregory require federal prosecutors to obtain approval from Washington before bringing Espionage Act prosecutions. John Lord O'Brien, the Attorney General's Special Assistant, recalled "the immense pressure brought to bear throughout the war upon the Department of Justice in all parts of the country for indiscriminate prosecution demanded in behalf of a policy of wholesale repression and restraint of public opinion."²³

In addition to providing information for Espionage Act prosecutions intelligence operations laid the foundation for the arrest and internment of enemy aliens. About 6,300 aliens were arrested, of which some 2,800 were turned over to military authorities for internment and the remainder released or placed on parole.²⁴

C. The Post-War "Red Scare" and the "Palmer Raids"

The end of the war in 1918 did not bring about the termination of domestic intelligence operations. The Bureau of Investigation shifted its attention from critics of the war to the activities of radical and anarchist groups. The new threat was dramatized vividly by a series of terrorist bombings in 1919, including an explosion on the doorstep of Attorney General A. Mitchell Palmer's residence. Congress resounded with calls for action, although the applicable provisions of the Espionage Act had expired at the end of the war and no new federal criminal statute was enacted to replace it. Instead, state statutes and the deportation provisions of the Immigration Act became the basis for the federal response.

Attorney General Palmer authorized two major revisions in Justice Department intelligence operations in 1919. First, he established a General Intelligence Division in the Justice Department, headed by J. Edgar Hoover, who had served during the war as head of the Department's program for compiling information on enemy aliens. At the

²⁰ Jenson, *The Price of Vigilance*, pp. 102-103.

²¹ Act of June 16, 1917, Title I, Section 8.

²² The Supreme Court upheld such convictions in *Schenck v. U.S.*, 240 U.S. 47 (1916) and *Abrams v. U.S.*, 235 U.S. 613 (1915).

²³ Zechariah Chafee, *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), p. 60.

²⁴ Cummings and McFarland, *Federal Justice*, p. 427.

same time, Palmer appointed William J. Flynn, former head of the Secret Service, as Director of the Bureau of Investigation.

Less than two weeks after the GID was established, Flynn ordered a major expansion of Bureau investigations "of anarchistic and similar classes, Bolshevism, and kindred agitations advocating change in the present form of government by force or violence, the promotion of sedition and revolution, bomb throwing, and similar activities." Since the only available federal law was the deportation statute, Flynn stressed that the investigations "should be particularly directed to persons not citizens of the United States." Nevertheless, he also directed Bureau agents to "make full investigations of similar activities of citizens of the United States with a view to securing evidence which may be of use in prosecutions under the present existing *state* or federal laws or under legislation of that nature *which may hereinafter be enacted.*" (Emphasis supplied.) The instructions discussed the provisions of the recent amendments to the Immigration Act, "which expanded the grounds for deportation to include membership in revolutionary organizations as well as individual advocacy of violent overthrow of the government."²⁵ Director Flynn concluded by urging Bureau agents to "constantly keep in mind the necessity of preserving the cover of our confidential informants."²⁶

The results of these investigations were reported to the Department's General Intelligence Division for analysis and evaluation. Overall direction of the work of the GID under Hoover and the Bureau under Flynn was placed in the hands of an Assistant Attorney General, Francis P. Garvan, who had been a division chief in the New York district attorney's office before the war.²⁷

Historians have documented fully the tremendous pressures placed on Attorney General Palmer, not just by his subordinates, but by public opinion, other members of President Wilson's cabinet, and the Congress to act decisively against the radical threat in 1919. For example, Secretary of State Lansing declared in a private memorandum written in July, "It is no time to temporize or compromise; no time to be timid or undecided; no time to remain passive. We are face to face with an inveterate enemy of the present social order." The Senate unanimously passed a resolution demanding that Palmer inform it whether he had yet begun legal proceedings against those who preached anarchy and sedition. According to his biographer, after passage of the Senate resolution Palmer decided that the "very liberal" provisions of the Bill of Rights were expendable and that in a time of emergency there were "no limits" on the power of the government "other than the extent of the emergency."²⁸

The principal result of the Justice Department's intelligence activities, in coordination with Immigration Bureau investigations, was the infamous "Palmer raids" on the night of January 2, 1920. Bureau of

²⁵ Act of October 16, 1918.

²⁶ Confidential Memorandum to all Special Agents and Employees, 8/12/19.

²⁷ Coben, *A. Mitchell Palmer* (New York, Columbia University Press, 1963), pp. 180, 207.

²⁸ Coben, *A. Mitchell Palmer*, pp. 210, 215-216; see also Preston, *Allens and Dissenters*, chs. 7-8; Chafee, *Free Speech in the United States*, ch. 6; Robert K. Murray, *Red Scare: A Study in National Hysteria* (Minneapolis: U. of Minnesota Press, 1955).

Investigation and Immigration Bureau agents in thirty-three cities rounded up some ten thousand persons believed to be members of the Communist and Communist Labor Parties, including many citizens and many individuals not members of either party. A summary of the abuses of due process of law incident to the raids includes "indiscriminate arrests of the innocent with the guilty, unlawful seizures by federal detectives, intimidating preliminary interrogations of aliens held incommunicado, highhanded levying of excessive bail, and denial of counsel."²⁰ Apart from the unavoidable administrative confusion in such a large-scale operation, these abuses have been attributed to several crucial decisions by federal officials.

The first was Director Flynn's instruction to Bureau agents that, in order to preserve "the cover of our confidential informants," they should "in no case . . . rely upon the testimony of such cover informants during deportation proceedings."²⁰ Consequently, Flynn's assistant, Frank Burke, advised the Immigration Bureau that informants should not be called as witnesses and that immigration inspectors should "make an effort to obtain from the subject a statement as to his affiliations." The success of eliciting incriminating admissions depended, in turn, upon decisions which made possible the prolonged detention and interrogation of arrested persons without access to counsel. In previous deportation proceedings, defense attorneys had urged aliens to remain silent. Therefore, it was necessary to amend the immigration regulation which allowed "attorneys employed by arrested persons to participate in the conduct of hearings from their very commencement."²¹ The head of the Justice Department's General Intelligence Division, J. Edgar Hoover, reiterated this request for a modification of immigration procedures.²² Three days before the raids the regulation was revised to permit hearings to begin without the presence of counsel.

Another barrier to effective interrogation was the alien's right to bail. Three weeks after the round-up, J. Edgar Hoover advised the Immigration Bureau that to allow aliens out on bail to see their lawyers "defeats the ends of justice" and made the revision of immigration regulations "virtually of no value."²³ Hoover later told immigration officials that since the purpose of the raids was to suppress agitation, he could not see the sense in letting radicals spread their propaganda while out on bail.²⁴ He also urged the Immigration Bureau to hold all aliens against whom there was no proof on the chance that evidence might be uncovered at some future date "in other sections of the country."²⁵ However, despite the Justice Department's pleas, the Secretary of Labor ordered a return to previous policies after the raids,

²⁰ Preston, *Aliens and Dissenters*, p. 221.

²¹ Confidential Memorandum, 8/12/19.

²² Memorandum from Burke to Caminetti, 11/19/19, cited in Preston, *Aliens and Dissenters*, pp. 216-217.

²³ Memorandum from Hoover to Caminetti, 12/17/19, cited in Coben, *A. Mitchell Palmer*, p. 228.

²⁴ Memorandum from Hoover to Caminetti, 1/22/20, cited in Preston, *Aliens and Dissenters*, p. 219.

²⁵ Memorandum from Hoover to Caminetti, 8/16/20, cited in Preston, *Aliens and Dissenters*, p. 210.

²⁶ Memorandum from Hoover to Caminetti, 2/2/20; 4/6/20 cited in Preston, *Aliens and Dissenters*, p. 224.

once again allowing detained aliens access to legal counsel and admission to bail if hearings were delayed.³⁵

An advantage of the amended Immigration Act had been that aliens could be deported simply for membership in a revolutionary group, without any evidence of their individual activity. J. Edgar Hoover urged literal application of the law to all members regardless of the individual's intent or the circumstances involved in his joining the organization.³⁷ Nevertheless, the Labor Department refused to deport automatically every Communist Party alien, instead adopting a policy of differentiating between "conscious" and "unconscious" membership, declining to deport those whose membership in the Socialist Party had been transferred to the Communist Party without the member's knowledge and those whose cases were based on self-incrimination without counsel or illegally seized membership records. Assistant Secretary of Labor Louis F. Post, who strongly opposed the Justice Department's position, also defied Congressional threats of impeachment in his vigorous defense of due process of law.³⁸

During the months following the "Palmer raids", a group of distinguished lawyers and law professors prepared a report denouncing the violation of law by the Justice Department. They included Dean Roscoe Pound, Felix Frankfurter, and Zechariah Chafee, Jr. of the Harvard Law School, Ernst Freund of the University of Chicago Law School, and other eminent lawyers and legal scholars. The committee found federal agents guilty of using third-degree tortures, making illegal searches and arrests, using *agents provocateurs*, and forcing aliens to incriminate themselves. Its report described federal intelligence operations in the following terms:

We do not question the right of the Department of Justice to use its agents in the Bureau of Investigation to ascertain when the law is being violated. But the American people have never tolerated the use of undercover provocative agents or "agents provocateurs" such as have been familiar in old Russia or Spain. Such agents have been introduced by the Department of Justice into radical movements, have reached positions of influence therein, have occupied themselves with informing upon or instigating acts which might be declared criminal, and at the express direction of Washington have brought about meetings of radicals in order to make possible wholesale arrests at such meetings.³⁹

The initial reaction of the head of the Justice Department's General Intelligence Division to such criticism was to search the files, including military intelligence files, for evidence that critics had radical associations or beliefs.⁴⁰

³⁵ Preston, *Aliens and Dissenters*, p. 222.

³⁶ Memorandum from Hoover to Caimnottl, 3/16/20, cited in Preston, *Aliens and Dissenters*, p. 238.

³⁷ Preston, *Aliens and Dissenters*, pp. 228-224; see Louis F. Post, *The Deportations Delirium of Nineteen-Twenty* (Chicago: Kerr, 1928).

³⁸ National Popular Government League, *Report on the Illegal Practices of the United States Department of Justice*, May 1920.

³⁹ Memorandum from J. Edgar Hoover to General Churchill, 1/28/20; 5/18/20, cited in Preston, *Aliens and Dissenters*, p. 225.

The work of the General Intelligence Division was summarized by J. Edgar Hoover in a report prepared later in 1920. Even though federal criminal statutes were "inadequate to properly handle the radical situation," Hoover stressed the "need in the absence of legislation to enable the federal government adequately to defend and protect itself and its institutions [from] not only aliens within the borders of the United States, but also American citizens who are engaged in unlawful agitation." Therefore, in addition to providing intelligence for use in the deportation of aliens, the GID supplied information to state authorities for the prosecution of American citizens under the broader state sedition laws.

The GID also had expanded "to cover more general intelligence work, including not only the radical activities in the United States and abroad, but also the studying of matters of an international nature, as well as economic and industrial disturbances incident thereto." Hoover described the GID's relationship to the Bureau of Investigation:

While the General Intelligence Division has not participated in the investigations of the overt acts of radicals in the United States, its sole function being that of collecting evidence and preparing the same for proper presentation to the necessary authorities, it has however by a careful review system of the reports received from the field agents of the Bureau of Investigation, kept in close and intimate touch with the detail of the investigative work.

The GID developed an elaborate system for recording the results of Bureau surveillance:

In order that the information which was obtained upon the radical movements might be readily accessible for use by the persons charged with the supervision of these investigations and prosecutions, there has been established as a part of this division a card index system, numbering over 150,000 cards, giving detailed data not only upon individual agitators connected with the radical movement, but also upon organizations, associations, societies, publications and social conditions existing in certain localities. This card index makes it possible to determine and ascertain in a few moments the numerous ramifications of individuals connected with the radical movement and their activities in the United States, thus facilitating the investigations considerably. It is so classified that a card for a particular city will show the various organizations existing in that city, together with their membership rolls and the names of the officers thereof.

The report said little about any tangible accomplishments in the prevention of terrorist violence or the apprehension of persons responsible for specific acts of violence. Instead, groups and individuals were characterized as having "dedicated themselves to the carrying out of anarchistic ideas and tactics"; as "urging the workers to rise up against the Government of the United States"; as having "openly advocated the overthrow of constitutions, governments and churches"; as being "the cause of a considerable amount of the industrial and economic unrest"; as "openly urging the workers to engage in armed

revolt"; as being "pledged to the tactics of force and violence"; as being "affiliated with the III International formed at Moscow" and under "party discipline regulated by Lenin and Trotsky"; and as "propagandists" appealing directly to "the negro" for support in the revolutionary movement.

The only references to particular illegal acts were that one group had participated in an "outlawed strike" against the railroads, that one anarchist group member had assassinated the king of Italy, and that Communists had smuggled diamonds into the United States to finance propaganda. The head of the GID did not claim to have identified terrorists whose bombings had aroused public furor. Instead, Hoover reported that the mass arrests and deportations "had resulted in the wrecking of the communist parties in this country" and that "the radical press, which prior to January 2nd had been so flagrantly attacking the Government of the United States and advocating its overthrow by force and violence, ceased its pernicious activities." State sedition prosecutions had served to protect "against the agitation of persons having for their intent and purpose the overthrow of the Government of the United States." Finally, the GID's work had "enabled the government to study the situation from a more intelligence and broader viewpoint."⁴¹

Parallel to the Justice Department and Immigration Bureau operations, military intelligence continued its wartime surveillance into the post-war era. After a temporary cut-back in early 1919, the Military Intelligence Division resumed investigations aimed at strikes, labor unrest, radicals, and the foreign language press. The American Protective League disbanded, but its former members still served as volunteer agents for military intelligence as well as for the Bureau of Investigation. While the military did not play a significant role in the "Palmer raids," troops were called upon in 1919 to control race riots in several cities and to maintain order during a steel strike in Gary, Indiana, where the city was placed under "modified martial law." Following the 1920 round-up of aliens, J. Edgar Hoover arranged for mutual cooperation between the GID and military intelligence. Reports from the Bureau of Investigation would be shared with the military, and investigations conducted at military request. In return, military intelligence agreed to provide Hoover with information from foreign sources, since the State Department had refused to do so and Hoover was prohibited from having agents or informants outside the United States.⁴²

The domestic intelligence structure as finally established in 1920 remained essentially intact until Attorney General Harlan Fiske Stone took office in 1924. Under the Harding Administration and Attorney General Harry Daugherty, the GID was made a part of the Bureau of Investigation under Director William J. Burns, with J. Edgar Hoover becoming an Assistant Director of the Bureau. Although the deportation program was strictly limited by Labor Department policies, the Bureau still supplied results of its surveillance operations to state authorities for the prosecution of Communists.⁴³ Hoover also

⁴¹ Memorandum from J. Edgar Hoover, re: General Intelligence Division, 10/5/20.

⁴² Jensen, *Military Surveillance*, pp. 18-22.

⁴³ Don Whitehead, *The FBI Story* (New York, Random House, 1953), pp. 61-62.

prepared a lengthy report for the Secretary of State on Communist activities in the United States. The State Department submitted the information to the Senate to back up its opposition to a resolution to grant diplomatic recognition to the Soviet Union.⁴⁴ During this period, the Bureau spelled out its domestic intelligence activities in annual reports to Congress, including summaries of investigative findings on the role of Communists in education, athletic clubs, publications, labor unions, women's groups, and Negro groups. Radical propaganda was "being spread in the churches, schools and colleges throughout the country." The Bureau also told Congress that it was furnishing information for prosecutions under state laws punishing "criminal syndicalism and anarchy."⁴⁵

D. Attorney General Stone's Reforms

In April, 1924, a new Attorney General took charge of a scandal-ridden Department of Justice. Harlan Fiske Stone, former Dean of the Columbia Law School, had been appointed by President Calvin Coolidge to replace the late President Warren Harding's political crony Harry Daugherty. Stone confronted more than simply corruption in the Justice Department when he took office. The Department's Bureau of Investigation had become a secret political police force. As Stone recalled later, "The organization was 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."⁴⁶ Attorney General Stone asked for the resignation of the Bureau Director William J. Burns, former head of the Burns Detective Agency, and directed that the activities of the Bureau "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." Stone also ordered a review of the entire personnel of the Bureau, the removal of "those who are incompetent and unreliable," and the future selection of "men of known good character and ability, giving preference to men who have had some legal training."⁴⁷ The Attorney General chose the young career Bureau official, J. Edgar Hoover, as Acting Director to implement these reforms, largely because of Hoover's reputation within the Justice Department as an honest and efficient administrator.⁴⁸

A principal problem Stone faced was the Bureau's domestic intelligence operation. He was vividly aware of the violations of individual rights committed in the name of domestic security at the time of the 1920 "Palmer raids." He had joined a committee of protest against Attorney General Palmer's round-up of radical aliens for deportation and had urged a Congressional investigation. When a Senate Judiciary Subcommittee began hearings in 1921, its first order of business was a

⁴⁴ FBI, *Digested History*, 2/1/40.

⁴⁵ Lowenthal, *The Federal Bureau of Investigation*, pp. 273-279.

⁴⁶ Alpheus Thomas Mason, *Harlan Fiske Stone: Pillar of the Law*, (New York, Viking, 1950), pp. 149-151.

⁴⁷ Memorandum From Attorney General Stone to J. Edgar Hoover, 5/13/24, cited in Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 151.

⁴⁸ Mason, *Harlan Fiske Stone: Pillar of the Law*, pp. 150-152; Donald Johnson, *The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union* (U. of Kentucky Press, 1963), p. 174.

letter from Stone calling for "a thoroughgoing investigation of the conduct of the Department of Justice in connection with the deportation cases."⁴⁹

In considering J. Edgar Hoover for the position of permanent Director of the Bureau of Investigation, Attorney General Stone was aware that he had played a major role in the "Palmer raids" as head of the Justice Department's General Intelligence Division. Roger Baldwin of the American Civil Liberties Union told Stone that he was skeptical of Hoover's ability to reform the Bureau. With the Attorney General's knowledge, Baldwin met with Hoover to discuss the future of the Bureau. Hoover assured Baldwin that he had played an "unwilling part" in the activities of Palmer, Daugherty, and Burns. He said he regretted their tactics but had not been in a position to do anything about them. He intended to help Stone build an efficient law enforcement agency, employing law school graduates, severing connections with private detective agencies, and not issuing propaganda. Most important from the American Civil Liberties Union's point of view, the Bureau's "radical division" would be disbanded. Baldwin wrote Stone, "I think we were wrong in our estimate of his attitude," and announced to the press that the ACLU believed the Justice Department's "red-hunting" days were over.⁵⁰

When Attorney General Stone arrived in 1924, he requested a review of the applicability of the federal criminal statutes to Communist activities in the United States. Various patriotic organizations had urged that Communists be prosecuted under the federal seditious conspiracy law, but the courts had ruled that this Civil War statute required proof of a definite plan to use force against the government.⁵¹ Justice Department lawyers also rejected prosecution under the Logan Act, enacted in the 1790s to punish hostile communications between American citizens and a foreign government.⁵² These conclusions buttressed the Attorney General's decision to abolish the Bureau's domestic intelligence operations, although Stone told Roger Baldwin of the ACLU that he had no authority to destroy the Bureau's intelligence files, without an Act of Congress.⁵³

Attorney General Stone may also have contemplated the possibility of future investigations under Congress' prewar revision of the Justice Department appropriations statute. He asked Acting Director Hoover whether the Bureau would have the authority to investigate Soviet and Communist activities within the United States for the State Department in connection with the question of recognition of the Soviet government. Hoover replied that the appropriations act did allow such investigations, upon formal request by the Secretary of State and approval of the Attorney General. The Acting Director stressed that such investigations "should be conducted on an entirely different line than previously conducted by the Bureau of Investigation" and

⁴⁹ Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 113. See *Charges of Illegal Practices of the Department of Justice*, Hearings before the Senate Committee on the Judiciary, 68th Cong. 3rd Sess. (1921).

⁵⁰ Johnson, *The Challenge to American Freedoms*, pp. 174-175.

⁵¹ *Baldwin v. Franko*, 120 U.S. 678.

⁵² Memorandum from Earl J. Davis to the Attorney General, 6/10/24, cited in Preston, *Aliens and Disasters*, pp. 241-242.

⁵³ Memorandum from Roger Baldwin, 8/7/24, cited in Preston, *Aliens and Disasters*, p. 243.

that there should be no publicity "because any publicity would materially hamper the obtaining of successful results."⁵⁴

After 1924, the Bureau of Investigation continued to receive information volunteered to it about Communist activities, and Bureau field offices were ordered to forward such data to headquarters. But the Bureau made "no investigations of such activities, inasmuch as it does not appear that there is any violation of a Federal Penal Statute involved."⁵⁵ Military intelligence officers still had a duty, under an Army emergency plan, to gather information "with reference to the economical, industrial and radical conditions, to observe incidents and events that may develop into strikes, riots, or other disorders, and to investigate and report upon the industrial and radical situation." However, by 1925 the military lacked adequate personnel and requested the Bureau of Investigation to provide information on "radical conditions."⁵⁶ J. Edgar Hoover replied that the Bureau had discontinued "general investigations into radical activities," but would communicate to the military any information received from specific investigations of federal violations "which may appear to be of interest" to the military.⁵⁷

Despite the curtailment of federal intelligence operations, it would be misleading to say that domestic intelligence activity ceased in the United States after 1924. The efforts of state and local authorities to investigate possible violations of state sedition laws continued in many parts of the country. Moreover, private industry engaged the services of detectives and informers to conduct surveillance of labor organizing activities. These industrial espionage programs reached their peak in the early 1930s. A Senate committee investigation in 1936 exposed these tactics and influenced at least one private detective firm, the Pinkerton Agency, to discontinue its anti-labor spying. The Senate inquiry documented the efficient techniques developed by labor spies for destroying unions. They wreaked havoc on union locals, generating mistrust, inciting violence, and reporting the identities of union members to hostile employers.⁵⁸

On one major occasion early in the Depression, military intelligence was reactivated temporarily. Army Chief of Staff Douglas MacArthur ordered corps area commanders in mid-1931 to submit reports on subversive activities in their areas. When the "bonus marchers" began arriving in Washington in 1932 to demand veteran benefits, military intelligence agents investigated Communist influence with the help of American Legion officials, reserve officers, and other volunteers. Military intelligence reports exaggerating the threat of "insurrectionists" among the veteran protesters contributed to the decision to use troops in a mass assault to clear the demonstrators out of Washington. Criticism of this operation led military authorities to instruct that intelligence officers be more discreet although they continued to gather intelligence on civilian groups.⁵⁹

⁵⁴ Memorandum from Hoover to the Attorney General, 12/13/24.

⁵⁵ Memorandum from Hoover to Ridgeley, 5/14/25.

⁵⁶ Memorandum from Colonel Reeves, Office of the Chief of Staff, to Hoover, 9/20/25.

⁵⁷ Memorandum from Hoover to Colonel Reeves, 10/7/25.

⁵⁸ U.S. Senate, Committee on Education and Labor, *Industrial Espionage*, 75th Cong., 2d Sess. (1937), cited Jerold Auerbach, *Labor and Liberty: The LaFollette Committee and the New Deal* (Indianapolis: Bobbs-Merrill, 1966), p. 98.

⁵⁹ Jensen, *Military Surveillance*, pp. 23-24.

Therefore, while Attorney General Stone had stopped the Justice Department's intelligence efforts in 1924, safeguards did not exist against state, private or military intelligence operations. Moreover, the Bureau of Investigation retained its massive domestic intelligence files from the 1916-1924 period, as well as the vague legal authority under the appropriations act to conduct investigations going beyond the detection of federal crimes if a future Attorney General and Secretary of State should direct it to do so. Nevertheless, when Congressman Hamilton Fish and members of a Special House Committee to Investigate Communist Activities in the United States proposed legislation authorizing the Bureau of Investigation to investigate "Communist and revolutionary activity" in 1931, Director Hoover opposed it. He told Congressman Fish that it would be better to enact a criminal statute and not expand the Bureau's power beyond criminal investigation, especially since the Bureau had "never been established by legislation" and operated "solely on an appropriation bill."⁶⁰ Hoover advised the Attorney General a year later,

The work of the Bureau of Investigation at this time is . . . of an open character not in any manner subject to criticism, and the operations of the Bureau of Investigation may be given the closest scrutiny at all times. . . . The conditions will materially differ were the Bureau to embark upon a policy of investigative activity into conditions which, from a federal standpoint, have not been declared illegal and in connection with which no prosecution might be instituted. The Department and the Bureau would undoubtedly be subject to charges in the matter of alleged secret and undesirable methods . . . as well as to allegations involving charges of the use of "Agents Provocateur."

Hoover assumed that the Immigration Bureau with jurisdiction to deport Communist aliens conducted such investigation and, if it did not, "would be subject to criticism for its laxity along these lines." Thus, the Director's position was not based on opposition to the idea of domestic intelligence itself, but rather on his concern for possible criticism of the Bureau if it were to resume "undercover" activities which would be necessary "to secure a foothold in Communistic inner circles" and "to keep fully informed as to changing policies and secret propaganda on the part of Communists."⁶¹

III. THE ESTABLISHMENT OF A PERMANENT DOMESTIC INTELLIGENCE STRUCTURE, 1936-1945

Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger real or pretended from abroad.

—James Madison, Letter to
Thomas Jefferson, May 13, 1798

Since 1936 the Federal Bureau of Investigation has been the primary civilian agency charged with domestic intelligence responsibil-

⁶⁰ Memorandum of telephone call between J. Edgar Hoover and Congressman Fish, January 19, 1931.

⁶¹ Memorandum from Hoover to the Attorney General, 1/2/32.

ities. However, the origins of this assignment have been clouded because the memoranda recording President Franklin Roosevelt's first instructions have not previously been made public. These and other directives of the President were described generally in the authorized history of the FBI.⁶² But the full texts and other materials shed more light on the circumstances for and consequences of Roosevelt's decisions. The basic orders and agreements governing the relations between the FBI and the military intelligence agencies have also been kept confidential until recent years.⁶³ Although President Roosevelt's 1940 directive authorizing warrantless wiretapping by the FBI for national security purposes has long been a matter of record, the FBI's practices for breaking-and-entering and clandestine mail opening were closely held secrets. The scope of prewar domestic intelligence and the joint plans of the FBI and the Justice Department for compiling a Custodial Detention List of American citizens have never been publicly examined.

A. *The 1936 Roosevelt Directive*

In August 1936, President Roosevelt issued the first of a series of instructions establishing the basic domestic intelligence structure and policies for the federal government. The President used his executive authority to determine which of the several competing civilian agencies of the government would carry out domestic intelligence investigations, to set up machinery for coordination between military intelligence and the FBI, and to lay down the general objectives of domestic intelligence going beyond criminal investigation. From the beginning Roosevelt "desired the matter to be handled quite confidentially."⁶⁴ When Attorney General Homer Cummings submitted to the President a joint FBI-military plan for domestic intelligence in 1938, he advised that additional legislation was not required and that the plan "should be handled in strictest confidence." The Attorney General enclosed a memorandum prepared by FBI Director J. Edgar Hoover which stated:

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. . . . 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.⁶⁵

⁶² Whitehead, *The FBI Story*, pp. 157 ff.

⁶³ The 1949 delimitations agreement between the FBI and the military intelligence agencies was released by the Justice Department in 1974, but an earlier agreement has not previously been published. See *Domestic Intelligence Operations for Internal Security Purposes*, Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3360-3383.

⁶⁴ Confidential Memorandum by J. Edgar Hoover, 8/25/36.

⁶⁵ Letter from Attorney General Homer Cummings to President Roosevelt and enclosure, 10/20/38.

Thus, the President's orders were kept secret, and Congress was deliberately excluded from the policymaking progress until after war broke out in Europe in 1939. Possibly if President Roosevelt had gone to Congress with a proposal for domestic intelligence in 1936 or 1938, legislation might not have been enacted and the nation's security could have been jeopardized. Perhaps a public announcement of the President's actions would have put the nation's potential adversaries on notice of his intentions. But these benefits must be weighed against the cost to constitutional government of unilateral executive actions directly affecting the rights of citizens.

There were legitimate grounds for concern about the need for domestic intelligence by 1936. Two years earlier the President had ordered the FBI to conduct a more limited intelligence investigation of "the activity of the Nazi movement in this country." The FBI, in cooperation with the Secret Service and the Immigration Bureau, 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 the antiracial activities and any anti-American activities having any possible connection with official representatives of the German government in the United States."⁶⁰

In January 1936, the Secretary of War advised the Attorney General that there was "definite indication" of foreign espionage in the United States and that in an emergency "some organizations . . . would probably attempt to cripple our war effort through sabotage." He urged the Justice Department to establish "a counterespionage service among civilians to prevent foreign espionage in the United States and to collect information so that in case of an emergency any persons intending to cripple our war effort by means of espionage or sabotage may be taken into custody."⁶¹ In addition to these foreign-related dangers, President Roosevelt was alerted to right-wing domestic threats. The FBI Director met with retired General Smedley Butler and reported to Roosevelt on "the effort of Father Coughlin to have General Butler lead an expedition to Mexico."⁶²

The nature of the President's interest is also reflected in the information FBI Director Hoover provided at their crucial meeting in August 1936. Except for a reference to Hoover's previous report on Father Coughlin and General Butler, it dealt exclusively with Communist activities. According to the FBI Director, the West Coast longshoremen's union headed by Harry Bridges "was practically controlled by Communists," the Communists "had very definite plans to get control of" the United Mine Workers union led by John L. Lewis, and the

⁶⁰ Memorandum from J. Edgar Hoover to Mr. Cowley, 5/10/34.

⁶¹ Letter from Secretary of War George H. Dern to Attorney General Homer Cummings 1/6/36. Attorney General Cummings discussed the matter with Secretary Dern, although he gained the impression that "there was no particular urgency." Memorandum from Attorney General Homer Cummings to J. Edgar Hoover, 2/19/38.

⁶² Confidential memorandum by J. Edgar Hoover, 8/24/36. General Butler also recounted attempts by right-wing elements to persuade him to join plans for an anti-New Deal "coup" to a congressional committee. Arthur M. Schlesinger, Jr., *The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), pp. 82-85.

Newspaper Guild had "strong Communist leanings." Director Hoover's memorandum of his conversation with the President continued:

I told him that my information was that the Communists had planned to get control of these three groups and by doing so they would be able at any time to paralyze the country in that they stop all shipping in and out through the Bridges organization; stop the operation of industry through the Mining Union of Lewis; and stop publication of any newspapers of the country through the Newspaper Guild.

I also related to him the activities which have recently occurred with Governmental service inspired by Communists, particularly in some of the Departments and in the National Labor Relations Board.

I likewise informed him that I had received information to the effect that the Communist Internationale in Moscow 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.

This memorandum indicates that the FBI was already gathering domestic intelligence about Communist activities inside and outside the government. After hearing Director Hoover's report, President Roosevelt expressed a desire for more systematic intelligence about "subversive activities in the United States, particularly Fascism and Communism." He wanted "a broad picture of the general movement and its activities as may affect the economic and political life of the country as a whole."⁶⁹ Whether or not the FBI Director exaggerated the threat, no President could afford to ignore such dire warnings without some further investigation.

President Roosevelt clearly understood that Communist and Fascist activities were an international problem tied to potentially hostile foreign governments. At Hoover's suggestion, Secretary of State Cordell Hull met with the President and the FBI Director to review the situation. Hoover's memorandum of this meeting stated:

The President pointed out that both of these movements were international in scope and that Communism particularly was directed from Moscow, and that there had been certain indications that Oumanski, attached to the Russian Soviet Embassy, was a leading figure in some of the activities in this country, so consequently, it was a matter which fell within the scope of foreign affairs over which the State Department would have a right to request an inquiry to be made.

President Roosevelt and Secretary Hull also considered "the making of a protest, either formally or informally, to the Russian Government relative to its interference with affairs in this country."⁷⁰ Thus, it was the international character of Communism and Fascism that

⁶⁹ Hoover memorandum, 8/24/38.

⁷⁰ Hoover memorandum, 8/25/38.

both justified the Secretary of State's request and underlay the President's desire for domestic intelligence.⁷¹

B. The Original Legal Authority for Domestic Intelligence

Despite its secrecy, President Roosevelt's initial request for domestic intelligence investigations did have a degree of statutory authorization. The provision in the Justice Department appropriations statute enacted before World War I allowed the Attorney General to direct the FBI to conduct investigations for the State Department. However, it became clear by 1938 that these investigations would not be terminated; and the President ceased relying on the procedure for State Department request by mid-1939. Presidential directives issued in 1939 attempted to link domestic intelligence to the investigation of espionage and sabotage, even though the FBI's actual mandate extended beyond the investigation of violations of law to encompass "subversive activities" generally and "counterespionage" operations. These directives created legal confusion which has persisted until the present day. There was no attempt to clarify what domestic intelligence functions were authorized by statute and what functions were based on an implicit claim of inherent presidential power.

J. Edgar Hoover was particularly sensitive to this issue, since Attorney General Stone had ordered that the activities of the Bureau "be limited strictly to investigations of violations of law."⁷² President Roosevelt sought to breach that line in 1936. His desire for "a broad picture" of the effects of Communism and Fascism on "the economic and political life of the country as a whole" went far beyond the investigation of violations of law. Nevertheless, Director Hoover advised Roosevelt that there was statutory authority for this type of investigation. Hoover told him that the FBI appropriation contained "a provision that it might investigate any matters referred to it by the Department of State and that if the State Department should ask for us to conduct such an investigation we could do so under our present authority in the appropriation already granted."⁷³ The President, in turn, told Secretary Hull that the FBI could make "a survey" of Communist and Fascist activities because "under the Appropriation Act this Bureau would have authority to make such investigation if asked to do so by the Secretary of State."⁷⁴

⁷¹ Recently, FBI officials have differed in their interpretations of these events. An FBI study in 1972 concluded that "the concern for national security was related to two international movements" in the pre-World War II period and that "there was no national concern for indigenous anarchists or other groups desiring to overthrow the Government." FBI Memorandum, *Scope of FBI Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations*, 7/31/72. However, a later study contends that the Secretary of State's request was a device to satisfy the provisions of the FBI appropriations statute and did not set "jurisdictional limits." The State Department's involvement "did not serve in some way to limit the scope of investigation to foreign or foreign-controlled activities to the exclusion of domestic." FBI Intelligence Division, *An Analysis of FBI Domestic Security Investigations*, 10/28/75. Except for the reference to General Butler and Father Coughlin, FBI records pertaining to the origins and implementation of President Roosevelt's order tend to support the former position.

⁷² Memorandum from Attorney General Harlan F. Stone to J. Edgar Hoover, Acting Director of the Bureau of Investigation, 5/13/24.

⁷³ Hoover memorandum, 8/24/36.

⁷⁴ Hoover memorandum, 8/25/36.

Director Hoover's reliance on the specific provision of the appropriations statute meant that FBI domestic intelligence was not initiated solely through an exercise of the President's independent constitutional power. In fact, Attorney General Stone had been aware of the implications of this provision in 1924.⁷⁶ Although there is no record that Attorney General Stone ever approved this type of inquiry, he clearly contemplated the possibility of at least a closed-end investigation for the State Department.

Thus, in compliance with Hoover's wishes, Secretary Hull "asked that the investigation be made," and the President asked Hoover to "speak to the Attorney General."⁷⁶ The FBI Director's memorandum of his conversation with Attorney General Cummings stated:

In talking with the Attorney General today concerning the radical situation, I informed him of the conference which I had with the President on September 1, 1936 [sic], at which time the Secretary of State, 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. I transmitted this request to the Attorney General, and the Attorney General verbally directed me to proceed with this investigation and to coordinate, as the President suggested, information upon these matters in the possession of the Military Intelligence Division, the Naval Intelligence Division, and the State Department. This, therefore, is the authority upon which to proceed in the conduct of this investigation, which should, of course, be handled in a most discreet and confidential manner.⁷⁷

These memoranda indicate clearly that Director Hoover was relying on the specific provisions of the appropriations statute. He followed almost to the letter the steps he had described to Attorney General Stone in 1924 as the necessary prerequisites for an investigation of Communist activities.

U. The FBI Intelligence Program, 1936-1938

Instructions were issued to FBI agents immediately after Director Hoover's meetings with the President and the Secretary of State. FBI field offices were ordered "to obtain from all possible sources information concerning subversive activities being conducted in the United States by Communists, Fascists, representatives or advocates of other organizations or groups advocating the overthrow or replacement of the Government of the United States by illegal methods."⁷⁸ Theoretically, this directive included purely domestic matters besides the international Communist and Fascist movements. There is no indication, however, that the President or the Attorney General were advised of this order; and the communications between the FBI Director and his superiors made no mention of advocacy of overthrow

⁷⁶ Memorandum from J. Edgar Hoover to Attorney General Harlan F. Stone, 12/18/24.

⁷⁷ Hoover memorandum, 8/25/36.

⁷⁸ Memorandum from Hoover to Tamm, Strictly Confidential, 9/10/30.

⁷⁹ Memorandum from Hoover to Field Offices, 9/5/36.

of the government. Instead, the terms used in 1936 were "general intelligence" and "subversive activities."

Following the Hoover-Roosevelt meetings, FBI officials also began developing a systematic organization for intelligence information "concerning subversive activities." The following general classifications were adopted:

Maritime Industry
 Activities in Government Affairs
 Activities in the Steel Industry
 Activities in the Coal Industry
 Activities in the Newspaper Field
 Activities in the Clothing, Garment and Fur Industries
 General Strike Activities
 Activities in the Armed Forces of the United States
 Activities in Educational Institutions
 General Activities—Communist Party and Affiliated Organizations
 Activities of the Fascists
 Anti-Fascists Movements
 Activities in Organized Labor Organizations

Steps were also taken to determine whether certain individuals were "available for service in the capacity of an informant," "to index the material previously submitted," and to "prepare memoranda dealing individually with those persons whose names appear prominently at the present time in the subversive circles." The Director was to receive daily memoranda on "major developments in any field" of subversive activities.⁷⁹

The President's instructions had dealt with relations between the FBI and other federal agencies. At his initial meeting with Hoover, the President said that the Secret Service "had assured him that they had informants in every Communist group," but Roosevelt believed this "was solely for the purpose of getting any information upon plots upon his life." He told Hoover that the Secret Service "was not to be brought in on this investigation as they should confine themselves strictly to the matter of protecting his life and the survey which he desired to have made was on a much broader field." In addition, the President suggested that Hoover "endeavor to coordinate any investigation along similar lines which might be made by the Military or Naval Intelligence Services."⁸⁰ The Director told his subordinates that he had advised the Attorney General that he would "coordinate, as the President suggested, information upon these matters in the possession of the Military Intelligence Division, the Naval Intelligence Division, and the State Department."⁸¹

The FBI and military intelligence proceeded along these lines in 1937-1938. The President designated Attorney General Cummings "as Chairman of a Committee to inquire into the so-called espionage situation" in October 1938, and to report on the need for "an additional appropriation for domestic intelligence." The Attorney General

⁷⁹ Memorandum from E. A. Tamm to Hoover, 8/28/36.

⁸⁰ Hoover memorandum, 8/24/36.

⁸¹ Memorandum from Hoover to Tamm, 9/10/36.

advised the President that a "well defined system" was functioning, made up of the FBI, the Military Intelligence Division, and the Office of Naval Intelligence, whose heads were "in frequent contact and are operating in harmony." He recommended that the appropriations be increased by \$35,000 each for MID and ONI and by \$300,000 for the FBI. He also submitted a plan prepared by Director Hoover in consultation with the military agencies. He observed that "no additional legislation to accomplish the general objectives seems to be required" and that "the matter should be handled in strictest confidence."⁸²

The FBI Director's memorandum spelled out the reasons why legislation was considered undesirable. Hoover believed the FBI's expansion could "be covered" by the language in the appropriations statute relating to "other investigations" conducted for the State Department:⁸³

Under this provision investigations have been conducted in years past for the State Department of matters which do not in themselves constitute a specific violation of a Federal Criminal Statute, such as subversive activities. Consequently, this provision is believed to be sufficiently broad to cover any expansion of the present intelligence and counter-espionage work which it may be deemed necessary to carry on. . . .

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 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 counter-espionage drive of any great magnitude.⁸⁴

Hoover noted that Army and Navy Intelligence did not need additional legislation "since their activities . . . are limited to matters concerning their respective services."

The FBI Director reviewed the current and proposed future operations of each of the three intelligence agencies. The FBI had set up a General Intelligence Section to investigate and correlate information dealing with "activities of either a subversive or a so-called intelligence type." Each FBI field office had "developed contacts with various persons in professional, business, and law enforcement fields" to obtain this information. The following was a break-down of the subject matter in the Intelligence Section files: "Maritime; government; industry

⁸² Letter from Cummings to the President, 10/20/38.

⁸³ 28 U.S.C. 533(3).

⁸⁴ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

(steel, automobile, coal, mining, and miscellaneous); general strikes; armed forces; educational institutions; Fascist; Nazi; organized labor; Negroes; youth; strikes; newspaper field; and miscellaneous." All information "of a subversive or general intelligence character pertaining to any of the above" was reviewed and filed at FBI headquarters, with index cards on individuals which made it possible to identify the persons "engaged in any particular activity, either in any section of the country or in a particular industry or movement." This index then included "approximately 2500 names . . . of the various types of individuals engaged in activities of Communism, Nazism, and various types of foreign espionage." In addition, the FBI had "developed a rather extensive library of general intelligence matters, including sixty-five daily, weekly, and monthly publications, as well as many pamphlets and volumes dealing with general intelligence activities." From both investigative sources and research, the FBI from time to time prepared "charts . . . to show the growth and extent of certain activities."⁸⁵

The Office of Naval Intelligence and the Military Intelligence Division were concerned with "subversive activities that undermine the loyalty and efficiency" of Army and Navy personnel or civilians involved in military construction and maintenance; with sabotage of military facilities or of "agencies contributing to the efficiency" of the military; and with "spy activities that may result in divulgence of information to foreign countries or to persons when such divulgence is contrary to the interests of our national defense." However, MID and ONI lacked trained investigators, and they relied on the FBI "to conduct investigative activity in strictly civilian matters of a domestic character." The three agencies exchanged information of interest to one another, both in the field and at headquarters in Washington.

For the future, all three agencies agreed that other federal agencies should be excluded from intelligence work since others were "less interested in matters of general intelligence and counter-intelligence" and because "the more circumscribed this program is, the more effective it will be and the less danger there is of its becoming a matter of general public knowledge." The FBI hoped to expand its personnel so that it could assign an agent specializing in intelligence to each of its forty-five field offices and could reopen offices in Hawaii, Alaska, and Puerto Rico. Additional funds would also be used to expand FBI facilities for "specialized training in general intelligence work."⁸⁶

Director Hoover met with the President in November 1938 and learned that he had instructed the Budget Bureau "to include in the Appropriations estimate \$50,000 for Military Intelligence, \$50,000 for Naval Intelligence and \$150,000 for the Federal Bureau of Investigation to handle counter-espionage activities." The President also said "that he had approved the plan which [Hoover] had prepared and which had been sent to him by the Attorney General," except for the revised budget figures.⁸⁷

⁸⁵ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

⁸⁶ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

⁸⁷ Confidential memorandum, by J. Edgar Hoover, 11/7/38.

D. FBI Intelligence Authority and "Subversion"

There is no evidence that either the Congress in 1916 or Attorney General Stone in 1924 intended the provision of the appropriations statute to authorize the establishment of a permanent domestic intelligence structure. Yet Director Hoover advised the Attorney General and the President in 1938 that the statute was "sufficiently broad to cover any expansion of the present intelligence and counter-espionage work which it may be deemed necessary to carry on."⁸⁸ Because of their reluctance to seek new legislation in order to keep the program secret, Attorney General Cummings and President Roosevelt did not question the FBI Director's interpretation. Nevertheless, the President's approval of Director Hoover's 1938 plan for joint FBI-military domestic intelligence was a substantial exercise of independent presidential power.

The precise nature of FBI authority to investigate "subversion" became confusing in 1938-1939. Despite the references in Director Hoover's 1938 memorandum to "subversion," Attorney General Cummings cited only the President's interest in the "so-called espionage situation."^{88a} Cummings' successors, Attorney General Frank Murphy, appears to have abandoned the term "subversive activities."⁸⁹ Moreover, when Director Hoover provided Attorney General 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, counter-espionage, and sabotage of a nature not within the specific provisions of prevailing statutes."⁹⁰

Moreover, a shift away from the authority of the appropriations provision, which was linked to the State Department's request, became necessary in 1939 when the FBI resisted an attempt by the State Department to coordinate domestic intelligence investigations. Director Hoover urged Attorney General Frank Murphy in March 1939 to discuss the situation with the President and persuade him to "take appropriate action with reference to other governmental agencies, including the State Department, which are attempting to literally chisel into this type of work. . . ." The Director acknowledged that the FBI required "the specific authorization of the State Department" where the subject of an investigation "enjoys any diplomatic status," but he knew of "no instance in connection with the handling of the

⁸⁸ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

^{88a} Letter from Cummings to the President, 10/20/38.

⁸⁹ On 2/7/39, the Assistant to 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 "subversive activities." (Letter from Attorney General Murphy to the Secretary of the Treasury, 2/10/39.) 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.) Attorney General Murphy had abandoned this reference, although there is no record of any reasons for doing so.

⁹⁰ Memorandum from J. Edgar Hoover to Attorney General Murphy, 3/10/39.

espionage work in which the State Department has had any occasion to be in any manner or degree dissatisfied with or apprehensive of the action taken by Bureau agents."⁹¹

Director Hoover was also concerned that the State Department would allow other Federal investigative agencies, including the Secret Service and other Treasury Department units, to conduct domestic intelligence investigations.⁹² The FBI cited the following example in communications to the Attorney General in 1939:

On the West Coast recently a representative of the Alcohol Tax Unit of the Treasury Department endeavored to induce a Corps Area Intelligence Officer of the War Department to utilize the services of that agency in the handling of all investigations involving espionage, counter-espionage, and sabotage....

A case was recently brought to the Bureau's attention in which a complaint involving potential espionage in a middle western state was referred through routine channels of a Treasury Department investigative agency and delayed in such a manner before reference ultimately in Washington to the office of Military Intelligence and then to the Federal Bureau of Investigation, that a period of some six weeks elapsed. . . .⁹³

During a recent investigation . . . an attorney and Commander of the American Legion Post . . . disclosed that a Committee of that Post of the American Legion is conducting an investigation relating to un-American activities on behalf of the Operator in Charge of the Secret Service, New York City⁹⁴

Consequently, at the FBI Director's request, the Justice Department asked the Secret Service, the Bureau of Internal Revenue, the Narcotics Bureau, the Customs Service, the Coast Guard, and the Post Office Department to instruct their personnel that information "relating to espionage and subversive activities" should be promptly forwarded to the FBI.⁹⁵

The Justice Department letter did not solve the problem, mainly because of the State Department's continued intervention. Director Hoover advised Attorney General Frank Murphy "that the Treasury Department and the State Department were reluctant to concede jurisdiction" to the FBI and that a conference had been held in the office of an Assistant Secretary of State "at which time subtle protests against the handling of cases of this type in the Justice Department were uttered." Hoover protested this "continual bickering" among Departments, especially "in view of the serious world conditions which are hourly growing more alarming."⁹⁶

⁹¹ Memorandum from Hoover to Murphy, 3/16/39.

⁹² Memorandum from J. Edgar Hoover to Alexander Holtzoff, Special Assistant to the Attorney General, 1/18/39.

⁹³ Memorandum from Hoover to Murphy, 3/16/39.

⁹⁴ Memorandum from Hoover to the Acting Assistant to the Attorney General, 5/5/39.

⁹⁵ Letter of J. B. Keenan, Assistant to the Attorney General, 2/7/39. (Compare the similar letter from Attorney General Murphy, omitting the term "subversive activities," at p. 401, note 93.)

⁹⁶ Memorandum from Hoover to the Attorney General, 3/16/39.

Two months later the problem remained unresolved. Assistant Secretary of State George S. Messersmith took on the role of "coordinator" of a committee composed of representatives of the War, Navy, Treasury, Post Office, and Justice Departments. The FBI Director learned that under the proposed procedures, any agency receiving information would refer it to the State Department which, after analysis, would transmit the data to that agency which it believed should conduct the substantive investigation. FBI and Justice Department officials prepared a memorandum for possible presentation to the President, pointing out the disadvantages of this procedure:

The inter-departmental committee by its operations of necessity causes delay which may be fatal to a successful investigation. It also results in a duplication of investigative effort . . . because of the lack of knowledge of one agency that another agency is working upon the same investigation. The State department coordinator is not in a position to evaluate properly the respective investigative ability of the representatives of particular departments in a manner comparable to that which the men actually in charge of an investigative agency may evaluate the proper merit of his own men.⁹⁷

Endorsing this view, Attorney General Murphy wrote the President to urge abandonment of this interdepartmental committee and "a concentration of investigation of all espionage, counterespionage, and sabotage matters" in the FBI, the G-2 section of the War Department, and the Office of Naval Intelligence. The directors of these agencies would "function as a committee for the purpose of coordinating the activities of their subordinates." To buttress his recommendation, the Attorney General pointed out that the FBI and military intelligence:

. . . have not only gathered a tremendous reservoir of information concerning foreign agencies operating in the United States, but have also perfected methods of investigation and have developed channels for the exchange of information, which are both efficient and so mobile and elastic as to permit prompt expansion in the event of an emergency.

Murphy stressed that the FBI was "a highly skilled investigative force supported by the resources of an exceedingly efficient, well equipped, and adequately manned technical laboratory and identification division." This identification data related "to more than ten million persons, including a very large number of individuals of foreign extraction." The Attorney General added, "As a result of an exchange of data between the Departments of Justice, War and Navy, comprehensive indices have been prepared."⁹⁸

President Roosevelt agreed to the Attorney General's proposal and sent a confidential directive drafted by FBI and Justice Department officials to the heads of the relevant departments. This June 1939 directive was the closest thing to a formal charter for FBI and military domestic intelligence. It read as follows:

⁹⁷ Memorandum from E. A. Tamm to Hoover, 5/31/36.

⁹⁸ Letter from Murphy to the President, 6/17/39.

It is my desire that the investigation of all espionage, counterespionage, 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, except by the three agencies mentioned above.

I shall be glad if you will instruct the heads of all other investigative agencies than the three named, to refer immediately to the nearest office of the Federal Bureau of Investigation any data, information, or material that may come to their notice bearing directly or *indirectly* on espionage, counterespionage, or sabotage."⁹⁹ [Emphasis added.]

The legal implications of this directive are clouded by its failure to use the term "subversive activities" and its references instead to *potential* espionage or sabotage and to information bearing *indirectly* on espionage or sabotage. This language may have been an effort by the Justice Department and the FBI to deal with the problem of legal authority posed by the break with the State Department. Since the FBI no longer wanted to base its domestic intelligence investigations on State Department requests, some other way had to be found to retain a semblance of congressional authorization. Yet the scope of the FBI's assignment made this a troublesome point. In 1936, President Roosevelt had wanted intelligence about Communist and Fascist activities generally, not just data bearing on potential espionage or sabotage; and the 1938 plan provided for the FBI to investigate "activities of either a subversive or a so-called intelligence type."¹⁰⁰ There is no indication that the President's June 1939 directive had the intent or effect of limiting domestic intelligence to the investigation of violations of law.

Consistent with the FBI Director's earlier desires, these arrangements were kept secret until September 1939 when war broke out in Europe. At that time Director Hoover decided that secrecy created more problems than it solved, especially with regard to the activities of local law enforcement. He learned that the New York City Police Department had "created a special sabotage squad of fifty detectives . . . and that this squad will be augmented in the rather near future to comprise 150 men." There had been "considerable publicity"

⁹⁹ Confidential Memorandum of the President, 6/26/39. President Roosevelt also dictated a separate additional memorandum for Secretary Hull which read, in part, "This does not mean that the intelligence work of the State Department should cease in any way. It should be carried on as heretofore but the directors of the three agencies should be constantly kept in touch by the State Department with the work it is doing." (Memorandum from the President to the Secretary of State, 6/26/39.)

¹⁰⁰ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

with the result that private citizens were likely to transmit information concerning sabotage "to the New York City Police Department rather than to the FBI." Calling this development to the attention of the Attorney General, the Director strongly urged that the President "issue a statement or request addressed to all police officials in the United States" asking them to turn over to the FBI "any information obtained pertaining to espionage, counterespionage, sabotage, and neutrality regulations."¹⁰¹

A document to this effect was immediately drafted in the Attorney General's office and dispatched by messenger to the White House with a note from the Attorney General suggesting that it be issued in the form of "a public statement".¹⁰² In recording his discussion that day with the Attorney General's assistant, Alexander Holtzoff, FBI official E. A. Tamm referred to the statement as "an Executive Order". Tamm also talked with the Attorney General regarding "the order":

Mr. Murphy stated that when he was preparing this he tried to make it as strong as possible. He requested that I relay this to Mr. Hoover as soon as possible and stated he knew the Director would be very glad to hear this. Mr. Murphy stated he prepared this on the basis of the memorandum which the Director forwarded to him.¹⁰³

The President's statement (or order or Executive Order) read as follows:

The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations.

This task must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.

To this end I request all police officers, sheriffs, and other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws.¹⁰⁴

The statement was widely reported in the press, along with the following remarks by Attorney General Murphy at a news conference held the same day:

Foreign agents and those engaged in espionage will no longer find this country a happy hunting ground for their

¹⁰¹ Memorandum from Hoover to the Attorney General, 9/6/39.

¹⁰² Letter from Murphy to the President, 9/6/39.

¹⁰³ E. A. Tamm, Memoranda for the FIVE, 9/6/39, 11:34 a.m., 12:47 p.m., 2:30 p.m., 6:20 p.m. This memorandum indicates Tamm was told that the President's statement would declare that the FBI was authorized to investigate "subversive activities." There is no explanation for the disparity between this message and the President's actual statement.

¹⁰⁴ Statement of the President, 9/6/39.

activities. There will be no repetition of the confusion and laxity and indifference of twenty years ago.

We have opened many new FBI offices throughout the land. Our men are well prepared and well trained. At the same time, if you want this work done in a reasonable and responsible way it must not turn into a witch hunt. We must do no wrong to any man.

Your government asks you to cooperate with it. You can turn in any information to the nearest local representative of the Federal Bureau of Investigation.¹⁰⁵

Three weeks later Murphy reiterated that the government would "not act on the basis of hysteria." He added, "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."¹⁰⁶

Two days after issuing the FBI statement, President Roosevelt proclaimed a national emergency "in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peacetime authorizations." The proclamation added, "Specific directions and authorizations will be given from time to time for carrying out these two purposes."¹⁰⁷

Thereupon, he issued an Executive Order directing the Attorney General to "increase the personnel of the Federal Bureau of Investigation, Department of Justice, in such number, not exceeding 150, as he shall find necessary for the proper performance of the additional duties imposed upon the Department of Justice in connection with the national emergency."¹⁰⁸ President Roosevelt told a press conference that the purpose of this order expanding the government's investigative personnel was to protect the country against "some of the things that happened" before World War I:

There was sabotage; there was a great deal of propaganda by both belligerents, and a good many definite plans laid in this country by foreign governments to try to sway American public opinion. . . . It is to guard against that, and against the spread by any foreign nation of propaganda in this country which would tend to be subversive—I believe that is the word—of our form of government.¹⁰⁹

President Roosevelt never formally authorized the FBI or military intelligence to conduct domestic intelligence investigations of "subversive activities," except for his oral instruction in 1936 and 1938. His written directives were limited to investigations of espionage, sabotage, and violations of the neutrality regulations. Nevertheless, the President clearly knew of and approved informally the broad investigations of "subversive activities" carried out by the FBI.

¹⁰⁵ New York Times, 9/7/39, p. 8, col. 1.

¹⁰⁶ New York Times, 10/1/39, p. 38, col. 3.

¹⁰⁷ Proclamation, 9/8/39, 54 Stat. 2043.

¹⁰⁸ Executive Order No. 8247, 9/8/39, cited in letter from Attorney General Murphy to the President, 9/12/39, Roosevelt Library, Official File 14-b, Box 14.

¹⁰⁹ 1939 Public Papers of Franklin D. Roosevelt, pp. 496-499.

President Roosevelt did use the term "subversive activities" in a directive to Attorney General Robert Jackson on wiretapping in 1940. This directive referred to the activities of other nations "engaged in the organization of propaganda of so-called 'fifth columns'" and in "preparation for sabotage." The Attorney General was directed to authorize wiretapping "of persons suspected of subversive activities against the Government of the United States, including suspected spies." The President also instructed that such wiretaps be limited "insofar as possible to aliens."¹¹⁰

With respect to investigations generally, however, the confusion as to precisely what President Roosevelt authorized is indicated by Attorney General Francis Biddle's description of FBI jurisdiction in 1942 and by 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. The pertinent section relating to the FBI stated that it had a duty to "investigate" criminal offenses against the United States and to act as a "clearing house" for the handling of "espionage, sabotage, and other subversive matters."¹¹¹ This latter "clearing-house" function was characterized as a duty to "carry out" the President's directive of September 6, 1939.

Four months later, President Roosevelt renewed his public appeal for "police cooperation" and added a request that "patriotic organizations" cooperate with the FBI. This statement described his September 1939 order as granting "investigative" authority to the FBI and not simply a "clearing-house" function. However, the President defined that authority as limited to "espionage, sabotage, and violation of the neutrality regulations" without any mention of "subversion."¹¹²

The statement was consistent with Attorney General Biddle's internal directive later in 1943 that the Justice Department's "proper function" was "investigating the activities of persons who may have violated the law."¹¹³

A similar problem is involved with the authority for "counterespionage" operations by the FBI and military intelligence. President Roosevelt's confidential order of June 1, 1939 explicitly authorized the FBI and military intelligence to handle counterespionage matters, and the 1938 plan used the terms "counter-espionage" and "counter-intelligence." However, none of the President's public directives formally authorized counterespionage measures going beyond investiga-

¹¹⁰ 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, 5/20/41.) 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.) Attorney General Biddle's response cited investigations under the recently enacted Smith Act. (Memorandum from Attorney General Biddle to the President, 6/28/41.)

¹¹¹ Attorney General's Order No. 3732, 9/25/42.

¹¹² 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."

¹¹³ Memorandum from Attorney General Biddle to Assistant Attorney General Hugh Cox and FBI Director Hoover, 7/16/43.

tion; and the Justice Department's regulations made no reference to this responsibility.

E. Congress and FBI Intelligence

Congress accepted this executive action as a necessary and inevitable measure to cope with the emergency conditions arising from the war in Europe.

In November 1939, FBI Director Hoover linked FBI intelligence to both the President's September 6 statement and his September 8 proclamation and order during testimony on an emergency supplemental appropriation bill. He told the House Appropriations Committee that establishment of a General Intelligence Division "was made necessary by the President's proclamation directing that all complaints of violations of the national defense statutes and proclamations be reported to the Federal Bureau of Investigation." When asked "by what authority" the FBI was expending funds for intelligence work beyond its existing appropriation, Hoover replied, "By authority of the President's proclamation directing the Attorney General to authorize an increase in the staff of the Federal Bureau of Investigation by 150 special agents and such additional clerical personnel and equipment as would be needed."¹¹⁶ The following exchange then took place between Congressman Woodrum and the Director:

Mr. WOODRUM. Will these additional people be kept on through the next fiscal year?

Mr. HOOVER. If the emergency continues.

Mr. WOODRUM. If the emergency does not continue you anticipate the force will be reduced?

Mr. HOOVER. Yes. For instance, we have opened 10 new field offices to conduct this work in various parts of the country. We opened another office in Savannah, one in Baltimore, one at Albany, in manufacturing and shipping centers as well as points wherein huge naval bases are maintained.

Mr. WOODRUM. And if the emergency ceases the need for the additional force will cease?

Mr. HOOVER. Yes.

Director Hoover also pointed out that this expansion would increase the number of FBI agents from 797 to 947.¹¹⁸

In his next appearance before the Appropriations Committee, the Director dropped reference to the President's proclamation of emergency and relied for his "authority" on the "formal statement" of September 6 which he described as "directing that there be coordinated under the Federal Bureau of Investigation all the matters of investigative work relating to espionage, sabotage, and violations of the neutrality regulations, and any other subversive activities."¹¹⁷

Six months later the Director told the Appropriations Committee that the FBI had a National Defense Division to "handle and direct

¹¹⁶ Hoover did not refer to the provision of the appropriations statute linked to the State Department which he had relied upon for authority before 1939.

¹¹⁷ *Emergency Supplemental Appropriation Bill, 1940*, Hearings before the House Committee on Appropriations, 11/30/39, pp. 308-307.

¹¹⁸ *Justice Department Appropriation Bill, 1941*, Hearings before the House Committee on Appropriations, 1/5/40, p. 151.

all investigations dealing with espionage, sabotage, national-defense matters, and violations of the neutrality statutes." He once again cited the President's "order of September 6, 1939," saying that it "directed the Bureau to coordinate the functions on national defense matters in intelligence work."¹¹⁸ In early 1941, Director Hoover had this exchange with members of the Appropriations Committee:

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

Mr. HOOVER. This is correct.

Mr. TABER. Is your set-up for the national-defense work separate from the other work?

Mr. HOOVER. It is.

Mr. TABER. Is it operated as a separate division?

Mr. HOOVER. Yes. In the field our field offices are under instructions to utilize approximately 50 percent of the personnel on national defense work and the other 50 percent on the regular work.

Mr. TABER. But if some rush comes up, you might have to vary that?

Mr. HOOVER. That is correct.

Mr. TABER. According to the situation.

Mr. HOOVER. According to the emergency that might arise. 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.

The FBI was seeking a deficiency appropriation for "700 additional field agents, 500 of whom would be used on national defense investigations, and 200 on the investigation of violations of the Selective Service Act."¹¹⁹

The FBI Director's appropriations testimony in 1939 and 1940 spelled out certain aspects of FBI intelligence programs and policies. The Director stated in 1939 that the General Intelligence Division had "compiled extensive indices of individuals, groups, and organizations engaged in . . . subversive activities, in espionage activities, or any activities that are possibly detrimental to the internal security of the United States." Hoover added,

These indexes have been arranged not only alphabetically but also geographically, so that at any time, should we enter into the conflict abroad, we would be able to go into any of these communities and identify individuals and groups who might be a source of grave danger to the security of this country. Their backgrounds and activities are known to the Bureau. These indexes will be extremely important and valuable in grave emergency.

¹¹⁸ *Supplemental National Defense Appropriations, 1941*, Hearings before the House Committee on Appropriations, 6/6/40, p. 180.

¹¹⁹ *First Deficiency Appropriation Bill, 1941*, Hearings before the House Committee on Appropriations, 2/10/41, pp. 170, 188-189.

The FBI had established a translation section "to review various foreign-language material" and a code section for "decoding any messages which we are able to intercept or obtain." With the agreement of military intelligence, the FBI also handled the protection of defense plants and advised industry officials on security measures.¹²⁰ The FBI Director reiterated these points in early 1940, adding that military and naval intelligence were "conducting no investigations in matters other than those connected with the military forces." He described the "general index" as being "available . . . so that in the event of any greater emergency . . . we will be able to locate immediately these various persons who may need to be the subject of further investigation by the Federal authorities."¹²¹ Later in 1940 the Director said that the "general intelligence index" included the names of persons "who may become potential enemies to our internal security, such as known espionage agents, known saboteurs, leading members of the Communist Party, and the bund." The last referred to various pro-Nazi organizations of German-Americans.¹²²

There was one important side effect of the confused legal basis for domestic intelligence. It allowed the Attorney General to deflect criticism of the FBI from another congressional source in 1940. Since the President's formal public directive could be construed as simply designating the FBI to take charge of the investigation of espionage, sabotage, and neutrality violations, Attorney General Robert Jackson was able to respond to criticism from Senator George Norris by declaring:

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 those 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.¹²³

Attorney General Jackson may have hoped to circumscribe FBI domestic intelligence within these limits, but the program developed in 1936-1939 went far beyond them. Consequently, the Attorney General's statement was at best a misleading description of executive policy.

Congress did have an opportunity in 1940 to enact a basic legislative charter for FBI intelligence. Representative Emmanuel Celler introduced a joint resolution which provided:

That the Federal Bureau of Investigation of the Department of Justice be authorized and directed to conduct investigat-

¹²⁰ 1939 Hearings, pp. 304-305.

¹²¹ January 1940 Hearings, pp. 152-154.

¹²² June 1940 Hearings, p. 181.

¹²³ Letter from Attorney General Robert H. Jackson to Senator George Norris, 80 Cong. Rec. 5042-5043, cited in Max Lowenthal, *The Federal Bureau of Investigation* (New York: Sloane, 1950), p. 445.

tions, subject to the direction of the Attorney General, to ascertain, prevent, and frustrate any interference with the national defense by sabotage, treason, seditious conspiracy (as defined in 18 U.S.C. 6), espionage, violations of the neutrality laws, or in any other manner.

The resolution would have permitted FBI wiretapping for these purposes under the specific authorization of the Attorney General.¹²⁴ The measure was endorsed by Attorney General Robert Jackson, but it was not passed. Consequently, except for the FBI Director's appropriations testimony, Congress played no role in authorizing the establishment of domestic intelligence operations.

Instead, Congress enacted two general statutes to deal with "subversive activities". The Smith Act of 1940 made it a federal crime to urge military insubordination or advocate the violent overthrow of the government.¹²⁵ And the Voorhis Act of 1941 required the registration of all "subversive" organizations having foreign links and advocating the violent overthrow of the government.¹²⁶ The Smith Act has been described as containing "the most drastic restrictions on freedom of speech ever enacted in the United States during peace." It was passed with little publicity and only brief floor debate as part of the Alien Registration Act of 1940, which appeared to most observers to deal only with fingerprinting foreigners.¹²⁷

The Smith Act and the Voorhis Act, along with the previously enacted Foreign Agents Registration Act of 1938, offer an insight into the way threats to domestic security were perceived before World War II. The Foreign Agents Registration Act was the product of an investigation of pro-Nazi and Communist activities by the Special House Committee on Un-American Activities headed by Representatives John McCormack and Samuel Dickstein in 1935-1936. The Committee's principal recommendation was legislation requiring the registration of foreign agents disseminating propaganda in the United States.¹²⁸ The Smith Act and the Voorhis Act carried this idea beyond "foreign agents". Thus, the Smith Act has been authoritatively described in the following terms: "From its inception this act was intended to combat and resist the organization of Fascist and Communist groups owing allegiance to foreign governments whose operations and activities were clearly contrary and dangerous to the Government of the United States."¹²⁹

In other words, the danger to domestic security was understood as including American citizens whose political activities might lead them to serve the interests of opposing nations. Attor-

¹²⁴ H.J. Res. 571, 76th Cong., 2d Sess. (1940). See also *Permitting Wire Tapping in Certain Cases*, report to accompany H.J. Res. 571, House Committee on the Judiciary, 76th Cong., 2d Sess. (June 14, 1940).

¹²⁵ 18 U.S.C. 2385, 2387.

¹²⁶ 18 U.S.C. 2386.

¹²⁷ Zechariah Chaffee, Jr., *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), pp. 430-441.

¹²⁸ 22 U.S.C. 611-621. See *Investigation of Nazi and Other Propaganda*, II, Rept. 153 (February 15, 1945).

¹²⁹ *Report of the Commission on Government Security* (1967), p. 621. The Administrative Director of this Commission was D. Milton Ladd, who was Assistant Director for the FBI Intelligence Division during the 1940s and Assistant to the Director in charge of all FBI intelligence and criminal investigations until 1954.

ney General Jackson used the term "Fifth Column" in 1940 to characterize "that portion of our population which is ready to give assistance or encouragement in any form to invading or opposing ideologies." He told a conference of state officials that the FBI's intelligence mission involved "steady surveillance over individuals and groups within the United States who are so sympathetic with the systems or designs of foreign dictators as to make them a likely source of federal law violation."¹²⁰

The assumption that such persons and organizations posed a direct and immediate threat to the nation's security was not seriously questioned, although there was disagreement over the need for criminal prosecution or registration of "subversives" because of their political advocacy. Attorney General Jackson could endorse FBI domestic intelligence *surveillance* at the same time as he warned against *prosecution* of "subversive activity." It was a dangerous concept, Jackson told federal prosecutors, because there were "no definite standards to determine what constitutes a 'subversive activity,' such as we have for murder or larceny." Attorney General 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.¹²¹

However, political organizations directly controlled by a potential enemy nation were considered to be different, especially when war was already underway in Europe. Germany and the Soviet Union (who, it should be remembered, were allied by treaty in 1939-1941) directed the international Nazi and Communist movements with well-organized followings in the United States.

In his effort to discourage prosecutions and to persuade the nation that FBI intelligence could handle any threats, Attorney General Jackson failed to acknowledge the risks to individual rights from unregulated federal surveillance. With no clear legislative or executive standards to keep it within the intended bounds, the FBI (and military intelligence in its sphere) had almost complete discretion to decide how far domestic intelligence investigations would extend. Only in retrospect as a Justice of the Supreme Court did Robert Jackson recognize these dangers. Shortly before his death in 1954 he wrote:

I cannot say that our country could have no central police without becoming totalitarian, but I can say with great con-

¹²⁰ *Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense* (August 5-6, 1940).

¹²¹ Robert H. Jackson, "The Federal Prosecutor," *Journal of the American Judicature Society* (June 1940), p. 18.

viction that it cannot become totalitarian without a centralized national police. . . . All that is necessary is to have a national police competent to investigate all manner of offenses, and then, in the parlance of the streets, it will have enough on enough people, *even if it does not elect to prosecute them*, so that it will find no opposition to its policies. Even those who are supposed to supervise it are likely to fear it. I believe that the safeguard of our liberty lies in limiting any national policing or investigative organization, first of all to a small number of strictly federal offenses, and second 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.¹³² [Emphasis added.]

F. The Scope of FBI Domestic Intelligence

A central feature of the FBI domestic intelligence program authorized by President Roosevelt was its broad investigative scope. The breadth of intelligence-gathering most clearly demonstrates why the program could not have been based on any reasonable interpretation of the power to investigate violations of law. The investigations were built upon a theory of "subversive infiltration" which remained an essential part of domestic intelligence thereafter. This theory persisted over the decades in the same way the Roosevelt directives continued in effect as the basis for legal authority. Moreover, there was a direct link between the policy of investigating "subversive" influence and the reliance on inherent executive power. The purpose of such investigations was not to assist in the enforcement of criminal laws, but rather to supply the President and other executive officials with information believed to be of value for making decisions and developing governmental policies. This "pure intelligence" function was precisely what President Roosevelt meant when he asked for "a broad picture" of the impact of Communism and Fascism on American life.

A second purpose for broad domestic intelligence investigations was to compile an extensive body of information for use in the event of an emergency or actual war. This information would supply the basis for taking preventive measures against groups or individuals disposed to interfere with the national defense effort. If such interference might take the form of sabotage or other illegal disruptions of defense production and military discipline, the collection of preventive intelligence was related to law enforcement. But the relationship was often remote and highly speculative, based on political affiliations and group membership rather than any tangible evidence of preparation to commit criminal acts. As the likelihood of American involvement in the war moved closer, preventive intelligence investigations focused on whether individuals should be placed on a Custodial Detention List for possible arrest in case of war. This program

¹³² Robert H. Jackson, *The Supreme Court in the American System of Government* (New York: Harper Torchbook, 1963), pp. 70-71.

was developed jointly by the FBI and a special Justice Department unit in 1940-1941.

These two objectives—"pure intelligence" and preventive intelligence—were closely related to one another. Investigations designed to produce information about subversive infiltration also identified individuals thought potentially dangerous to the country's security. Likewise, investigations of persons alleged to be security threats contributed to the overall domestic intelligence picture.

Internal FBI instructions described the scope of surveillance in detail. On September 2, 1939, all FBI field offices were ordered to review their files and secure information from "reliable contacts" in order to prepare reports on "persons of German, Italian, and Communist sympathies," as well as other persons "whose interest may be directed primarily to the interest of some other nation than the United States." Such information included "a list of the subscribers" and officers of all German and Italian language newspapers in the United States, language newspapers published by the Communist Party or "its affiliated organizations," and both foreign and English language newspapers "of pronounced or notorious Nationalistic sympathies." FBI offices were also instructed to identify members of all German and Italian societies, "whether they be of a fraternal character or of some other nature," and of "any other organization, regardless of nationality, which might have pronounced Nationalistic tendencies."¹²³

In October 1939 the FBI was investigating the Communist Party and the German American Bund, using such techniques as "the employment of informants," "research into publications," "the soliciting and obtaining of assistance and information from political emigres, and organizations which have for their purpose the maintenance of files of information bearing upon this type of study and inquiry," and "the attendance of mass meetings and public demonstrations." The compilation of information on other organizations and groups "expressing nationalist leanings" continued pursuant to the September 1939 instructions. In addition, the FBI was conducting "confidential inquiries" regarding "the various so-called radical and fascist organizations in the United States" for the purpose of identifying their "leading personnel, purposes and aims, and the part they are likely to play at a time of national crisis."¹²⁴

In November 1939, the FBI began preparing a list of specific individuals "on whom information is available indicating strongly that [their] presence at liberty in this country in time of war or national emergency would constitute a menace to the public peace and safety of the United States Government." The list comprised persons "with strong Nazi tendencies" and "with strong Communist tendencies." The citizenship status of each individual was determined, and cards prepared summarizing the reasons for placing him on the list.¹²⁵

FBI field offices were instructed to obtain information on such persons from "public and private records, confidential sources of infor-

¹²³ Memorandum from Hoover to Field Offices, 9/2/39.

¹²⁴ Memorandum from Clyde Tolson to Hoover, 10/30/39.

¹²⁵ Memorandum for E. A. Tamm, 11/9/39.

mation, newspaper morgues, public libraries, employment records, school records, et cetera." FBI agents were to keep the purpose of their inquiries "entirely confidential" and to reply to questions by stating as a cover that the investigation was being made in connection with "the Registration Act requiring agents of foreign principals to register with the State Department."¹³⁶ FBI headquarters supervisors divided the list into two categories:

Class #1. Those to be apprehended and interned immediately upon the outbreak of hostilities between the Government of the United States and the Government they serve, support, or owe allegiance to.

Class #2. Those who should be watched carefully at and subsequent to the outbreak of hostilities because their previous activities indicate the possibility but not the probability that they will act in a manner adverse to the best interests of the Government of the United States.¹³⁷

This program was described as a "custodial detention" list in June 1940, and field offices were again instructed to furnish information on persons possessing "Communist, Fascist, Nazi or other nationalistic background."¹³⁸

The primary subjects of FBI intelligence surveillance under this program in mid-1940 were active Communists (including Communist candidates for public offices, party officers and organizers, speakers at Communist rallies, writers of Communist books or articles, individuals "attending Communist meetings where revolutionary preaching is given," Communists in strategic operations "or holding any position of potential influence," and Communist agitators who participate "in meetings or demonstrations accompanied by violence"), all members of the German-American Bund and similar organizations, Italian Fascist organizations, and American Fascist groups such as "Silver Shirts, Ku Klux Klan, White Camelia, and similar organizations."¹³⁹ Director Hoover summarized these "subversive activities" in a memorandum to the Justice Department:

the holding of official positions in organizations such as the German-American Bund and Communist groups; the distribution of literature and propaganda favorable to a foreign power and opposed to the American way of life; agitators who are adherents of foreign ideologies who have for their purpose the stirring up of internal strike [sic], class hatreds and the development of activities which in time of war would be a serious handicap in a program of internal security and national defense . . .¹⁴⁰

Director Hoover claimed publicly in 1940 that advocates of foreign "isms" had "succeeded in boring into every phase of American life,

¹³⁶ Memorandum from Hoover to Field Offices, 12/6/39.

¹³⁷ Memorandum for E. A. Tamm, 12/2/39.

¹³⁸ Memorandum from Hoover to Field Offices, 6/15/40.

¹³⁹ Memorandum for the Director, 8/19/40.

¹⁴⁰ Memorandum from Hoover to M. J. McGuire, the Assistant to the Attorney General, 8/21/40.

masquerading behind front organizations."¹⁴¹ Intelligence about "front" groups was transmitted to the White House. For example, in 1937 the Attorney General had sent 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 Communist.¹⁴² 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 system.¹⁴³

FBI investigations and reports (which went into Justice Department and FBI permanent files) covered entirely lawful domestic 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."¹⁴⁴ In 1944 the FBI prepared a more extensive intelligence report on an active political group, the Independent Voters of Illinois, apparently because it was the target of 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 election 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 Fascism, etc.¹⁴⁵

Thus, the Bureau gathered data about left-liberal groups in its search for subversive "influence." 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

¹⁴¹ *Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense*, 8/5-6/40.

¹⁴² Letter from Attorney General Cummings to the President (and enclosure), 1/30/37. (FDR Library.)

¹⁴³ Letter from Attorney General Cummings to the President (and enclosure) 8/13/37. (FDR Library.)

¹⁴⁴ Report of New York City Field Office, 10/22/41, summarized in Justice Department memorandum from S. Brodley to Assistant Attorney General Quinn, 10/10/47.

¹⁴⁵ Report of Chicago Field Office, 12/20/44, summarized in Justice Department memorandum from S. Brodley to Assistant Attorney General Quinn, 10/9/47.

the less extreme "America First" movement were reported by the FBI.¹⁴⁶

The Bureau even looked into a Bronx, New York, child care center which was "apparently dominated and run" by Communists to determine whether it was being used as a "front" for carrying out the Communist program.¹⁴⁷

One example of the nature of continuing intelligence investigations is the FBI's reports on the NAACP. The Washington, D.C. Field Office opened the case in 1941 because of a request from the Navy Department for an investigation of protests against racial discrimination in the Navy by "fifteen colored mess attendants." FBI agents used an informant to determine the NAACP's "connections with the communist party and other communist controlled organizations."¹⁴⁸

FBI headquarters sent a request to the Oklahoma City Field Office in August 1941 for an investigation of "Communist Party domination" of the NAACP in connection with the development of "Nationalistic Tendency Charts." The field office report concluded, on the basis of an informant's reports, "that there is a strong tendency for the NAACP to steer clear of Communist activities. Nevertheless, there is a strong movement on the part of the Communists to attempt to dominate this group through an infiltration of Communist doctrines. Consequently, the activities of the NAACP will be closely observed and scrutinized in the future."¹⁴⁹

FBI informants subsequently reported on NAACP conferences at Hampton, Virginia, in the fall of 1941 and at Los Angeles in the summer of 1942. These investigations were conducted "to follow the activities of the NAACP and determine further the advancement of the Communist group has made into that organization."¹⁵⁰ Similar reports came to headquarters from field offices in Richmond, Virginia; Springfield and Chicago, Illinois; Boston, Massachusetts; Oklahoma City, Oklahoma; Indianapolis, Indiana; Savannah, Georgia; and Louisville, Kentucky, in 1942-1943. Informants were used to report on efforts "to place before the NAACP certain policies or ideas which . . . may be favorable to the Communist Party."¹⁵¹ An informant attended an NAACP convention in South Carolina in June 1943 and reported on his conversations with NAACP counsel Thurgood Marshall. The informant believed that Marshall was "a loyal American" and "would not permit anything radical to be done."¹⁵²

Informants for the Oklahoma City Field Office reported on Communist efforts to "infiltrate" the NAACP and advised that the Communist Party would "be active" at a forthcoming NAACP conference.¹⁵³ On the other hand, an informant for the Chicago office reported "no evidence that there is any Communist infiltration in the Chicago

¹⁴⁶ Justice Department memorandum re Christian Front, 10/28/41.

¹⁴⁷ Report of New York City Field Office, 9/7/45, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/9/47.

¹⁴⁸ Report of Washington, D.C. Field Office, 3/11/41.

¹⁴⁹ Report of Oklahoma City Field Office, 9/19/41.

¹⁵⁰ Report of Los Angeles Field Office, 7/27/42; report of Norfolk, Virginia Field Office, 4/18/42.

¹⁵¹ Report of Louisville, Kentucky Field Office, 2/13/43.

¹⁵² Report of Savannah, Georgia Field Office, 9/9/43.

¹⁵³ Report of Oklahoma City Field Office, 10/20/43.

branch."¹⁵⁴ And informants for the Detroit office advised that there were "numerous contacts by the CP members and NAACP members, some collaboration on issues which affect negroes, presence of CP members at NAACP meetings, interest of CP in NAACP, but no evidence of CP control."¹⁵⁵

FBI investigation of the NAACP reflected in these and other reports to headquarters produced massive information in Bureau files about the organization, its members, their legitimate activities to oppose racial discrimination, and internal disputes within some of the chapters. One thirty-five page report contained the names of approximately 250 individuals and groups, all indexed in a table of contents.¹⁵⁶ The reports and their summaries contained little if any information about specific activities or planned activities in violation of federal law.

The scope of the information compiled through these investigations of alleged Communist "infiltration" is indicated by an FBI estimate that by 1944 "almost 1,000,000 people knowingly or unknowingly had been drawn into Communist-Front activity."¹⁵⁷

G. The Custodial Detention Program

The epitome of preventive intelligence was the Custodial Detention Program established by the FBI and the Justice Department in 1940-1941. It should not be confused with the internment of Japanese-Americans in 1942. Both the FBI and military intelligence opposed the massive infringement of human rights which occurred in 1942 when 112,000 Japanese and Japanese-Americans were placed in detention camps—a decision made by President Roosevelt and ratified by the Congress. The authoritative histories stress the crucial influence of the Army's Provost Marshal General and his "empire-building" machinations, especially in reaction to a pre-war decision transferring responsibility for alien enemy internment to the Justice Department.¹⁵⁸

The mass detention of American citizens solely on the basis of race was exactly what the Custodial Detention Program was designed to prevent. Its purpose was to enable the government to make individual decisions as to the dangerousness of enemy aliens and citizens who might be arrested in the event of war. Moreover, when the program was implemented after Pearl Harbor, it was limited to dangerous enemy aliens; and the plans for internment of potentially dangerous American citizens were never carried out.

The most significant aspects of the Custodial Detention Program bear upon the relationship between the FBI and the Attorney General. Director Hoover opposed Attorney General Robert Jackson's attempt in 1940 to require Departmental supervision; and when Attorney General Francis Biddle abolished the Custodial Detention List in 1943, the FBI Director did not comply with his order.

Director Hoover asked Attorney General Jackson in June 1940 for policy guidance "concerning a suspect list of individuals whose

¹⁵⁴ Report of Chicago Field Office, 11/24/43.

¹⁵⁵ Report of Detroit Field Office, 1/15/44.

¹⁵⁶ Report of Detroit Field Office, 1/15/44.

¹⁵⁷ Whitehead, *The FBI Story*, p. 329.

¹⁵⁸ See Roger Daniels, *Concentration Camps USA: Japanese-Americans and World War II* (New York: Holt, Rinehart, and Winston, 1971); Stetson Conn, et al., *The United States Army in World War II: The Western Hemisphere: Guarding the United States and Its Outposts*: (1964).

arrest might be considered necessary in the event the United States becomes involved in war."¹⁵⁰ Secretary of War Henry L. Stimson advised the Attorney General in August that the War Department had emergency plans providing "for the custody of such alien enemies as may be ordered interned" and suggested that they be discussed between military and Justice Department officials.¹⁶⁰ To deal with these matters, Attorney General Jackson assigned responsibility to the head of a newly created Neutrality Laws Unit in the Justice Department. This Unit was later renamed the Special War Policies Unit and undertook Departmental planning for the war, as well as analysis and evaluation of FBI intelligence reports and the review of names placed on the Custodial Detention List.

The FBI Director initially resisted the plan for Justice Department supervision. He told the head of the Special Unit that the Department's program created "the very definite possibility of disclosure of certain counter-espionage activities."¹⁶¹ Hoover added,

The personnel which would handle this work upon the behalf of the Department . . . should be selected with a great deal of care. We in the FBI have endeavored to assure the utmost secrecy and confidential character of our reports and records. To turn over to the Department this great collection of material in toto . . . means that the Department must assume the same responsibility for any leaks or disclosure which might be prejudicial to the continued internal security of our country. Obviously, the identity of many of our confidential informants will become known to such personnel. . . . The life and safety of these informants are at stake if their identities should become known to any outside persons.

Hoover also feared that if the Department took any overt administrative action or prosecution, "the identity of confidential informants now used by the Bureau would become known." This would "cut off that source of information in so far as continued counter-espionage might be concerned in that case." He claimed that if the Attorney General approved the plan, it would mean the Justice Department was "ready to abandon its facilities for obtaining information in the subversives field."¹⁶²

Attorney General Jackson refused to give in to the FBI Director. After five months of negotiation, the FBI was ordered to transmit its "dossiers" to the Justice Department Unit.¹⁶³ To satisfy the FBI's

¹⁵⁰ Cited in memorandum from J. Edgar Hoover to the Attorney General, 10/16/40.

¹⁶⁰ Memorandum from Stimson to the Attorney General, 8/20/40.

¹⁶¹ It is not clear whether Hoover may have had in mind the secret arrangements with British intelligence established at that time at President Roosevelt's instructions. These arrangements have recently been made public in a book based on previously classified British records. [William Stevenson, *A man Called Intrepid* (New York: Harcourt Brace Jovanovich, 1976).]

¹⁶² Memorandum from J. Edgar Hoover to L. M. C. Smith, Chief Neutrality Laws Unit, 11/28/40.

¹⁶³ Memorandum from M. F. McGuire, Assistant to the Attorney General to J. Edgar Hoover and L. M. C. Smith, 4/21/41.

concerns, the Department agreed that any formal proceeding would be postponed or suspended if the FBI indicated that it "might interfere with sound investigative techniques." The FBI was assured that the plan "does not involve any abandonment by the Department of its present facilities for obtaining information in connection with subversive activities by surveillance or counterespionage." There would be "no public disclosure of any confidential informants . . . without the prior approval of the Bureau."¹⁶⁴ Thus, from 1941 until 1943 the Justice Department had the machinery to oversee at least this aspect of FBI domestic intelligence.

The wartime detention plans envisioned entirely civilian proceedings for arrest of alien enemies following a Presidential proclamation pursuant to statutory provisions, and all warrants would be authorized and issued by the Attorney General.¹⁶⁵ Separate instructions stated that, with respect to American citizens on the list and "not subject to internment," a Departmental committee would consider whether specific persons should be prosecuted under the Smith Act of 1940 "or some other appropriate statute" in the event of war.¹⁶⁶

FBI instructions to the field reiterated the types of organizations whose members should be investigated under the Custodial Detention Program. In addition to the groups listed in 1940, the order included the Socialist Workers Party (Trotskyite), the Proletarian Party, Lovestonites, "or any of the other Communistic organizations, or . . . their numerous 'front' organizations," as well as persons reported as "pronouncedly pro-Japanese."¹⁶⁷

FBI officials were concerned that the Department plan did not provide sufficiently for action against citizens. In addition to the Smith Act of 1940, FBI officials pointed out to the Department "the possibility of utilizing denaturalization proceedings." At the FBI's request, the Special Departmental Unit prepared "a study of the control of citizens suspected of subversive activities." As later summarized by the FBI, the study stressed:

. . . the great need for a federal overall plan of legislation to control suspected citizens, rather than isolated statutes which would care for particular citizens. . . . It was pointed out that the British system of defense legislation had been to enact a general enabling statute under which the executive authority is permitted to promulgate rules and regulations having the effect of law, and it was suggested that, if this country entered the war, a similar type of statute should be enacted which would enable the President to set up a system of regulations subject to immediate change and addition as the need arose.¹⁶⁸

Attorney General Francis Biddle did not endorse this position. Instead, the Department's Special Unit relied upon recently enacted

¹⁶⁴ Memorandum from M. F. McGuire to J. Edgar Hoover, 4/17/41.

¹⁶⁵ Memorandum from M. F. McGuire to Hoover, 4/17/41.

¹⁶⁶ Memorandum from McGuire to Hoover, and L. M. C. Smith, 4/21/41.

¹⁶⁷ Memorandum from Hoover to Field Offices, 4/30/41.

¹⁶⁸ Memorandum from D. M. Ladd to the Director, 2/27/48.

specific statutes as the basis for its planning. These included the Foreign Agents Registration Act of 1938, the Smith Act of 1940 making it a federal crime to urge military insubordination or advocate the violent overthrow of the government, and the Voorhis Act of 1941 requiring the registration of organizations having foreign ties and advocating the violent overthrow of the government.

Acting at "the post-investigative level," the Special War Policies Unit considered these and other statutes as the basis for coordinating "affirmative action on the internal security front." Its annual report in 1942 stated:

The Unit deals with new forms of political warfare. As part of its equipment, it has engaged analysts with special experience and schooling in the field of political organization and ideologies. The Unit has not only sought to collate information regarding dangerous individuals and organizations; it has sought to bring together a trained staff equipped to understand the methods, beliefs, relationships and subversive techniques of such individuals and organizations for the purposes of initiating appropriate action.¹⁶⁹

During the period 1941-1943 the Special Unit included a Foreign Agents Registration Section, a Sedition Section, an Organizations and Propaganda Analysis Section, and a Subversives Administration composed of a Nazi and Fascist Section and a Communist Section. The Special Unit initiated such wartime measures as the internment of several thousand enemy aliens, the denaturalization of members of the German-American Bund who had become American citizens, sedition prosecutions, exclusion of publications from the mails, and prosecution of foreign propaganda agents. The Unit received and analyzed reports from the FBI, the State Department, the Office of War Information, and the Office of Strategic Services. Attorney General Biddle abolished the Special Unit in July 1943 and transferred its prosecutive functions to the Criminal Division.¹⁷⁰

In 1943, Attorney General Francis Biddle also decided that the Custodial Detention List had outlived its usefulness and that it was based on faulty assumptions. His directive to the FBI and the Departmental Unit stated:

There is no statutory authorization or other present justification for keeping a "custodial detention" list of citizens. 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.

Apart from these general considerations, it is now clear to me that this classification system is inherently unreliable.

¹⁶⁹ Annual Report of the Attorney General for Fiscal Year 1942, p. 200.

¹⁷⁰ Annual Report of the Attorney General for Fiscal Year 1944, pp. 17, 234-247. From 1940 to 1943, a National Defense Section on the Criminal Division had supervised espionage and Selective Service prosecutions. It was renamed the Internal Security Section in 1943.

The evidence used for the purpose of making the classifications was inadequate; the standards applied to the evidence for the purpose of making the classifications were defective; and finally, 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.¹⁷¹

Upon receipt of this order, the FBI Director did not abolish the FBI's list. Instead, he changed its name from Custodial Detention List to Security Index.¹⁷² The new index continued to be composed of individuals "who may be dangerous or potentially dangerous to the public safety or internal security of the United States." Instructions to the field stated:

The fact that the Security Index and Security Index Cards are prepared and maintained should be considered strictly confidential, and should at no time be mentioned or alluded to in investigative reports, or discussed with agencies or individuals outside the Bureau other than duly qualified representatives of the Office of Naval Intelligence and the Military Intelligence Division, and then only on a strictly confidential basis.¹⁷³

The Attorney General and the Justice Department were apparently not informed of the FBI's decision to continue the program for dangerousness classification under a different name.

Moreover, FBI investigations did not conform to Attorney General Biddle's statement that the Justice Department's proper function was investigation of "the activities of persons who may have violated the law." The FBI Director's instructions at the end of the war emphasized that the Bureau investigated activities "of prosecutive or intelligence significance."¹⁷⁴ However, towards the end of the war, the FBI did limit substantially its investigation of individual Communists. Orders to the field requiring investigation of every member of the Communist Political Association (as the Party was named in 1943-1945) were modified in 1944, when field offices were instructed to confine their investigations to "key figures in the national or regional units of the CPA." This directive received "widely varying interpretations" in the field, and many offices "continued to open cases on the basis of membership alone." Further instructions in April 1945 stated that investigations were restricted to "key figures" or "potential key figures" rather than on all members as had been the policy before 1944.

¹⁷¹ Memorandum from Attorney General Biddle to Assistant Attorney General Cox and J. Edgar Hoover, Director, FBI, 7/16/43.

¹⁷² Director Hoover interpreted the Attorney General's order as applying only to the list maintained by the Justice Department's special unit. (Memorandum from J. Edgar Hoover to FBI Field Offices, Re: Dangerousness Classification, 8/14/43.)

¹⁷³ Memorandum from J. Edgar Hoover to FBI Field Offices, Re: Dangerousness Classification, 8/14/43.

¹⁷⁴ Bureau Bulletin No. 55, Series 1015, 9/12/45.

Security Index cards were "prepared only on those individuals of the greatest importance to the Communist movement."¹⁷⁵

At the end of the war the head of the FBI Intelligence Division, D. M. Ladd, recommended to Director Hoover another cutback in operations. This proposal was approved by the FBI Executive Conference; and the State Department and the Justice Department's Criminal Division were advised of the changes.¹⁷⁶ FBI field offices were

. . . instructed to immediately discontinue all general individual security matter investigations in all nationalistic categories with the specific exceptions of cases involving Communists, Russians, individuals whose nationalistic tendencies result from ideological or organizational affiliation with Marxist groups such as the Socialist Workers Party, the Workers Party, the Revolutionary Workers League or other groups of similar character and members of the Nationalist Party of Puerto Rico.

The FBI would open "no new general individual security matter investigations . . . unless they fall within the above specific exceptions." However, the instructions permitted the field to continue investigating "individuals whose activities are of paramount intelligence importance such as individuals closely allied with political or other groups abroad, individuals prominent in organizational activity of significance or individuals falling within similar categories." The instructions added,

It is realized, of course, that in connection with the intelligence jurisdiction of the Bureau it will be necessary to investigate the activities and affiliations of certain individuals considered key figures in nationalistic and related activities or considered leaders of importance in various foreign nationality groups. . . . If in such an instance you have any question as to the advisability or desirability of instituting such an investigation in view of the above instructions, you should, of course, refer the matter to the Bureau for appropriate decision.

This flexibility specifically allowed for the investigation of "fascist individuals of prosecutive or intelligence significance."¹⁷⁷

H. FBI Wartime Operations

A review of FBI intelligence work during World War II would not be complete without brief mention of several other activities. In 1940 President Roosevelt authorized the FBI with the approval of the Attorney General to conduct electronic surveillance of "persons suspected of subversive activities against the Government of the United

¹⁷⁵ In early 1946 there were 10,763 Security Index cards on "communists and members of the Nationalist Party of Puerto Rico." (Memorandum from D. M. Ladd to the Director, *Re: Investigations of Communists*, 2/27/46.)

¹⁷⁶ Memorandum from D. M. Ladd to the Director, 8/30/45.

¹⁷⁷ Bureau Bulletin No. 55, Series 1945, 9/12/45.

States, including suspected spies."¹⁷⁸ The Federal Communications Commission denied the FBI access before the war to international communications on the grounds that such intercepts violated the Federal Communications Act of 1934.¹⁷⁹ However, military intelligence had secretly formed a Signals Intelligence Service to intercept international radio communications; and Naval intelligence arranged with RCA to get copies of Japanese cable traffic to and from Hawaii, although other cable companies used by the Japanese refused to violate the statute against interception before Pearl Harbor.¹⁸⁰ Moreover, the FBI developed "champering" or surreptitious mail opening techniques, and the practice of surreptitious entry was used by the FBI in intelligence operations.¹⁸¹

Several basic internal memoranda and agreements spelled out the policies governing the relationships between FBI and military intelligence in this period. The military concentrated more heavily on what it perceived as potential threats to the armed forces, while the FBI developed a wider and more sophisticated approach to the gathering of intelligence about "subversive activities" generally. An example of the Army's policy was an intelligence plan approved in 1936 for the Sixth Corps Area which covered Illinois, Michigan, and Wisconsin. It called for the collection and indexing of the names of several thousand groups, ranging from the American Civil Liberties Union to pacifist student groups alleged to be Communist-dominated. Sources of information were to be the Justice Department, the Treasury Department, the Post Office Department, local state police, and private intelligence bureaus employed by businessmen to keep track of organized labor.¹⁸² The joint FBI-military intelligence plan prepared in 1938 stated that the Office of Naval Intelligence and the Military Intelligence Division (G-2) were concerned with "subversive activities that undermine the loyalty and efficiency" of Army and Navy personnel or civilians involved in military construction and maintenance. Since ONI and MID lacked trained investigators, they relied before the war on the FBI "to conduct investigative activity in strictly civilian matters of a domestic character." The three agencies exchanged information of interest to one another, both in the field and at headquarters in Washington.¹⁸³

The FBI, ONI, and MID entered into a Delimitation Agreement in June 1940 pursuant to the authority of President Roosevelt's 1939 di-

¹⁷⁸ Roosevelt to Jackson, 5/21/40. See Report on Warrantless FBI Electronic Surveillance.

¹⁷⁹ Whitehead, *The FBI Story*, p. 226.

¹⁸⁰ David Kahn, *The Codebreakers* (New York: Signet Books, 1973) (pb), pp. 11-16.

¹⁸¹ See Report on CIA and FBI Mail Opening; Memorandum From FBI to Select Committee, 9/23/75.

¹⁸² Sixth Corps Area, Emergency Plan—White, December 1936, AG No. 386, cited in *Military Surveillance: Hearings before the Senate Subcommittee on Constitutional Rights*, 93d Cong., 2d Sess. (1974), p. 174.

¹⁸³ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

rectives. As revised in February 1942, the Agreement covered "investigation of all activities coming under the categories of espionage, counterespionage, subversion and sabotage." It provided that the FBI would be responsible for all investigations "involving civilians in the United States" and for keeping ONI and MID informed of "important developments . . . including the names of individuals definitely known to be connected with subversive activities."¹⁸⁴ As a result of this Agreement and prior cooperation, military intelligence could compile extensive files on civilians from the information disseminated to it by the FBI. For example, in May 1939 the MID transmitted a request from the Ninth Corps Area on the West Coast for the names and locations of "alien and disloyal American sabotage and espionage organizations," organizations planning to take advantage of war-time hardships to overthrow the government, "citizens opposed to our participation in war and conducting anti-war propaganda," and potential enemy nationals who should be interned in case of an "international emergency."¹⁸⁵

Moreover, despite the FBI-military agreement, the Counter Intelligence Corps of the Army (CIC) gradually undertook wider investigation of civilian "subversive activity" as part of a preventive security program which used voluntary informants and investigators to collect information.¹⁸⁶

The FBI developed a substantial foreign intelligence operation in Latin America during the war. On June 24, 1940, President Roosevelt issued a directive assigning foreign intelligence responsibilities in the Western Hemisphere to a Special Intelligence Service of the FBI. SIS furnished the State Department, the military, and other governmental agencies with intelligence regarding "financial, economic, political and subversive activities detrimental to the security of the United States." SIS assisted several Latin American countries "in training police and organizing anti-espionage and anti-sabotage defenses." When another foreign intelligence agency, the Office of Strategic Services, was established in 1941, it sought to enter the Latin American

¹⁸⁴ Delineation of Investigative Duties of the Federal Bureau of Investigation, the Office of Naval Intelligence, and the Military Intelligence Division, 2/8/42.

¹⁸⁶ Memorandum from Colonel Churchill, Counter Intelligence Branch, MID, to E. A. Tamm, FBI, 5/16/39, and enclosure. "Subject: Essential Items of Domestic Intelligence Information."

¹⁸⁶ 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*, 1974 Hearings, pp. 174-175.)

field until President Roosevelt made clear that jurisdiction belonged to SIS.¹⁸⁷

There was constant friction throughout the war between the FBI and the OSS. Despite the President's orders, OSS operatives went to Latin America. Within the United States OSS officers are reported to have secretly entered the Spanish embassy in Washington to photo-

¹⁸⁷ Whitehead, *The FBI Story*, pp. 266, 456. President Roosevelt's Directive of December 1941 on the FBI's SIS read as follows:

"In accordance with previous instructions the Federal Bureau of Investigation has set up a Special Intelligence Service covering the Western Hemisphere, with Agents in Mexico, Central America, South America, the Caribbean, and Canada. Close contact and liaison have been established with the Intelligence officials of these countries.

"In order to have all responsibility centered in the Federal Bureau of Investigation in this field, I hereby approve this arrangement and request the heads of all Government Departments and Agencies concerned to clear directly with the Federal Bureau of Investigation in connection with any intelligence work within the sphere indicated.

"The Director of the Federal Bureau of Investigation is authorized and instructed to convene meetings of the chiefs of the various Intelligence Services operating in the Western Hemisphere and to maintain liaison with Intelligence Agencies operating in the Western Hemisphere." (Confidential Directive to the Heads of the Government Departments and Agencies concerned, 12/41.)

An agreement between the FBI and military intelligence dealing with "Special Intelligence operations in the Western Hemisphere" cited Presidential "Instructions" of June 24, 1940 and January 16, 1942. It described FBI responsibilities as follows:

"The Special Intelligence Service will obtain, primarily through undercover operations supplemented when necessary by open operations, economic, political, industrial, financial and subversive information. The Special Intelligence Service will obtain information concerning movements, organizations, and individuals whose activities are prejudicial to the interests of the United States." (Agreement between MID, ONI, and FBI for Coordinating Special Intelligence Operations in the Western Hemisphere, 2/28/42.)

Overlap between FBI and OSS operations is indicated by the following sections from a Joint Chiefs of Staff Directive on the functions of the Office of Strategic Services in 1943:

"3. Secret Intelligence

"a. The Office of Strategic Services is authorized to: (1) Collect secret intelligence in all areas other than the Western Hemisphere by means of espionage and counter-espionage, and evaluate and disseminate such intelligence to authorized agencies. In the Western Hemisphere, bases already established by the Office of Strategic Services in Santiago, Chile, and Buenos Aires, Argentina, may be used as ports of exit and of entry for the purpose of facilitating operations in Europe and Asia, but not for the purpose of conducting operations in South America. The Office of Strategic Services is authorized to have its transient agents from Europe or Asia touching points in the Western Hemisphere transmit information through facilities of the Military Intelligence Service and of the Office of Naval Intelligence.

"4. Research and Analysis

"The Office of Strategic Services will (1) furnish essential intelligence for the planning and execution of approved strategic services' operations; and (2) furnish such intelligence as is requested by agencies of the Joint Chiefs of Staff, the armed services, and other authorized Government agencies. To accomplish the foregoing no geographical restriction is placed on the research and analysis functions of the Office of Strategic Services. . . ." (Emphasis supplied)

(JCS Directive: Functions of the Office of Strategic Services, JCS 155/11/D, 10/27/43.)

graph documents. The FBI Director apparently learned of the operation, but instead of registering a protest he waited until OSS returned a second time and then had FBI cars outside turn on their sirens. When OSS protested to the White House, the President's aides reportedly ordered the embassy entry project turned over to the FBI.¹⁸⁸ A similar incident occurred in 1945 when OSS security officers illegally entered the offices of *Amerasia* magazine in the search for confidential government documents.¹⁸⁹ This illegal entry made it impossible for the Justice Department to prosecute vigorously on the basis of the subsequent FBI investigation, for fear of exposing the "taint" which started the inquiry.

Director Hoover's most serious conflict with OSS involved a weighing of the respective needs of foreign intelligence and internal security. In 1944, the head of OSS, William Donovan, negotiated an agreement with the Soviet Union for an exchange of missions between OSS and the NKVD (the Soviet intelligence and secret police organization). Both the American military representative in Moscow and Ambassador Averill Harriman hoped the exchange would improve Soviet-American relations.¹⁹⁰ When Hoover learned of the plan, he warned Presidential aide Harry Hopkins of the potential danger of espionage if the NKVD were "officially authorized to operate in the United States where quite obviously it will be able to function without any appropriate restraint upon its activities." The Director also advised Attorney General Biddle that secret NKVD agents were already "attempting to obtain highly confidential information concerning War Department secrets." Thus, the exchange of intelligence missions was blocked.¹⁹¹ The FBI was also greatly concerned about the OSS policy of employing American Communists to work with the anti-Nazi underground in Europe, although OSS did dismiss some persons suspected of having links with Soviet intelligence.¹⁹²

The FBI was not withdrawn from the foreign intelligence field until 1946. At the end of the war President Truman abolished the Office of Strategic Services and dispersed its functions to the War and State Departments. The FBI proposed expanding its wartime Western Hemisphere intelligence system to a world-wide basis, with the Army and Navy handling matters of importance to the military. Instead, the President formed a National Intelligence Authority with representatives of the State, War, and Navy Departments to direct the foreign intelligence activities of a Central Intelligence Group. The Central Intelligence Group was authorized to conduct all foreign espionage and counterespionage operations in June 1946. Director Hoover immediately terminated the operations of the FBI's Special Intelligence Service; and in some countries SIS officers destroyed their files rather than transfer them to the new agency.¹⁹³

¹⁸⁸ Downes, *The Scarlet Thread*, pp. 87-97, cited in Smith, *OSS: The Secret History of America's First Central Intelligence Agency*, p. 20.

¹⁸⁹ Smith, *OSS*, p. 277.

¹⁹⁰ Smith, *OSS*, p. 21.

¹⁹¹ Whitehead, *The FBI Story*, pp. 277-278.

¹⁹² Smith, *OSS*, pp. 10-11.

¹⁹³ Whitehead, *The FBI Story*, pp. 279-280; Smith, *OSS*, p. 366.

IV. DOMESTIC INTELLIGENCE IN THE COLD WAR ERA: 1945-1963

If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

—Mr. Justice Oliver Wendell Holmes, Dissenting in *Gitlow v. New York*, 268 U.S. 652 (1925).

The situation with which Justices Holmes and Brandeis were concerned in *Gitlow* was a comparatively isolated event. . . . They were not confronted with any situation comparable to the instant one—the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis.

—Mr. Chief Justice Fred Vinson, Opinion in *Dennis v. United States*, 341 U.S. 494 (1951).

A. The Anti-communist Consensus

During the Cold War period the domestic intelligence activities of the Federal Government were rooted in a firm rational consensus regarding the danger to the United States from international Communism. No distinction was made between the threats posed by the Soviet Union and by Communists within this country. At the peak of international tension during the Korean War, the Supreme Court upheld the conviction of Communist Party leaders under the Smith Act for conspiracy to advocate violent overthrow of the government. The conspiratorial nature of the Communist Party and its ideological links with the Soviet Union at a time of stress in Soviet-American relations were cited by the Court as the reasons for its decision.¹⁰⁴

In the same environment, Congress enacted the Internal Security Act of 1950 over President Truman's veto. Its two main provisions were the Subversive Activities Control Act to register Communist and Communist "front" groups and individual Communists, and the Emergency Detention Act for the internment in an emergency of persons who might engage in espionage or sabotage. 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."¹⁰⁵ Going even further in 1954, Congress passed the Communist Control Act which provided

¹⁰⁴ 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 world conditions, similar uprisings in other countries, 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).]

¹⁰⁵ 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.

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."¹⁹⁶ These statutes buttressed the intelligence authority of the FBI, even though Congress never enacted legislation directly authorizing FBI domestic intelligence.¹⁹⁷

By the mid-1950s, gradual relaxation of international tensions between the United States and the Soviet Union, coupled with a decline in domestic Communist influence after the Smith Act prosecutions, slowed the momentum for suppression. The Supreme Court reversed Smith Act convictions of second-string Communist leaders in 1957, holding that the government must show advocacy "of action and not merely abstract doctrine."¹⁹⁸ However, as late as 1961, the Court sustained the constitutionality under the First Amendment of the requirement that the Communist Party register with the Subversive Activities Control Board.¹⁹⁹

The degree of consensus in favor of repression of the Communist Party should not be overstated. In contrast to the Congressional enthusiasm, President Truman was concerned about the risks to constitutional government. According to one White House staff member's notes during the debate over the Internal Security Act of 1950, "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 said he would veto the bill "regardless of how politically unpopular it was—election year or no election year."²⁰⁰

Throughout the period there was a confusing mixture of secrecy and disclosure, both within the executive branch and between the executive and Congress. On matters such as the Emergency Detention Program, the FBI and the Justice Department joined in disregarding the will of Congress. Unilateral executive action was frequently substituted for

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

¹⁹⁷ In light of the facts now known, the Supreme Court overstated the degree to which Congress had explicitly "charged" the FBI with domestic 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 1930 statement on FBI investigations and an address by FBI Director Hoover to state law enforcement officials in August 1940.

¹⁹⁸ *Yates v. United States*, 354 U.S. 298, 325 (1957).

¹⁹⁹ 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).]

²⁰⁰ File memorandum of S.J. Spingarn, assistant counsel to the President, 7/22/50, Spingarn Papers (Harry S. Truman Library).

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 both Congress 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.

B. The Post-War Expansion of FBI Domestic Intelligence

In February 1946, Assistant Director Ladd of the FBI Intelligence Division recommended reconsideration of previous restrictive policies and the institution of a broader program aimed at the Communist Party. Ladd advised Director Hoover:

The Soviet Union is obviously endeavoring to extend its power and influence in every direction and the history of the Communist movement in this country clearly shows that the Communist Party, USA has consistently acted as the instrumentality in support of the foreign policy of the USSR.

The Communist Party has succeeded in gaining control of, or extensively infiltrating a large number of trade unions, many of which operate in industries vital to the national defense. . . .

In the event of a conflict with the Soviet Union, it would not be sufficient to disrupt the normal operations of the Communist Party by apprehending only its leaders or more important figures. Any members of the Party occupied in any industry would be in a position to hamper the efforts of the United States by individual action and undoubtedly the great majority of them would do so. . . .

It is also pointed out that the Russian Government has sent and is sending to this country a number of individuals without proper credentials or travel documents and that in the event of a breach of diplomatic relations there would undoubtedly be a considerable number of these people in the United States.

Therefore, Ladd recommended "re-establishing the original policy of investigating all known members of the Communist Party" and reinstating "the policy of preparing security index cards on all members of the Party."

He observed that "the greatest difficulty" with apprehending all Communists if war broke out was "the necessity of finding legal authorization." While enemy aliens could be interned, the only statutes available for the arrest of citizens were the Smith Act, the rebellion and insurrection statutes, and the seditious conspiracy law. These laws were inadequate because "it might be extremely difficult to prove that members of the Party knew the purpose of the Party to overthrow the Government by force and violence" under the Smith Act and "some overt act would be necessary" before the other statutes could be invoked. Hence, he proposed advising the Attorney General of the FBI's

plans and the need for "a study as to the action which could be taken in the event of an emergency."²⁰¹

Consequently, Director Hoover informed Attorney General Tom C. Clark that the FBI had "found it necessary to intensify its investigation of Communist Party activities and Soviet espionage cases." The FBI was also "taking steps to list all members of the Communist Party and any others who would be dangerous in the event of a break in diplomatic relations with the Soviet Union, or other serious crisis, involving the United States and the U.S.S.R." The FBI Director added that it might be necessary in a crisis "to immediately detain a large number of American citizens." He suggested that a study be made "to determine what legislation is available or should be sought to authorize effective action . . . in the event of a serious emergency."²⁰²

Assistant Director Ladd proposed another FBI program which was not called to the Attorney General's attention. He told the Director, "Apart from the legal problems involved, another difficulty of considerable proportions which would probably be encountered in the event of extensive arrests of Communists would be a flood of propaganda from Leftist and so-called Liberal sources." To counteract this possibility, he made the following recommendation:

It is believed that an effort should be made now to prepare educational material which can be released through available channels so that in the event of an emergency we will have an informed public opinion.

To a large extent the power and influence of the Communist Party in this country, which is out of all proportion to the actual size of the Party, derives from the support which the Party receives from "Liberal" sources and from its connections in the labor unions. The Party earns its support by championing individual causes which are also sponsored by the Liberal elements. It is believed, however, that, in truth, Communism is the most reactionary, intolerant and bigoted force in existence and that it would be possible to assemble educational materials which would incontrovertibly establish the truth.

Therefore, material could be assembled for dissemination to show that Communists would abolish or subjugate labor unions and churches if they came to power. Such material would undermine Communist influence in unions and support for the Party from "persons prominent in religious circles." Additional material could be assembled "indicating the basically Russian nature of the Communist Party in this country." Ladd proposed a two-day training conference for "Communist supervisors" from eighteen or twenty key field offices so that they might have "a complete understanding . . . of the Bureau's policies and desires. . . ." These recommendations were approved by the FBI Executive Conference.²⁰³

²⁰¹ Memorandum from Ladd to Hoover, 2/27/46.

²⁰² Personal and Confidential Memorandum from Hoover to the Attorney General, 3/8/46.

²⁰³ Memorandum from Ladd to Hoover, 2/27/46.

C. The Federal Loyalty-Security Program

In 1947, President Truman established by executive order a Federal Employee Loyalty Program.²⁰⁴ Its basic features were retained in the Federal Employee Security Program authorized by President Eisenhower in Executive Order 10450, which is still in effect with some modifications today.²⁰⁵ The program originated out of serious and well-founded concern that Soviet intelligence was using the Communist Party as an effective vehicle for the recruitment of espionage agents. However, from the outset it swept far beyond this counter-espionage purpose to satisfy more speculative preventive intelligence objectives. The program was designed as much to protect the government from the "subversive" ideas of federal employees as it was to detect potential espionage agents.

The basic outlines of the employee security program were developed in 1946-1947 by a Temporary Commission on Employee Loyalty. Its understanding of the problem was shaped largely by the report of a Canadian Royal Commission in June 1946. The Royal Commission had investigated an extensive Soviet espionage operation in Canada, which was disclosed by a defector from the Soviet Embassy. Its report described how employees of the Canadian government had communicated secret information to Soviet intelligence. The report concluded that "membership in Communist organizations or sympathy towards Communist ideologies was the primary force which caused these agents" to work for Soviet intelligence. It explained that "secret members or adherents of the Communist Party," who were attracted to Communism by its propaganda for social reform, had been developed into espionage agents. 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.²⁰⁶ The impact of the report in the United States was that "questions of thought and attitudes took on new importance as factors of safety in the eyes of all those concerned with national security."²⁰⁷

A subcommittee of the House Civil Service Committee recommended shortly after release of the Canadian commission report that the President appoint an interdepartmental committee to study employee security practices. FBI Director Hoover suggested to Attorney General Clark whom he should appoint to such a committee "if it is set up."²⁰⁸ When President Truman appointed a Commission on Employee Loyalty in November 1946, the FBI Director's suggested Justice Department representative was made chairman, and the other

²⁰⁴ Executive Order 9835, 12 Fed. Reg. 1625, 3/21/47.

²⁰⁵ Executive Order 10450, 18 Fed. Reg. 2489 (1953).

²⁰⁶ *Report of the Royal Commission*, 6/27/46, pp. 82-83, 686-689. The report described how "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 then been led step by step along the ingenious 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."

²⁰⁷ Eleanor Bontecou, *The Federal Loyalty-Security Program* (Ithaca: Cornell University Press, 1953), p. 22.

²⁰⁸ Memorandum from Hoover to Clark, 7/25/46 (Harry S. Truman Library).

members represented the Departments of State, War, Navy, and Treasury, and the Civil Service Commission.

The President's Commission had less success than its Canadian counterpart in discovering the dimensions of the problem in the United States. FBI Assistant Director D. M. Ladd told the Commission that there were "a substantial number of disloyal persons in government service" and that the Communist Party "had established a separate group for infiltration of the government." He also called the Commission's attention to "a publication of the U.S. Chamber of Commerce" which had expressed the opinion "that Communists in the government have reached a serious stage." The War Department representative on the Commission then stated that it "should have something more than reports from the Chamber of Commerce, FBI, and Congress, to determine the size of the problem." However, when Assistant Director Ladd was asked later "for the approximate number of names in subversive files . . . and whether the Bureau had a file of names of persons who could be picked up in the event of a war with Russia," the FBI official "declined to answer because this matter was not within the scope of the Commission." The meeting ended with "general agreement that Mr. Hoover should be asked to appear. . . ." ²⁰⁹ Thereafter, the Commission prepared a lengthy list of questions for the FBI; but instead of Director Hoover appearing, Attorney General Clark testified in a session where no minutes were taken.

The Attorney General supplemented his "informal" appearance with a memorandum which stated that the number of subversive persons in the government had "not yet reached serious proportions," but that the possibility of "even one disloyal person" entering government service constituted a "serious threat." ²¹⁰ Thus, the President's Commission accepted its foreclosure from conducting any serious evaluation of FBI intelligence operations or FBI intelligence data on the extent of the danger. One Commission staff member observed that these were felt to be "matters exclusively for the consideration of the counterintelligence agencies." ²¹¹

It is impossible to determine fully the effect of the autonomy of FBI counterespionage on the government's ability to formulate appropriate security policies. Nevertheless, this record suggests that executive officials were forced to make decisions 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. With respect to the employee loyalty program in 1947, the FBI's view prevailed on three crucial issues—the broad definition of the threat of "subversive influence," the secrecy of FBI informants and electronic surveillance, and the exclusive power of the FBI to investigate allegations of disloyalty.

Although Director Hoover did not testify before the President's Commission, he submitted a general memorandum on the types of

²⁰⁹ Minutes of the President's Temporary Commission on Employee Loyalty, 1/17/46. (Harry S. Truman Library.)

²¹⁰ Memorandum from Attorney General Clark to Mr. Vanech, Chairman, President's Temporary Commission on Employee Loyalty, 2/14/47. (Harry S. Truman Library.)

²¹¹ Memorandum from S. J. Spingarn to Mr. Foley, 1/19/47. (Harry S. Truman Library.)

activities of "subversive or disloyal persons" in government service which would "constitute a threat" to the nation's security. The danger as he saw it was not limited to espionage or the recruitment of others for espionage. It extended to "influencing" the formation and execution of government policies "so that those policies will either favor the foreign country of their ideological choice or will weaken the United States Government domestically or abroad to the ultimate advantage of the . . . foreign power." Consequently, he urged that attention be given to the association of government employees with "front" organizations. These included not only established "fronts" but also "temporary organizations, 'spontaneous' campaigns, and pressure movements so frequently used by subversive groups." If a disloyal employee was affiliated with such "fronts", he could be expected to influence government policy in the direction taken by the group.²¹²

The President's Commission accepted Director Hoover's position on the threat, as well as the view endorsed later 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."²¹³ Thus, the standards for determining employee loyalty included a criterion based on 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.²¹⁴

The executive orders provided a substantive legal basis for the FBI's investigation of allegedly "subversive" organizations which might fall within these categories.²¹⁵

The FBI also succeeded in protecting the secrecy of its informants and electronic surveillance. The Commission initially recommended that the FBI be required to make available to department heads upon request "all investigative material and information available to the investigative agency on any employee of the requesting department." Director Hoover protested that the FBI had "steadfastly refused to reveal the identities of its confidential informants." He advised the Attorney General that the proposal "would also apparently contemplate the revealing of our techniques, including among others, technical surveillances which are authorized by you." The Director assured the Attorney General that the FBI would make "information available to other agencies to evaluate the reliability of our infor-

²¹² Memorandum from the FBI Director to the President's Temporary Commission, 1/3/47. (Harry S. Truman Library.)

²¹³ President's Commission on Civil Rights, *To Secure These Rights* (1947), p. 52.

²¹⁴ Executive Order 9835, part I, section 2; cf. Executive Order 10450, section 8(a) (5).

²¹⁵ 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 Yeagley to Hoover, 5/17/60.)

mants" without divulging their identities.²¹⁶ The Commission revised its report to satisfy the FBI.²¹⁷

Director Hoover was still concerned that the Commission (and the President's executive order) did not give the FBI exclusive power to investigate allegedly subversive employees.²¹⁸ He went so far as to threaten "to withdraw from this field of investigation rather than to engage in a tug of war with the Civil Service Commission."²¹⁹ According to notes of presidential aide George Elsey, President Truman felt "very strongly anti-FBI" on the issue and wanted "to be sure and hold FBI down, afraid of 'Gestapo'."²²⁰ Presidential aide Clark Clifford reviewed the situation and came down on the side of the FBI as "better qualified" than the Civil Service Commission.²²¹ Nevertheless, the President insisted on a compromise which gave Civil Service "discretion" to call on the FBI "if it wishes."²²² The FBI Director objected to this "confusion" as to the FBI's jurisdiction.²²³

Justice Department officials warned the White House that Congress would "find flaws" with this arrangement; and President Truman noted "J. Edgar will in all probability get this backward looking Congress to give him what he wants. It's dangerous."²²⁴ President Truman was correct. The administration's budget request of \$16 million for Civil Service and \$8.7 million for the FBI to conduct loyalty investigations was revised in Congress to allocate \$7.4 million to the FBI and only \$3 million to the Civil Service Commission.²²⁵ The issue was finally resolved to the FBI's satisfaction. President Truman issued a statement to all department heads declaring that there were "to be

²¹⁶ Memorandum from J. Edgar Hoover to Attorney General Clark, Re: President's Temporary Commission on Employee Loyalty, 1/20/47. (Harry S. Truman Library.)

²¹⁷ Report of the President's Temporary Commission on Employee Loyalty, 2/20/47, pp. 31-32.

²¹⁸ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/10/47. (Harry S. Truman Library.)

²¹⁹ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/31/47. (Harry S. Truman Library.)

²²⁰ Memorandum of George M. Elsey, 5/2/47. (Harry S. Truman.)

²²¹ Clifford advised, "Inasmuch as 'undercover' and 'infiltration' tactics may become necessary, duplication will be costly and would jeopardize the success of both FBI and Civil Service." He added that the FBI "has a highly trained, efficiently organized corps of investigators. There are approximately 4,800 FBI agents now, 1,600 of whom are investigating Atomic Energy Commission employees. FBI expects to begin releasing these 1,600 shortly. . . . Civil Service, on the other hand, has fewer than 100 investigators, none of whom is especially trained in the techniques required in loyalty investigations. . . . It is precisely because of the dangers that I believe the FBI is a better agency than Civil Service to conduct loyalty investigations for new employees; the more highly trained, organized and administered an agency is, the higher should be its standards." (Memorandum from Clark Clifford to the President, 5/7/47.) (Harry S. Truman Library.)

²²² Memorandum from Clark Clifford to the President, 5/9/47. Letter from President Truman to H. B. Mitchell, United States Civil Service Commission, 5/9/47. (Harry S. Truman Library.)

²²³ Memorandum from J. Edgar Hoover to Attorney General Clark, Re: Executive Order 9835, 5/12/47. (Harry S. Truman Library.)

²²⁴ Memorandum from Clark Clifford to the President, 5/23/47. (Harry S. Truman Library.)

²²⁵ Bontecou, *The Federal Loyalty-Security Program*, pp. 33-34.

no exceptions" to the general rule that the FBI would make all loyalty investigations.²²⁰

The rationale for investigating groups under the authority of the loyalty-security program changed over the years.

Such investigations supplied a body of intelligence data against which to check the names of prospective federal employees.²²¹ By the mid-1950s, the Communist Party and other groups fitting the standards for the Attorney General's list were no longer extensively used by Soviet intelligence for espionage recruitment.²²² Therefore, FBI investigations of such groups became—in combination with the "name check" of Bureau files—almost entirely a means for monitoring the political background of prospective federal employees. They also came to serve a pure intelligence function of keeping the Attorney General informed of "subversive" influence and infiltration.²²³

No organizations were formally added to the Attorney General's list after 1955. 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.²²⁴ However, the FBI's "name check" reports on prospective employees were never limited to information about groups on the list. The list's criteria were independent standards for evaluating an employee's background, regardless of whether a group was formally designated by the Attorney General.²²⁵

After 1955, a substitute for designation on the Attorney General's list was the FBI's "characterization" or "thumb-nail sketch" of a group. Thus, if a "name check" uncovered information about a prospective employee's association with a group which *might* fall under the categories for the list, the FBI would report the data and attach a "characterization" of the organization setting forth pertinent facts relating to the standards for the list.²²⁶ This procedure made it unnecessary for the Attorney General to add groups to the formal list, since FBI "characterizations" served the same purpose within the executive branch.

²²⁰ Memorandum from J. R. Steelman, Assistant to the President, to the Attorney General, 11/3/47.

²²¹ FBI "name checks" are authorized as one of the "national agencies checks" required by Executive Order 10450, section 3(a).

²²² FBI monograph, "The Menace of Communism in the United States Today" (1955), pp. iv-v; testimony of former FBI liaison with CIA, 9/22/75, p. 32.

²²³ The FBI official in charge of the Internal Security Section of the Intelligence 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", and 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.)

²²⁴ Memoranda from the Attorney General to Heads of Departments and Agencies, 4/20/53; 7/15/53; 9/28/53; 1/22/54.

²²⁵ Executive Order 10450, section 8(a) (5).

²²⁶ 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. (The SAC Letter is a formal regular communication from the FBI Director to all Bureau field offices.)

D. The Emergency Detention Program, 1946-1950

The development of plans during this period for emergency detention of dangerous persons and for intelligence about such persons took place entirely within the executive branch. In contrast to the employee security program, these plans were not only withheld from the public and Congress but were framed in terms which disregarded the legislation enacted by Congress. Director Hoover's decision to ignore Attorney General Biddle's 1943 directive abolishing the wartime Custodial Detention List had been an example of the inability of the Attorney General to control domestic intelligence operations. In the 1950s the FBI and the Justice Department collaborated in a decision to disregard the attempt by Congress to provide statutory direction for the Emergency Detention Program. This is not to say that the Justice Department itself was fully aware of the FBI's activities in this area. The FBI kept secret from the Department its most sweeping list of potentially dangerous persons, first called the "Communist Index" and later renamed the "Reserve Index," as well as its targeting programs for intensive investigation of "key figures" and "top functionaries" and its own detention priorities labeled "Detcom" and "Comsab".

Director Hoover advised Attorney General Clark in March 1946 of the existence of its Security Index, although he did not say that it had existed since Attorney General Biddle's 1943 directive. The Index listed persons "who would be dangerous or potentially dangerous in the event of . . . serious crisis, involving the United States and the U.S.S.R."²³³ The Justice Department then prepared a memorandum concluding that the available options for action in an emergency were a declaration of martial law or suspension of the privilege of the writ of habeas corpus.²³⁴ The FBI Director recommended going to Congress to secure "statutory backing for detention."²³⁵

After a conference between Department and FBI officials, the FBI submitted a lengthy analysis of its standards for classifying potentially dangerous persons. The memorandum gave specific examples of "Communists and Communist sympathizers whose names appear in the Bureau's Security Index." However, the FBI did not provide any specific examples in the category "Espionage Suspects and Government Employees in Communist Underground." Assistant Director Ladd advised Director Hoover of the reason for excluding any such examples:

The Bureau has identified over 100 persons who are logically suspected of being in the Government Communist Underground; however, at the present time, the Bureau does not have evidence, whether admissible or otherwise, reflecting actual membership in the Communist Party. It is believed that for security reasons, examples of these logical suspects should not be set forth at this time.

²³³ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/8/46.

²³⁴ Memorandum from T. L. Caudle, Assistant Attorney General, to Attorney General Clark, Re: Detention of Communists in the event of sudden difficulty with Russia, 7/11/46.

²³⁵ Memorandum from J. Edgar Hoover to the Attorney General, 8/5/46.

The Director noted, "I most certainly agree. There are too many leaks."²²⁶

The FBI memorandum explained that potentially dangerous persons included not only "every convinced and dependable member of the Communist Party," but also other individuals "who regard the Soviet Union as the exponent and champion of a superior way of life." The FBI listed:

known members of the Communist Party, USA; strongly suspected members of the Communist Party, USA; and persons who have given evidence through their activities, utterances and affiliations of their adherence to the aims and objectives of the Party and the Soviet Union.

The FBI provided a breakdown of the "fields of endeavor not directly identified with the Communist Party" where Communists on the Security Index were "promoting Communist Party objectives and principles." These included:

A. Organized Labor.—The Bureau has followed closely Communist infiltration of labor and is continually endeavoring to identify Communists in the labor movement.

B. Communist "Front" Organizations.—There are numerous of these organizations which not only serve as political and pressure instruments, but also as media for recruiting and raising funds for the Communist Party.

C. Exploitation of Racial Groups and Conditions.—In many areas of the country where racial tension has been prevalent, conspiratorial activity on the part of Communists could very easily instigate race riots.

D. Nationality Groups.—Communists have worked actively and intensely among various foreign language groups, endeavoring to control their political thinking and attempting to utilize them as pressure and propaganda media.

E. Youth.—[The leading "front"] organization could be effectively used, in the event of war with the Soviet Union, to urge draft evasion, "conscientious" objection and insubordination in the armed forces.

F. Propaganda Activities.—Communists have utilized several organizations in the United States to propagandize [for] the Soviet Union.

G. Political Work.—The Communists look upon obtaining informers in the major political parties or in other political bodies . . . as an excellent means of obtaining advice, political appointments, and other political influence.

H. Education and Cultural Work.—In the field of cultural work the Communist penetration of the motion picture industry is one of the best examples.

I. Science and Research.—In this field it is well established that the Communists and the Soviets are extremely anxious and desirous of obtaining the secret of the atomic bomb and

²²⁶ Memorandum from D. M. Ladd to the Director, 9/5/46.

other highly confidential and highly important scientific developments. Furthermore, existing scientific groups have been infiltrated by Communists with the view in mind of propagandizing the relinquishment of the secret of the atomic bomb by the United States. . . .

In addition, the FBI gave examples from the Security Index of "persons holding important positions who have shown sympathy for Communist objectives and policies" and therefore "might possibly serve the Community Party and/or the Soviet Union should war break out." Finally, the FBI pointed out that the Security Index included "Trotskyite Communists or members of such non-Stalinist groups as the Socialist Workers Party. . . ." Although such groups were "opposed to the Stalinist-Communist rule in the Soviet Union," many of them looked upon the Soviet Union "as the center for world revolution." Thus it was "entirely possible" in the event of a war that these groups "would engage in activities aimed at our national security and at hampering of our war effort."²²⁷

The Justice Department raised no objection to the FBI's standards, although it ignored the FBI Director's idea for legislation.

The FBI proceeded under this authority until late 1947, when Director Hoover objected to the Justice Department's tentative plans (based on suspension of habeas corpus) and again stressed the need for "appropriate legislation."²²⁸ In response, a "blind memorandum" was prepared in the Justice Department. As summarized and quoted by the FBI, it stated, "The present is no time to seek legislation. To ask for it would only bring on a loud and acrimonious discussion. . . ." In an emergency the President could issue a proclamation suspending the writ of habeas corpus which Congress could ratify later if it "is in a position to assemble—and if it is not, then the situation has obviously become so desperate that the President's actions will not be questioned." What was needed was "sufficient courage to withstand the courts . . . if they should act" and "a campaign of education directed to the proposition that Communism is dangerous." This educational purpose would be served by prosecuting Communist leaders under the Smith Act.²²⁹

In view of the Justice Department's position, the FBI Intelligence Division recommended reviewing the Security Index to keep it up-to-date, developing a "plan of action" for the apprehension of dangerous persons, and studying more carefully the information on persons most likely to be "saboteurs and espionage agents." The Intelligence Division also agreed with the Justice Department on the need to prosecute Communist leaders under the Smith Act so as to "obtain a Federal adjudication establishing the Communist Party as illegal for advocating the overthrow of government by force and violence."

. . . it is felt that as a broad but an immediate objective of the Bureau that it work earnestly to urge prosecution of important officials and functionaries of the Communist Party, particularly under Sections 10-13 of Title 18, United States

²²⁷ Memorandum from the FBI Director to the Attorney General, 9/5/46.

²²⁸ Memorandum from J. Edgar Hoover to Attorney General Clark, 10/20/47.

²²⁹ Memorandum from D. M. Ladd to J. Edgar Hoover, 1/22/48.

Code. Prosecution of Party officials and responsible functionaries would, in turn, result in a judicial precedent being set that the Communist Party as an organization is illegal; that it advocates the overthrow of the government by force and violence; and finally that the patriotism of Communists is not directed towards the United States but towards the Soviet Union and world Communism. Once this precedent is set then individual members and close adherents or sympathizers can be readily dealt with as substantive violators. This in turn has an important bearing on the Bureau's position should there be no legislative or administrative authority available at the time of the outbreak of hostilities which would permit the immediate apprehension of both aliens and citizens of the dangerous category.

Finally, the Intelligence Division proposed that Bureau inspectors review "the investigation of Communist activities in all field offices," since Bureau headquarters officials had "no way of knowing the contents of field office files concerning all potentially dangerous persons." The inspectors would make sure that the field was "following those dangerous and potentially dangerous persons as closely as possible."²¹⁰

Thereafter, FBI Director Hoover again advised the Attorney General that he disagreed with the Justice Department's position against legislation, suggesting that it would "be adopted readily by Congress." Hoover also observed that the Attorney General "might wish to consider the prosecution well in advance of such an emergency of the Communist Party under [the Smith Act] . . . thereby obtaining judicial recognition of the aims and purposes of the Communist Party."²¹¹

Instructions were issued to FBI field offices setting priorities for an intensified investigation of "Security Index subjects" and preparation of "a Communist Index (as distinguished from the Security Index) which will contain information on all known Communist Party members." Procedures for handling Security Index data were revised, and the field offices were asked for suggestions on how best to implement a detention program.²¹²

Numerous draft proclamations and orders were prepared by the Justice Department and compiled in an "Attorney General's Portfolio" for use in an emergency. The FBI began using IBM punch cards for the storage and retrieval of its Security Index data.²¹³ Lists of the names of persons on the Security Index were forwarded periodically to the Internal Security Section of the Justice Department's Criminal Division, beginning in October 1948.²¹⁴

The Emergency Detention Plan finally took shape in 1949, pursuant to an agreement executed on February 11 by Secretary of Defense James Forrestal and Attorney General Clark. The purpose of the

²¹⁰ Memorandum from Ladd to Hoover, 1/22/48.

²¹¹ Memorandum from FBI Director to the Attorney General, 1/27/48. The Justice Department secured Smith Act indictments against the Party's national leaders later in 1948, and they were convicted in 1949.

²¹² Memorandum from FBI Headquarters to all SACs, 3/15/48, SAC Letter No. 57, Series 1048, 4/10/48.

²¹³ Memorandum from T. J. Baumgardner to D. M. Ladd, 6/28/49.

²¹⁴ Memorandum from H. B. Fletcher to D. M. Ladd, 8/26/49.

agreement was "to provide maximum security with respect to the apprehension and detention of those persons who, in the event of war or other occasion upon which Presidential Proclamations, Executive Orders, and applicable statutes come into operation, are to be taken into custody and held pending further disposition." The agreement provided "that the entire program of apprehending and detaining civilians in such an emergency is the responsibility of the Attorney General. . . ." It also stated that the FBI was "designated by the Attorney General as the agency charged with the complete responsibility of investigating and apprehending the persons to be detained."²⁴⁵

The Assistant to the Attorney General asked the FBI in September 1949 for "the standards upon which decisions are based to incorporate names in the Security Index list or to remove them."²⁴⁶ Director Hoover replied,

The basic qualification required for inclusion of an individual in the security index is that such an individual is potentially dangerous or would be dangerous in the event of an emergency to the internal security of this country. The elements going into measuring an individual's potential dangerousness or dangerousness in the event of an emergency consist of two broad elements: (1) membership, affiliation or activity indicating sympathy with the principal tenets of the Communist Party or similar ideological groups and the Nationalist Party of Puerto Rico; and (2) a showing of one or more of the following:

- a. activity in the organization, promoting its aims and purposes;
- b. training in the organization, indicating a knowledge of its ultimate aims and purposes;
- c. a position in a mass organization of some kind where his affiliation or sympathy as set forth in element one will determine the destiny of the mass organization;
- d. employment or connection with an industry or facility vital to the national defense, health and welfare;
- e. possessing a potential for committing espionage or sabotage.

No individual was included on the Index until he had been "investigated by the Bureau"; and deletions were made "when an individual no longer fits the standards for inclusion. . . ."²⁴⁷

These general standards represented several different programs developed within the FBI in connection with the Security Index. Field offices were instructed to give special attention to "top functionaries" and "key figures" in the Communist Party. In addition, a "Comsab program" concentrated on Communists with a potential for sabo-

²⁴⁵ *Joint Agreement of the Secretary of Defense and the Attorney General Respecting the Temporary Detention of Dangerous Persons in Event of Emergency*, 2/11/49, revised by Attorney General Herbert Brownell and Deputy Secretary of Defense R. B. Robertson, Jr., 9/6/56.

²⁴⁶ Memorandum from Peyton Ford to Hoover, Personal and Confidential, 9/13/49.

²⁴⁷ Memorandum from the FBI Director to the Assistant to the Attorney General, 9/16/49.

age "either because of their training or because of their position relative to vital or strategic installations or industry." Finally, under the plans for the detention of Communists, the FBI had a "Detcom program" which was concerned with the individuals "to be given priority arrest in the event of . . . an emergency." Priority under the Detcom program was given to "all top functionaries, all key figures, all individuals tabbed under the Comsab program," and "any other individual who, though he does not fall in the above groups, should be given priority arrest because of some peculiar circumstances."²⁴⁸

If an individual did not meet the standards for the Security Index because investigation failed "to reflect sufficient disloyal information," he was considered for the Communist Index which was "a comprehensive compilation of individuals of interest to the internal security." Names for both the Communist Index and the Security Index would be produced by "loyalty of government employee investigations" and by "espionage and foreign intelligence investigations," as well as by "all other types of investigations." The reports of any FBI investigation of persons on the Security or Communist Index, regardless of the subject, were to be sent to the Security Index Desk at FBI headquarters. Finally, FBI personnel were instructed that "no mention must be made in any investigative report relating to the classifications of top functionaries and key figures, nor to the Detcom or Comsab Programs, nor to the Security Index or the Communist Index. These investigative procedures and administrative aids are confidential and should not be known to any outside agency."²⁴⁹ A review of FBI documents indicates that only the Security Index was made known to Justice Department officials.

In July 1950, when the Congress and the President were considering the Emergency Detention Act, Attorney General McGrath asked the FBI for an analysis of the Security Index.²⁵⁰ The FBI provided the following breakdown of the statistics by "Nationalistic Tendency or Organizational Affiliation":

Communist Party, USA.....	11,401
Socialist Workers Party.....	308
Independent Socialist League.....	45
Nationalist Party of Puerto Rico.....	77
Independent Labor League.....	2
Revolutionary Workers League.....	1
Proletarian Party of America.....	0
Total	11,930

Of these, 9,258 were native born citizens, 2,281 were naturalized citizens, 296 were aliens, and 95 were of unknown nationality.²⁵¹

By early 1951, the total had increased to 13,901 names as the result of an FBI decision after the outbreak of the Korean War to broaden "the basis for inclusion in the Security Index to include all active members of the Communist Party." The size of the Communist Index, as contrasted with the Security Index, was indicated by the figures from the New York field office which had 2,897 names on the Se-

²⁴⁸ SAC Letter No. 97, Series 1949, 10/10/49.

²⁴⁹ SAC Letter No. 97, Series 1949, 10/10/49.

²⁵⁰ Memorandum from the Attorney General to the FBI Director, 7/25/50.

²⁵¹ Memorandum from the FBI Director to the Attorney General, 7/27/50.

curity Index and 42,000 names on the Communist Index. Since the Communist Index was based on "allegations of Communist activity," it was "a measure of investigations performed." If this proportion applied "throughout the field," as the FBI memorandum suggested, then the Communist Indexes in the field offices contained over 200,000 names.²⁵²

E. The Emergency Detention Act of 1950 and FBI/Justice Department Noncompliance

There is no indication that Congress was advised of these plans or the role of the Smith Act prosecution in them. When Congress was considering the Emergency Detention Act of 1950, President Truman's staff advised him that he could safely veto the measure in view of the government's power to use the Smith Act in an emergency. One of his aides said the Justice Department could "arrest immediately all principal national and local leaders of the Communist Party in the United States under the Smith Act, and bail could be set sufficiently high so that they could not be sprung."²⁵³

The Emergency Detention Act of 1950 set forth specific standards for the apprehension of persons in the event of an "internal security emergency" declared by the President. The basic criterion was whether there was "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." The statute provided for hearings after arrest before presidentially appointed hearing officers, review by an administrative board, and appeal to the U.S. Court of Appeals.²⁵⁴ Nevertheless, the FBI and the Justice Department made no changes in either the Security Index criteria or the previous detention plans to bring them into conformity with the statute.

Shortly after passage of the Detention Act, according to an FBI memorandum, Attorney General J. Howard McGrath advised Director Hoover to disregard it and "proceed with the program as previously outlined." Justice Department officials were quoted as recognizing that the act was "undoubtedly in conflict with the Department's proposed detention program," but that the act's provisions were "unworkable."²⁵⁵

The Justice Department also advised the FBI that it did not have adequate personnel to review the placement of names on the Security Index and that in an emergency "all persons now or hereafter included by the Bureau on the Security Index should be considered subjects for immediate apprehension, thus resolving any possible doubtful cases in favor of the Government in the interests of the national security."²⁵⁶

The FBI continued to furnish Security Index names to the Justice Department, with one exception. The names of certain espionage subjects were not made available to the Department "for security rea-

²⁵² Memorandum from D. M. Ladd to the FBI Director, 1/12/51.

²⁵³ Memorandum of S. J. Spingarn, 7/21/50. A note on this memorandum indicates that a copy was given to the President by his counsel, Charles Murphy.

²⁵⁴ Title II, Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 811-820.

²⁵⁵ Memorandum from A. H. Belmont to D. M. Ladd, 10/15/52.

²⁵⁶ Memorandum from Peyton Ford, Deputy Attorney General, to the FBI Director, 12/1/50.

sons." An internal FBI memorandum stated that apprehension of such persons in an emergency "would destroy chances of penetration and control of an operating Soviet espionage parallel or would destroy known chances of penetration and control of a 'sleeper' parallel."²⁵⁷ These counterespionage investigations were supervised by the Espionage Section of the FBI Intelligence Division, while all other domestic intelligence investigations under the Security Index program and related programs were supervised in the Division's Internal Security Section.²⁵⁸ There was also a category for "prominent persons" who were given special review since their apprehension "might cause the Bureau some embarrassment because these individuals would hold themselves out as martyrs" and thus "result in considerable adverse publicity and criticism of the FBI."²⁵⁹

By May 1951, the Security Index had grown to 15,390 names, of which over 14,000 were Communists. FBI officials decided to urge the Justice Department to pass on each name (except espionage subjects) so that, among other reasons, "the Bureau would not be open to an allegation of using Police State tactics."²⁶⁰ FBI Intelligence Division officials discussed the matter with officials of the Justice Department's Criminal Division, who advised that Criminal Division attorneys would conduct the reviews under the supervision of a former FBI agent and four other Division officials. FBI Director Hoover noted after this meeting, "What do our files show on these five? Can't we get names of the attorneys making the reviews?"²⁶¹

The Justice Department also undertook to revise the Security Index standards "so as to conform more closely" to the provisions of the Emergency Detention Act of 1950.²⁶² An FBI study of the Department's standards concluded that they needed further revision so that the FBI could continue to list the persons it believed to be dangerous. There was a "wide disparity" between the FBI standards and Departmental criteria.²⁶³

The FBI analysis of this problem disclosed how little the Justice Department knew about the scope and purposes of FBI domestic intelligence operations. In at least three areas of vital significance to the Bureau, the Departmental standards showed almost total ignorance of FBI intelligence programs. This lack of knowledge went far beyond the Department's unawareness of the "top functionaries," "key figures," "Comsab," and "Communist Index" programs deliberately kept secret by the FBI. The Justice Department failed to take account of the FBI programs aimed at "Marxist-type or other revolutionary groups" not controlled by the Communist Party, at Communist sympathizers who had not positively "discontinued such associations," and at subjects of "Nationalistic Tendency" or foreign

²⁵⁷ Memorandum from A. H. Belmont to D. M. Ladd, 4/17/51.

²⁵⁸ Memorandum from A. H. Belmont to All Supervisors in the Espionage and Internal Security Sections, 12/5/50.

²⁵⁹ Memorandum from Mr. Clegg to Mr. Tolson, 2/7/51.

²⁶⁰ Memorandum from Mr. Clegg to Mr. Tolson, 5/10/51.

²⁶¹ Memorandum from A. H. Belmont to Mr. Ladd, 5/31/51.

²⁶² Memorandum from Deputy Attorney General Peyton Ford to the FBI Director, 6/1/51.

²⁶³ Memorandum from F. J. Baumgardner to A. H. Belmont, 6/8/51.

intelligence investigations.²⁶⁴ The FBI informed the Justice Department of these disparities. Among the examples of Security Index subjects not covered by the Departmental standards were the following:

Individuals whose party membership or affiliation in a revolutionary group has not been proven, but who have committed past acts of violence during strikes, riots, or demonstrations, and, because of anarchist or revolutionary beliefs, are likely to seize upon the opportunity presented by a national emergency to endanger the public safety and welfare.

A number of individuals are now carried on the Security Index who were placed thereon several years ago . . . yet concerning whom we have no developed current activity of a subversive nature. These individuals have not been removed from the Security Index in the absence of positive indication of disaffection or cessation of the activities which caused them to be placed on the index. Bearing in mind the instructions of the Communist Party relative to "sleepers" and underground activities . . . we have no assurance that these individuals are not a continued potential threat . . . and, indeed, have strong reason to believe to the contrary.

Individuals . . . whose association and activities are closely affiliated with individuals or organizations having a definite foreign interest or connection contrary and detrimental to the interests of the United States. Examples are certain employees and associates of Amtorg, Tass News Agency, United Nations, foreign legations, etc.

The FBI Director asked for "a prompt resolution of the problem" posed by the disparity between FBI and Justice Department criteria.²⁶⁵

It took over a year for the Justice Department to decide that the proposed standards, based on the act of 1950, would be set aside in view of the FBI's desires. In discussions between FBI and Justice Department officials in 1952, the Department officials made clear that they intended to proceed under pre-1950 plans in the event of an emergency. Criminal Division official Raymond Whearty told FBI intelligence executives in March 1952 that the FBI should operate under the "Attorney General's Portfolio" rather than the 1950 act because of the latter's "unworkability."²⁶⁶ The standards in the "portfolio" used by Justice Department attorneys in reviewing Security Index names still differed from the FBI's criteria. Director Hoover noted, "I can't understand the Department having one set of standards and approving a different set for FBI."²⁶⁷

²⁶⁴ Memorandum from F. J. Baumgardner to A. H. Belmont, 6/8/51.

²⁶⁵ Memorandum from the FBI Director to Deputy Attorney General Perton Ford, 6/28/51.

²⁶⁶ Memorandum from A. H. Belmont to Mr. Ladd, 3/19/52.

²⁶⁷ Note on memorandum from A. H. Belmont to D. M. Ladd, 7/10/52.

After meeting with Deputy Attorney General Ross Malone, an Intelligence Division official summarized the differences between the 1950 Act and the "Portfolio":

There are contained among the 19,577 individuals listed in our Security Index the names of many persons whom we consider dangerous but who *do not fall within the standards* set forth in the Internal Security Act of 1950. . . .

The fact that the Internal Security Act of 1950 does not provide for suspension of the Writ of Habeas Corpus would prove a definite hindrance to the execution of necessary measures. . . .

The lack of provision in the act for measures to be taken in the event of threatened invasion precludes the President from taking action against potentially dangerous persons prior to an actual invasion, insurrection, or declaration of war.

The provision in the Act for apprehension of subjects by individual warrants is a factor which would be a detriment, a time-consuming procedure as compared to the use of *one master warrant of arrest* for all subjects apprehended as provided in the Department's Portfolio.

The apparent lack of provision in the Act for *searches* and for confiscation of contraband would be a definite deterrent to our operation. . . .²⁶⁸ [Emphasis added.]

Director Hoover then repeated his request for "a definite and clear cut answer" from the Department.²⁶⁹ Attorney General James McGranery replied:

. . . I wish to assure you that it is the Department's intention to proceed under the program as outlined in the Department's Portfolio invoking the standards now used. This approval, of course, indicates agreement with your Bureau's concepts of the Detention Program and the Security Index standards as outlined in your memorandum of June 28, 1951. . . .²⁷⁰

This directive was classified "Top Secret". For security reasons there were only three copies made of the "Portfolio", two kept by the FBI and one by the Attorney General.²⁷¹

FBI records reveal no change in this policy under Attorney General Herbert Brownell during 1953-1954. In April 1953, Attorney General Brownell granted authority to the FBI "to implement the apprehension and search and seizure provisions of this program immediately upon ascertaining that a major surprise attack upon Washington, D.C., has occurred. . . ." The Attorney General also repeated previous instructions "to apprehend all individuals listed in the Security Index in the event that the . . . program is implemented prior to the completion of the review of the individual cases by the Criminal Division."²⁷²

²⁶⁸ Memorandum from D. M. Ladd to the FBI Director, 11/13/52.

²⁶⁹ Memorandum from the FBI Director to Deputy Attorney General Ross L. Malone, Jr., 11/14/52.

²⁷⁰ Memorandum from the Attorney General to the FBI Director, 11/25/52.

²⁷¹ Memorandum from D. M. Ladd to the Director, 11/13/52.

²⁷² Memorandum from the Attorney General to the FBI Director, 4/27/58.

By the end of 1954, the size of the Security Index had increased to 26,174, of whom 11,033 were designated under the Detcom and Comsab programs for priority apprehension. At that time the Intelligence Division decided to revise the Detcom and Comsab standards, reducing the number by fifty percent to "permit a more efficient handling of the arrests."²⁷³ Shortly thereafter, in response to a request from Attorney General Brownell, the FBI Director provided the Department the "general criteria" used for the Security Index.²⁷⁴ After a meeting between officials of the FBI Intelligence Division and the Justice Department, Director Hoover advised the Assistant Attorney General for the Internal Security Division "that there was no area of disagreement between the Department and this Bureau on the criteria or concepts regarding dangerousness" and that FBI standards were "not all-inclusive. . . ."²⁷⁵

On its own initiative the FBI decided in early 1955 to revise the Security Index criteria, primarily because all cases were not being reviewed by Justice Department attorneys and FBI officials wanted to "minimize the inevitable criticism of the dual role" the Bureau had in both investigating and passing on "the soundness of these cases."²⁷⁶ Soon thereafter the FBI reorganized the work of its Intelligence Division to create a new Subversives Control Section for the supervision of the Security Index and related programs for the investigation of individuals. The Internal Security Section continued to supervise investigations of subversive organizations and individuals considered to be "top functionaries" and "key figures" in those organizations.²⁷⁷ The result of the revision of Security Index standards was to reduce its size to 12,870 by mid-1958. The new standards still differed from the 1950 act and the Department's "Portfolio". To aid in applying the criteria, FBI agents were instructed frequently to interview the individual. "Refusal to cooperate" with such an interview was "taken into consideration along with other facts" in determining his dangerousness.²⁷⁸

The cancelled Security Index cards on individuals taken off the Index after 1955 were retained in the field offices. This was done because they remained "potential threats and in case of an all-out emergency, their identities should be readily accessible to permit re-study of their cases." These cards would be destroyed only if the subject agreed to become an FBI source or informant or "otherwise indicates complete defection from subversive groups."²⁷⁹

Thus, the cancelled cards served as a supplementary detention list which remained available despite the new, tighter standards for the Security Index itself. In 1956, the FBI decided to use these cancelled

²⁷³ Memorandum from A. H. Belmont to L. V. Boardman, 12/8/54.

²⁷⁴ Memorandum from the FBI Director to the Attorney General, 12/23/54.

²⁷⁵ Memorandum from the FBI Director to Assistant Attorney General William F. Tompkins, 1/27/55. In 1954 the Justice Department had established an Internal Security Division, replacing the previous Internal Security Section in the Criminal Division.

²⁷⁶ Memorandum from the FBI Director to the Attorney General, 3/9/55.

²⁷⁷ Staff summary of interview with James F. Bland, former Chief of the FBI Subversives Control Section (1955-1967), 10/13/75.

²⁷⁸ Memorandum from J. F. Bland to A. H. Belmont, 7/30/58.

²⁷⁹ Memorandum from A. H. Belmont to L. V. Boardman, 4/14/55; SAC Letter No. 53-31, 4/19/55.

cards as the basis for a revised Communist Index, since this Index had "grown unwieldy" and was "serving very little purpose." There is no indication in FBI records that the Justice Department was ever advised of the existence of the Communist Index. The Communist Index was reviewed in 1959 and reduced from 17,783 to 12,784 names.²⁸⁰ In mid-1959 the Security Index included 11,982 names.²⁸¹

The Communist Index was renamed the Reserve Index in 1960, and subdivided into two sections. Section A was to include

. . . those individuals whose subversive activities do not bring them within the SI criteria but who, in a time of national emergency, are in a position to influence others against the national interests or are likely to furnish financial or other material aid to subversive elements due to their subversive associations and ideology. Included therein would be individuals falling within the following categories: (1) Professors, teachers and educators; (2) Labor Union organizers and leaders; (3) Writers, lecturers, newsmen and others in the mass media field; (4) Lawyers, doctors and scientists; (5) Other potentially influential persons on a local or national level; (6) Individuals who could potentially furnish financial or material aid. This section could well include the names of such individuals as Norman Mailer, a novelist and author of "The Naked and the Dead" and an admitted "leftist", and -----, a former history teacher who was recently fired for praising Premier Khrushchev before his history class and stating that the pilot of the U-2 plane should be executed by the Reds.

Section B would follow the standards for the Communist Index, with the additional criterion "membership in the Nation of Islam." The purpose of the Reserve Index was to "have a special group of individuals listed therein who should receive priority consideration with respect to investigation and/or other action following the apprehension of our SI subjects."²⁸² The FBI disseminated investigative reports on Reserve Index subjects to the Justice Department, but there is no indication that the Department was advised of the existence of the Index itself.²⁸³

Throughout the 1950s, supervision of the collection of intelligence information about individuals for the Security Index, the Communist Index, and the Detcom programs was a major function of the FBI Intelligence Division. In addition, the "key figure" and "top functional" programs were operated separately from the Indexes and Detcom. The purpose of these two programs was "to select for special attention those individuals in a subversive movement who are of outstanding importance to the effectiveness of the movement." Field offices were instructed to obtain photographs and handwriting specimens, and to maintain intelligence coverage of the subject's activities through "contact with informants" and "established sources."²⁸⁴

²⁸⁰ Memorandum from J. F. Bland to A. H. Belmont, 11/5/59.

²⁸¹ Memorandum from J. F. Bland to A. H. Belmont, 8/18/59.

²⁸² Memorandum from A. H. Belmont to Mr. Parsons, 6/3/60.

²⁸³ Memorandum from J. F. Bland to A. H. Belmont, 9/9/60.

²⁸⁴ 1960 FBI Manual Section 87, pp. 66-70.

F. The Scope of FBI "Subversion" Investigations

While the Bureau targeted "key figures" and "top functionaries" for special attention, the scope of the FBI program for security intelligence investigations of individuals was far wider. The FBI Manual stated, "It is not possible to formulate any hard-and-fast standards by which the dangerousness of individual members or affiliates of revolutionary organizations may be automatically measured because of manner revolutionary organizations function and great scope and variety of activities." Individuals were investigated if they were "members in basic revolutionary organizations" or were "espousing the line of revolutionary movements." 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." Anonymous allegations could start an FBI investigation if they were "sufficiently specific and of sufficient weight." On the other hand, prior approval from FBI headquarters was required for investigating students, faculty members, and U.S. or foreign government officials. Investigations were to be "thorough and exhaustive," developing "all pertinent information concerning the subject's background and subversive activity."

The FBI took the following steps if it learned that "any individual on whom we have subversive derogatory information" planned travel abroad:

Information concerning these subjects' proposed travel abroad, including information concerning their subversive activities, is furnished by the Bureau to the Department of State, the Central Intelligence Agency, and [FBI] legal attaches if the proposed travel is in areas covered by such and, frequently, requests are made of one or all of the above to place stops with appropriate security services abroad to be advised of the activities of these subjects. [Emphasis added.]

Domestic investigative techniques included a review of existing FBI files, coverage by confidential informants, physical surveillance, photographic surveillance, public source records, records of private firms, and interviews with the subject.²⁸⁵

In addition to the policies for intelligence investigations of individuals, the FBI had substantial programs for collecting intelligence about "Marxist revolutionary-type organizations" including a "Cominfil" program aimed at groups suspected of being infiltrated by Communists. The purpose of these programs was not only to obtain evidence for possible prosecution, but also "to follow closely the activities of these organizations from an intelligence viewpoint to have a day-to-day appraisal of the strength, dangerousness, and activities of these organizations seeking the overthrow of the U.S. Government."²⁸⁶

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.

²⁸⁵ 1960 FBI Manual Section 87, pp. 22-38.

²⁸⁶ 1960 FBI Manual Section 87, pp. 5-10.

Government.”²⁸⁷ One purpose of investigation was possible prosecution under the Smith Act. But no prosecutions were initiated under that Act after 1957.²⁸⁸ The Justice Department advised the FBI in 1956 that such a prosecution required “an actual plan for a violent revolution.”²⁸⁹ The Department’s position in 1960 was that “incitement to action in the foreseeable future” was needed.²⁹⁰ The First Amendment required:

something more than language of prophecy and prediction and implied threats against the Government to establish the existence of a clear and present danger to the nation and its citizens.²⁹¹

Despite the strict requirements for prosecution, the FBI kept on investigating “subversive” organizations “from an intelligence viewpoint” to appraise their “strength” and “dangerousness.”²⁹²

The FBI’s broadest program for collecting intelligence was carried out under the heading COMINFIL, for Communist infiltration.²⁹³

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
- Industry²⁹⁴

FBI investigations covered “the entire spectrum of the social and labor movement in the country.”²⁹⁵ The purpose was pure intelligence—to “fortify” the government against “subversive pressures”²⁹⁶ or to “strengthen” the government against “subversive campaigns.”²⁹⁷ In other words, the COMINFIL program supplied the Attorney General and the President with political intelligence about groups

²⁸⁷ 1960 FBI Manual Section 87, p. 5.

²⁸⁸ 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.” Cf., *Yates v. United States*, 354 U.S. 208 (1957).

²⁸⁹ Memorandum from Assistant Attorney General Tompkins to Director, FBI, 3/15/50.

²⁹⁰ Memorandum from Assistant Attorney General Yeagley to Director, FBI, 5/17/60.

²⁹¹ Memorandum from Assistant Attorney General Yeagley to Director, FBI, 9/23/60.

²⁹² 1960 FBI Manual Section 87, p. 5.

²⁹³ 1960 FBI Manual Section 87, pp. 83-84.

²⁹⁴ 1960 FBI Manual Section 87, pp. 5-11.

²⁹⁵ Annual Report of the Attorney General for Fiscal Year 1955, p. 105.

²⁹⁶ Annual Report for 1958, p. 338.

²⁹⁷ Annual Report for 1964, p. 375.

seeking to influence national policy, so that they might assess whether Communists were involved.²⁹⁸

The FBI said it was not concerned with the "legitimate activities" of "nonsubversive groups," but only with whether Communists were "gaining a dominant role."²⁹⁹ Nevertheless, COMINFIL reports inevitably described such "legitimate activities" unrelated whatsoever to the role of alleged "subversives." The FBI Manual required prior approval from FBI headquarters before opening a COMINFIL investigation. The techniques used included contacting established sources and informants and pretext interviews with members of the organization.³⁰⁰

An example of one such investigation was the FBI's COMINFIL case on the NAACP. In 1957, the New York Field Office prepared a 137-page report covering the intelligence gathered during the previous year. Copies were disseminated to the three military intelligence agencies. The report described the national section of the NAACP, its growth and membership, its officers and directors, its national convention, its stand on communism and the role in its state and local chapters of alleged Communists, members of Communist front groups, and the Socialist Workers Party. A synopsis of the report discussed the size of the NAACP and added.

NAACP 47th Annual Convention held June 26 to July 1, 1956, in San Francisco, California. Convention reaffirmed and extended 1950 resolution against Communism. Resolution bars NAACP membership to individuals with Communist affiliations. Informant, who has furnished reliable information in the past, advised that there was no activity at the convention which could be termed Communist activity. Informant, who has furnished reliable information in the past, advised that two individuals of national CP status would attend convention. NAACP in letter dated 11/3/55 to branch presidents instructs branches to be alert for Communists in the organization and see that no persons of questionable reputations are permitted to obtain positions in NAACP branches. The CP, USA continued to consider NAACP as main Negro mass organization and desires program to win leadership among Negro organizations. September 1956 issue of "Political Affairs" carried an article entitled "The NAACP Convention." Various attempts have been made by the CP to infiltrate and dominate certain NAACP branches throughout the United States and its territories. Identities of known CP members in various branches throughout the United States set forth.³⁰¹

²⁹⁸ 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.)

²⁹⁹ Annual Report for 1955, p. 165.

³⁰⁰ 1950 FBI Manual Section 87, pp. 83-84.

³⁰¹ Memorandum from New York City Field Office to FBI Headquarters, 2/12/57.

The report was based on information supplied by 151 informants or confidential sources, including at least four who attended the NAACP national convention; most of the informants or sources provided data on individuals with subversive connections who had either joined or associated with the NAACP.

Other reports from field offices in Boston, Seattle, Philadelphia, and Milwaukee provide additional examples of the scope of FBI intelligence coverage of the NAACP. In Boston, informants provided membership figures, and the FBI compiled lists of officers from public sources.³⁰² An informant in Seattle obtained a list of officers and reported on a meeting where signatures were gathered on a "petition directed to President Eisenhower" and plans announced for two members to go to Washington, D.C., for a "Prayer Pilgrimage."³⁰³ The Philadelphia office used an informant to discover the officers and total membership of the NAACP chapter and to learn its general objective—"to . . . the enactment of new civil rights laws."³⁰⁴ A Milwaukee informant also provided a list of officers.³⁰⁵ Although these reports concentrated on information about alleged Communist infiltration, they all included data on individuals and activities such as the above having no connection with "subversive activity."

The FBI and the Justice Department both justified the continuation of COMINFIL investigations, despite the Communist Party's decline in the fifties and early sixties, 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."³⁰⁶ 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 had under investigation "two hundred known or suspected communist front and communist-infiltrated organizations."³⁰⁷ 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.³⁰⁸

By 1960 the FBI had opened approximately 432,000 headquarters files on individuals and groups in the "subversive" intelligence field. Between 1960 and 1963 an additional 9,000 such files were opened.³⁰⁹

Apart from domestic intelligence programs aimed at the Communist Party, Communist infiltration, and other "revolutionary" groups such

³⁰² Memorandum from Boston Field Office to FBI Headquarters, 2/28/57.

³⁰³ Memorandum from Seattle Field Office to FBI Headquarters, 6/1/57.

³⁰⁴ Memorandum from Philadelphia Field Office to FBI Headquarters, 6/7/57.

³⁰⁵ Memorandum from Milwaukee Field Office to FBI Headquarters, 6/13/57.

³⁰⁶ Annual Report of the Attorney General for Fiscal Year 1959, pp. 247-248.

³⁰⁷ 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.

³⁰⁸ A former head of the FBI Intelligence Division has testified that such language was deliberately used to exaggerate the threat of Communist influence. William C. Sullivan testimony, 11/1/75, pp. 40-41.

³⁰⁹ Memorandum from FBI to Senate Select Committee, 10/6/75.

as the Socialist Workers Party and the Nationalist Party of Puerto Rico, the FBI had extensive programs in the foreign intelligence and counterintelligence areas. Within the FBI Intelligence Division, a separate Counterintelligence Branch supervised investigations and other operations directed against hostile foreign intelligence services and espionage activities. This branch took over supervision of cases of Communists suspected of being involved in espionage activity. The Counterintelligence Branch included an Espionage Section, a Liaison Section, and a Nationalities Section. The Internal Security (or domestic intelligence) Branch included the Internal Security Section for organizations, the Subversives Control Section for individuals, and a Research Section.

G. The Justice Department and FBI Intelligence Investigations

The Justice Department supplied only the most general guidance to the FBI for the investigation of organizations. An example is the FBI's intelligence investigation of the Nation of Islam. As early as 1952, the Criminal Division advised the FBI that the Nation of Islam would not then be placed on the "Attorney General's list," but that available information indicated that the organization "may be a fit subject for designation . . ." under the employee security program.³¹⁰ The following year the Criminal Division told the FBI that "the evidence presently available is insufficient to establish a violation of the Smith Act," but that the FBI should continue to furnish investigative reports "with a view to possible future prosecution under the Smith Act."³¹¹ In 1955, the FBI asked the Department's Internal Security Division whether it should continue to include leading members of the Nation of Islam on the Security Index.³¹² The Internal Security Division replied six months later that "the evidence did not warrant designation for the 'Attorney General's list,' but that 'statements and activities on the part of individual members of the Cult indicating anarchistic and revolutionary beliefs should be considered in making a judgment as to whether or not such individual members come within the revised Security Index criteria.'"³¹³ Shortly thereafter, the Internal Security Division advised that the evidence was still "insufficient to constitute a violation of the Smith Act," since the statements of group leaders were "more in the realm of prophecy than of an actual plan for a violent revolution."³¹⁴

Nevertheless, the FBI continued to investigate and supply reports to the Justice Department under the authority of the employee security program and the emergency detention program.³¹⁵ In June 1959, Director Hoover noted on an internal FBI memorandum, "Is there no

³¹⁰ Memorandum from Assistant Attorney General James M. McInerney to the FBI Director, 5/5/52.

³¹¹ Memorandum from Assistant Attorney General Warren Olney III to the FBI Director, 2/9/53.

³¹² Memorandum from the FBI Director to Assistant Attorney General William F. Tompkins, 8/8/55.

³¹³ Memorandum from Assistant Attorney General Tompkins to the FBI Director, 2/7/56.

³¹⁴ Memorandum from Assistant Attorney General Tompkins to the FBI Director, 3/15/56.

³¹⁵ Memorandum from the FBI Director to Assistant Attorney General Tompkins, 5/11/56; Assistant Attorney General Tompkins to FBI Director, 4/12/57.

action Dept. can take against the NOI?"³¹⁶ Therefore, the FBI asked the Internal Security Division to review the reports submitted by the Bureau and "advise whether any type of legal action against the NOI is feasible in the light of this additional information."³¹⁷ The Internal Security Division replied that the FBI reports "failed to disclose the type of evidence required" for a Smith Act prosecution, but that designation for the "Attorney General's list" was "under consideration." Upon receipt of this memorandum, Director Hoover noted, "They always come up with more reasons for no positive action and none for constructive approach."³¹⁸

Nearly a year later, the Internal Security Division advised the FBI that there were "a number of legal problems" with designation of the Nation of Islam for the "Attorney General's list" because the language of the group's leaders "concerning the destruction of the government usually has been couched in terms of prophecy or prediction rather than in terms of incitement to action in the foreseeable future." Nevertheless, the Division would continue to review any "additional information furnished by the Bureau relative to the criteria" of the employee security program.³¹⁹

Director Hoover was still dissatisfied, noting on the FBI's Current Intelligence Analysis for August 31, 1960, "Has the Department ruled on the NOI or are they still 'considering' it?" Hoover believed "nothing would be gained" by writing the Internal Security Division, again, and suggested "an overall memo on NOI be sent A.G. stressing vicious character and statements of this outfit."³²⁰ Consequently, the FBI sent Attorney General William Rogers a summary of the most inflammatory rhetoric of the group and asked him to "consider whether there is any legal action that can be taken or whether the organization can be designated pursuant to the provisions of Executive Order 10450."³²¹

In reply, the Internal Security Division explained again that "the First Amendment would require something more than language of prophecy and prediction and implied threats against the Government to establish the existence of a clear and present danger to the nation and its citizens." Moreover, there was insufficient evidence to meet the criterion of Executive Order 10450 "that it has adopted a policy of advocating or approving the commission of . . . acts of violence to deny others their constitutional rights." Nevertheless, the FBI was requested to "continue its investigation . . . because of the semi-secret and violent nature of this organization, and the continuing tendency on the part of some of its leaders to use lan-

³¹⁶ Memorandum from S. B. Donahue to A. H. Belmont, 6/17/59. (The May 27, 1960, issue of the FBI's "Current Intelligence Analysis" had been devoted to "presentation of picture of growing threat to internal security of Nation of Islam.")

³¹⁷ Memorandum from the FBI Director to the Assistant Attorney General, Internal Security Division, 6/10/59.

³¹⁸ Memorandum from the Acting Assistant Attorney General J. Walter Yeagley to the FBI Director, 7/15/59.

³¹⁹ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 5/17/60.

³²⁰ Memorandum from A. H. Belmont to D. J. Parsons, 9/1/60.

³²¹ Memorandum from the FBI Director to the Attorney General, 9/9/60.

guage of implied threats against the Government. . . ." Director Hoover noted on this memorandum, "Just stalling!"³²²

Thus, for a decade the FBI continued to conduct an intelligence investigation of the Nation of Islam, despite the lack of any evidence to justify federal prosecution or other legal action by the Justice Department. Although the Department had an entire division concerned with internal security matters, it failed almost totally to provide the FBI guidance or direction.

The Internal Security Division contained a Subversive Activities Section to supervise prosecution of Communists under the Smith Act and related statutes (over one hundred Party leaders were prosecuted in the 1950s), a Subversive Organizations Section to enforce the Subversive Activities Control Act against Communist and Communist-front groups and to make designations for the Employee Security Program, an Appeals and Research Section to handle the voluminous appellate litigation and consider legislation, and a Foreign Agents Registration Section. In 1955, the Division received 101,470 memoranda and reports from the FBI.³²³ The Assistant Attorney General in charge of the Internal Security Division from 1958 until 1970, J. Walter Yeagley, was a former official of the FBI Intelligence Division; and his principal deputy, John Doherty, had been FBI Director Hoover's liaison with the White House in the early 1950s.

H. FBI Investigations of "Hate Groups" and "Racial Matters"

During the 1950s the FBI also developed investigative programs in the area of "racial matters," including racial disturbances and "Klan-type organizations, hate organizations, and associated individuals." As early as 1947, designations for the Attorney General's list required data on any organization which advocated the commission of acts of force or violence to deny persons their constitutional rights.³²⁴ At that time President Truman's Committee on Civil Rights endorsed "the principles of disclosure . . . to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups."³²⁵ The first "Attorney General's list" of subversive organizations for the employee loyalty program included various Ku Klux Klan organizations.

The FBI program for Klan-type and hate organizations required investigation of "organizations and associated individuals that . . . have adopted a policy or have allegedly adopted a policy of advocating, condoning, or inciting the use of force or violence to deny others their rights under the Constitution." The intelligence sought included information about the structure, objectives, publications and propaganda, and finances of the organizations, as well as the officers, membership, recruiting activities, and meetings of each klavern or local chapter. Hate groups which did not "qualify for investigation" under

³²² Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 9/23/60.

³²³ Annual Report of the Attorney General for Fiscal Year 1955 pp. 44-60.

³²⁴ Executive Order 9835, 12 Fed. Reg. 1036 (1947). Executive Order 10450, 18 Fed. Reg. 2480 (1953).

³²⁵ President's Committee on Civil Rights, *To Secure These Rights* (1947), p. 52.

these standards were followed "through public source material and established sources."³²⁶

FBI field offices were instructed to "conduct no investigation regarding individual acts of violence allegedly or actually committed by an organization in absence of information indicating violation within Bureau's jurisdiction." Nevertheless, the FBI used its informants and sources within the groups to determine which group was involved in "each such incident" and "whether action taken was on initiative of individual members or with knowledge or approval of leadership." Individual investigations were opened "on officers, leaders, and active workers in these organizations to determine whether they have been involved in acts of violence or have a definite potential for future acts of violence." Names of members attending meetings were "indexed from informants' statements," and names of new members were furnished to FBI headquarters "for indexing purposes." Informants were "developed in all such organizations." However, field offices were cautioned,

Wholesale investigations of individuals of these organizations should not be conducted and investigations of individual members should be initiated only on a most selective basis. Individuals investigated should be those who are key personnel who actually formulate and carry out the organization's policy and not those individuals who merely attend meetings on a regular basis.³²⁷

This restriction was imposed in mid-1956, after supervision of Klan-type and hate matters were transferred from the FBI Intelligence Division to the General Investigative Division.

Nevertheless, the Bureau used its "established sources" to monitor the activities of hate groups which did not "qualify" under the violence standard.³²⁸ Thus, the FBI collected and disseminated intelligence about the John Birch Society and its founder, Robert Welch, in 1959.³²⁹ 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 there was no federal law violation and no basis for putting the group on the "Attorney General's list."³³⁰

³²⁶ 1960 FBI Manual Section 122, p. 1.

³²⁷ 1960 FBI Manual Section 122, pp. 2-3.

³²⁸ 1968 FBI Manual Section 122, p. 1.

³²⁹ The FBI has denied that it ever conducted a "security-type investigation" of the Birch Society or Welch, but 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. Laungardner to W. C. Sullivan, 5/20/63.)

³³⁰ 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. (Dwight D. Eisenhower Library.)

Under the FBI program for "General Racial Matters," the Bureau gathered intelligence on "race riots, civil demonstrations, and similar developments." These developments included "proposed or actual activities of individuals, officials, committees, legislatures, organizations, etc., in the racial field." Although the FBI realized it did not have "investigative jurisdiction over such general racial matters," the Manual stated, "As an intelligence function the Bureau does have the responsibility of advising appropriate Government agencies and officials on both a national and local level of all pertinent information obtained concerning such incidents." FBI responsibilities were also based on the long-standing agreement with military intelligence:

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 and ONI 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.³³¹

The need for federal troops to control civil disturbances was vividly demonstrated in the Little Rock school desegregation events of 1957-1958.

The President was informed during these years of the FBI's "racial matters" intelligence activities. At a Cabinet briefing in 1958, Director Hoover stated:

... we investigate such fanatical and so-called "hate" groups as the Negro Nation of Islam; the Ku Klux Klan; the National States Rights Party, an anti-Jewish and anti-Negro organization; and the "Confederate Underground." The latter is a name which has been mentioned on a number of occasions in recent bombing threats and other forms of violence.

Since January 1, 1957, there have been over 90 bombings, or attempted bombings, in the United States. Of these, at least 69 have involved Negro victims and at least eight Jewish religious and educational facilities. . . .

Recognizing the danger to the national welfare from a general pattern of organized terrorism, the FBI has moved in to expand its assistance to local law enforcement. . . . We are closely checking the activities of individuals prominently involved in racial incidents, such as [a leader of] the Seaboard White Citizens Council of Washington. As a further aid to local law enforcement agencies, the FBI has scheduled a series of special conferences . . . to discuss our cooperative services regarding bombings and threats of bombings against religious and educational institutions.

Our entry into these cases at this new level is not to be interpreted as an attempt on our part to usurp the jurisdiction of local authorities. To give the FBI this jurisdiction

³³¹ 1000 FBI Manual Section 122, pp. 5-6.

would relieve local governments of the basic responsibility to maintain law and order, and the ultimate responsibility rightfully rests at the local level.³²²

Director Hoover's sensitivity to possible criticism for exceeding the FBI's jurisdiction was reflected in a warning to the field offices that racial matters were "extremely delicate and great care must be exercised in the approach to such matters."³²³

There was greater emphasis on right-wing extremism in FBI domestic intelligence policy during 1960-1963. In January 1963, FBI field offices received a thirty-two page set of instructions on how to characterize "Klan-type and hate-type organizations." Field offices were advised that individual and group activities had to be "specifically identified with the correct Klan organization."³²⁴

Instructions to FBI field offices in June 1963 specifically emphasized investigations of "rightist or extremist" groups, based not only on the FBI's criminal investigative jurisdiction and its authority under the Federal Employee Security Program, but also on a general intelligence premise:

"Rightist or extremist" groups operating in the anticommunist field are being formed practically on a daily basis. I wish to re-emphasize the necessity for the field to be alert to, and advise the Bureau concerning, *the formation and identities of such groups*. The field should *also* be alert to the activities of such groups which come within the purview of Executive Order 10450 or are in violation of Federal statutes over which the Bureau has investigative jurisdiction. Investigations, where warranted, should be initiated and handled pursuant to Bureau policy relating to the specific substantive violation. You are reminded that anticommunism should not militate against checking on a group if it is engaged in unlawful activities in violation of Federal statutes over which the Bureau has investigative jurisdiction.

Investigations of groups in this field whose *activities are not in violation* of any statutes over which the Bureau has jurisdiction are not to be conducted without specific Bureau authority. A request for authority to investigate such a group should include the basis for your recommendations regarding investigation.³²⁵ [Emphasis added.]

Thus, the FBI developed a program for collecting general intelligence on right-wing extremism. There is no further reference to this program in comparable instructions to the field issued after 1963.

I. Legal Authority for Domestic Intelligence

During the 1945-1963 period, there were two formal presidential statements (or directives) on FBI domestic intelligence authority—one by President Truman in 1950 and the other by President Eisenhower in 1953. These statements specifically authorized FBI investiga-

³²² FBI Director Hoover's Briefing of the President and the Cabinet, 11/6/58.

³²³ 1000 FBI Manual Section 122, p. 6.

³²⁴ SAC Letter No. 63-4, 1/23/63.

³²⁵ SAC Letter No. 63-27, 6/11/63.

tion of "subversive activities," unlike the more ambiguous Roosevelt directives. Moreover, a confidential directive of the National Security Council in 1949 granted authority to the FBI and military intelligence for counterespionage operations and the investigation of "subversive activities." The power of the National Security Council to issue this order was based, in part, on the National Security Act of 1947. That act also created the Central Intelligence Agency, with a prohibition against its performance of "law enforcement or internal security functions" and a limitation on the authority of the Director of Central Intelligence to inspect FBI intelligence.

The action of the National Security Council in 1949 greatly strengthened the independence of the FBI. The line of authority for FBI and military domestic intelligence now flowed from the National Security Council to an Interdepartmental Intelligence Conference (IIC), composed of the FBI Director (as chairman) and the heads of the military intelligence agencies. This chain of command bypassed the Attorney General. A member of the National Security Council staff in the White House was assigned to serve as the point of contact between the IIC and the NSC. The Attorney General was, as a practical matter, regularly involved in major White House decisions.³³⁰ This arrangement continued until 1962, when President Kennedy placed the Interdepartmental Intelligence Conference under the direct authority of the Attorney General.³³⁷

The testimony before Congress and the floor debate at the time of consideration of the National Security Act of 1947 did not clarify the authority of the FBI. Nevertheless, the legislative history supporting the intent of Congress to exclude the CIA from domestic intelligence was extensive. The restriction against "police, law enforcement or internal security functions" appeared first in President Truman's directive establishing the Central Intelligence Group in January 1946.³³⁸ General Vandenberg, then serving as 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."³³⁹ Proponents of the creation of the Central Intelligence Agency cited the FBI as a model. For example, Allen Dulles stated:

The success of the FBI has been due not only to the ability of the director and the high qualities of his chief assistants, but to the fact that that director has been on that particular job for a sufficient period of years to build up public confidence, an esprit de corps in his organization, and a high prestige. We should seek the same results for our intelligence

³³⁰The 1950 Truman statement on FBI authority was cleared by Acting Attorney General Peyton Ford; and Attorney General Herbert Brownell took part in the National Security Council meeting where the 1953 statement was approved. (Letter from James S. Lay, Jr., Executive Secretary, NSC, to Attorney General J. Howard McGrath, 7/24/50; Memorandum from J. Edgar Hoover to Attorney General Brownell, 12/20/58.)

³³¹National Security Action Memorandum 161, 6/9/62.

³³²Presidential Directive, Coordination of Federal Foreign Intelligence Activities, 1/22/46, 11 Fed. Reg. 1337.

³³³Hearings before the Senate Armed Services Committee on S. 758, 86th Cong. (1947), p. 497.

service, which will operate in the foreign field, and on items of foreign information.³⁴⁰

Secretary of the Navy James Forrestal testified that the purposes of the CIA were "limited definitely to purposes outside of this country, except the collation of information gathered by other Government agencies." The FBI was relied upon "for domestic activities."³⁴¹ 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."³⁴²

Congressmen were also concerned with a provision of the original bill establishing the CIA which gave its Director the power to make "inspection" of the intelligence operations of other government agencies. Congressman Busby urged an amendment "to eliminate the possibility of its [the CIA's] going into the records and books of the FBI because the FBI does not go outside the United States. It is only concerned with internal intelligence and investigations in the United States."³⁴³ Congressman Judd introduced such an amendment "primarily to protect the FBI." He stated:

I do not believe we ought to give this Director of Central Intelligence power to reach into the operations of J. Edgar Hoover and the FBI, which are in the domestic field. . . . All the intelligence the FBI has . . . must be available to the Director of Central Intelligence if it relates to the national security. But the Director of Central Intelligence will not have the right to inspect their operations.

Congressman Judd feared the DCI "coming in and finding out who their agents are, what and where their nets are, how they operate, and thus destroy their effectiveness." He believed the FBI was "too valuable an agency to be tampered with." The amendment was adopted.³⁴⁴

Consequently, the National Security Act of 1947 contained two sections specifically applying to domestic intelligence. First, it provided that the CIA "shall have no police, subpoena, law-enforcement powers, or internal-security functions." Second, it excluded the FBI from the

³⁴⁰ Senate Armed Services Committee Hearings, on S. 758 (1947), pp. 525-526. President Truman had rejected a proposal by FBI Director Hoover in 1945 for expanding the FBI's wartime Special Intelligence Service, which was assigned to the Western Hemisphere, to a world-wide basis. Don Whitehead, *The FBI Story* (New York, Random House, 1956) p. 79.

³⁴¹ Hearings before the House Committee on Expenditures in the Executive Departments on H.R. 2319, 80th Cong. (1947) p. 127.

³⁴² 98 Cong. Rec. 9480 (1947). "The CIA foreign intelligence agency would intrude into domestic matters . . . in 1944, when General William Donovan, head of the Office of Strategic Services, proposed that the OSS be transformed from a wartime basis to a permanent 'central intelligence service.' Donovan's proposal 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.]

³⁴³ 98 Cong. Rec. 9404 (1947).

³⁴⁴ 98 Cong. Rec. 4218-4219 (1947).

"inspection" powers of the Director of Central Intelligence and provided only "that upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security."³⁴⁵

The only indication of legislative intent regarding the type of information to be made available by the FBI appeared in the House debate. Congressman Judd was asked, "If the FBI has information about fifth-column activities and subversive information affecting the national defense, would that be open to the Central Intelligence Agency?" The sponsor of the amendment replied, "Yes."³⁴⁶

There was no general restatement of the FBI's domestic security intelligence responsibilities at this time. This issue arose first in 1948, when the Secretary of Defense recommended to the National Security Council that it consider how best to coordinate internal security matters. The NSC directed its executive secretary to conduct an internal security survey, and a report was submitted in August 1948.³⁴⁷

In 1948 there were also political developments in Congress and the forthcoming presidential election campaign, including the allegations of Elizabeth Bentley and Whittaker Chambers before the House Un-American Activities Committee regarding Communists in government service and charges that the administration's security procedures were lax. In this context, Attorney General Clark advised the President that he should make "a statement concerning investigations in the internal security field." The draft read as follows:

On September 6, 1939, and again on January 8, 1943, a Presidential directive was issued providing that the Federal Bureau of Investigation should take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and similar matters. It was requested that all law enforcement officers in the United States, and all patriotic organizations and individuals, promptly turn over to the Federal Bureau of Investigation any information concerning these matters.

The Federal Bureau of Investigation has fully carried out its responsibilities with respect to the internal security of the United States, under these directives. The cooperation rendered to the Federal Bureau of Investigation in accordance with the directives has been of invaluable assistance to it.

I wish to emphasize at this time that these directives continue in full force and effect.

³⁴⁵ 50 U.S.C. 403(d) (8) and 403(e).

³⁴⁶ 93 Cong. Rec. 4210 (1947). The following discussion of FBI Director Hoover by Congressman John McCormack appears in the floor debate on the tenure of the CIA Director: "The best we can do is as in the case of J. Edgar Hoover: A man by his personality, a man who impresses himself so much upon his fellowmen that permanency accrues by reason of the character of service that he renders. But J. Edgar Hoover has no tenure for life. He has earned it because of his unusual capacity." [93 Cong. Rec. 9445 (1947).]

³⁴⁷ J. Patrick Coyne, Major Chronological Developments on the Subject of Internal Security, 4/8/49 (Harry S. Truman Library, Papers of Stephen J. Spingarn).

Investigations in matters relating to the internal security of the United States to be effective must be conducted in a comprehensive manner, on a national basis, and by a single central agency. The Federal Bureau of Investigation is the agency designated for this purpose. At this time, I request that all information concerning any activities within the United States, its territories or possessions, believed to be of a subversive nature, be reported promptly to the Federal Bureau of Investigation.³⁴⁸

Attorney General Clark's recommendation of a presidential statement on FBI authority was made the day after he met with White House aides Clark Clifford, Charles Murphy, and George Elsey to discuss how the President should handle the Bentley and Chambers allegations. At that meeting it had been decided that the President should not make a statement on the espionage allegations and that consideration would be given to "referring the question of Soviet espionage in the Federal Government to a bipartisan commission, such as the Hoover Commission."³⁴⁹

Upon receiving the Attorney General's proposed statement, presidential aide George Elsey asked Admiral Souers, Executive Secretary of the National Security Council, "to undertake a review of the statement, with a view to limiting the excessive authority granted to the FBI, and in such other ways as he finds desirable in the light of his experience in the National Security Council."³⁵⁰ However, the revised draft by Admiral Souers made no substantial change except to include reference to "the intelligence services of the military forces." Mr. Elsey and Admiral Souers passed the matter on to White House aide Stephen Spingarn, who met with Assistant Director Ladd of the FBI. Ladd urged "early issuance of the statement by the President" and stated that its purpose "was to spike vigilante activity in the internal security field by private organizations and persons." After this meeting, Spingarn advised Clark Clifford that "the issuance of such a statement at this time by the President might give rise to the impression that he was making a rather transparent show of activity on this matter as a result of needling from Congressional quarters. . . ."³⁵¹

Nevertheless, the Justice Department did release a statement criticizing the "political activity" of the House Committee on Un-American Activities, and declaring that "all individuals and groups involved in activities potentially dangerous to the security of the nation are subject to the continuous but quiet watchfulness of the Federal Bureau of investigation."³⁵²

³⁴⁸ Memorandum from the Attorney General to the President, 9/17/48. (Harry S. Truman Library.)

³⁴⁹ Memorandum from G. M. Elsey to Clark Clifford, 8/16/48. (Harry S. Truman Library, Papers of George M. Elsey.)

³⁵⁰ Memorandum from Elsey to Charles Murphy, 8/26/48. (Harry S. Truman Library, Elsey Papers.)

³⁵¹ Memorandum from S. J. Spingarn to Mr. Clifford, 6/21/48. (Harry S. Truman Library, Official File.)

³⁵² Justice Department Press Release, 9/20/48. (Harry S. Truman Library, Spingarn Papers.)

After the 1948 presidential election, the National Security Council addressed formally the problem of coordination in the internal security field. An understanding was reached by the Secretary of Defense, the Attorney General, and the Director of the FBI on February 1, 1949; and recommendations were submitted thereafter to the President for the establishment under the NSC of two committees—the Interdepartmental Intelligence Conference and the Interdepartmental Committee on Internal Security—and the designation of an NSC Representative on Internal Security “to perform coordinating and advisory functions with the IIC and the ICIS. . . .”³⁵³ The President approved these recommendations and issued a directive on coordination of internal security.³⁵⁴

The National Security Council then approved charters for the IIC and the ICIS. They recited the provisions of Section 101 of 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,” and also the President’s directive of March 1949. The purpose of the IIC, composed of the FBI and military intelligence agencies, was to “effect the coordination of all investigation of domestic espionage, counterespionage, sabotage, subversion, and other related intelligence matters affecting internal security.” The ICIS, made up of representatives from the Departments of State, Treasury, Justice, and the military, was assigned responsibility for coordinating all non-investigatory internal security activities.³⁵⁵

The Delimitations Agreement between the FBI and the military intelligence agencies was also revised in 1949. It allocated responsibilities among the agencies for the “investigation of all activities coming under the categories of espionage, counterespionage, subversion, and sabotage.” Each agency was obliged “to exchange freely and directly with the other subscribing organizations all information of mutual interest.” The FBI had specific responsibility for advising the military agencies of “developments concerning the strength, composition, and intentions of civilian groups within its cognizance which are classed as subversive and whose activities are a potential danger to the security of the United States.” The military agencies were limited to investigations directly involving military personnel, civilian employees of the military, and areas under military control.³⁵⁶

A supplementary agreement in June 1949 required FBI and military intelligence officials in the field to “maintain close personal liaison” and to pay “particular attention . . . to avoiding any duplication in connection with the use of informers.” The supplementary agreement also stated, “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.”³⁵⁷

³⁵³ J. P. Coyne, *Major Chronological Developments on the Subject of Internal Security*, 4/8/49. (Harry S. Truman Library, Spingarn Papers.)

³⁵⁴ NSC Memorandum 17/4, 3/23/49.

³⁵⁵ NSC Memorandum 17/5, 6/15/49.

³⁵⁶ Delimitation of Investigative Duties and Agreement for Coordination, 2/23/49.

³⁵⁷ Supplemental Agreement No. 1 to the Delimitations Agreement, approved by IIC, 6/2/49.

After the outbreak of the Korean War and in the midst of congressional consideration of new internal security legislation in 1950, the IIC under the chairmanship of FBI Director Hoover recommended to the NSC "that a Presidential statement be issued to bring up to date and clarify prior Presidential Directives . . . outlining the responsibilities of the Federal Bureau of Investigation in connection with espionage, sabotage, subversive activities and related matters." Attorney General McGrath forwarded the draft to the President's counsel.³⁵⁸

The NSC approved a revised version of the draft, and it was made public on July 24, 1950. There is no record of why it chose the broader interpretation of the Roosevelt directives and declared that they had provided that the FBI:

should take charge of investigate work in matters relating to espionage, sabotage, *subversive activities and related matters*.³⁵⁹ [Emphasis added.]

President Roosevelt's directives had not used this language. (See pp. — above.) Moreover, President Truman's domestic policy aides were surprised by the release of the statement. 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."³⁶⁰ 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."³⁶¹

Despite this concern among his assistants, President Truman's statement clearly placed him on record as endorsing FBI investigations of "subversive activities." Neither the President's statement nor the secret NSC charter nor the confidential Delimitations Agreement defined "subversive activities" or "subversion."

The President's announcement gave the FBI an opportunity to make a statement of its own. The FBI statement denounced "hysteria, witch-hunts and vigilantes" and affirmed the need for "protecting the innocent as well as . . . identifying the enemies within our midst." Nevertheless, the FBI advanced the following view of the threat:

The forces which are most anxious to weaken our internal security are not always easy to identify. Communists have been trained in deceit and secretly work toward the day when they hope to replace our American way of life with a Communist dictatorship. They utilize cleverly camouflaged movements, such as some peace groups and civil rights organizations, to achieve their sinister purposes. While they as individuals are difficult to identify, the Communist Party line is clear. Its first concern is the advancement of Soviet Russia and the godless Communist cause. It is important to learn to know the enemies of the American way of life.³⁶²

³⁵⁸ Letter from Attorney General J. Howard McGrath to Charles S. Murphy, Counsel to the President, 7/11/50.

³⁵⁹ Statement of President Truman, 7/24/50.

³⁶⁰ Notes initialed D. Bell, SJS (S. J. Spingarn), and GWE (George W. Elsey) 7/24-25/50. (Elsey Papers, Harry S. Truman Library.)

³⁶¹ Memorandum from G. W. Elsey to Charles S. Murphy, Counsel to the President, 7/12/50. (Murphy Papers, Harry S. Truman Library.)

³⁶² Statement of J. Edgar Hoover, 7/26/50. (Harry S. Truman Library, Bontecou Papers.)

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 interpreted the Roosevelt directive as saying that it had authorized "investigative work" related to "subversive activities."³⁶³

In December 1953, President Eisenhower issued a statement reiterating President Truman's "directive" (including its interpretation of Roosevelt's orders) and extending it to matters under the Atomic Energy Act.³⁶⁴ On the day this statement was released, Director Hoover and Attorney General Herbert Brownell attended a National Security Council meeting to discuss "additional funds" for FBI "counterintelligence coverage." Director Hoover's memorandum after the meeting stated that the President "wanted to have" the "additional counterintelligence coverage."³⁶⁵ There was no reference to "subversive activities."

President Kennedy issued no public statement comparable to the Roosevelt, Truman, and Eisenhower "directives." However, in 1962 he did transfer the Interdepartmental Intelligence Conference from under the National Security Council to "the supervision of the Attorney General."³⁶⁶ In 1964, Attorney General Robert Kennedy re-issued the IIC charter, citing as authority the President's 1962 order and directing the IIC (still composed of the FBI and military intelligence agencies) to continue:

the coordination of all investigation of domestic espionage, counterespionage, sabotage and subversion, and other related intelligence matters affecting internal security.

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."³⁶⁷

Thus, the Kennedy administration made no change in the vague mandate for domestic intelligence activities, but merely placed formal control in the hands of the Attorney General.

J. FBI Intelligence and International Tension, 1961-1963

The basic policy theme for the entire 1945-1963 period is stated in a report for the National Security Council on the "Internal Security Program" in 1954:

Communist doctrine provides that a period of peace is to be used to consolidate and strengthen the Communist forces in the world while at the same time weakening and dividing, the democratic nations including disruption of the internal life of these nations economically, politically and socially. Thus

³⁶³ Letter from J. Edgar Hoover to Sherman Adams, Assistant to the President, 1/28/53, and attached memorandum on "FBI Liaison Activities," 1/20/53.

³⁶⁴ Statement of President Eisenhower, 12/15/53.

³⁶⁵ Memorandum from J. Edgar Hoover to Attorney General Brownell, 12/29/53.

³⁶⁶ National Security Action Memorandum 161, 6/9/62.

³⁶⁷ Memorandum from Attorney General Kennedy to J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, 8/5/64.

the present Soviet "peace tactics" emphasize that our internal security protective coverage must be maintained at a high level. Soviet Russia can continue to increase subversive, disruptive tactics without risk or cost to herself commensurate with the potential beneficial results to the Soviet cause.

The Internal Security Program was formulated on the assumption of a continuance of peacetime "cold war" conditions. However, it includes the elements to be expanded for a wartime operation.³⁶⁸

The scope and techniques of domestic security intelligence operations during this period cannot be fully understood without recognizing that this assumption prevailed throughout all branches of the United States government.³⁶⁹

In 1961, Director Hoover submitted a report to President Kennedy's Special Assistant for National Security, McGeorge Bundy, on the status of the internal security programs of the Interdepartmental Intelligence Conference. It began by reviewing the charter of the IIC and the Delimitations Agreement among the FBI and military intelligence agencies. The primary objective of the "investigative program" was "to counter the ever-increasing and continual threat from international communism and Soviet-bloc espionage and subversion."³⁷⁰

In addition to reviewing counterespionage operations, the report described programs for "identification and investigation of potentially dangerous persons in the United States" and for "coverage of Communist Party activities." The most significant recent change in operations was expanded coverage of Cuban groups. The FBI's Security Index program was explained in the following terms:

The FBI maintains a current list of individuals, both citizens and aliens, to be considered for apprehension and detention, if necessary, in a period of emergency. Approximately 12,000 individuals are listed at this time. This list is kept current on a daily basis by the addition of new individuals whose activities make them potentially dangerous to the United States, and by the deletion of individuals who are no longer engaged in subversive activities. Included on the list of po-

³⁶⁸ *Report on the Internal Security Program*, prepared by the Interdepartmental Intelligence Conference and the Interdepartmental Committee on Internal Security, 3/5/54.

³⁶⁹ The Justice Department's 1959 annual report stated:

"Despite the 'thaw,' real or apparent, in the Cold War, 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 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 influence of the Party and its contacts with other forces and currents in American life, and with the hope of being able to "move in" on such movements when the time is propitious. As a conspiratorial activity the Party is still very much alive." (Annual Report of the Attorney General for Fiscal Year 1959, pp. 247-248.) [Emphasis supplied.]

³⁷⁰ J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, to McGeorge Bundy, Special Assistant to the President, 7/25/61, enclosing IIC Report, *Status of U.S. Internal Security Programs, July 1, 1960, Through June 30, 1961*.

tentially dangerous individuals are nearly 200 persons who are engaged in pro-Castro Cuban activities or who sympathize strongly with such activities. In addition to members of the Communist Party, it also includes certain members of such organizations as the Nationalist Party of Puerto Rico, the Nation of Islam, and the Socialist Workers Party.

The FBI's "intensive coverage" of Cuban activities was required because of "the close ties between the Castro government of Cuba and the Soviet bloc." Particular attention was paid to the "July 26 Movement", which had been required to register under the Foreign Agents Registration Act, and to "the Fair Play for Cuba Committee." Regarding the latter, the report stated:

The Fair Play for Cuba Committee is the principal outlet for pro-Castro propaganda and agitation on the part of U.S. nationals sympathetic to the Castro regime. There are indications that this organization is receiving funds from the Cuban Government. In addition, investigation has shown that this group has been heavily infiltrated by the Communist Party, USA (CPUSA), and the Socialist Workers Party (SWP). . . . In fact, some chapters of the group have been directly organized by and under the complete control of the CPUSA or the SWP.

Finally, with respect to coverage of the Communist Party and related groups, the report stated:

The CPUSA is active in agitation and spreading dissension in the U.S., and during the current racial disturbances in the South, it *has attempted* to take full advantage of the situation. The Party *has endeavored* to bring pressure to bear on state and Federal officials through the press, labor unions, and student groups. . . .

At the present time, the FBI has under investigation two hundred known or suspected communist front and communist-infiltrated organizations. Many of these organizations are national in scope with chapters in various cities throughout the United States. These groups represent transmission belts through which the CPUSA *can* further its line.²⁷¹ [Emphasis added.]

The report did not say how effective the "attempts" and "endeavors" of the Communists were, nor did it indicate Communist success was increasing or decreasing.

The question of pro-Cuban activities had arisen earlier at a National Security Council meeting in May 1961 after the Bay of Pigs invasion. Director Hoover attended at the request of the Attorney General. Hoover recorded after the meeting that he had "outlined to the President the fact that the FBI had intensified its coverage of Cubans in this country, both anti-Castro groups and pro-Castro

²⁷¹ IIC Report, *Status of U.S. Internal Security, Program, July 1, 1960 through June 30, 1961.*

groups." He had also "commented briefly upon the activities of the Fair Play for Cuba Committee and the elements in back of it."³⁷²

An FBI intelligence program aimed at Castro sympathizers had originally begun in November 1960 when field offices were instructed to consider "recommending for the Security Index those individuals who are not now on the Security Index but who . . . would be deemed dangerous or potentially dangerous to the internal security of the U.S. in the event of an emergency involving Cuba and the U.S." Such individuals included both Cubans and non-Cubans "who have been engaged in substantial activities in furtherance of the aims and purpose of the Cuban government, in support of pro-Castro groups or organizations or in furtherance of the communist or subversive infiltration of pro-Castro groups."³⁷³

After the Bay of Pigs invasion in 1961, FBI field officers were advised that "increasing anti-United States attitudes and demonstrations stemming from the Cuban situation and 'cold war' tensions are cause for concern" and that pro-Castro groups might "react militantly to an emergency situation." In particular, the activities of the Fair Play for Cuba Committee revealed "the capacity of a nationality group organization to mobilize its efforts in such a situation so as to arrange demonstrations and influence public opinion." Hence, all field offices were to "be most alert to the possibility of demonstrations by nationality groups which could lead to incidents involving violence."³⁷⁴

Further instructions covered both pro-Castro and anti-Castro groups:

The failure of the recent invasion attempt by Cuban rebel forces has accentuated the problem of investigating anti-Castro and pro-Castro groups and individuals in the United States. In addition to discharging our security and criminal responsibilities we are faced with the necessity of acquiring and providing other agencies informative and valid intelligence data relative to the objectives and activities of both factions as well as data regarding key personalities. . . .

In order to discharge these investigative and intelligence responsibilities with maximum effectiveness it is essential that particular attention be afforded the development on a broadly expanded basis of sources and informants in a position to provide knowledgeable data regarding pro-Castro and anti-Castro activities.³⁷⁵

At the time of the Cuban missile crisis in 1962, the FBI intensified its program for placing pro-Cubans on the Security Index and established a special "Cuban Section" of the Index. Among the activities to be considered in placing Cuban aliens on the Index included:

- (1) participation in organizations supporting the Castro regime,
- (2) participation in picket lines formed in support of the Cuban Government,
- (3) contacts with

³⁷² Memorandum of J. Edgar Hoover, 5/11/61.

³⁷³ SAC Letter No. 60-54, 11/22/60.

³⁷⁴ SAC Letter No. 61-24, 4/27/61.

³⁷⁵ SAC Letter No. 61-28, 5/28/61.

Cuban agents operating in this country on behalf of the Cuban Government, or (4) statements or activities on a subject's part establishing reasonable grounds to believe that his loyalty would lie with the Cuban Government in the event of armed conflict between the United States and Cuba.³⁷⁶

This program would have made it possible for the President, at the height of the Cuban missile crisis, to declare an "internal security emergency" and order the arrest and detention of those persons deemed "potentially dangerous" because of their pro-Castro sympathies.

In 1962 there were 11,165 persons on the Security Index, 989 persons in Section A of the Reserve Index, and approximately 10,000 persons in Section B of the Reserve Index. An internal FBI memorandum stated, "Essentially, all of the individuals included therein fall within the emergency detention provisions in the Internal Security Act of 1950 as well as the emergency detention provisions of the Attorney General's Portfolio."³⁷⁷ There is no indication that Justice Department officials under the Kennedy Administration were informed of the existence of the Reserve Index.

In late 1963 the Security Index contained the names of 10,519 individuals, of whom 1,967 were designated for the Detcom Priority Apprehension Program because "their training, violent tendencies and prominence in subversive activity represent the greatest threat in time of a national emergency. . . ." ³⁷⁸ The procedures for Justice Department review of the Security Index were described as follows:

The Department does not review individual cases *prior* to the time they are placed on the Security Index. . . . In July 1955 the Department advised that it would engage in reviewing a "sampling" of our Security Index cases and it has been so engaged since. We furnish the Department each month a list of our Security Index subjects for attachment to the Master Warrant of Arrest maintained by the Department should an emergency occur requiring their apprehension and from this list the Department selects cases for reviewing. For information, as of today approximately 59.4 percent of the Security Index cases have been reviewed and approved by the Department.

We request the Department to conduct specific review of a Security Index case when such a subject becomes (1) a U.S. Government employee, (2) a foreign government employee, and (3) an employee of the United Nations. We also request the Department to specifically review a case previously reviewed and approved by it prior to taking action with respect to removing a subject's name from the Security Index. These reviews are generally conducted by the Department within a thirty-day period.³⁷⁹

³⁷⁶ SAC Letter No. 62-55, 10/5/62.

³⁷⁷ Memorandum from J. F. Bland to W. C. Sullivan, 6/7/62, 12/11/62.

³⁷⁸ Memorandum from W. C. Sullivan to A. H. Belmont, 11/20/63.

³⁷⁹ Memorandum from W. C. Sullivan to A. H. Belmont, 12/9/63.

The date of this December 1963 memorandum, in response to a request by Director Hoover, indicates high-level concern that Lee Harvey Oswald was not on the Security Index.

Following the Kennedy assassination, the FBI Intelligence Division proposed "a broadening of the factors which must be considered in evaluating an individual's dangerousness." Six new criteria were added:

1. Contacts with Sino-Soviet-bloc establishments (including Cuba) where purpose of contact cannot be determined or contact indicates communist sympathies.

2. Contacts with Sino-Soviet-bloc, Cuban, or Yugoslav intelligence agents where purpose of contact cannot be determined or contact indicates communist sympathies.

3. Individuals who have defected, revoked or sought revocation of their United States citizenship in favor of a Sino-Soviet-bloc country, who have returned to the United States, and who have taken no positive steps to counteract such action.

4. Statements or activities on a subject's part establishing reasonable grounds to believe that his loyalty would lie with communist nations in the event of armed conflict between the United States and communist nations.

5. Training and/or participation in espionage, sabotage, or intelligence activities.

6. A history of emotional instability or irrational behavior on the part of an individual with a subversive background whose prior acts depict a propensity for violence and hatred against organized government.

It was pointed out that such criteria were "sufficiently elastic so that when applied with the necessary judgment the complex questions which arise can be resolved."³⁸⁰

These FBI domestic intelligence policies in 1961-1963 indicated the central purpose of the Bureau's internal security assignment. International tensions were still sufficiently intense that the FBI could reasonably anticipate the possibility of an "internal security emergency." The basic assumptions which had prevailed since World War II had not been seriously questioned, and new events were viewed within that framework.

V. FBI INTELLIGENCE AND DOMESTIC UNREST, 1964-1974

"Mr. J. Edgar Hoover and the FBI had developed into an extraordinarily independent agency within our Government. It is hard to exaggerate that. Mr. Hoover, in effect, took orders only from himself, sometimes from an Attorney General, usually from a President, and that was it. He had created a kind of kingdom of which he was very jealous. . . .

"Mr. Hoover built a position which I think is almost unparalleled in the administrative branch of our Government, a combination of pro-

³⁸⁰ Memorandum from W. C. Sullivan to A. H. Belmont, 12/11/63; SAC Letter No. 63-61, 12/17/63.

fessional performance on the job, some element of fear, very astute relations with the Congress, and very effective public relations."

—Testimony of former Secretary of State Dean Rusk before the Senate Foreign Relations Committee, July 23, 1974.

During the tumultuous years of the mid- and late-1960s and early 1970s, the FBI and other executive officials confronted entirely new domestic security problems which did not fit the assumptions of the past. Civil rights demonstrations, the violent Klan reaction, urban ghetto disturbances, and protests against the Vietnam War raised substantially different concerns for federal executives. They were essentially law enforcement matters, requiring effective criminal investigation of violent acts, improved police-community relations in the cities, and careful planning to insure peaceful demonstrations. Nevertheless, the FBI approached them within the framework of its domestic intelligence operations, based on the concepts of previous decades; and the Justice Department did not attempt in any significant way to reorient the Bureau away from its preoccupation with Communist "influence." Instead, Attorneys General simply added new assignments for FBI intelligence, in broad requests containing little guidance and even less control.

A. Klan Intelligence

During the first half of 1964 officials of the Justice Department—including Attorney General Kennedy, Deputy Attorney General Nicholas Katzenbach, and Assistant Attorney General Burke Marshall of the Civil Rights Division—were increasingly concerned about the spread of Ku Klux Klan activity and violence in Mississippi and parts of Louisiana and Alabama. Attorney General Kennedy sent a team of lawyers experienced in organized crime investigations to Mississippi. Based on their report and his own findings, Assistant Attorney General Marshall prepared a memorandum for the Attorney General to send to President Johnson in June 1964. Its purpose was to encourage the FBI "to develop its own procedures for the collection of intelligence." The memo to the President stated, in part:

... it seems to me that consideration should be given by the Federal Bureau of Investigation to new procedures for identification of individuals who may be or have been involved in acts of terrorism, and to the possible participation in such acts by law enforcement officials or at least their toleration of terrorist activity. In the past the procedures used by the Bureau for gaining information on known, local Klan groups have been successful in many places, and the information gathering techniques used by the Bureau on Communist or Communist related organizations have of course been spectacularly efficient.

The unique difficulty that seems to me to be presented by the situation in Mississippi (which is duplicated in parts of Alabama and Louisiana at least) is in gathering information on fundamentally lawless activities which have the sanction of local law enforcement agencies, political officials and a substantial segment of the white population. The techniques

followed in the use of specially trained, special assignment agents in the infiltration of Communist groups should be of value. If you approve, it might be desirable to take up with the Bureau the possibility of developing a similar effort to meet this new problem.³⁵¹

Shortly thereafter, when three civil rights workers disappeared in Mississippi, President Johnson called on former CIA Director Allen Dulles to evaluate the situation. After conferring with the Attorney General, the FBI Director, and other Justice Department officials, Dulles flew to Jackson, Mississippi. There he met with the Governor, the head of the highway patrol, civic business leaders, black and white religious leaders, and civil rights workers. Upon his return to Washington, Dulles recommended to the President that a substantial increase be made in the number of FBI agents in Mississippi to help "control the terrorist activities". He announced publicly that the President appeared to favor his proposal and had indicated it would be implemented very shortly.³⁵²

According to an account based on FBI sources, President Johnson directed J. Edgar Hoover "to put people after the Klan and study it from one county to the next. I want the FBI to have the best intelligence system possible to check on the activities of these people."³⁵³

Another account suggests that Hoover initially told the President to send Federal marshals or troops to Mississippi, but finally agreed that the FBI would take on the assignment.³⁵⁴ Consequently, the FBI opened a new field office in Jackson, Mississippi, in July 1964. In addition, the Justice Department's Civil Rights Division set up a special unit as "a central clearing house for information on Klan and Klan-type organizations and on acts of violence and intimidation found to have been encouraged by the Klan." The unit maintained a current listing of Klan membership; compiled information on the organization of Klan federations and Klaverns and the relationship among different groups; monitored trends toward growth or attrition, recruiting activities, and changes in support for the Klan movement in particular areas; and reviewed and recommended action against Klan organizations where members were acting to violate Federal statutes.³⁵⁵

At FBI headquarters the supervision of investigations of Klan and hate groups was transferred from the General Investigative Division to the Domestic Intelligence Division, where it had been prior to 1958. The Inspection Division prepared a study of the matter before the 1964 shift occurred. This study recalled that "one of the prime factors" in the 1958 decision had been "the almost complete absence of Communist Party activity in the racial area;" another factor had been the need to "streamline operations." Because the General Investigative Division handled "the investigation of individual cases, i.e., bombings,

³⁵¹ Quoted in Victor Navasky, *Kennedy Justice* (New York: Atheneum 1971), pp. 105-106.

³⁵² "Dulles Requests More FBI Agents for Mississippi," *New York Times*, 6/27/64; see also Joseph Alsop, "Murder by Night," *Washington Post*, 6/17/64.

³⁵³ Don Whitehead, *Attack Against Terror: The FBI Against the Ku Klux Klan in Mississippi* (1970), pp. 90-91.

³⁵⁴ Joseph Kraft, "J. Edgar Hoover: The Complete Bureaucrat," *Commentary* (February 1965), pp. 59-62.

³⁵⁵ Annual Report of the Attorney General for Fiscal Year 1965, pp. 185-186.

murders, police brutality, etc.," there was an advantage in "having the hate group informants and intelligence functions with the substantive civil rights cases." This argument was repeated by officials opposed to the transfer in 1964:

[One official] believes the transfer of functions would create an undesirable division of authority and responsibility; that our best chance to break major civil rights cases such as bombings, murders, etc., is through information developed from the inside as a result of coverage established in the community where the crime occurred; i.e., informants and sources in the Klan, hate groups, subversive organizations, but also sources not connected with any group, who will report potential violence and individuals prone to violence. We are following the policy of aggressively seeking out persons addicted to violence even though they have not violated a federal law as yet. He feels that the Division that is going to investigate these cases should forge the necessary tools to use for this purpose.

The contrary argument was based on "the premise that organizations like the KKK and supporting groups are essentially subversive in that they hold principles and recommend courses of action that are inimical to the Constitution as are the viewpoints of the Communist Party." The Domestic Intelligence Division had experienced with aggressive techniques in the area of "subversion:"

[Another official] feels that the DID over the years has developed wide experience in the penetration of subversive organizations through informants, anonymous sources, sophisticated microphones and technical surveillances, interview programs of highly specialized nature, etc., and that his division could put this experience to excellent use in penetrating the Klan and other hate groups.

It was also suggested that the Domestic Intelligence Division "would be in a position to launch a disruptive counterintelligence program against the Klan and other hate groups with the same effectiveness that they are now doing insofar as the Communist Party is concerned."

The Inspection Division agreed that the Domestic Intelligence Division had "achieved noteworthy results in infiltrating the Communist Party and Soviet intelligence operations" and that "this experience and knowhow could be put to good advantage in penetrating the Klan and other hate groups." The Inspection Division also "felt that a study of counterintelligence and disruption tactics against the Klan certainly merits further consideration." On the basis of this recommendation, Director Hoover approved the transfer.³⁰⁶

Former Attorney General Nicholas Katzenbach vigorously defended the FBI's broad intelligence-gathering program against the Klan in his testimony before the Select Committee:

³⁰⁶ Memorandum from J. H. Gale to Mr. Tolson, 7/30/64 (See Report on COINTELPRO).

The Klan program involved the investigation and prosecution of persons who engaged in and who were committed to the violent deprivation of constitutionally guaranteed rights of others through murders, kidnappings, beatings and threats of violence—all in contravention of federal and state laws. . . . The Bureau was investigating and attempting to prevent violence. To equate such efforts with surveillance or harassment of persons exercising constitutionally guaranteed rights is in my view unmitigated nonsense. . . .

It is true that the FBI program with respect to the Klan made extensive use of informers. That is true of virtually every criminal investigation with which I am familiar. In an effort to detect, prevent, and prosecute acts of violence, President Johnson, Attorney General Kennedy, Mr. Allen Dulles, myself and others urged the Bureau to develop an effective informant program, similar to that which they had developed with respect to the Communist Party. It is true that these techniques did in fact disrupt Klan activities, sowed deep mistrust among Klan members, and made Klan members aware of the extensive informant system of the FBI and the fact that they were under constant observation. Klan members were interviewed and reinterviewed openly—a fact which appeared in the public press at the time. They were openly surveilled. These techniques were designed to deter violence—to prevent murder, bombings and beatings. In my judgment they were successful. I was aware of them and I authorized them. In the same circumstances I would do so again today.³⁸⁷

Mr. Katzenbach spoke of the FBI's intensive investigation of individuals and groups with a "propensity for violence." The FBI Manual did, in fact, attempt to focus Klan intelligence investigations in this manner. The basic standard for opening an investigation was whether organizations or individuals "have adopted a policy or have allegedly adopted a policy of advocating, condoning, or inciting the use of force or violence to deny others their rights under the Constitution." The FBI Manual stressed:

The fundamental objective is to identify those who may be engaged in or responsible for acts of violence, and care must be taken to avoid becoming involved in widespread, nebulous investigation which does not go to the heart of the problem at hand. When a case is opened, it should receive immediate and continuous attention until the initial allegation is resolved. The case should be promptly closed if it is definitely determined that it does not fall within the criteria set out . . . above.

. . . wholesale investigations of individuals associated with these organizations should not be undertaken. Individuals investigated should be those key personnel who have the propensity for violence and actually formulate and carry out

³⁸⁷ Nicholas deB. Katzenbach testimony, 12/8/75, Hearings, Vol. 6, p. 207.

the organization's policies and not those individuals who merely attend meetings on a regular basis.

However, general intelligence collection did go beyond these limits. Field officers were instructed to "follow through public source material and established sources activities of organizations which do not qualify for investigation under above standards."³⁸⁸

The Domestic Intelligence Division chafed under these restrictions, which were held over from when Klan investigations had been under the General Investigative Division. Assistant Director William C. Sullivan, head of the Intelligence Division, told the FBI Executives Conference in 1966 that

. . . in his strong opinion the FBI is not adequately coping with the problems created by the Ku Klux Klan. He had in mind bombings, beatings, civil rights violations, etc. Mr. Sullivan pointed out that there are 14,000 members of the Klans in the United States today. The FBI's policy calls for investigating all officers of the Klan and all Klan members who are violence prone. He said there are 4,500 officers and to date we have investigated only 1,500 of them, and only 800 violence-prone of whom there are many more.

Sullivan specifically cited the problem in North Carolina where there were 152 Klaverns and the FBI needed informant coverage of 81. He urged that the Bureau give "sufficient manpower . . . and direction to seriously disrupt and reduce their activities and practices."³⁸⁹

Thereafter, in 1967 the FBI Manual was revised to direct field offices specifically to furnish "details concerning rallies [and] demonstrations" by Klan or hate-type organizations.³⁹⁰ In 1969 these instructions were broadened to "include full details concerning the speeches made at the rallies or demonstrations, as well as the identities of the speakers."³⁹¹

In 1971 the criteria for investigating individuals were widened still further. Special Agents in Charge of 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."³⁹²

Thus, the FBI gradually expanded its Klan intelligence investigations, moving beyond information related to possible violence. By 1971 the FBI program for investigating Klan and hate-groups delegated virtually unlimited discretion to the field and specifically required FBI agents to report on lawful political speeches.

For example, the FBI's collection of intelligence about "white militant groups" included groups "known to sponsor demonstrations against integration and against the bussing of Negro students to white schools." As soon as a new organization of this sort was formed, the Bureau used its informers and "established sources" to determine "the

³⁸⁸ 1965 FBI Manual Section 122, pp. 1-2.

³⁸⁹ Executives Conference Memorandum, 8/24/66.

³⁹⁰ 1967 FBI Manual Section 122, p. 2.

³⁹¹ 1969 FBI Manual Section 122, p. 2.

³⁹² 1971 Manual Section 122, p. 2.

aims and purposes of the organization, its leaders, approximate membership" and other "background data" bearing upon "the militancy" of the group.³⁰³

B. FBI Intelligence and the Black Community

Events in 1964 also led to a substantial change in FBI intelligence programs dealing with black "extremists" and civil disorders, in addition to the Klan. During the first urban ghetto riots in the summer of 1964, President Johnson instructed the FBI to investigate their origins and extent. The Bureau's report was made public in late September. The FBI had surveyed nine cities where riots had occurred and gathered information "from public officials, police officers, clergymen, leaders of responsible organizations and individuals considered to be reliable." The basis for the inquiry was explained in the most general terms:

It is a truism that the first duty of all government is to maintain order, else there is no government. 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.* [Emphasis added.]

The FBI's findings served to reassure the public: there was no evidence "that the riots were organized on a national basis;" none of the incidents was a "race riot" involving interracial violence; and none was a "direct outgrowth of conventional civil rights protest." However, the FBI did report the role of "a Marxist-Leninist group following the more violent Chinese Communist line" and other individuals "with histories of Communist affiliation" in alleged attempts to instigate riot activity. The FBI also called attention to the growth of black militancy, asserting that "a number of violent agitators" had arisen. Without mentioning his name, the FBI report described the activities of Malcolm X as one example of a leader urging blacks "to abandon the doctrine of non-violence."³⁰⁴

These developments in the North and the increasing number of civil rights demonstrations in the South were the background for an expansion of the FBI program for collecting intelligence on "General Racial Matters" in early 1965. The FBI Manual was revised to cover demonstrations, racial violence and riots. These revisions included the following:

In order that the Bureau's information will be complete regarding planned racial activity, such as demonstrations, rallies, marches, or threatened opposition to activity of this kind, each office must assume responsibility for following up the planned activity and promptly advising the Bureau by teletype of subsequent developments even though the develop-

³⁰³ SAO Letter 68-25, 4/30/68.

³⁰⁴ "Text of FBI Report on Recent Racial Disturbances," *New York Times*, 9/27/64.

ment may be a postponement or cancellation of the planned activity.

In the event of an outbreak of mob violence or rioting . . . you must: Immediately launch a vigorous investigation to determine the causes and forces behind the threatened or actual mob violence or rioting and whether there is an organized pattern underlying it emanating from subversive or radical groups or other outside sources . . . [and] afford specific assignments to informants, and keep them assigned, to determine the underlying cause of the mob violence or riot. . . .³⁹⁵

At this time the FBI Director testified before the House Appropriations Committee that the FBI was following "the racial situation from an intelligence viewpoint." The Justice Department reported that this intelligence had already made it possible for the Civil Rights Division to keep "a close and continuing watch on civil rights demonstrations which totaled 2,422 in almost all states during the year ending April 1964."³⁹⁶

In late 1963 after two more "long hot summers," including the 1965 Watts riot in Los Angeles and many smaller-scale disorders, the FBI instituted a program for preparing semi-monthly summaries of possible racial violence in major urban areas. Field offices were instructed to conduct "a continuing survey to develop advance information concerning racial developments which clearly point to the possibility of mob violence and riotous conditions."

This survey should afford the Bureau a realistic, comprehensive picture of the existing racial conditions in major urban areas on a current basis and this can only be accomplished by maintaining a constant and effective check on existing conditions through racial, criminal, and security informants and through established logical sources. Information . . . should cover the following categories:

- (1) Name of community. . . .
- (2) General racial conditions. . . .
- (3) Current evaluation of violence potential. . . .
- (4) Identities of organizations involved in local racial situations. Such organizations may include not only civil rights organizations but also subversive organizations, black nationalist organizations, Klan organizations, hate-type groups, and others. Include a concise summary of the general programs of such organizations relating to the racial issue. In particular include any indications of subversive or radical infiltration of organizations and any indication that organizations involved in the racial issue advocate or may resort to extralegal action or violence.
- (5) Identities of leaders and individuals involved. Include the identity of leaders and individuals in the civil rights movement as well as readily available personal background data, any pertinent information contained in office files

³⁹⁵ 1965 FBI Manual Section 122, pp. 6-8.

³⁹⁶ Department of Justice Appropriation for Fiscal Year 1966, Hearings before the House Appropriations Committee (1965), pp. 175, 842-848, 848.

showing affiliation or association with Klan-type, communist or related subversive organizations and/or statements made by such individuals advocating racial violence and/or extra-legal activity.

(6) Existence of channels of communication between minority leaders and local officials. . . .

(7) Objectives sought by minority community, and possible points of contention. . . . Describe the number, character, and intensity of the techniques used by the minority community, such as picketing or sit-in demonstrations, to enforce their demands.

(8) Reaction of leaders and members of the community to minority demands . . .³⁹⁷

The Bureau concentrated investigations in this field on "black nationalist groups," described as "hate-type organizations" with a "propensity for violence and civil disorder."³⁹⁸ The term "militant black nationalist" was not defined with any precision. Such "racial militants" were deemed a "threat to the internal security" because of their "anarchistic tendencies"³⁹⁹ or their "propensity for fomenting racial disorder."⁴⁰⁰ Leaders and members of "black nationalist" groups were investigated under the Emergency Detention Program for placement on the FBI's Security Index.⁴⁰¹

The standards were so vague, however, that the FBI included Dr. Martin Luther King and his nonviolent Southern Christian Leadership Conference in the "radical and violence-prone" category, because Dr. King might "abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism."⁴⁰²

Another leading civil rights group, the Council on Racial Equality (CORE), which had "negligible" Communist infiltration, was investigated under the "Racial Matters" Program because the Bureau concluded that it was moving "away from a legitimate civil rights organization" and was "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 there was as yet no information that its members "advocate violence" or "participate in actual violence."⁴⁰³

The Justice Department provided little guidance for FBI intelligence investigations. The Nation of Islam again provides an example. In 1962, the FBI asked if the group could be prosecuted or designated for the "Attorney General's list." In reply, the Internal Security Division repeated its earlier position that there was not "sufficient evidence to warrant prosecutive action," but that the FBI should "continue its investigation . . . because of the radical, semi-secret, and violent nature of this organization, and the continuing tendency on the

³⁹⁷ FBI Manual Section 122, revised 12/13/60, pp. 8-9.

³⁹⁸ Memorandum from FBI Headquarters to all SACs, 8/25/67.

³⁹⁹ Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

⁴⁰⁰ Memorandum from P. L. Cox to Mr. Sullivan, 9/8/67.

⁴⁰¹ Memorandum from Brennan to Sullivan, 4/30/68.

⁴⁰² Memorandum from FBI Headquarters to all SACs, 8/4/68.

⁴⁰³ SAC Letter 68-16, 8/12/68.

part of some of its leaders to use language of implied threats against the Government."⁴⁰⁴ Although the Division did not mention the Security Index, the FBI believed that the investigation was conducted primarily so that leaders and/or active members could be considered "for apprehension during the period of a national emergency and for inclusion in the Security Index."⁴⁰⁵

The FBI again asked for the Justice Department's opinion in 1963. An official of the FBI Domestic Intelligence Division observed to his superior, "Inasmuch as the Department is in possession of all pertinent information regarding the NOI and its teachings, it appears the Department is trying to get the Bureau to do the Department's work."⁴⁰⁶

The Internal Security Division replied only that there was "insufficient evidence" for prosecution and said nothing about further investigation.⁴⁰⁷

Nevertheless, the FBI did continue investigating "because of the radical, semisecret and violent nature of the organization." In 1964, it once again asked for the Department's opinion "as to whether the activities of the NOI come within the criteria of Executive Order 10450 or whether its activities are in violation of any other Federal statute."⁴⁰⁸ The Internal Security Division's answer reiterated that there was "insufficient evidence" for prosecution, and went into greater detail regarding applicability of the criteria for the Employee Security Program under Executive Order 10450:

The activities reported must be shown to be more than mere prophecies or utterances made with the hope of ultimate attainment of their desired aims. For example, while teaching that the white man must be exterminated they do not say by whom or how. There should be available evidence to show that the advocacy or approval of the commission of acts of violence to deny others their Constitutional rights is calculated to incite the members to action now or in the foreseeable future. Evidence is needed to show the specific acts taken by particular individual leaders in advocating or approving acts of force and violence; not that "heads will roll in the streets", which could be merely a prediction, but rather what specific plan of action, direction or urging has been made to bring about such an event, not the abstract teaching that Allah will cause the desired event, but the concrete steps taken by specific individual leaders to effectuate their goals. It is fully realized that such evidence is not easily obtained even if it exists; and finally there seems to be some indication that the leaders are becoming more cautious in their utterances.⁴⁰⁹

⁴⁰⁴ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 1/25/62.

⁴⁰⁵ Note on Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 1/10/62.

⁴⁰⁶ Memorandum from F. J. Baumgardner to W. C. Sullivan, 2/21/63.

⁴⁰⁷ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 5/10/63.

⁴⁰⁸ Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 1/31/64.

⁴⁰⁹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 3/8/64.

Despite this formal opinion, the FBI continued to investigate and to furnish the results to the Department in reports and memoranda.

FBI intelligence officials assumed they could go ahead not only because the Justice Department did not say "stop the investigation," but also because the FBI still included "names of appropriate Nation of Islam officials . . . in our Security Index" (which was reviewed by the Internal Security Division). In mid-1966 an FBI intelligence official observed, "The Department apparently has no intention of authorizing prosecution of the Nation of Islam, in absence of the Nation of Islam causing large-scale riots, or virtual insurrection. However, it appears to be in the Bureau's best interests to put the Department on record once again as to whether a prosecutable violation exists. . . ." ⁴¹⁰

This time the Internal Security Division specifically asked the FBI to continue "active investigation . . . for possible violation of Federal statutes or for possible designation under the provisions of Executive Order 10450." This request was made despite the Division's conclusion that there was still "insufficient evidence" and that in the previous two years there had "been no significant changes as to the character and tactics of the organization." The only reason offered for this Departmental instruction to continue the investigation was that the group's leaders "advocate disobedience of any law contrary to the beliefs of Muslims." ⁴¹¹

There were no further FBI requests for Departmental opinion or instructions provided by the Internal Security Division regarding the continued intelligence investigation of the Nation of Islam from 1966 until 1973.

C. COMINFIL Investigations—"Racial Matters"

In June 1964, the FBI established a "special desk" in the Domestic Intelligence Division to supervise an "intensification of the investigation of communist influence in racial matters." ⁴¹² The chief of the Division's Internal Security Section stressed that civil rights was "the primary domestic issue on the political front today," and that "both sides" in the Senate debate on the Civil Rights Bill might "ask the Bureau" for information about "communist penetration into the racial movement." Thus, the FBI had to be prepared to make "a proper presentation of the facts." The Bureau's Inspection Division endorsed this step, noting that the "urgency" for the FBI to "stay ahead" of the situation was tied not only to the civil rights bill, but to "the complex political situations in an election year where civil rights and social disturbances will play a key role in campaign efforts and possibly election results." ⁴¹³ Instructions to the field in August 1964 stated:

There are clear and unmistakable signs that we are in the midst of a social revolution with the racial movement at its core. The Bureau, in meeting its responsibilities in this area, is an integral part of this revolution. ⁴¹⁴

⁴¹⁰ Memorandum from F. J. Baumgardner to W. C. Sullivan, 7/15/66.

⁴¹¹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 7/28/66.

⁴¹² Memorandum from F. J. Baumgardner to W. C. Sullivan, 10/1/64.

⁴¹³ Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/20/64.

⁴¹⁴ Memorandum from FBI Headquarters to all SACs, 8/28/64.

The part the FBI played in this "revolution" in American race relations was not a noble one. Director Hoover's formal statement to the Appropriations Committee, published in April 1964, discussed at great length the "Communist interest in Negro activities." He concluded that "Communist influence" in the "Negro movement" was "vitaly important" because "it can be the means through which large masses are caused to . . . succumb to the party's propaganda lures." The number of Negroes recruited by the Communists was "not the important thing." Rather, Director Hoover said it was "an old Communist principle" that: "Communism must be built with non-Communist hands."⁴¹⁵

Director Hoover's public and private message in 1964, on this and other occasions, was that the "importance of the Communist influence in the Negro movement" could not be "ignored or minimized."⁴¹⁶ Most Americans at that time would not have questioned Hoover's preeminence as an expert on Communism.⁴¹⁷ Nevertheless, Bureau records indicate that he rejected the findings of the FBI's most experienced intelligence officials on this issue, that he influenced his subordinates to abandon their own judgments and to exaggerate Communist influence in the civil rights movement, and that these subordinates then instituted massive investigative efforts to find every possible bit of evidence of Communist links in order to substantiate the Director's preconception.⁴¹⁸

The August 1963 March on Washington had a dramatic impact on the nation—and devastating consequences within the FBI. Shortly before the March, Bureau intelligence officials summarized the results of extensive investigations (initiated a month before the March).⁴¹⁹ There was no evidence that the March was "actually initiated" or "controlled" by Communists, although they did plan to participate. There had been "an obvious failure" of the Communists "to appreciably infiltrate, influence, or control large numbers of American Negroes." The report concluded that "time alone will tell" whether the Communists would have "great success" in the future.⁴²⁰

Director Hoover, upon reading the report, sharply rejected its finding that Communist influence was "infinitesimal."⁴²¹ His subordinates got the message. "The Director is correct," wrote the head of the Domestic Intelligence Division, adding, "We regret greatly that the memorandum did not measure up to what the Director has a right to expect from our analysis."⁴²²

The Division head advised another Bureau official: "It is obvious that we did not put the proper interpretation upon the facts which we gave to the Director." He promised to "do everything that is

⁴¹⁵ Justice Department Appropriation for FY 1965, Hearings before the House Appropriations Subcommittee, 88th Cong. (1964), p. 300.

⁴¹⁶ Memorandum from C. D. DeLoach to Elwin O. Guthman, Special Assistant to the Attorney General for Public Information, 5/14/64. (Enclosure)

⁴¹⁷ His book, *Masters of Deceit: The Story of Communism in America and How to Fight It* (New York: Henry Holt, 1958), was a best-seller and was used in schools across the country.

⁴¹⁸ See Committee Report on Dr. Martin Luther King.

⁴¹⁹ Memorandum from F. J. Baumgardner to W. C. Sullivan, 8/22/63.

⁴²⁰ Memorandum from F. J. Baumgardner to W. C. Sullivan, 8/23/63.

⁴²¹ J. Edgar Hoover's note on Baumgardner memorandum, 8/23/63.

⁴²² Memorandum from W. C. Sullivan to A. Belmont, 8/30/63.

humanly possible to develop all facts nationwide relative to Communist penetration and influence over Negro leaders and their organizations."⁴²⁴

This exchange set in motion a disastrous series of events. The Domestic Intelligence Division recommended asking the Attorney General to approve a wiretap on Dr. Martin Luther King,⁴²⁵ intensifying field investigations to uncover "communist influence on the Negro" using "all possible investigative techniques," and expanding COINTELPRO operations using "aggressive tactics" to "neutralize or disrupt the Party's activities in the Negro field."⁴²⁶ After a sarcastic initial rejection of these plans, Director Hoover approved a new Intelligence Division memorandum on "Communism and the Negro Movement—A Current Analysis" and noted, "I am glad that you recognize at last that there exists such influence."⁴²⁷

Approving a recommendation after a December 1963 conference that the Bureau take Dr. King "off his pedestal" and promote someone else to be his successor as the new "national Negro leader," FBI Director Hoover observed:

I am glad to see that "light" has finally though dismally delayed, come to the Domestic Int. Div. I struggled for months to get over the fact that the Communists were taking over the racial movement but [illegible] couldn't or wouldn't see it.⁴²⁸

Director Hoover's exaggeration of Communist influence in the civil rights movement (especially his 1964 appropriations testimony) risked poisoning the political climate in the months before passage of the 1964 Civil Rights Act.⁴²⁹ And the investigation of the civil rights movement to uncover any shred of evidence of Communist influence added massive reports to the files of the Bureau and other agencies on lawful political activity and law-abiding Americans.

To achieve this end FBI Manual provisions for internal security intelligence were revised substantially without any outside supervision. New instructions were added to intensify FBI intelligence investigations of Communist influence in the civil rights movement and in protest demonstrations. First of all, field offices were to identify all Negro members of the Communist Party. Second, a new program code-named CIRM (Communist Influence in Racial Matters) was instituted. Quarterly reports from the field offices were to include information on:

... communist infiltration in various organizations, such as the Congress of Racial Equality, Student Non-Violent Coordinating Committee, and the like; investigations of subversive individuals active in the racial movements; investigations of communist fronts and other miscellaneous organizations; and racial disturbances and other racial matters. ... These reports shall be designed to precisely spell out the full extent of the communist influence in racial matters. They

⁴²⁴ Memorandum from W. C. Sullivan to A. Belmont, 9/25/68.

⁴²⁵ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 10/7/68.

⁴²⁶ Memorandum from F. J. Baumgardner to W. C. Sullivan, 9/10/68.

⁴²⁷ Note on Memorandum from Alan Belmont to Clyde Tolson, 10/17/68.

⁴²⁸ Note on memorandum from W. C. Sullivan to A. Belmont, 1/8/64.

⁴²⁹ "Rights Bill Crippling is Feared," *Washington Post*, 5/11/64.

should separate words and intentions from actions; mere participation from direct influence; and the bona fide communist from the mere "do-gooder". They should not include information concerning legitimate efforts in the racial movement where there is no communist taint.

The FBI Manual also required field office reports on protest activities where Communists might be involved including:

Information on communist direction and influences of and participation in racial demonstrations, disturbances, drives, boycotts, and any other similar activities with racial overtones. This part will illustrate *how* communist activities *attempt* to exploit radical situations and expand communist influence, thus furthering communist objectives. . . . [Emphasis added.]

Under each subheading include such information as nature of event; sponsoring and participating groups; total participants; number and identities of subversives involved; specifics as to whether subversives directed, controlled, instigated, or merely participated; whether violence resulted and, if so, whether subversives involved; arrests of subversives and court disposition; and any other information believed pertinent to the over-all picture of communist influence. Efforts by supporting groups to avoid communist involvement should also be reported. If a particular event had no communist involvement, it should, of course, not be included in the report.

The last restriction had somewhat less effect, because FBI offices were advised that "the term 'communist' should be interpreted in its broad sense as including persons not only adhering to the principles of the CPUSA itself, but also to such splinter and offshoot groups as the Socialist Workers Party, Progressive Labor Party, and the like." Whenever a group was subject to Communist influence, field offices had to report:

. . . pertinent data as to the national headquarters, as well as any local affiliates. . . . The number of members, nationally and by locals, should be indicated. Include under each organization information as to officers and others in positions of influence who have present *or past* subversive connections; information as to other subversives who are merely members; specific evidence of influence wielded by subversives; policy concerning communist participation in the organization's activities, such as prohibition of communists holding office or membership (if no such stated policy, so indicate); and use and distribution of communist propaganda. [Emphasis added.]⁴³⁰

These instructions continued in effect until the early 1970's. Their application to Dr. Martin Luther King, Jr., and the Southern Christian Leadership Conference are described elsewhere.^{430a}

⁴³⁰ FBI Manual Section 87, pp. 12a-12c, revision of 9/18/64.

^{430a} See Committee Report on Dr. Martin Luther King, Jr.

Under this program the FBI also intensified investigations of moderate groups like the NAACP, which had been under investigation since the 1940's. For example, the Detroit office relied on six informants to "follow and report on all efforts by the Communist Party to infiltrate the NAACP."⁴³¹

The New York Field Office used sixteen informants and confidential sources "to follow CP infiltration of the national organization of the NAACP and local branches of the NAACP." All the national officers and board members of the NAACP were listed, and any data in FBI files on their past associations with subversives were included. Most of this information went back to the 1940's. Copies of the report were disseminated to local military intelligence officers.⁴³²

The FBI's Chicago office prepared a Letterhead Memorandum (a report designed for dissemination to other Executive Branch agencies) on the plans of Communist leaders to have "the Party forces" at the NAACP National Convention press for certain policies. The memorandum did not indicate how extensive or influential these "Party forces" would be.⁴³³ The St. Louis office used eleven informants and confidential sources to "follow and report interest and activity of the CP and SWP in the NAACP in St. Louis."⁴³⁴ The New York office reported changes in the leadership and board of the NAACP in 1966, once again going back in FBI files to uncover any subversive associations in the 1940's.⁴³⁵ The FBI did close cases on specific chapters where there were very few Communists involved.⁴³⁶ In order to reach the point of closing a case, however, FBI offices submitted reports listing all officers of the NAACP chapters and the number of members. Membership figures were sometimes obtained by "pretext telephone call . . . utilizing the pretext to being interested in joining that branch of the NAACP." (Copies of all reports were disseminated to local military intelligence offices "in view of their interest in matters pertaining to infiltration of the NAACP.")⁴³⁷

D. C. MINFIL Investigations—The Antiwar Movement and Student Groups

The scope of FBI intelligence investigations of Communist infiltration of civil rights groups was matched, if not exceeded, by its investigations of Communist links to the antiwar movement. As early as 1964 the FBI reported publicly that the Communist Party was conducting "an intensive campaign for the withdrawal of American forces from South Vietnam."⁴³⁸

In April 1965, President Johnson's Assistant for National Security Affairs, McGeorge Bundy, asked the FBI for information concerning the Communist role in criticism of American policy in Vietnam. The following day Director Hoover met with the President to discuss this matter. According to Hoover's account:

⁴³¹ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/65.

⁴³² Memorandum from New York Field Office to FBI Headquarters, 4/15/65.

⁴³³ Memorandum from Chicago Field Office to FBI Headquarters, 5/7/65.

⁴³⁴ Memorandum from St. Louis Field Office to FBI Headquarters, 4/14/66.

⁴³⁵ Memorandum from New York Field Office to FBI Headquarters, 4/15/66.

⁴³⁶ Memorandum from FBI Headquarters to Indianapolis Field Office, 5/4/66.

⁴³⁷ Memorandum from Los Angeles Field Office to FBI Headquarters, 11/5/65.

⁴³⁸ Annual Report of the Attorney General for fiscal year 1964, pp. 378-376.

The President informed me that he was quite concerned over the anti-Vietnam situation that has developed in this country and he appreciated particularly the material that we sent him yesterday containing clippings from various columnists in the country who had attributed the agitation in this country to the communists as there was no doubt in his mind but that they were behind the disturbances that have already occurred. He said he had just received from Mr. McCone, the outgoing Director of the Central Intelligence Agency, a letter in which the Central Intelligence Agency stated that their intelligence showed that the Chinese and North Vietnamese believe that by intensifying the agitation in this country, particularly on the college campus levels it would so confuse and divide the Americans that our troops in South Vietnam would have to be withdrawn in order to preserve order here and it would enable North Vietnam to move in at once. . . . He stated he would like me to take prompt and immediate steps to brief at least two Senators and two Congressmen, preferably one of each Party, on the demonstrations in this country of the anti-Vietnam groups so that they might in turn not only make speeches upon the floors of Congress but also publicly. . . .

I informed the President that I had just received word this morning before coming to the White House that plans had been made from May 3 to May 9 to demonstrate in 85 cities of this country by the Students for Democratic Society, which is largely infiltrated by communists and which has been woven into the civil rights situation which we know has large communist influence. I told the President we were preparing a memorandum on the Students for Democratic Society which I would try to get to him by tomorrow. . . .

I also told the President that we were preparing, in response to the request he had made through Honorable McGeorge Bundy at the White House an over-all memorandum on the Vietnam demonstrations and communist influence in the same. . . .

Director Hoover issued the following instructions to his subordinates after his meeting with the President :

. . . I want prepared immediately a memorandum which I can transmit to the President containing what we know about the Students for Democratic Society. While I realize we may not be able to technically state that it is an actual communist organization, certainly we do know there are communists in it. It is somewhat similar to the situation we found in the Selma-to-Birmingham March in which we were able to identify 75 communists from New York City as being in that march even though there were many others in the march who were not communists and we could not be certain it was a communist demonstration. 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. [Emphasis added.]

I believe we should intensify through all field offices the instructions to endeavor to penetrate the Students for Democratic Society so that we will have proper informant coverage similar to what we have in the Ku Klux Klan and the Communist Party itself.

The Director also issued instructions for the overall memorandum on antiwar demonstrations "so that it can be used publicly by prominent officials of the Administration whom the President intends to send in various parts of the country to speak on the Vietnam situation."

I want it prepared in such a manner that there will be nothing to uncover our informant coverage but be a good, strong memorandum that will pinpoint that these demonstrations which have occurred, particularly on the campuses of the colleges and universities have been largely participated in by communists even though they may not have initiated them but they at least have joined and forced the issue such as has been done at Berkeley, California, and as they are doing at Ohio State University at the present time. Give this matter immediate attention and top priority as the President is quite concerned about the situation and wants prompt and quick action.³⁹

The resulting report on "Communist Activities Relative to United States Policy on Vietnam" presented extensive information showing the Communist Party's *desire* to influence antiwar activity—by sending letters to the President and Congressmen, issuing press releases, delivering speeches on campuses and elsewhere, distributing Party propaganda, and participating in protest demonstrations. Only one antiwar group other than the Party itself was reported as being significantly influenced—the W.E.B. DuBois Clubs allegedly formed in 1964 "as a result of a mandate by the Communist Party." The Party had instructed its district leaders "to organize activities in the trade-union movement, in youth groups and in religious organizations until peace is achieved." The extent or success of this effort was not discussed. Instead, a recent demonstration of some 15,000 persons in Washington, D.C., "was not communist instituted, dominated or controlled," although party members participated. Party members also were "participants" in a "vigil" at the LBJ ranch.⁴⁰

FBI field offices were instructed in 1965 to intensify their investigation of "subversive activity" among student groups.⁴¹ However, in 1967, there was concern that FBI intelligence activity on college campuses might be exposed by the controversy over CIA links with the National Student Association. Therefore, field offices were advised:

It is possible that this current controversy could focus attention on the Bureau's investigations of student groups on college campuses. It is also possible that student groups such as the Students for a Democratic Society and the W.E.B. DuBois Clubs of America could use this controversy as a vehicle to create some incident to embarrass the Bureau by

³⁹ Memorandum of J. Edgar Hoover, 4/28/65.

⁴⁰ Letter to McGeorge Bundy, 4/28/65, enclosing FBI memorandum, 4/28/65.

⁴¹ SAC Letter No. 65-44, 8/17/65.

claiming that we are infringing on academic freedom by investigating such groups. You should, therefore, bear in mind that in our continuing investigations to keep abreast of subversive influence on campus groups, in discharging our responsibilities in the internal security field, such investigations should be conducted in a most discreet and circumspect manner. Good judgment and common sense must prevail so that the Bureau is not compromised or placed in an embarrassing position.

Field offices were reminded that existing FBI policy required approval from headquarters before investigating individuals or groups "connected with an institution of learning," before interviewing students or faculty members, and before developing a student or faculty member "as an informant or source." These interviews or contacts were also to "be made away from the campus."⁴¹²

When the Katzenbach committee issued its report on CIA involvement with student groups, FBI Director Hoover canceled all outstanding authorizations "to contact students, graduate students, and professors of educational institutions in security matters . . . [including] established sources, informants, and other sources." Field offices were instructed to request new authority from FBI headquarters "where contacts with such individuals are particularly important and necessary."⁴¹³

Thus, at least one dimension of the FBI's expanding domestic intelligence program in the 1960s was temporarily cut back to avoid criticism. Director Hoover's restrictions imposed in 1966-1967 on the use of other sensitive techniques, including electronic surveillance and surreptitious entries, are discussed elsewhere.^{413a}

The FBI's desires for intelligence conflicted directly with its fear of "embarrassment." Shortly after the cutback in campus coverage, the FBI formally characterized the Students for a Democratic Society for the first time. The characterization (or "thumbnail sketch") stressed the following information on "subversive" connections with SDS.

Gus Hall, General Secretary, Communist Party, USA, when interviewed by a representative of United Press International in San Francisco, California, on May 14, 1965, described the SDS as a part of the "responsible left" which the Party has "going for us." At the June, 1965, SDS National Convention, an anticommunist proviso was removed from the SDS constitution. In the October 7, 1966, issue of "New Left Notes," the official publication of SDS, an SDS spokesman stated that there are some communists in SDS and they are welcome.⁴¹⁴

As intelligence investigations of SDS chapters expanded, FBI officials realized that the restrictions on campus contacts "impose problems for the field." Field offices were advised to stress "the development of noncampus informants and sources" to maintain intelligence

⁴¹² SAC Letter No. 67-18, 2/21/67.

⁴¹³ SAC Letter No. 67-20, 4/7/67.

^{413a} See Reports on Warrantless FBI Electronic Surveillance; Warrantless FBI Surreptitious Entry; and CIA and FBI Mail Opening.

⁴¹⁴ SAC Letter No. 67-28, 4/25/67.

coverage of "subversive" activity at educational institutions.⁴⁴⁵ Shortly thereafter, the restriction was lifted for contacts on campuses with "established sources functioning in an administrative capacity such as a Registrar, Director of Admissions, Dean of Men, Dean of Women and Security Officer, and their subordinates." Headquarters approval was still needed to contact students or professors.⁴⁴⁶

An example of the scope of these investigations is the coverage of various antiwar teachins and conferences sponsored by the Universities Committee on Problems of War and Peace. A forty-one page report from the Philadelphia office, based on coverage by thirteen informants and confidential sources, described in complete detail a "public hearing on Vietnam."

A Communist Party official had "urged all CP members" in the area to attend, and one of the organizers was alleged to have been a Communist in the early 1950s. Upon receipt from an informant of a list of the speakers, the FBI culled its files for data on their backgrounds. One was described by a source as a Young Socialist Alliance "sympathizer." Another was a conscientious objector to military service. A third had contributed \$5.00 to the National Committee to Abolish the House Committee on Un-American Activities. A speaker representing the W.E.B. DuBois Club was identified as a Communist. The FBI covered the meeting with an informant who reported practically verbatim the remarks of all the speakers, including the following:

- The Chairman of the Philadelphia Ethical Society;
- A representative of the American Civil Liberties Union;
- A representative of the United Electrical Workers;
- A spokesman for the Young Americans for Freedom;
- A member of the staff of the "Catholic Worker";
- A minister of the African Methodist Episcopal Church;
- A minister of the Episcopal Church;
- A representative of the Philadelphia Area Committee to End the War in Vietnam;
- A professor of industrial economics at Columbia University;
- A representative of the Inter-University Committee for Debate on Foreign Policy;
- A member of Women's Strike for Peace who had traveled to North Vietnam;
- A member of Women's International League for Peace and Freedom who had visited South Vietnam;
- A chaplain from Rutgers University;
- A professor of political science from Villanova University;
- Another member of Young Americans for Freedom;
- The former Charge d'Affaires in the South Vietnamese Embassy.

This informant's report was so extensive as to be the equivalent of a tape recording, although the FBI report does not indicate that the in-

⁴⁴⁵ SAC Letter No. 67-24, 5/2/67.

⁴⁴⁶ SAC Letter No. 67-20, 5/24/67.

formant was "wired." Another informant reported the remarks of additional participants:

- An official of the Committee for a Sane Nuclear Policy;
- A minister of the Church of the Brethren;
- A Unitarian minister;
- A representative of United World Federalists;
- A member of Students for a Democratic Society;
- A member of the Socialist Workers Party;
- A spokesman for the W.E.B. DuBois Clubs.

The report was prepared as a Letterhead Memorandum with fourteen copies for possible dissemination by the FBI to other Executive branch agencies. Copies were disseminated to military intelligence agencies, the State Department, and the Internal Security and Civil Rights Divisions of the Justice Department.⁴⁴⁷

Even where there was no specific prior indication of Communist involvement, the FBI investigated emerging "New Left" groups such as "Free Universities" attached to various college campuses. For example, when an article appeared in a Detroit newspaper stating that a "Free University" was being formed in Ann Arbor, Michigan, and that it was "anti-institutional," FBI headquarters instructed the Detroit Field Office to "ascertain through established sources the origin of this group and the identity of the individuals who are responsible for the formation of the group and whether any of these individuals have subversive backgrounds." A note on the instruction stated,

Several "Free Universities" have been formed in large cities recently by the Communist Party and other subversive groups. We are therefore conducting discreet investigations through established sources regarding all such "Free Universities" that come to the Bureau's attention to determine whether they are in any way connected with subversive groups.⁴⁴⁸

The field office contacted five informants and confidential sources, prepared a ten-page letterhead memorandum describing in detail the formation, curriculum content, and associates of the group—including several members of Students for a Democratic Society and the Socialist Workers Party. Although no further investigation was recommended, the report was disseminated to local military intelligence and Secret Service office, military intelligence and Secret Service headquarters in Washington, the State Department, and Internal Security Division of the Justice Department.⁴⁴⁹

Intelligence developed under what the Bureau called its VIDEM Program on Vietnam demonstrations was teletyped to headquarters "for immediate dissemination to the White House and other interested Government agencies, followed by . . . routine dissemination to the intelligence community."⁴⁵⁰ The White House not only received the product of FBI intelligence on antiwar demonstrations, but it also asked the Bureau to conduct "name checks" of its files on dozens of

⁴⁴⁷ Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.

⁴⁴⁸ Memorandum from FBI Headquarters to Detroit Field Office, 2/17/66.

⁴⁴⁹ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

⁴⁵⁰ SAC Letter No. 68-20, 3/20/68.

persons who signed telegrams critical of U.S. Vietnam policy.⁴⁵¹ An assistant to President Johnson also requested that the FBI monitor the televised hearings of the Senate Foreign Relations Committee on Vietnam policy and prepare a memorandum comparing statements of Senators William Fulbright and Wayne Morse with "the Communist Party line."⁴⁵² Another White House aide requested name checks on persons whose names appeared in the *Congressional Record* as signers of letters to Senator Morse expressing support for his criticism of U.S. Vietnam policy.⁴⁵³

A similar request was channeled through Attorney General Ramsey Clark, who supplied a Presidential aide (at the latter's request) with a summary of information concerning the National Committee for a Sane Nuclear Policy.⁴⁵⁴ This same aide summarized for the President an FBI memorandum on "peace" demonstrations, pinpointing those particular examples which gave evidence that (as quoted from the Bureau report):

The Communist Party and other organizations are continuing their efforts to force the United States to change its present policy toward Vietnam.⁴⁵⁵

The exaggeration of Communist participation, both by the FBI and White House staff members, could only have had the effect of reinforcing President Johnson's original tendency to discount dissent against the Vietnam War as "Communist inspired." It is impossible to measure the larger impact on the fortunes of the nation from this distorted perception at the very highest policymaking level.

E. Civil Disturbance Intelligence

While no explicit directive from the Attorney General authorized the FBI's collection of intelligence about protest demonstrations in the early sixties, the Justice Department's Civil Rights Division made "oral requests" to the FBI for intelligence, including for example a tape recording of a speech by Governor-elect George Wallace of Alabama in late 1962⁴⁵⁶ and "photographic coverage" of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation.⁴⁵⁷ The FBI advised the Division of 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."⁴⁵⁸ The Division prepared regular summaries of information from the Bureau on "demonstrations and other racial matters."⁴⁵⁹

⁴⁵¹ Letter from J. Edgar Hoover to Marvin Watson, Special Assistant to the President, 6/4/65.

⁴⁵² FBI Summary Memorandum, 1/31/75.

⁴⁵³ Letter from J. Edgar Hoover to Marvin Watson, Special Assistant to the President, 7/15/66 (cites request of "Mr. Jake Jacobsen, Legislative Counsel to the President").

⁴⁵⁴ Memorandum from Attorney General Clark to Marvin Watson, 4/8/67, enclosing memorandum from Director, FBI, to the Attorney General, 4/7/67.

⁴⁵⁵ Memorandum from Marvin (Watson) to the President, 5/16/67.

⁴⁵⁶ Memorandum from Director, FBI, to Assistant Attorney General Burke Marshall (Civil Rights Division), 12/4/62.

⁴⁵⁷ Memorandum from St. J. B. (St. John Barrett) to Mr. Marshall, 6/18/63.

⁴⁵⁸ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/11/63.

⁴⁵⁹ Memorandum from Carl W. Gabel to Burke Marshall, 7/19/63. This memorandum described 21 such "racial matters" in ten states, including Ohio, New Jersey, Pennsylvania, Indiana, and Nevada outside the South. While some of the

(Continued)

The only formal directive on this intelligence activity 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" with the U.S. Attorneys.⁴⁰⁰

During the first small-scale Northern ghetto disturbances in the summer of 1964, President Johnson ordered the FBI to investigate their origins and extent.⁴⁰¹ However, after the FBI submitted a report on the Watts riots in Los Angeles in 1965, Attorney General Nicholas Katzenbach advised President Johnson that the FBI would only investigate "directly" the possible "subversive involvement." He did not believe the FBI should conduct a "general investigation" of "other aspects of the riot." The President approved this "limited investigation."⁴⁰² As described earlier (at pp. 475-477), internal Bureau instructions in 1965 and 1966 went far beyond this limitation.

Instructions to all FBI offices in 1966 stressed the need for "expanding awareness and alertness" regarding demonstrations against the Vietnam War. Director Hoover stated:

There are increasing indications that the public is losing patience with the continued succession of demonstrations which have been occurring in all parts of the nation. This rising tide of public indignation is more and more creating waves of retributive action directed at the demonstrators. Increasingly, irate spectators are rejecting their passive roles and expressing their opposition and indignation toward the demonstrators by attacking them physically.

On the other hand, leaders of many of the groups involved in demonstrations have been exhorting their followers to more "direct action tactics" to gain their ends. Thus, the demonstrations have been marked by a growing militancy.

Clearly, the situation is one in which the conflict of interests produces a growing tension. With summer approaching, the potentialities for violent outbreaks will increase immeasurably, whether demonstrations are directed at opposition toward United States foreign policy in Vietnam or protests involving racial issues.

We must not only intensify and expand our coverage to insure prompt and accurate reporting of violent outbreaks of this nature but also to insure that advance signs of such outbreaks are detected and disseminated to appropriate authorities.

(Continued)

items in this and later summaries related to violent or potentially violent protest activity, or to the role of alleged "subversives" in the 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, 7/22/68, 8/2/68 and 8/22/68.)

⁴⁰⁰ Memorandum from Attorney General Kennedy to U.S. Attorneys, 5/27/63.

⁴⁰¹ "Text of FBI Report on Recent Racial Disturbances," *New York Times*, 9/27/64.

⁴⁰² Memorandum from Attorney General Katzenbach to President Johnson, 8/17/65.

I want to stress to you that the emphasis in these matters must be on *advance detection*. Post mortem reporting is of secondary consequence. We are an intelligence agency and as such are expected to know what is going to or is likely to happen. National, state, and local authorities rely upon us to obtain this information so they can take appropriate action to avert disastrous outbreaks.⁴⁶³

The urban riots of the summer of 1967 greatly intensified FBI domestic intelligence operations. Equally important, the Detroit and Newark riots brought other agencies of the Federal government into the picture. A Presidential Commission was established to study civil disorders, the Attorney General reexamined the intelligence capabilities of the Justice Department, and the use of Federal troops in riot torn cities led to widespread military intelligence surveillance of civilians. It was a period of intense pressure and little coordination. Antiwar protests under the banner of "Resistance to Illegitimate Authority" culminated in a massive march on the Pentagon in October 1967. The combination of ghetto violence, the highly-publicized militant rhetoric of figures like Stokely Carmichael and H. Rap Brown, widening protest against the Vietnam war, and increasing acts of civil disobedience during antiwar demonstrations generated intense demands for domestic intelligence.

In late July 1967 President Johnson created the National Advisory Commission on Civil Disorders to investigate and make recommendations with respect to:

- (1) The origins of the recent major civil disorders in our cities, including the basic causes and factors leading to such disorders and the influence, if any, of organizations or individuals dedicated to the incitement or encouragement of violence.
- (2) The development of methods and techniques for avert-
ing or controlling such disorders . . .

The President directed the FBI, in particular, to "provide investigative information and assistance" to the Commission. The President stated publicly that the FBI would "continue to exercise its full authority to investigate these riots, in accordance with my standing instructions, and continue to search for evidence of conspiracy."⁴⁶⁴

Director Hoover appeared before the Commission on August 1, 1967. He discussed the role in certain disturbances of "rabble-rousers who initiate action and then disappear;" and he identified Martin Luther King, Floyd McKissick (of the Congress of Racial Equality), and Rap Brown and Stokely Carmichael (of SNCC) as "vociferous firebrands who are very militant in nature and who at times incite great numbers to activity." When asked about proposed Federal antiriot legislation, Hoover expressed the "opinion that any law which allowed law enforcement the opportunity to arrest militant and vicious rabble-rousers like Carmichael and Brown would be healthy to have on the

⁴⁶³ SAC Letter 00-27, 5/3/68.

⁴⁶⁴ Executive Order 11305, 7/20/67; Remarks of the President 7/20/67. In *Report of the National Advisory Commission on Civil Disorders* (1968), pp. 534-537 (Bantam Books ed.).

books." New York Mayor John Lindsay asked the FBI Director "if it would be possible to total up and fully identify the number of militant Negroes and whites who were in the same category as Carmichael and Brown" so that the Commission could learn "just exactly what the hard core in this country amounted to." Director Hoover replied "that the FBI, through its intelligence gathering, was of course capable of identifying and totaling up such individuals." Mayor Lindsay also asked "if the FBI had any intelligence regarding Negroes or white groups shifting money or firearms to foreign countries." Hoover answered "that the FBI had no such intelligence," but that Stokely Carmichael's travel to Cuba and other countries "should not be overlooked." Lindsay then observed that "such travels were apparently not widespread."

In his discussion of the riots in Watts, Newark, and Detroit, the FBI Director pointed out that the FBI "had no intelligence reflecting an overall organized conspiracy" and "that many of the riots occurred as the result of an incidental spark." However, he added "that the communist and other subversive forces always, while not initiating the riots, certainly attempted to exploit them once the riot started." The chairman, Governor Otto Kerner, asked that FBI reports be made available to the Commission. Director Hoover replied:

... that it should be definitely understood that the FBI cannot make individual investigations, but that the FBI would be most willing to make inquiries in communities where there are allegations of subversive influences, involvement of out-of-state influences, and the like. . . . [V]olumes on subversive organizations, as well as a rundown on major disorders and riots of this summer, would be left with the Commission at this time.

Following his meeting with the Commission, Director Hoover ordered his subordinates to intensify their collection of intelligence about "vociferous rabble-rousers."⁶⁵

Parallel with the FBI's expansion of domestic intelligence operations in 1967-1968, the Justice Department developed a mechanism for the analysis and evaluation of civil disturbance intelligence. Indeed, one substantial basis for FBI intelligence authority in this period was a memorandum from Attorney General Ramsey Clark to Director Hoover in September 1967:

Although the bulk of criminal offenses occurring in the course of recent riots have been local rather than federal in nature, the question as to whether there was an organization which (a) had made advanced plans for, and (b) was active during any of the riots in the summer of 1967 is one that cannot always be readily resolved by local authorities. In view of the seriousness of the riot activity across the country, it is most important that you 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. [Emphasis added.]

⁶⁵ Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67.

Attorney General Clark listed numerous Federal statutes which "could be applicable" in a specific situation, including criminal statutes on rebellion or insurrection, seditious conspiracy, advocacy of violent overthrow of the government (Smith Act), activities affecting the armed forces, Selective Service, interstate travel to commit arson or transport explosives, assault on a Federal officer, destruction of government property, firearms regulation, and crimes on Federal reservations. The Attorney General added:

I appreciate that the Bureau has constantly been alert to this problem and is currently submitting intelligence reports to us about riots and about the activity of certain groups and individuals before, during and after a riot. Indeed, the President has said both publicly and privately that the FBI is conducting extensive and comprehensive investigations of these matters.

There persists, however, a widespread belief that there is more organized activity in the riots than we presently know about. We must recognize, I believe, that this is a relatively new area of investigation and intelligence reporting for the FBI and the Department of Justice. We have not heretofore had to deal with the *possibility of an organized pattern of violence, constituting a violation of federal law*, by a group of persons who make the urban ghetto their base of operation and whose activities may not have been regularly monitored by existing intelligence sources.

In these circumstances, 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 pre-planned or organized; and, if so, to determine the identity of the people and interests involved; and to deter this activity by prompt and vigorous legal action.

As a part of the broad investigation which must necessarily be conducted . . . sources or informants in black nationalist organizations, SNCC 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, *and also* to determine the whereabouts of persons who might be involved in instigating riot activity in violation of federal law. Further, we need to investigate fully allegations of conspiratorial activity that come to our attention from outside sources . . .⁴⁰⁰ [Emphasis added.]

In furtherance of the Attorney General's instructions, the FBI advised its field offices in October 1967 that there was "a definite need to develop additional penetrative coverage of the militant black nationalist groups and the ghetto areas immediately to be in a position to have maximum intelligence in anticipation of another outburst of racial violence next summer." For this purpose the FBI instituted a program for "the development of ghetto-type racial informants." In addition, the FBI intensified its existing "Black Nationalist Groups

⁴⁰⁰ Memorandum from Attorney General Ramsey Clark to the FBI Director, 9/14/67.

TOPLEV Informant Program." Racial informants were to be "directed to obtain information concerning individuals who may be stockpiling firebombs, Molotov cocktails, weapons, and to identify any groups of terrorists who may be planning on carrying out a type of guerrilla warfare during riotous situations."⁴⁶⁷

In contrast to previous policies for centralizing domestic intelligence investigations of "subversives," local police were encouraged to establish intelligence programs both for their use and to feed into the Federal intelligence gathering process, thus greatly expanding the domestic intelligence apparatus and making it harder to control.

In reaction to civil disorders in 1965-1966, Attorney General Nicholas Katzenbach had turned to the newly-created President's Commission on Law Enforcement and Administration of Justice for advice. After holding a conference with police and National Guard officials, the crime 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."⁴⁶⁸ Former Assistant Attorney General Vinson recalls 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."⁴⁶⁹

During the winter of 1967-1968, the Justice Department and the National Advisory Commission on Civil Disorders reiterated the message that local police should set up "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."⁴⁷⁰ The Commission also urged that these local units be linked to "a national center and clearinghouse" in the Justice Department.⁴⁷¹ The unstated consequence of these recommendations was that the FBI, having regular liaison with local police, served as the channel (and supplementary repository) for this intelligence data.

These federal policies led to the proliferation of police intelligence activities, often without adequate controls. For example, a recent state grand jury report on the Chicago Police Department's "Security Section" revealed 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. For example, 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 would be told that the individual was "a member." The grand jury stated:

⁴⁶⁷ SAC Letter No. 67-72, 10/17/67.

⁴⁶⁸ President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), pp. 118-119.

⁴⁶⁹ Fred Vinson testimony, 1/27/70, p. 82.

⁴⁷⁰ *Report of the National Advisory Commission on Civil Disorders* (1968), p. 487 (Bantam Books ed.).

⁴⁷¹ *Ibid.*, p. 490.

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.⁴⁷²

Several urban police departments have more recently attempted to set "guidelines" for their security intelligence activities.⁴⁷³

F. The Justice Department and the IDIU

Joseph Califano, who was President Johnson's assistant in 1967, has 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," since they "didn't know what the black groups were" in Detroit. Consequently, "there was a desire to have the Justice Department have better intelligence, for lack of a better term, about dissident groups;" and this "precipitated the intelligence unit" set up by Attorney General Ramsey Clark in late 1967. The President and the White House staff were saying, "There must be a way to predict violence. We've got to know more about this."⁴⁷⁴

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."⁴⁷⁵ Vinson has recalled that many people "jumped to a conspiracy theory," and the government "would have been remiss" if it had not investigated.⁴⁷⁶

In September 1967 Attorney General Ramsey Clark asked Assistant Attorney General John Doar to review the Department's "facilities for keeping abreast of information we receive about organizations and individuals who may or may not be a force to be taken into account in evaluating the causes of civil disorder in urban areas." After conferring with Assistant Attorneys General Fred Vinson of the Criminal Division and J. Walter Yeagley of the Internal Security Division, Doar

⁴⁷² "Improper Police Intelligence Activities," A Report by the Extended March 1975 Cook County (Illinois) Grand Jury, 11/10/75. The report also stated:

"Finally, political spying by police lowers the community's respect for law enforcement. Without the respect and support of the community, law enforcement agencies cannot operate effectively. The decision by high police officials to indiscriminately infiltrate community groups makes the difficult job of responsible law enforcement even more difficult."

⁴⁷³ For example, Procedures: Public Security Activities of the Intelligence Division, New York City Police Department, published in "Domestic Intelligence Operations for Internal Security Purposes," Hearings before the Committee on Internal Security, House of Representatives, 93d Cong., 2d Sess. (1974), pp. 3747-3792; and Standards and Procedures: Public Disorder Intelligence Division, Los Angeles Police Department, April 10, 1975.

⁴⁷⁴ 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.)

⁴⁷⁵ Vinson, 1/27/76, p. 33.

⁴⁷⁶ Vinson, 1/27/76, pp. 37-38.

reported their joint recommendation that the Department establish "a single intelligence unit to analyze the FBI information we receive about certain persons and groups who make the urban ghetto their base of operation." Doar also proposed that other Divisions of the Justice Department, including the Community Relations Service, should "funnel information to this unit." He recognized that the Community Relations Service risked losing "its credibility with people in the ghetto," but he believed the Department could develop safeguards to maintain "the confidentiality of the information." In addition, Doar recommended,

Other agencies of the government might become a source of intelligence information. This is a sensitive area, but the poverty programs, the Labor Department programs, and the Neighborhood Legal Services, all have access to facts which a unit in the Department might find helpful. At the very least the intelligence unit should know where the poverty programs are operating, where the Neighborhood Legal Services are located, who is staffed there so that if there were a need in a particular area the unit would know where to go to get additional factual material.

Other investigative agencies of the federal government might also furnish intelligence information, for example, the intelligence unit of the Internal Revenue Service. I found that in Detroit this unit under the direction of John Olszewski, had by far the best knowledge of the Negro areas in Detroit. According to Olszewski, the Alcohol, Tax and Tobacco Unit has the best intelligence on the geography of ghetto areas. The Narcotics Bureau is another possibility, and, finally, my experience in Detroit suggests that the Post Office Department might be helpful. Perhaps utilization of other agencies intelligence potential is too big and difficult a task, but I raise it for your consideration.

Beyond the FBI and other governmental sources Doar expected that the unit would become familiar with "the literature"—including Jack Newfield's *The Prophetic Minority*, Howard Zinn's *The New Abolitionists*, and writings on the "New Left" by Andrew Kopkind and Nicholas von Hoffman—and with the work produced by the Institute for Policy Studies and Studies on the Left. The unit would undertake "critical analysis" of intelligence data and prepare periodic reports and evaluations for the Attorney General "on the organizations, on individuals and on particular urban areas."

It is evident from Assistant Attorney General Doar's memorandum that the primary purpose was to have a unit that would "include conclusions and recommendations" in its civil disturbance intelligence reports. This was a function the FBI would not perform. Instead, FBI reports to the Department normally carried the form statement: "This document contains neither recommendations nor conclusions of the FBI." Doar described current procedures for evaluation of intelligence:

The Internal Security Division has been engaged in evaluating FBI reports involving several thousand alleged Communists in order to determine their individual dangerousness

(2300 per year). It also reviews FBI reports on more than 125 organizations and their officers. Internal Security says that it received 16,192 FBI reports and memoranda last year . . .

I note from Mr. Yeagley's memorandum . . . that for the most part he restricts his lawyers to summarizing the pertinent facts in the memorandum and has discouraged them from injecting personal opinions or indulging any prognostication. He limits analysis to the recognition of whether particular information represents a fact, a probable fact or only a possible fact, or is pure fiction in evaluating material found in FBI reports, publications or other source material. I am not sure that I understand this distinction.

Doar also presented a sample from the FBI memoranda which came to the Civil Rights Division and showed the broad range of FBI intelligence reports. He did not recommend placing any limits on FBI intelligence collection. Instead, he proposed "that the scope be very broad initially."

We have not taken a broad spectrum approach to collection and analysis of intelligence. Rather, we have focused narrowly on individuals, a limited number of traditional subversive groups, and intelligence information about a suspect who may have become a subject of a specific statutory violation. As the unit became knowledgeable and sophisticated and could make reasonable judgments and could measure the influence of particular groups or organizations, then it could narrow its spectrum to a more limited target.

Doar anticipated that the unit would need five or six lawyers and six to eight college graduate research analysts. The lawyers would go out in the field to "become familiar with urban areas."⁴⁷

Attorney General Clark did not implement Doar's plan at once, but appointed a committee to study the matter further. In the meantime the Internal Security Division began "compiling an index and abstracts on individuals and organizations connected with civil disturbance matters." Approximately 1400 cards were prepared in the first two months. The Departmental committee made its report in December 1967. A careful review of the FBI's intelligence reports to the Internal Security Division disclosed that reports and files were being maintained on approximately 400 organizations, more than one-third relating directly "to the civil disturbance problem (due to a characterization as black power, new left, pacifist, pro-Red Chinese, anti-Vietnam War, pro-Castro, etc.)." The committee recommended that the new intelligence unit collate this data so as to develop "a master index on individuals, or organizations, and by cities." Departmental attorneys would prepare "monographs" on particularly important organizations, including "a statement of its purposes, its relevant activities within the past few years, the location of the headquarters and all branch offices of the organization, activities and significant background information concerning its officers and active

⁴⁷ Memorandum from Assistant Attorney General John Doar to the Attorney General, 9/27/67.

members, etc." The unit would also draw on the Departmental files on individuals maintained under the Emergency Detention Program, which contained "brief synopses of approximately 10,000 individuals who are members of the Communist Party, the SWP, the Nation of Islam, etc." However, the committee stressed that the unit's "primary goal . . . must be the meaningful evaluation of information received rather than preparation of an exhaustive index." There was also a potential for "computerizing the master index." Possible links to other government agencies were suggested:

As he becomes familiar with the subjects involved, the head of the Intelligence Unit should develop contacts with other intelligence gathering agencies. Since this may represent a duplication of the liaison established with the FBI, it should be undertaken with care. Possible sources of outside intelligence include the President's Commission on Civil Disorders, various corresponding state agencies such as the New Jersey Blue Ribbon Commission, CIA, State Department, Army Intelligence, National Security Agency, and Office of Economic Opportunity. In addition, other federal agencies may have relevant information. These perhaps would include Department of Labor, Migration and Unemployment studies, Department of Housing and Urban Development surveys and Model City applications, the Treasury Department's Alcohol and Tobacco Tax Unit and Narcotics Bureau, and the general background information available from the Post Office Department Postal Inspector's Branch.

The committee did not seriously consider assigning the unit's analysis and evaluation functions to the FBI. It was divided as to whether the unit should be placed in the Internal Security Division or directly under the Attorney General and the Deputy Attorney General. In either case, there was a pressing need for "coordination" because of "the heavy flow of FBI reports to the Attorney General, the Deputy Attorney General, and the Internal Security, Criminal, and Civil Rights Divisions." On the other hand, it did "not seem wise to establish an elaborate organizational structure" because it was "impossible to tell how long the Intelligence Unit will need to exist."^{477a}

Attorney General Clark adopted the committee's recommendation and established a permanent Interdivision Information Unit (IDIU). He noted that it would "take over and extend the activities of the so-called Summer Project of the past two years" (in the Criminal Division). The IDIU was placed under the supervision of a Committee composed of the Director of the Community Relations Services and the Assistant Attorneys General in charge of the Civil Rights, Criminal, and Internal Security Divisions. The IDIU "charter" stated:

The Unit shall function for the purposes and within the guidelines expressed in my memorandum of November 9 and the report of December 6, 1967. It is enough to state here that, in the main, it shall be responsible for reviewing and reduc-

^{477a} Memorandum from Kevin T. Maroney, et al., to Attorney General Clark, 12/6/67.

ing to quickly retrievable form all information that may come to this Department relating to organizations and individuals throughout the country who may play a role, *whether purposefully or not*, either in instigating or spreading civil disorders, or in preventing or checking them.⁴⁷⁸ [Emphasis added.]

The memorandum of November 9, appointing the study committee had also stated:

It is imperative that the Department seek and obtain the most comprehensive intelligence possible regarding organized or other purposeful stimulation of domestic dissention, civil disorders, and riots. To carry out these responsibilities we must make full use of, and *constantly endeavor to increase and refine*, the intelligence available to us, both from internal and external sources, concerning organizations and individuals throughout the country who may play a role either in instigating or spreading disorders or in preventing or checking them. However, we do not now adequately use such intelligence or develop and implement methods of improving intelligence. Thus, we do not have any systematic means at present of compiling and analyzing the voluminous information about various persons or organizations furnished to us by the FBI, and we make very little effort *to obtain information elsewhere*.⁴⁷⁹ [Emphasis added.]

Finally, the committee report had formally defined the IDIU's responsibilities as follows:

1. Gathering facts from sources within and without the Department relating to organizations and individuals whose activities are or may be related to planning for or participating in civil disturbances.

2. Systematically collating, evaluating and recording such information so that it is subject to convenient and expeditious recalls.

3. Preparing periodic intelligence summaries, from time to time, or as directed by the Attorney General on persons, organizations and places including therein estimates and evaluations of potential disturbances.

4. Report immediately to the Attorney General the receipt of information indicating plans or attempts by individuals or organizations to foster or promote civil disorders, including therewith an evaluation of the source and pertinent background material.

5. Recommending to the Attorney General means for obtaining additional intelligence.

6. Consulting with the Assistant Attorneys General of Internal Security, Criminal and Civil Rights Divisions and the

⁴⁷⁸ Memorandum from Attorney General Ramsey Clark to Assistant Attorneys General John Doar, Fred M. Vinson, Jr., Roger W. Wilkins, and J. Walter Yeagley, 12/18/67.

⁴⁷⁹ Memorandum from Attorney General Clark to Kevin T. Maroney, et al, 11/9/67.

Director of the Community Relations Service on each of the above functions.⁴⁸⁹

The IDIU, later renamed the Interdivisional Intelligence Unit, obtained computer facilities in 1968 and continued to function as the Attorney General's main source of civil disturbance intelligence analysis until 1971, when the Intelligence Evaluation Committee was created in the aftermath of the "Huston Plan."⁴⁹⁰ The IDIU and the IEC both existed from 1970 until 1973, when the IEC was abolished. The IDIU has been renamed the Civil Disturbance Unit and remains, on a more limited basis, the Attorney General's principal source for regular summaries of information about civil disturbances.

The IDIU's work in 1968 was summarized as follows by Assistant Attorney General Yeagley:

The Unit, immediately upon its establishment, embarked on an information retrieval system utilizing automatic data processing, which . . . constitutes probably the best information retrieval system in the Department. In pursuit of its duties, the analysts and attorneys during the year 1968 reviewed more than 32,000 FBI investigative reports, teletypes, *army intelligence reports* and other material concerning individuals and organizations involved primarily in the area of *racial agitation*. In addition, but on a more selective basis, the Unit has also followed certain other activities, when related. . . . Information concerning individuals and organizations who are the subjects of the reports coming into the Unit is abstracted by the analysts and put on special forms for automatic data processing. The information input concerns itself with data regarding disturbances and incidents such as individual fire bombings, gunfire, attacks on police or other officials, vandalism, etc., which may occur in a particular locality which appear to be caused by or to contribute to racial unrest. [Emphasis added.]

The computer system could generate reports listing all individuals "who are members or affiliates of any particular organization," as well as their location and travel. IDIU also had the capability to produce reports on:

All incidents relating to *specific issues* or specific coded events such as all Black Power activity or all incidents relating to convention demonstrations or all information to some future and planned specific demonstration, such as we had in connection with the Chicago Democratic Convention and the demonstrations on Inaugural weekend in Washington.⁴⁹¹

A later review of IDIU operations states that "1968 entries in the IDIU files include numerous anti-war activists and other dissidents."⁴⁹²

⁴⁸⁹ Memorandum from Maroney, et al, to Attorney General Clark, 12/6/67.

⁴⁹⁰ See Report on The Huston Plan.

⁴⁹¹ Memorandum from Assistant Attorney General J. Walter Yeagley to Deputy Attorney General Richard G. Kleindienst, 2/6/69.

⁴⁹² Statement of Deputy Attorney General Laurence H. Silberman, Justice Department Press Release, 1/14/75.

The IDIU's receipt and use of Army intelligence reports in 1968 had the effect, if perhaps not the full intent, of providing the Attorney General's implicit authorization for a vast expansion of military surveillance of civilians during this period. At a White House meeting in January 1968, Attorney General Clark told those present (including Defense Department officials) that "every resource" must be used in the domestic intelligence effort, although he asked the Army to be more selective in the reports it sent to the Justice Department.⁴⁵³ The Army's intelligence collection plans of February 1, 1968, and May 2, 1968, were circulated to the Justice Department; and Army intelligence officers received specific oral requests from the Justice Department.⁴⁵⁴ There was never a formal decision by civilian officials in the Defense Department or the Justice Department which explicitly authorized Army surveillance of civilian political activity. However, the practice was accepted without challenge by those responsible officials who received the intelligence product. For example, Deputy Attorney General Warren Christopher thanked an Army intelligence officer for the Army's spot reports and daily summaries, although he explained that the FBI would be in charge of distributing intelligence to other agencies and that the IDIU provided analyses for intradepartmental use only.⁴⁵⁵

As a result of the long-standing Delimitations Agreement, the FBI and military intelligence shared their intelligence product. Consequently, FBI reports constituted a substantial part of the information about civilians stored in the Army's computerized data banks. Likewise, the military's surveillance efforts complemented the FBI's intelligence coverage, especially with respect to groups which could be infiltrated by Army intelligence agents more readily than by FBI agents or FBI-recruited informants. Thus, by the end of 1968 a massive domestic intelligence apparatus had been established in response to ghetto riots, militant black rhetoric, antiwar protest activity, and campus disruptions. To a great extent each component of the structure—FBI, IDIU, military—set its own generalized standards and priorities.

In the first year of the Nixon Administration, Attorney General John Mitchell and Deputy Attorney General Richard Kleindienst sought to bring greater order and coherence to the domestic intelligence operations set in motion by their predecessors. The Attorney General and the Secretary of Defense developed an "Interdepartmental Action Plan for Civil Disturbances" under which the Attorney General was designated "as the chief civilian officer in charge of coordinating all Federal Government activities relating to civil disturbances." The plan provided:

Under the supervision of the Attorney General, raw intelligence data pertaining to civil disturbances will be acquired from such sources of the Government as may be available. Such data will be transmitted to the Intelligence

⁴⁵³ Memorandum for the Undersecretary of the Army, printed in *Federal Data Banks, Computers, and the Bill of Rights*, Hearings before the Subcommittee on Constitutional Rights (1971), pp. 1278-1281.

⁴⁵⁴ See Report on Improper Surveillance of Private Citizens by the Military.

⁴⁵⁵ Letter from Deputy Attorney General Warren Christopher to Maj. Gen. William P. Yarborough, Assistant Chief of Staff for Intelligence, 5/15/68.

Unit of the Department of Justice, and it will be evaluated on a continuing basis by representatives from various departments of the Government. After evaluations have been made, the data will be disseminated to the Attorney General, the Secretary of Defense, and the White House. [Emphasis added.]

During the early stages of a crisis in which it appears that a request for Federal military assistance may be forthcoming, the intelligence organization of the Department of Justice will alert the Attorney General and the Secretary of Defense. It is expected that responsible State and local officials will promptly inform the Attorney General of the situation and will thereafter keep him informed of developments. When advised that a serious disturbance is in the making, the Attorney General will immediately inform the President.

If time permits, the Attorney General and the Secretary of Defense may dispatch their personal representatives to the disturbance area to appraise the situation before any decision is made to commit Federal forces. Such action can help to assure that the Federal Government responds in accordance with the realities of the situation as perceived by its own observers.⁴⁸⁶

The plan formalized the use of civil disturbance teams to be sent out from Washington when IDIU evaluations indicated possible serious disorder. However, it did not clarify which federal agencies would collect civil disturbance intelligence, thus permitting the Army to continue its surveillance of civilian activity. Military intelligence operations continued unabated until 1970, when public exposure and Congressional criticism led to a substantial curtailment.⁴⁸⁶

Pursuant to the plan, the first Intelligence Evaluation Committee was created to advise the Attorney General as to the steps to be taken in case of possible serious disorders. Its members included the heads of the Internal Security and Criminal Divisions, the Community Relations Service, and the IDIU, as well as representatives from the Civil Rights Division, the Secret Service, and Army Intelligence. The chairman was the Assistant to the Director of the FBI, Cartha DeLoach. This prominent role for the FBI was a significant departure from previous practice under Attorney General Clark.⁴⁸⁷ The head of the IDIU, James T. Devine, described its functions in 1970:

The Information Unit is responsible for collecting, analyzing, and computerizing all intelligence information received by the Department in the area of civil disorders and campus disturbances. This intelligence encompasses informa-

⁴⁸⁶ Memorandum from Melvin Laird, Secretary of Defense, and John N. Mitchell, Attorney General to the President, 4/1/69.

⁴⁸⁶ Improper Surveillance of Private Citizens by the Military.

⁴⁸⁷ Memorandum from Attorney General John N. Mitchell to Deputy Attorney General Richard G. Kleindienst, 7/22/69.

tion on both events and individuals past, prior, and during actual disorders. Intelligence information is received from the FBI, the U.S. Attorneys, Bureau of Narcotics and Dangerous Drugs, Military Intelligence, Alcohol, Tobacco, and Firearms Division of the Treasury Department and other intelligence gathering bodies within the Executive Branch. These intelligence reports run in excess of 42,000 a year. [Emphasis added.]

The Unit produces a daily morning and evening report on disturbances nation-wide and a summation weekly report. . . .

The Unit produces a complete print-out of all intelligence within the ADP system on a weekly basis for study as to the degree of civil disturbance intensity throughout various sections of the country. Upon request by concerned citizens, special printouts are made on such subjects as *BPP* [Black Panther Party] activities, foreign travel, assaults on police, bombings during a given period, high school disorders, etc. . . . [Emphasis added.]

The Chief . . . is chargeable with the intelligence briefing of all Civil Disturbance teams prior to their commitment to a given area. Intelligence briefings are also provided on an intermittent basis to senior officials of the Department of Defense. This office is further charged with maintaining liaison with Chiefs of Police, Public Safety Directors and the offices of Mayors and State Governors as a situation warrants.⁴⁸⁸

The references to campus disturbances, the Black Panther Party, and foreign travel indicate some of the highest priorities for domestic intelligence in 1969-1970. In addition Assistant Attorney General Jerris Leonard of the Civil Rights Division, who was assigned as the Attorney General's Chief of Staff for the Civil Disturbance Group, arranged in 1970 for the Justice Department "to make available for examination or copying, to designated officials of the Central Intelligence Agency, computerized tapes of information submitted by the IDIU." An inquiry in 1975 concluded that the Department "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. At the time it was provided to the CIA, the IDIU subject list contained records of approximately ten to twelve thousand individuals. The records contained identifying information, aliases, brief narratives and file sources of the data, including FBI inputs."⁴⁸⁹

An examination of the IDIU computer printout in 1971 disclosed such prominent names as Rev. Ralph Abernathy, Cesar Chavez, Bosley Crowther (former *New York Times* film critic), Sammy Davis, Jr., Charles Evers, James Farmer, Seymour Hersh, Julius Hobson, and Mrs. Coretta King. Organizations noted in the computer printout included the NAACP, the Congress of Racial Equality, the Institute for Policy Studies, VISTA, United Farm Workers of California, and

⁴⁸⁸ James T. Devine, *Interdivisional Information Unit, Civil Disturbance Group*, 9/10/70.

⁴⁸⁹ Statement of Deputy Attorney General Laurence H. Silberman, Justice Department Press Release, 1/14/75.

the Urban League. Many ordinary people who were not prominent nationally had their names included in the IDIU subject data listing. One was described as "a local civil rights worker," another as "student at Merritt College and member of Peace and Freedom Party as of mid '68," and another as "a breaded militant who writes and recites poetry."⁴⁹⁰

There were some congressional misgivings expressed about the Justice Department's procedures for handling demonstrations in Washington, D.C. To allay these concerns, the Department prepared a report on *Demonstration and Dissent in the Nation's Capital*. With respect to intelligence, the report stated:

Accurate and complete information is essential for the planning necessary to achieve peaceful demonstrations and for dealing with disorders. It is not only important to know how many are coming at a particular time, but who they might be and why they are coming. *This kind of relevant information is freely available to anyone*; it is only necessary to collect it in one place and, having collected it, to evaluate it in order to make value judgments and to formulate a plan of action. To provide the concerned departments and agencies with reliable information, there has been established within the Department of Justice an Interdivisional Information Unit (IDIU) and an Intelligence Evaluation Committee. Whenever the information indicates a large demonstration may occur, all intelligence concerning that potential demonstration is reviewed by the Intelligence Evaluation Committee. The Intelligence Evaluation Committee is composed of officials of the Executive Branch experienced with demonstrations and in assessing the potential for disorders. The Intelligence Evaluation Committee weighs all of the available information and reports its conclusions regarding the potential for disorder to the Attorney General.⁴⁹¹ [Emphasis added.]

The Justice Department report did not make clear that the IDIU and the first IEC received and evaluated not only publicly available information, but also data provided from clandestine intelligence investigations by the FBI and military intelligence.

In 1971, Assistant Attorney General Robert Mardian issued new "guidelines" for the IDIU, which stated in part:

... IDIU must analyze and monitor all information relating to past civil disorders as well as information relating to the potential for civil disorder. ... [W]e must identify and understand the philosophies of organizations and individuals who have engaged in civil disorder or have demonstrated a propensity to do so.

In carrying out our purpose, it is imperative that the analysts involved keep clearly in mind that IDIU is not an investigative agency. Its mission, reduced to its simplest es-

⁴⁹⁰ Staff Memorandum for the Subcommittee on Constitutional Rights, United States Senate, 9/14/71.

⁴⁹¹ Department of Justice Report, *Demonstration and Dissent in the Nation's Capital*, in Hearings before the Senate Subcommittee on Administrative Practice and Procedure, *Federal Handling of Demonstrations* (1970), pp. 62-63.

sential, is merely the indexing and filing of information collected by investigatory agencies, principally the FBI, and information furnished by the news media in a quickly retrievable form.

... [V]e must take every reasonable precaution to insure that the identity of individuals included in our indexes be protected from unauthorized or inadvertent disclosure. We must keep clearly in mind that it is the use to which the information is put rather than the collection of the information itself that gives rise to the greatest possibility of abuse. . . .⁴⁹²

These "guidelines" were prepared shortly before Assistant Attorney General Mardian and other Justice Department officials were called to testify before the Senate Subcommittee on Constitutional Rights, which was inquiring into military surveillance and other domestic intelligence collection programs. At those hearings Mardian did explain that IDIU relied on FBI reports for most of its information; but Justice Department officials did not disclose the reorganized IEC, nor did they provide the Subcommittee with FBI's standards of intelligence collection.⁴⁹³

Assistant Attorney General William Rehnquist defended the power of the executive to collect any information which was "legitimately related to the statutory or constitutional authority of the executive branch to enforce the laws." [Emphasis added.] He cited the Supreme Court's opinion in *In Re Neagle*, 135 U.S. 1, 64 (1890), interpreting the President's duty to "take care that the Laws be faithfully executed" under Article II, section 3 of the Constitution. The Court had construed the word "Laws" to encompass not only statutes enacted by Congress, but also "the right, 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." Assistant Attorney General Rehnquist also cited as a basis for gathering intelligence about both protest demonstrations and ghetto unrest Article IV, section 4 of the Constitution which provides, "The United States shall guarantee every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence." This provision had traditionally been understood as authorizing the President to dispatch federal troops under implementing statutes passed in 1792 and the 1860's. But the Justice Department now asserted that it was "another basis of the information gathering authority of the Executive Branch," therefore justifying "investigative activities . . . directed to determine the possibility of domestic violence occurring at a particular place or at a particular time."⁴⁹⁴

G. "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 con-

⁴⁹² Memorandum from Assistant Attorney General Robert C. Mardian to all IDIU personnel, 3/5/71.

⁴⁹³ *Federal Data Banks, Computers, and the Bill of Rights*, Hearings before the Senate Subcommittee on Constitutional Rights (1971), pp. 867-877.

⁴⁹⁴ *Federal Data Banks*, 1071 Hearings, pp. 598-601.

sidered "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." Although every person arrested at a demonstration was not automatically investigated by the FBI, all that was needed to open an individual case was some "propensity for violence" or association with "subversive or revolutionary activity."⁴⁹³

After the disorders at Columbia University and other campuses, in 1968, FBI field offices were instructed:

The most recent outbreak of violence on college campuses represents a direct challenge to law and order and a substantial threat to the stability of society in general. The Bureau has an urgent and pressing responsibility to *keep the intelligence community informed* of plans of new left groups and student activists to engage in acts of lawlessness on the campus. We can only fulfill this responsibility through the development of high quality informants who are in a position to report on the plans of student activists to engage in disruptive activities on the campus. [Emphasis added.]

In view of the increased agitational activity taking place on college campuses, each office is instructed to immediately expand both its coverage and investigation of campus-based new left groups and black nationalist organizations with the objective of determining *in advance* the plans of these elements to engage in violence or disruptive activities on the campus. It cannot be too strongly emphasized that all offices are expected to develop and maintain adequate sources to enable the Bureau to determine *in advance* and promptly report agitational activities being planned by campus-based groups. In carrying out these instructions, you should, of course, be guided by existing regulations which require that Bureau authorization be obtained prior to the development of informants and sources on college campuses . . .⁴⁹⁴

The possibility of "embarrassment" placed some limits on intelligence operations, especially when there was adverse publicity. The following is one example:

At a recent antidraft demonstration, a Bureau Agent posing as a newsman was recognized by a representative of a newspaper that has been traditionally hostile to the FBI. The Special Agent involved was attempting to identify the demonstrators and those who were burning their draft cards, and to record statements of various individuals participating in the demonstration. A distorted news item regarding the Agent's activities appeared in a subsequent issue of that paper reflecting the Bureau in an unfavorable light.

Consequently, you should instruct your Agent personnel that, henceforth, no matter what the justification, they are not to pose as newsmen or representatives of any wire service for the purpose of establishing an investigative cover.⁴⁹⁷

⁴⁹³ SAC Memorandum 1-72, 5/28/72.

⁴⁹⁴ SAC Letter No. 68, 5/21/68.

⁴⁹⁷ SAC Letter No. 68-38, 6/2/68.

The FBI attempted to define the "New Left," but with little success. Field offices were told that it 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 the security of the United States." Such persons would also be placed on the Security Index because of these "anarchistic tendencies," even if the Bureau could not prove "membership in a subversive organization."⁴⁹⁸

Later instructions to the field stated that the term "New Left" did not refer to "a definite organization," but to a "loose, y-bound, free-wheeling, college-oriented movement" and to the "more extreme and militant anti-Vietnam war and antidraft protest organizations." These instructions initiated 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 in 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;

⁴⁹⁸ SAC Letter No. 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."

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."⁴⁹⁹ Few Bureau programs better reflect "pure intelligence" objectives going far beyond even the most generous definition of "preventive intelligence."

The FBI prepared a study of "Youth in Rebellion" early in 1969. This "comprehensive document on new left and black extremist activities" was designed to review the "worldwide ramifications of these movements as well as their impact on the internal security of the country."⁵⁰⁰ When the FBI completed this report, the Internal Security Division of the Justice Department specifically authorized the FBI to conduct investigations "to determine whether there is any underlying subversive group giving illegal directions and guidance to the numerous campus disorders throughout the country." The Internal Security Division also submitted "suggested areas of particular interest for future investigative efforts."⁵⁰¹ These instructions were generally comparable to Attorney General Clark's September 1967 memorandum regarding ghetto riots and civil disturbances intelligence. Both were taken by the FBI as broad authorizations for domestic intelligence investigations.⁵⁰²

An additional request from the Internal Security Division in March 1969 advised the FBI that the Justice Department was "considering the possibility of conducting a grand jury investigation of some future serious campus disorder" with a view towards prosecution under the antiriot act, the Smith Act, the Voorhis Act, and statutes on seditious, conspiracy and insurrection. Consequently, the Internal Security Division asked the FBI:

... to secure in advance the names of any persons planning activities which might fall within the proscription of any of the foregoing statutes. It would also be important for us to know the identities of the officials of any participating organizations who have custody or control of records concerning the activities of such organizations which we would seek to obtain by means of subpoenas duces tecum.

It would also be most helpful if you were able to furnish us with the names of any individuals who appear at more than one campus either before, during, or after any active disorder or riot and the identities of those persons from outside the campus who might be instigators of these incidents.

The FBI was asked to use not only its "existing sources" but also "any other source you may be able to develop. . . ." ⁵⁰³

Despite the pressure for greater intelligence about campus groups, Director Hoover decided "that additional student informants cannot

⁴⁹⁹ Memorandum from FBI Headquarters to all SAC's 10/28/68, and enclosure.
⁵⁰⁰ SAC Letter No. 69-14, 2/25/69.

⁵⁰¹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 2/18/69.

⁵⁰² FBI Intelligence Division, Position Paper on Jurisdiction, 2/18/75.

⁵⁰³ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 3/3/69.

be developed." Nevertheless, the FBI field offices were instructed to intensify their efforts: "It is . . . recognized that with the graduation of senior classes, you will lose a certain percentage of your existing student informant coverage. This decreasing percent of coverage will not be accepted as an excuse for not developing the necessary information."⁶⁰⁴ One way to achieve this result without the FBI recruiting additional student informants was to have local police do so. Thus, when field offices were reminded of the need for gathering intelligence so that the Justice Department could provide "data regarding developing situations having a potential for violence," FBI headquarters stressed the need for "in-depth liaison with local law enforcement agencies."⁶⁰⁵ The restriction on new campus informants was finally relaxed, although field officers were still forbidden to develop informants "under the age of 21" and procedures were instituted "for tight controls and great selectivity in this most sensitive area."

Upon initial contact with a potential student informant or source, informant or source should be requested to execute a brief signed written statement for the field file to the effect that such individual has voluntarily furnished information to the FBI because of his concern of individuals and groups *acting against the interests of his government* and that he understands that the FBI is not interested in the legitimate activities of educational institutions. [Emphasis added.]

Field offices were also to submit quarterly reports assessing the productivity of each student informant so as "to justify the continued utilization of the source."⁶⁰⁶ FBI Intelligence Division officials were greatly dissatisfied with these limits, as became clear in the preparation of the "Huston Plan" in 1970.⁶⁰⁷

FBI intelligence surveillance of the New Left was further expanded in early 1970 after an explosion at a New York City townhouse killed several youthful bomb-makers and dramatized the violence potential of the Weatherman faction of SDS. Because members of the Weatherman faction were believed to live in communes, all FBI field officers were instructed:

For the purposes of Bureau investigations, a commune is defined 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.

A rebuttable presumption exists that persons having a past history of participation in violent leftist radical activity, or leftist terrorist activity, living in a communal relationship constitutes a commune within the above definition.

When information is received by an office that indicates a commune exists, falling within the above definition, it is incumbent upon that office to conduct sufficient investigation to determine the identity of all members. Each member must be

⁶⁰⁴ SAC Letter No. 69-16, 3/11/69.

⁶⁰⁵ SAC Letter 69-44, 8/10/69.

⁶⁰⁶ SAC Letter No. 69-75, 9/20/69.

⁶⁰⁷ See Report on the Huston Plan.

investigated as a suspected extremist within the framework of existing instructions to determine whether they should be included on the Security Index. Every effort must be made by the office to obtain informant and/or sophisticated coverage of the commune and its participants to develop advance knowledge of any planned violence so that preventative action can be initiated and prosecutive action brought to bear where possible.⁵⁰⁸

To conduct more intensive investigations of "terrorism by New Left extremists," the FBI Intelligence Division requested that additional manpower be assigned. Director Hoover noted, "O.K. but it must be kept in mind that we will get no additional personnel until July 1971 so whatever personnel is needed now will have to come from cutbacks in other programs."⁵⁰⁹ To a significant extent these resources were drawn away from the FBI's counterintelligence effort against hostile foreign intelligence operations in the United States.⁵¹⁰

By the time of the widespread disturbances following the Cambodian invasion and Kent State, the Intelligence Division believed 451 additional agents were needed for New Left investigations, with an increase to 741 "for peak periods." The Intelligence Division explained the need for more agents in the following terms:

The tragic, violent aftermath of violence and destruction on our campuses following the President's speech on Cambodia is a clear warning of the impact of New Left terrorist philosophy and advocacy of street action. The ability of radical activists to seize a controversial issue and whip up violent reaction among large crowds is again demonstrated. The threat to the Nation's ability to function in a crisis situation posed by New Left extremists has never been more clearly drawn. This grave threat requires immediate and positive steps be taken to fulfill our responsibilities for protection of the internal security of the Nation.⁵¹¹

Subsequent instructions to the field stressed intensified investigation of persons adhering to the "Weatherman ideology of violence and revolution", and again observed that "communal living follows Weatherman lifestyle and is good guide to individual's adherence to Weatherman ideology." Persons who used "terroristic tactics in furtherance of revolution" were to be considered "for inclusion in Priority I of Security Index." Field offices were directed to "begin shifting personnel to this work from other work areas, except for personnel specifically designated for organized crime work . . ."⁵¹²

H. Target Lists and the Security Index

After meeting with the President's Commission on Civil Disorders in 1967, FBI Director Hoover instructed "that an index be compiled of racial agitators and individuals who have demonstrated a propensity

⁵⁰⁸ Memorandum from FBI Headquarters to all SAC's, 4/17/70.

⁵⁰⁹ Note on Memorandum from C. D. Brennan to W. C. Sullivan, 4/16/70.

⁵¹⁰ C. D. Brennan testimony, 9/25/75, Hearings, Vol. 2, p. 177.

⁵¹¹ Memorandum from C. D. Brennan to W. C. Sullivan, 5/11/70.

⁵¹² Memorandum from Headquarters to all SAC's, 5/18/70.

for fomenting racial discord."⁵¹³ Standards for the Rabble Rouser Index were then sent to the field:

The Index will consist of the names, identifying data, and background information of individuals who are known rabble rousers and who have demonstrated by their actions and speeches that they have a propensity for fomenting racial disorder. It is desired that only individuals of prominence who are of national interest be included on this index. Particular consideration should be given to recommending those individuals in this category who travel extensively . . . The fact that an individual is on the Security Index or Reserve Index does not preclude his inclusion on the Rabble Rouser Index.⁵¹⁴

The initial effect of the Rabble Rouser Index was to collect in files at FBI headquarters all information from the field offices about persons on the Index. Field offices were also to provide information about their "possible foreign travel."⁵¹⁵ The first Index contained less than 100 names.⁵¹⁶

At the same time as the creation of the Rabble Rouser Index, the FBI instituted a COINTELPRO program aimed at disrupting and discrediting black nationalist or black "extremist" groups and individuals. The Rabble Rouser Index served as a convenient list of primary targets for COINTELPRO activity.⁵¹⁷ Within the FBI Domestic Intelligence Division, there was a substantial reorganization to take account of these new functions in 1967. The Subversives Control Section was abolished and its supervision of investigations of individual "subversives"—both "Old Left" and "New Left"—were transferred back to the Internal Security Section. A new Racial Matters Section was established to supervise intelligence investigations of black and white "extremist" groups.

The 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," not just racial disorders, and to include persons of local as well as national interest. 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." The purpose of this expansion to develop a nationwide index "of agitators of all types whose activities have a bearing on the national security." This included "black nationalists, white supremacists, Puerto Rican nationalists, anti-Vietnam demonstration leaders, and other extremists."⁵¹⁸ Standardized forms for automatic data processing of the Index by computer included the following organizational affiliation categories:

American Nazi Party
Anti-Vietnam
Black Nationalist

⁵¹³ Memorandum from C. D. Brennan to W. C. Sullivan, 8/3/67.

⁵¹⁴ SAC Letter No. 07-47, 8/4/67.

⁵¹⁵ SAC Letter No. 07-50, 9/12/67.

⁵¹⁶ Memorandum from P. L. Cox to Mr. Sullivan, 9/5/67.

⁵¹⁷ See Report on COINTELPRO.

⁵¹⁸ SAC Letter No. 07-70, 11/28/67.

Black Panther Party
 Communist
 Congress of Racial Equality
 Ku Klux Klan
 Latin American
 Minuteman
 Nation of Islam
 National States Rights Party
 Progressive Labor Party
 Nationalist groups advocating Independence for Puerto Rico
 Revolutionary Action Movement
 Southern Christian Leadership Conference
 Students for a Democratic Society
 Student Nonviolent Coordinating Committee
 Socialist Workers Party
 Workers World Party
 Miscellaneous ⁵¹⁹

The overlap with the Security Index is indicated by the inclusion in 1968 of Students for a Democratic Society and the Student Nonviolent Coordinating Committee in a list of organizational affiliations for the Security Index. By 1968 the Security Index also contained persons without organizational affiliation designated "Anarchist" and "Black Nationalist." ⁵²⁰

The Rabble Rouser Index was renamed the Agitator Index in March 1968, and field offices were directed to obtain a photograph of each person on the Index. ⁵²¹

The Domestic Intelligence Division also stressed the dangerousness of the "New Left" movement and the need to include its "leading activists" on the Security Index.

The emergence of the new left movement as a subversive force dedicated to the complete destruction of the traditional values of our democratic society presents the Bureau with an unprecedented challenge in the security field. Although the new left has no definable ideology of its own, it does have strong Marxist, existentialist, nihilist and anarchist overtones. While mere membership in a new left group is not sufficient to establish that an individual is a potential threat to the internal security of the United States, it must be recognized that many individuals affiliated with the new left movement do, in fact, engage in violence or unlawful activities, and their potential dangerousness is clearly demonstrated by their statements, conduct and actions.

The Bureau has recently noted that in many instances security investigations of these individuals are not being initiated. In some cases, subjects are not being recommended for inclusion on the Security Index merely because no membership in a basic revolutionary organization could be established. Since the new left is basically anarchist, many of the

⁵¹⁹ SAC Letter No. 68-5, 1/16, 68.

⁵²⁰ SAC Letter No. 68-14, 2/20/68.

⁵²¹ Memorandum from FBI Headquarters to all SAC's, 3/21/68.

leading activists in it are not members of any basic revolutionary group. It should be borne in mind that even if a subject's membership in a subversive organization cannot be proven, his inclusion on the Security Index may often be justified because of activities which establish his anarchistic tendencies. In this regard, you should constantly bear in mind *the public statements, the writings and the leadership activities of subjects of security investigations which establish them as anarchists are proper areas of inquiry.* Such activity should be actively pursued through investigation with the ultimate view of including them on the Security Index. It is entirely possible, therefore, that a subject without any organizational affiliation can qualify for the Security Index by virtue of his public pronouncements and activities which establish *his rejection of law and order* and reveal him to be a *potential threat* to the security of the United States. [Emphasis added.]

Field offices were cautioned, however, "that mere dissent and opposition to the Governmental policies pursued in a legal constitutional manner are not sufficient to warrant inclusion in the Security Index." Agents were to report information "to show the potential" and not merely show anti-Vietnam or peace group sentiments without also revealing advocacy of violence or unlawful action which would justify an investigation."⁵²²

At the same time that these instructions were issued, the FBI instituted a COINTELPRO program against the "New Left." The Agitator Index and the Security Index served as indicators of the prime subjects for efforts under COINTELPRO to disrupt groups and discredit individuals in the "New Left."⁵²³

The FBI did not develop its new Security Index policies alone. As the Commission on Civil Disorders had encouraged the FBI to identify "rabble rousers," so President Johnson ordered a comprehensive review of the Government's emergency plans after the October 1967 March on the Pentagon against the Vietnam war.

Attorney General Ramsey Clark was appointed chairman of a committee to review the Presidential Emergency Action Documents (PEADs) prepared under the Emergency Detention Program. Subsequent decisions were summarized in an FBI memorandum:

After extensive review, in which the FBI participated, a proposal was submitted to the President that certain documents be revised. It was proposed that the Emergency Detention Program be revised to agree with the provisions of the Emergency Detention Act [of 1950].

The Internal Security Division (ISD) of the Department has raised questions as to the ability to discharge the responsibilities of the Attorney General under the Emergency Detention Act of 1950. By letter dated 2/26/68 the Department requested a conference with the FBI for the purpose of reviewing the implementation of the Emergency Detention Program...

⁵²² SAC Letter No. 08-21, 4/2/68.

⁵²³ See Report on COINTELPRO.

One of the changes in PEAD pertains to the definition of a "dangerous individual". The document, which has been approved by the President, now states, "The Attorney General acting through such officers and agents as he may designate for the purpose, shall apprehend, and by order detain, pursuant to the provisions of the Emergency Detention Act, each 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 and effective operation of the national, state, and local governments and of the national defense effort." As used in this section, the term "person." shall mean any citizen or national of the United States, or any citizen, subject or national of any foreign nation, or any stateless person.

The above is an all encompassing definition of a "dangerous person". This will extend the criteria for the Security Index.

During the conference of 4/22/68 with ISD, the definition of a dangerous individual was discussed, and it was decided that Item D of the SI criteria should be expanded to include the definition as stated in the new PEAD 6...

With the emergence of the New Left and the intensification of activities by the racial militants and black nationalists, who are not affiliated with basic revolutionary organizations but because of their anarchist tendencies do present a threat to the internal security of the United States, it has become apparent that these individuals warrant inclusion on the SI.

Many individuals on the SI, because of their violent tendencies and their representation of top leadership of subversive organizations, are scheduled for priority apprehension. The administrative procedures developed to make these apprehensions are referred to as the Detcom Program. In an all-out emergency, all subjects whose names are in the SI will be considered for immediate apprehension.

The new priorities for apprehension under Detention Program were described as follows:

Priority I.—Top national and state leadership of basic subversive organizations, leaders of anarchistic groups, individuals who have shown greatest propensity for violence, as well as those who have special training in sabotage, espionage, guerrilla warfare, etc. . . .

Priority II.—Second level leadership and individuals who present significant threat but are in less influential positions than Priority I . . .

Priority III.—All other individuals on SI. Made up mainly of rank and file members . . .

Results of FBI investigations would continue to be provided to the Justice Department "for its concurrence and approval of the persons listed for apprehension".⁵²⁴

The FBI formally requested Departmental approval for the broader Security Index criteria and the standards for the Priority Apprehension Program.⁵²⁵ Even though the Department's formal reply was that the criteria were "under study," the FBI went ahead with Manual revisions and new instructions to the field.⁵²⁶ There was "informal" Departmental approval for these changes, as noted in a later memorandum.⁵²⁷

The Justice Department's Office of Legal Counsel eventually approved a modified version of the Security Index criteria in September 1968. Since this was the first time since 1955 that the Department had fully considered the matter, it is important to stress that the previous policy of disregarding the Emergency Detention Act of 1950 was now 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 Emergency Detention Act". However, the Security Index criteria themselves could be less precise because of "the needed flexibility and discretion at the operating level in order to carry on an effective surveillance program." As revised by the Office of Legal Counsel, the Security Index criteria read as follows:

A. Membership or participation in the activities of a basic revolutionary organization within the last 5 years as shown by overt acts or statements established through reliable sources, informants or individuals.

B. Subject has had membership or participation in the affairs of one or more front organizations which adhere to the policies and doctrines of a basic revolutionary organization, in a leadership capacity or by active substantial participation in the furtherance of those aims and purposes of the front organization which coincide with those of a basic revolutionary organization, within the last three years as shown by overt acts or statements established through reliable sources, informants, or individuals.

C. Investigation has developed information that an individual, though *not a member of or a participant* in the activities of a basic revolutionary or front organization, has *unarchistic or revolutionary beliefs* and is likely to seize upon the opportunity presented by a 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 effort. [Emphasis added.]

⁵²⁴ Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

⁵²⁵ Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 5/1/68.

⁵²⁶ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 6/17/68; memorandum from C. D. Brennan to W. C. Sullivan, 6/19/68; SAC Letter No. 68-36, 6/21/68.

⁵²⁷ Memorandum from Assistant Attorney General Frank M. Wozencraft, Office of Legal Counsel, to Assistant Attorney General J. Walter Yeagley, 9/9/68.

D. Although investigation has failed to establish the facts required by (A), (B) or (C) above, either as to the substance of those criteria or because there have been no overt acts or statements within the time limits prescribed, facts have been developed which clearly and unmistakably depict the subject as a dangerous individual who could be expected to commit acts of the kind described in (C) above.⁵²⁸

The Internal Security Division forwarded the Office of Legal Counsel's memorandum to the FBI, and the Bureau agreed that it would "be guided by these revised criteria of 1968." The FBI Manual was changed accordingly.⁵²⁹

Their expanding size made the Agitator Index and the Security Index less valuable for most efficiently concentrating FBI intelligence investigations. Consequently, the Domestic Intelligence Division developed more refined tools for this purpose—including the Key Activist Program and the Black Nationalist Photograph Album. Instructions went out to ten major field offices in January 1968 to designate certain persons as "Key Activists," defined as "individuals in the Students for a 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." [Emphasis added.] There was to be "an intensive investigation" of each Key Activist:

... with the objective of developing detailed and complete information regarding their day-to-day activities and future plans for staging demonstrations and disruptive acts directed against the Government. Because of their leadership and prominence in the 'new left' movement, as well as the growing militancy of this movement, each office must maintain high-level informant coverage on these individuals so that the Bureau is kept abreast of their day-to-day activities as well as the organizations they are affiliated with, to develop information regarding their sources of funds, foreign contracts, and future plans.

In the event adequate live informant coverage is not immediately available on these individuals, other types of coverage such as technical surveillances and physical surveillances should be considered as temporary measures to establish the necessary coverage.⁵³⁰

In May 1968, the FBI obtained the Federal income tax returns for Key Activists and, in some instances, used this and other intelligence information as part of COINTELPRO operations to disrupt an individual's activities.⁵³¹

The Key Activist Program was expanded to virtually all field offices in October 1968. The offices were instructed to recommend additional

⁵²⁸ Memorandum from Wozencraft to Yeagley, 9/9/68.

⁵²⁹ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 9/19/68; memorandum from FBI Director to Assistant Attorney General Yeagley, 9/26/68; FBI Manual Section 87, p. 45, revised, 10/14/68.

⁵³⁰ Memorandum from FBI Headquarters to all SAC's, 1/30/68.

⁵³¹ Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/68.

persons for the program and to "consider if the individual was rendered ineffective would it curtail such [disruptive] activity in his area of influence." The importance of the program was explained by stressing "the shift to violence in the New Left movement."

Sabotage, arson, bombing, and a variety of obstructive tactics have been openly advocated during the past year. In September, 1968, within a five-day period three ROTC establishments were sabotaged and a fourth threatened. In addition, a Central Intelligence Agency office at Ann Arbor, Michigan, was bombed during that month. These instances of openly made plans for violence and the brazen follow through of action are examples of the problems facing the Bureau in this field and the absolute necessity for intensive investigative efforts in these matters. Successful prosecution is the best deterrent to such unlawful activity. Intensive investigations of Key Activists under this Program are logically expected to result in prosecutions under substantive violations within the Bureau's investigative jurisdiction.⁵⁵²

While the FBI considered Federal prosecution a "logical" result, it should be noted that Key Activists were not chosen because they were suspected of having committed or planning to commit any specific Federal crime.

A counterpart to the Key Activist Program for the "New Left" was the Black Nationalist Photograph Album, which grew out of a conference of FBI agents from forty-two field offices. The conference recommended concentrating on no more than fifty prominent "militant black nationalists" who traveled extensively. Each field office would have a copy of the Album, including photographs and "biographical data," so that they could be identified "should they turn up in different areas of the country."⁵⁵³

The Key Activist Program, the Black Nationalist Photograph Album, the Agitator Index, and the revised Security Index identified the prime subjects for domestic intelligence investigation. However, the scope of inquiry went far beyond these defined targets. Inflammatory reports about possible "catastrophes" intensified headquarters pressures on the field to produce more intelligence in 1968:

Recently we have been advised by informants that militant black nationalist organizations, as well as independent Negro extremists are talking of taking such action as dynamiting the Empire State Building in New York City, throwing dynamite on the floor of the New York Stock Exchange and possibly assassinating some white political candidates as a means of retaliating for the killing of Martin Luther King, Jr. We have also received information that militant black racial extremists feel that all white people should be killed and one has stated that he believes if the right contact is made with the White House staff, a plan might be formulated to poison 500 to 600 people attending functions at the White House.

⁵⁵² Memorandum from FBI Headquarters to all SAC's 10/24/68.

⁵⁵³ Memorandum from FBI Headquarters to all SAC's, 8/11/68.

... With the increased number of violent statements coming to the attention of the Bureau, you must be alert to promptly run out all rumors of violence connected with racial activity for the purpose of either proving or disproving these rumors.

In addition, our experience in the past has shown that often when an individual is confronted concerning a violent statement he is alleged to have made, it will deter him from taking any such action. In view of this, whenever possible, interview individuals who are alleged to have made violent statements. . . .⁵³⁴

This latter form of deterrent "preventive action" proceeded independently from FBI COINTELPRO operations.

In early 1969, the FBI stepped up its Key Activist Program. Reports on Key Activists were to be made every ninety days, and "particular effort" was to be made "to obtain recordings of or reliable witnesses to inflammatory speeches or statements made which may subsequently become subject to criminal proceedings."⁵³⁵ The FBI Intelligence Division also compiled a Key Activist Album containing photographs and biographies of each Key Activist for distribution to all field offices.⁵³⁶ At this time there were 55 individuals covered by the program. To expand this number, FBI field offices were instructed to investigate all persons connected with the regional offices of Students for a Democratic Society—to determine whether they should be included in the Security Index or the Key Activist Program.⁵³⁷

The Black Nationalist Photograph Album was also expanded in early 1969 "to include the photographs of the principal leaders of any black extremist organization," not just those specifically known to travel.⁵³⁸ Later in the year the FBI broadened the scope of its Racial Calendar, which had been established in 1968 to advise each field office of "the dates of black nationalist type conferences and . . . racial events and anniversaries." Because of increasing cooperation between "black extremists and white subversives," the Racial Calendar would now include demonstrations and conferences "of the antifascist, antidraft and anti-Vietnam variety" which would "easily develop into a racial event."⁵³⁹

In anticipation of possible racial unrest in the summer of 1969, FBI headquarters reemphasized to the field the need for "developing a network of ghetto-type informants . . . to enable you to advise appropriate local and Federal authorities in advance of potential large scale racial violence." The FBI was particularly concerned that the "radical Negro students on college campuses" would seek "to promote racial violence" in the ghettos. Therefore, it was deemed necessary "to thoroughly saturate every level of activity in the ghetto."⁵⁴⁰

⁵³⁴ SAC Letter No. 68-32, 6/4/68.

⁵³⁵ Memorandum from FBI Headquarters to all SAC's, 3/10/69.

⁵³⁶ Memorandum from FBI Headquarters to all SAC's, 4/2/69.

⁵³⁷ Memorandum from FBI Headquarters to all SAC's, 5/22/69.

⁵³⁸ Memorandum from FBI Headquarters to all SAC's, 1/17/69.

⁵³⁹ Memorandum from G. C. Moore to W. C. Sullivan, 9/2/69.

⁵⁴⁰ SAC Letter No. 69-30, 5/27/69.

1. Investigations of "Foreign Influence" on Domestic Unrest

The FBI was increasingly interested in possible foreign influence on domestic violence and protest, partly at the urging of President Johnson. As early as 1963 the FBI Manual had authorized requests for CIA investigations of Americans abroad for internal security purposes. Prior thereto the sole purpose of advising the CIA of foreign travel by domestic "subversives" was "to place stops with appropriate security services abroad to be advised of the activities of these subjects."⁵⁴¹ This provision was revised as follows in 1963:

Information concerning these subjects' proposed travel abroad, including information concerning their subversive activities, is furnished by the Bureau to the Department of State, Central Intelligence Agency, and legal attaches if the proposed travel is in areas covered by such. . . . In the cover letter accompanying the letterhead memorandum, indicate *extent of foreign investigation recommended* or whether *only stops should be placed with appropriate security services abroad.*⁵⁴² [Emphasis added.]

It was through these procedures that the FBI secured the assistance of the CIA in the investigation of antiwar activists and black militant leaders who traveled overseas.⁵⁴³

In 1966 the FBI and CIA negotiated an informal agreement to regularize their "coordination." This agreement had as its "heart" that the CIA would "seek concurrence and coordination of the FBI" before engaging in clandestine activity in the United States, and that the FBI would "concur and coordinate if the proposed action does not conflict with any operation, current or planned, including active investigation [by] the FBI."⁵⁴⁴ Moreover, when an agent 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 could "continue" its "handling" of the agent for "foreign intelligence" purposes, and the FBI would also become involved where there were "internal security factors,"⁵⁴⁵ although it was recognized that CIA might continue to "handle" the agent in the United States and provide the Bureau with "information" bearing on "internal security matters."

The term "internal security factors" used in the agreement meant that CIA agents were used after 1966 to report on domestic "dissidents" for the FBI. There were instances where, 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

⁵⁴¹ 1960 FBI Manual Section 87, p. 38.

⁵⁴² FBI Manual Section 87, p. 38a, revised 4/15/68.

⁵⁴³ See Report on CIA Intelligence Collection About Americans.

⁵⁴⁴ Former FBI Liaison with the CIA testimony, 9/22/75, p. 52.

⁵⁴⁵ Liaison testimony, 9/22/75, p. 55.

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.⁵⁴⁶

The policies embodied in the 1966 agreement and the practice under it clearly involved the CIA in the performance of "internal security functions." At no time was Congress asked to amend the 1947 Act to modify its ban against CIA "internal security functions."

As previously noted (p. 484), President Johnson and Director Hoover had been seeking proof that Communists were behind the anti-war movement since 1965. The CIA increasingly was drawn into that quest, in part in response to Bureau requests. Joseph Califano, 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.⁵⁴⁷

The same pressures and beliefs led to FBI investigations of possible "foreign influence" on "militant black nationalists" and radical students.

Within the United States the FBI established intelligence coverage on domestic groups if a Communist country appeared interested in exercising influence. For example, on the basis of information that a black American fugitive was in the People's Republic of China and that the Chinese government was making propaganda statements "to promote and abet racial strife in this country," the FBI instructed its field offices in 1967 "to be on the alert constantly for information indicating Chicom attempts to influence groups or individuals involved in the racial movement and . . . that development of live formants who can become knowledgeable of such attempts is vital."⁵⁴⁸ Similarly, information that Cuba had plans for "the use of American Negroes, Indians, and Communists to methodically sabotage our installations throughout the Western Hemisphere" and that Cuban officials had offered arms and assistance to "Puerto Rican revolutionary groups" led the FBI to alert its informants in defense plants and to ask its "trustworthy police contacts . . . to alert their racial and security informants" so that they would report information about "dissident groups, including 'black nationalist' organizations, which have potential for carrying out sabotage or other disruptive activities on behalf of Cuba."⁵⁴⁹

In addition to these specific problems, the FBI issued general instructions to the field for collecting intelligence on "foreign influences in the Black Nationalist movement":

The potential for foreign influences in these matters certainly exists as evidenced by wide travel in communist countries of such militant black nationalists as Stokely Carmichael who, within the recent past, has visited such far-flung places

⁵⁴⁶ Liaison testimony, 9/22/75, pp. 57-58.

⁵⁴⁷ Califano, 1/27/76, p. 70.

⁵⁴⁸ SAC Letter No. 67-56, 9/12/67.

⁵⁴⁹ SAC Letter No. 67-62, 10/17/67.

as Cuba, North Vietnam, Czechoslovakia, Algeria, United Arab Republic, and other countries abroad. Other individuals connected with the Student Nonviolent Coordinating Committee as well as individuals affiliated with other black nationalist organizations are known to have traveled in communist countries.

Each office should review its files for the identities of any known black nationalists who have traveled to Iron Curtain countries and other communist countries during the past two years . . . [I]n instances in which investigations have not been conducted, 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 appropriate overseas investigations may be conducted to establish activities and contacts abroad.

In addition, each office should submit a letterhead memorandum . . . to include indications of foreign support, direction, guidance or influence, as well as a listing of individual black nationalists . . . who have traveled to communist countries within the past two years. . . .⁵⁵⁰

The FBI passed such information on 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.⁵⁵¹ One purpose for the FBI effort to obtain income tax returns of Key Activists was "to determine whether their income supports their ability to travel throughout this country, and abroad as part of the New Left revolt."⁵⁵²

The IDIU's transfer of its computer printout to the CIA was just one instance of the substantial flow of domestic intelligence to and from the foreign intelligence agencies. The FBI was the main channel for mobilizing foreign intelligence resources and techniques against domestic targets. The FBI began submitting names of citizens engaged in domestic protest and violence to the CIA not only for investigation abroad (as had been the case before 1969), but also for placement on a "watch list" to be used in conjunction with the CIA's mail opening project.⁵⁵³ 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.⁵⁵⁴

In 1970 these agencies attempted to obtain formal authorization to use these techniques, and to resume previously forbidden methods such

⁵⁵⁰ SAC Letter No. 67-66, 11/7/67.

⁵⁵¹ See Report on National Security Agency Surveillance Affecting Americans.

⁵⁵² Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/67.

⁵⁵³ See Report on CIA and FBI Mail Opening.

⁵⁵⁴ See Report on National Security Agency Surveillance Affecting Americans.

as FBI "black bag jobs," for domestic intelligence purposes.⁵⁵⁵ These efforts to broaden intelligence surveillance resulted largely from intense pressures from the White House to determine whether there was foreign direction or financing of domestic protest activity. Rather than relying on intelligence coverage of foreign governments and their officials or agents, the FBI and the foreign intelligence agencies targeted American citizens in the hope of finding foreign influence even when there was no prior indication of contact with foreign agents.

A good picture of the FBI's basic approach to the issue of foreign influence is provided by a memorandum 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 such an effort was initiated in September, 1968, at an International Student Conference at Columbia University. This conference disclosed that despite the factionalism and confusion now so prevalent, *there is great potential* for the development of an international student revolutionary movement. We are initiating investigations aimed at identifying prominent foreign New Left leaders and activists and to increase our reservoir of background information regarding foreign New Left organizations. This also encompasses travel on the part of groups or individuals either to or from the U.S., and will include international conferences. . . .

Furthermore, it is apparent that the old-line communist groups such as the Communist Party, U.S.A., the Progressive Labor Party, the Socialist Workers Party, and particularly its youth affiliate, the Young Socialist Alliance are *making a determined effort* to move into the New Left movement to exert a greater influence and control over its future activities. More and more we see the New Left movement *holding up as heroes* international communists such as Fidel Castro, Ho Chi Minh, and Mao Tse-tung. More and more we also see old-line leftist groups *influencing the thinking* of the New Left along Marxist lines and giving direction to *attacks 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*. We can expect this activity to intensify greatly in the future.⁵⁵⁶ [Emphasis added.]

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 dangerous ideas.

White House interest in the financing of New Left protest activities intensified FBI intelligence investigations in early 1970. In response to a specific request, the FBI furnished the White House "material concerning income sources of revolutionary groups" in February 1970.

⁵⁵⁵ See Report on the Huston Plan.

⁵⁵⁶ Memorandum from C. D. Brennan to W. C. Sullivan, 2/8/69.

FBI officials observed that this request was "indicative of high-level interest" in the question. Consequently, the Intelligence Division instructed field offices "to develop information indicative of support of the New Left Movement by tax-exempt charitable foundations or financial 'angels' . . . as well as support by politically oriented groups such as the Vietnam Moratorium Committee to End the War in Vietnam." The field was advised that such support might include "furnishing bail money to arrested demonstrators, furnishing printing equipment or office space, and underwriting the cost of conventions or rallies." FBI officials realized, however, that "direct intensive financial investigation of large foundations, prominent wealthy individuals, . . . or politically oriented groups such as the Vietnam Moratorium Committee" might result in "embarrassment to the bureau."⁶⁵⁷

It was in this climate of stress that the Assistant Director in charge of the Intelligence Division, William C. Sullivan, and the chief of the Internal Security Section, Charles D. Brennan, played influential roles in the development of the "Huston Plan" in June 1970.⁶⁵⁸ These officials saw the threat as essentially domestic in nature. Mr. Brennan has testified that the FBI "never developed any information to indicate that communist sources abroad were financing the anti-war activities in the United States." The only significant foreign connections were that "many activists in the anti-war movement had traveled to foreign countries, had attended communist conferences in various countries abroad and appeared to be getting some degree of propaganda, if not indirectly some guidance which they applied in the conduct of the anti-war demonstrations here."⁶⁵⁹

Mr. Brennan gave one example of this influence:

They attended conferences in various . . . countries abroad which were sponsored by Communists. The peace movement in the United States was generally discussed and I recall in one instance, for example, where several of the activists were involved in the policy committee of the anti-war activities . . . and attended conferences where these issues were the subject of discussion with many Communist representatives. And at the time, the general feeling of the anti-war movement here was that the next step in the stage should be protest demonstrations around the United States.

It is my recollection that information at the Communist Conference abroad led to the conclusion that there should be instead a concentrated demonstration in Washington, D.C. And following the return of these individuals to this country, I think they served to project that view and indeed we did have a concentrated demonstration in Washington, D.C., and it is my recollection that when that demonstration took place, there were also concerted demonstrations at American embassies in many foreign countries on the same day.

⁶⁵⁷ Memorandum from C. D. Brennan to W. C. Sullivan, 3/12/70; Memorandum from FBI Headquarters to all SAC's, 3/10/70.

⁶⁵⁸ See Report on the Huston Plan.

⁶⁵⁹ C. D. Brennan deposition, 9/28/76, p. 4.

This kind of indirect "guidance" was not matched by financial support or direct control. Mr. Brennan stated, "I personally held the feeling that we were dealing with what I term credit card revolutionaries, and that the individuals involved in this type of activity in the United States had ample resources of their own . . . to finance these activities. I never saw anything to the contrary."⁵⁶⁰ Nevertheless, Brennan pointed out that the FBI was "constantly being asked by the White House as to whether or not there was foreign funding . . . and in response to that, then I felt it was necessary for us to try to respond to the question."⁵⁶¹

From Brennan's point of view, the problem was much broader than foreign influence. He explained:

I think you have to look at the social, political, and economic complexities that were related, which built tremendous pressures on the White House, and these, I think, stem from the thousands of bombings, the arsons, the disruptions, the disorder. Our academic communities were being totally disrupted, and I think that a vast majority of American people were subjecting the representatives of Congress and . . . the White House staff and other people in Government to a great deal of pressure, as to why these things were taking place and why something wasn't being done about these, and I think in a broader context, then, the FBI was getting a tremendous amount of pressure from the White House, in response to the overall problem.⁵⁶²

In addition to these outside pressures, FBI intelligence officials themselves had their own reasons for conducting extensive intelligence investigations. This view is illustrated in the following testimony when Brennan was asked about decisions expanding intelligence coverage in the fall of 1970:

I believe[d] that the leaders of the New Left movement had publicly professed their determination to act to overthrow the government of the United States. And I felt that with them on public record as having this basic objective, anyone who joined in membership in their cause, possibly should have their names recorded for future reference in FBI files. And I was reminded of the circumstances of the 1930's, when a great deal of individuals, who at that time were involved and concerned as a result of the economic depression, they became involved with communist activities.

A great deal of communist cells developed, and many of the individuals who, at that time, were in colleges, subsequently were employed in sensitive positions of government, and government had no record of their previous communist involvement. I did not want to see a repetition of that sort of circumstances come about.

So that when individuals did profess themselves to be in adherence to concepts which aimed at, or called for the over-

⁵⁶⁰ C. D. Brennan testimony, 9/25/75, Hearings, Vol. 2, p. 104.

⁵⁶¹ Brennan, 9/25/75, Hearings, Vol. 2, p. 107.

⁵⁶² Brennan, 9/25/75, Hearings, Vol. 2, p. 108.

throw of the government. I did feel that the FBI had the responsibility to record that type of information so if they ever obtained sensitive government positions that could be made known, and known to the agency for which they were going to go to work.⁵⁶³

Brennan admitted that this policy meant putting greater emphasis on FBI domestic intelligence and less on counterintelligence operations directed at hostile foreign intelligence activities in the United States. He stated, "I personally felt that the domestic situation had a higher priority at that particular given time."⁵⁶⁴

Brennan advanced one additional reason for domestic intelligence investigations, completely separate and apart from prevention or prosecution of violent crime and maintenance of the government's security against disloyal employees. He stated:

I think that basically intelligence investigations are designed not specifically for prosecutive intent, but basically to develop intelligence information which will be provided to officials of the United States Government to enable them to possibly consider *new types of legislation* which may be affecting the security of the country. . . .⁵⁶⁵ [Emphasis added.]

This "pure intelligence" function meant that even if Congress had not made an activity a Federal crime, the FBI could be authorized to investigate it so that the President and Congress could consider making it a crime.

J. Intensifications After the 1970 "Huston Plan."

There are several dimensions to the expansion of FBI domestic intelligence operations during the fall of 1970, in the aftermath of the "Huston Plan." Field offices were instructed in mid-September "to immediately institute an aggressive policy of developing new productive informants who can infiltrate the ranks of terrorist organizations, their collectives, communes and staffs of their underground newspapers." Specifically implementing one of the provisions of the "Huston Plan," the FBI authorized its field offices "to develop student security and racial informants who are 18 years of age or older." This removal of the previous restriction on recruiting informants under the age of twenty-one presented the field "with a tremendous opportunity to expand your coverage."⁵⁶⁶

Further intensifications occurred following a series of conferences held at FBI headquarters for domestic intelligence supervisors from the field. There is some dispute as to whether the decisions made at this time were the result of the recommendations made at these conferences, of an attempt by FBI executives to implement certain elements of the "Huston Plan," or of Director Hoover's desire to increase caseload statistics in order to justify a larger appropriation for the FBI. All three factors contributed to some extent.

The head of the FBI Domestic Intelligence Division, William C. Sullivan, was promoted in the summer of 1970 to be Assistant to the

⁵⁶³ Brennan, 9/25/75, Hearings, Vol. 2, p. 117.

⁵⁶⁴ Brennan, 9/25/75, Hearings, Vol. 2, p. 117.

⁵⁶⁵ Brennan, 9/25/75, Hearings, Vol. 2, p. 101.

⁵⁶⁶ SAC Letter 70-48, 9/15/70.

Director in charge of all investigative and intelligence activities. His successor as Assistant Director for the Domestic Intelligence Division was Charles D. Brennan, previously chief of the Internal Security Section. Both men had participated in drafting the "Huston Plan" and were now in positions of greater influence within the Bureau.

Brennan has testified that their success in persuading the FBI Executives' Conference to expand domestic intelligence coverage was partly due to "budgetary considerations." He stated:

I believe . . . that the Bureau of the Budget had questioned the Bureau's appropriation request, pointing to a drop in what was categorized as certain types of security cases, and apparently it involved a practice whereby there were cases listed which consisted mostly of name checks and the like, and because of this apparent drop in security cases, the budget question [was] whether or not the Bureau's request for appropriations was consistent. And this, as I understand, was the basis on which they suddenly saw a need to open a number or more cases.⁶⁰⁷

The relationship between the "Huston Plan" and the intensification programs in the fall of 1970 was described by Mr. Brennan in the following exchange with Committee counsel:

MR. BRENNAN. The Huston Plan really had nothing to do with it. What was essential here was the recognition of what was taking place inside the country and the recognition of the individuals, whether the Division, whose responsibility it was to cope with the growing violence, to recommend the types of action and programs which they thought necessary to cope with the problem.

Q. Well, let me ask this question another way. Did these programs emanate from Mr. Hoover, Mr. Tolson, or any other part of the Bureau, except the Domestic Intelligence Division?

MR. BRENNAN. Definitely not. They emanated from individuals within the Domestic Intelligence Division with the exception of the opening of a number of cases which you mentioned, which were the subject of the discussion at the Executive Conference.

Q. But, on the whole, it represented an effort by intelligence professionals who recognized what they perceived to be the extreme nature of the domestic violence in this country.

MR. BRENNAN. Right, definitely.

Q. And these same individuals would have been much happier if the Huston Plan had been implemented at the same time. Is that correct?

MR. BRENNAN. Yes, I think so. The general feeling was that there was a greater need for the types of sophisticated techniques which had been eliminated. This would have given us a greater capacity to cope with the problem.

Q. This program was the next best thing. Is that correct?

MR. BRENNAN. Well, you did everything that you did con-

⁶⁰⁷ Brennan, 0/23/75, pp. 31-32.

sistent with your continuing determination to try to do your job.

Q. And this was done in spite of Mr. Hoover and some of the top executives of the FBI.

Mr. BRENNAN. Mostly, I think, it was done over their grudging acquiescence.⁶⁶

The decisions of the FBI Executive Conference increasing the domestic intelligence caseload were recorded in the following memorandum:

Lifting of existing moratorium on report writing and investigation of Priority II and Priority III, Security Index cases.

There are approximately 10,690 individuals currently included in Priority II and Priority III of the Security Index. Virtually no investigation has been conducted regarding approximately 6,924 of these individuals since the imposition of the moratorium in February, 1969. Many of these individuals have changed residence and/or employment and their whereabouts are unknown. To fulfill our current responsibilities, we should know where they are. . . .

Black Student Unions and similar groups on college campuses.

In 1967, black students began forming their own groups to project their demands, many of which indicate a commitment to black nationalism. These groups are autonomous and have a strong sense of common purpose. The Black Panther Party has made open efforts to organize the Black Student Unions nationally and other black extremist groups have used these organizations to project their extremism and separatism.

Campus disorders involving black students increased 23 percent in the 1969-1970 school year over the previous year indicating that these groups represent a real potential for violence and disruption. In the past, we have opened cases on these organizations following evidence of black extremist activities; however, in view of the vast increase in violence on college campuses, it is felt that every Black Student Union and similar group, regardless of their past or present involvement in disorders, should be the subject of a discreet preliminary inquiry through established sources and informants to determine background, aims and purposes, leaders and key activists. It is estimated that this would cause the field to open approximately 4,000 cases involving organizations and the key activists and leaders connected therewith. [Emphasis added.]

Students for a Democratic Society (SDS) and militant New Left campus organizations.

At the end of the 1969-1970 academic year, the various factions of the SDS, excluding the Weatherman faction, which has become an organization in its own right, consisted of a membership of approximately 2,500 individuals. In addition to the SDS groups, there are about 252 totally inde-

⁶⁶ Brennan, 0/28/75, pp. 20-31.

pendent groups on college campuses which are pro-communist New Left-type and are followers of the SDS ideology. It is estimated that the membership of these organizations consists of about 4,000 members. At the present time, we are conducting investigations of all these organizations but have not, in the past, initiated investigations of the individual members of such organizations, with the exceptions of the key activists and individuals who are known to be violence prone.

Major campuses across the nation have been completely disrupted by violent demonstrations, bombings, arsons and other terroristic acts perpetrated by these organizations. It is, therefore, proposed that cases be opened on all individuals belonging to such organizations to determine whether they have a propensity for violence. If this proposal were implemented, it is estimated that the field would be required to open approximately 6,500 new cases.⁵⁶⁹ [Emphasis added.]

Subsequent instructions to the field regarding Black Student Unions stressed the need to "target informants and sources to develop information regarding these groups on a continuing basis to fulfill our responsibilities and to develop such coverage where none exists."⁵⁷⁰

The directive on New Left campus groups stated, in part:

As you are aware, SDS and other similar subversive campus-oriented groups are clearly symbolic of violence and Marxist-Leninist revolution on the Nation's campuses. As their intent has crystallized, the *adherence to this philosophy* of revolution and violence is, of necessity, more inherent among members and followers. These groups are undoubtedly the breeding ground for revolutionaries, extremists and terrorists. Logic and good judgment should be used in these investigations, bearing in mind the objective is to identify *potential* and actual extremists, revolutionaries and terrorists and to assess their threat to the internal security of the Government. [Emphasis added.]

Field offices were also reminded, "Each individual investigated should be considered for inclusion on the Security Index."⁵⁷¹

The Domestic Intelligence Division convened a conference of racial intelligence supervisors from the field in late October 1970. In preparation for this conference, Division officials and Assistant to the Director Sullivan proposed that a Justice Department representative be invited to attend a session on the Black Panther Party. The chief of the Racial Intelligence Section explained:

One of our primary objectives in the investigation of the BPP is to develop information which could be used to prosecute the Party and its leaders. The Department has had in operation for little over a year a special task force looking into all phases of BPP operations and currently is presenting evi-

⁵⁶⁹ Memorandum from Executives Conference to Mr. Tolson, 10/20/70.

⁵⁷⁰ Memorandum from FBI Headquarters to all SAC's, 11/4/70.

⁵⁷¹ Memorandum from FBI Headquarters to all SAC's, 11/4/70.

dence to a Federal Grand Jury looking towards indictments of BPP leaders on Smith Act violations. We have not received any concrete information from the Department which would indicate prosecutions are imminent.

The Section Chief added "that these discussions will impress the Departmental representative as to our seriousness in our efforts to put the violent BPP leaders in jail as quickly as possible." Assistant to the Director Sullivan appended a note stating, "The Department needs to be not only educated to some of the ugly realities of the Black Panthers, but also the Department needs to be pushed into getting some prosecutive action underway. People about the country are beginning to wonder why something isn't being done." The proposal was rejected. Associate Director Clyde Tolson wrote, "I doubt the wisdom of this." And Director Hoover noted, "I agree with Tolson."⁵⁷²

One of the recommendations growing out of the conference was a revision of the Agitator Index, which was described as "a ready reference to individuals who have demonstrated a propensity for fomenting disorder of racial and/or security nature." The Agitator Index was viewed as "a valuable and necessary administrative tool," although it was observed that the Justice Department had "not been advised as to the establishment of the AI." Since many of the "extremist and revolutionary" individuals on the Agitator Index were now included in the Security Index, however, field offices were instructed to delete persons on the Security Index from the Agitator Index.⁵⁷³

There was serious concern at the conference about the contemporaneous events in Canada, where terrorist activities in Quebec had led the Canadian government to impose a state of emergency and suspend certain legal guarantees. Of equal concern were the reports that at least one antiwar group in the United States—the East Coast Conspiracy to Save Lives, involving Father Philip Berrigan—was considering the kidnaping of American government officials. Summarizing the conference results, the head of the Racial Intelligence Section stated,

The conference was most timely and productive in light of the present terroristic activities in Canada and the imminent concern of the White House concerning the probability of extremist groups taking action against Government officials or their families.

The topics discussed at the conference covered the entire spectrum of the problems inherent in investigating and developing informants in the BPP as well as related extremist matters. These topics included detailed discussion concerning the need for full penetration of extremist groups to obtain information concerning terroristic activities which may be aimed against Government officials. In addition, the conference took note that maximum attention should be given to the

⁵⁷² Memorandum from G. C. Moore to C. D. Brennan, 9/22/70.

⁵⁷³ Memorandum from G. C. Moore to C. D. Brennan, 11/3/70; SAC Letter No. 70-61, 11/10/70.

extremist activities in Canada in connection with our investigations as well as intensifying our investigations having international ramifications. . . .⁵⁷⁴

The conference also reviewed COINTELPRO operations directed against black extremists:

Our experience over the past year and the growth of our knowledge regarding black extremist activities have resulted in utilization of increasing number of sophisticated techniques. . . . Among highly successful tangible results realized during the past year, as a result of this program, were the disbandment of a Black Panther Party (BPP) front group in . . . Mississippi; the transfer of an energetic organizer and key leader of the . . . BPP chapter to a less influential post . . . ; and the complete disruption of a planned conference of the violence-prone Republic of New Africa. . . .⁵⁷⁵

Following the conference, FBI intelligence officials developed a Key Black Extremist program for concentrated investigation and COINTELPRO operations. The program was justified in the following terms:

The information submitted by the field indicates that there is a need for intensified coverage on a group of black extremists who are either key leaders or activists and are *particularly extreme, agitative, anti-Government, and vocal in their calls for terrorism and violence*. Leaders of the violence-prone Black Panther Party have indicated that the "revolution" is entering the beginning phases of actual armed struggle and our investigations indicate there are certain extremists more likely to resort to or to order terrorism as a tactic and therefore require particular attention. [Emphasis added.]

FBI officials envisioned that about ninety cases would be involved.⁵⁷⁶ All field offices were sent a list of Key Black Extremists (KBEs) and instructed to "remain alert for additions to the KBE list." The following measures were to be taken:

- (1) All KBEs must be included in Priority I of the Security Index. . . .
- (2) All KBEs must be included in the Black Nationalist Photograph Album (BNPA). . . .
- (3) All aspects of the finances of a KBE must be determined. Bank accounts must be monitored. Safe deposit boxes, investments, and hidden assets must be located and available information regarding them must be reported.
- (4) Continuing consideration must be given by each office to develop means to neutralize the effectiveness of each KBE. Any counterintelligence proposal must be approved by the Bureau prior to implementation.

⁵⁷⁴ Memorandum from G. C. Moore to C. D. Brennan, 10/27/70.

⁵⁷⁵ Memorandum from G. C. Moore to C. D. Brennan, 10/29/70.

⁵⁷⁶ Memorandum from G. C. Moore to C. D. Brennan, 12/22/70.

(5) Obtain suitable handwriting specimens of each KBE to be placed in the National Security File in the Laboratory....

(6) Particular efforts should be made to obtain records of and/or reliable witnesses to, inflammatory statements made which may subsequently become subject to criminal proceedings....

(7) Where there appears to be a possible violation of a statute within the investigative jurisdiction of the Bureau, the... possible violation [should be] vigorously investigated in accordance with existing instructions.

(8) Particular attention must be paid to travel by a KBE and every effort made to determine financial arrangements for such travel....

(9) The Federal income tax returns of all KBEs must be checked annually in accordance with existing instructions.

Reports on all KBEs were to be submitted every ninety days, and the field offices were urged to use "initiative and imagination in order that the desired results are achieved."⁵⁷⁷

K. The 1971 Inspection Reports

The annual inspection of the FBI Domestic Intelligence Division in January 1971 reflected the increasing intensification of FBI domestic surveillance programs. The role of the Inspection Division was to encourage more aggressive measures. One example involved the East Coast Conspiracy to Save Lives (ECCSL), the group associated with Father Philip Berrigan which allegedly had planned to kidnap government officials. Inspector E. S. Miller advised the Domestic Intelligence Division:

The field should be appropriately instructed to keep the Bureau fully advised of all demonstrations, vigils, harassment tactics, etc., conducted by sympathetic groups and followers of the ECCSL. Such vigils and demonstrations should be afforded sufficient appropriate coverage to develop identities and backgrounds of leading activists and sponsors of such sympathetic activities.

Field offices should also be alerted to other retaliatory actions by sympathetic groups attempting to capitalize on the "persecution" theory thereby exploiting the recent indictments as a sympathetic rallying point for more conspiratorial activities.⁵⁷⁸

The Inspector also recommended using the facilities of the FBI Identification Division and the computerized National Crime Information Center for intelligence purposes in locating members of the Venceremos Brigade (VB) who had visited Cuba:

While no evidence has been received that those persons who travel to Cuba received guerrilla warfare training in Cuba, they were constantly told that they were the vanguard of the Revolution in the United States. . . .

⁵⁷⁷ Memorandum from FBI Headquarters to all SAC's, 12/23/70.

⁵⁷⁸ Inspection Report, Domestic Intelligence Division, 1/8-20/71, p. 7.

Inasmuch as some of the VB members have indicated they were going underground and the fact that a majority have not been located for interview, you should consider placing name stops in the Identification Division so that if these persons are arrested or an inquiry is made by local law enforcement authorities, this fact will be immediately brought to the attention of the Bureau. In addition, a stop file is now being set up by the NCIC Unit for persons other than fugitives concerning whom the Bureau has an interest. . . . Every effort should be made to utilize stops with the Identification Division and the NCIC Unit on these persons.⁵⁷⁹

This proposal was implemented shortly thereafter and the field advised "to submit stop notices for Identification Division and NCIC, concerning Venceremos Brigade (VB) subjects whose whereabouts are not known. . . ." ⁵⁸⁰ Although Inspector Miller criticized to some extent the Domestic Intelligence Division's shortcomings in the foreign counterintelligence field, he placed great emphasis on the opportunities in the domestic area:

You should bear in mind that the attitude and instructions expressed by the President, the Director, and many of the legislators in Congress, have been to curtail the militant actions and violent activities on the part of a significant group of young people in the United States today. The thinking of the Supreme Court of the United States with its several recent changes may be along the lines of suppressing the activities of those who openly espouse the overthrow of all forms of democratic authority in the United States. In addition, the Internal Security Division of the Department of Justice has been specifically enlarged and strengthened to deal with these matters.⁵⁸¹

The details of many of the FBI's most disruptive COINTELPRO operations were set out in the Inspection Report as significant "accomplishments" of the Domestic Intelligence Division.

Among additional measures taken in 1971 were the following, as summarized in the next Inspection Report prepared in August-September:

In March, 1971, a coalition of leftist individuals including subversives and extremists under the sponsorship of the Clergy and Laymen Concerned About Vietnam, American Friends Service Committee, and Fellowship of Reconciliation traveled to Paris, where they were in contact with the North Vietnamese and other elements antagonistic to the U.S. We developed two informants to participate in this travel and as a result, identified all 170 people in attendance, their activities, contacts, and objectives. All information developed was afforded dissemination to appropriate government agencies and

⁵⁷⁹ Inspection Report, Domestic Intelligence Division, 1/8-20/71, pp. 231-230.

⁵⁸⁰ Memorandum from R. L. Shackelford to C. D. Brennan, 8/9/71.

⁵⁸¹ Inspection Report, Domestic Intelligence Division, 1/8-20/71, p. 280.

we were commended by one intelligence agency for the excellent coverage.⁵⁸²

Through the Key Activist Program, we have focused investigative attention on the leaders of the New Left Movement with the aim of prosecuting these leaders under appropriate statutes, federal or local, wherever possible. This program has proved successful in that we have been able to follow closely the activities of these individuals and furnish interested agencies and high government officials with information concerning their subversive and agitational activities. Of particular note is the fact that more than half of the 73 individuals designated as Key Activists are subjects of some type of prosecutive action.⁵⁸³

Extremist intelligence information gathered through our informants and investigations makes up a major portion of the Bureau's sophisticated document which is disseminated to the White House and other high level government agencies. This document captioned "FBI Summary of Extremist Activities" furnishes the White House and other agencies with a digest of the extremist problem in the United States.⁵⁸⁴

By airtel to all offices dated 6/15/71 the field was advised that a new "Stop Index" program had been instituted in the National Crime Information Center (NCIC). This program is for Bureau use only and concerns extremists who are in Priority I of the Security Index and who are not already carried in the NCIC wanted persons file. Through this program, the field obtains prompt notice from NCIC by telephone whenever a police agency makes inquiry concerning one of these extremists, which enables the field to better follow the activities and movements of extremists.

By SAC Letter 71-37 (E) dated 8/10/71 captioned "Security Flash Notices Regarding Security Index Subjects", the field was advised of new procedures which enable the Identification Division to better disseminate arrest information on Security Index subjects for whom no fingerprints are on file in the Identification Division. This is accomplished by periodic submission by the field of Security Flash Notices . . . which determine if fingerprints of a Security Index subject have been received since the last check and if so, a stop is placed in the fingerprint record to assure that the field is advised of all subsequent fingerprint submissions. The Security Flash Notice is periodically submitted at different intervals depending on the priority of the subject's Security Index status.⁵⁸⁵

⁵⁸² Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 34.

⁵⁸³ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 50.

⁵⁸⁴ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 72.

⁵⁸⁵ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 104.

New University Conference (NUC)

The NUC, composed of radical professors, graduate students, and teachers, is committed to the growth of a revolutionary socialist movement in the U.S., with educational institutions and professional associations being their main targets. In Bureau airtel 6/4/71, the attention of Chicago Division, Office of Origin, was directed to the fact that the NUC claimed 42 national chapters plus 15 pre-chapter groupings, with 675 national members, and anticipated further expansion. Chicago Division was instructed to ensure appropriate leads were set out to confirm the existence of all NUC chapters and to conduct appropriate investigations in accordance with Bureau instructions relating to investigations of organizations connected with institutions of learning. It was further instructed these investigations should include information concerning the leaders and leading activists, aims and objectives and the activities of these chapters.⁵⁸⁶

Vietnam Veterans Against the War (VVAW)

Letter to all offices dated 8/3/71 instructed each office to initiate a survey to determine existence of VVAW. This action was necessary in the light of increasing indication that the VVAW may be a target for infiltration by subversive groups such as the Communist Party USA and the Socialist Workers Party and their respective youth groups. VVAW has also been involved in aiding and financing U.S. deserters, including false identity papers and reportedly in one area has a cache of arms. VVAW has become increasingly active in the antiwar field and must be considered a prime target for infiltration.⁵⁸⁷

Computerized Telephone Number File (CTNF) was expanded on 2/26/71, to include telephone numbers of black, New Left, and other ethnic extremists. As a result, black extremist groups, black extremist Security Index subjects, and individuals included in the Black Nationalist Photograph Album have been entered into the CTNF. This has proven to be extremely valuable investigative tool and has saved the field considerable investigative time in ascertaining subscribers of telephone numbers since "hits" are made on 15.5% of numbers checked against the file.⁵⁸⁸

During 1971, Assistant to the Director Sullivan and Assistant Director Brennan made proposals for major reorganization of the Domestic Intelligence Division, Sullivan suggested that it be divided into two separate divisions—one for Domestic Intelligence (including a New Left Section, an Extremist Intelligence Section, and an Internal Security Section) and the other for Counterespionage—Foreign Intelligence. In addition, Brennan proposed that supervision of spe-

⁵⁸⁶ Inspection Report, Domestic Intelligence Division 8/17-9/9/71, p. 107.

⁵⁸⁷ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 111.

⁵⁸⁸ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 127.

efic antiriot and bombing criminal investigations be transferred from the General Investigative Division to the Domestic Intelligence Division. These recommendations were examined in the second 1971 Inspection Report.

Regarding the proposal for two separate divisions, Assistant Director Brennan stated that the advantage of having "smaller divisions thus allowing for tighter and more effective supervision" was outweighed by the disadvantages:

(a) The nature of the work of DID does not readily lend itself to division. The interrelationship of foreign influence in domestic subversion cases is well established and requires close coordination within the Division. . . . Our goal should be to obtain maximum utilization of the knowledge and expertise of supervisory personnel, and division of DID would obviously result in diffusion of related talents. . . .

(b) Budgetary considerations and administrative efficiency would be affected by imposing an additional Divisional superstructure. . . .

Brennan noted that when Sullivan had originally made the proposal in a memorandum to Associate Director Tolson in June 1971, Director Hoover had noted, "I do not approve. We do not have any provision for another Assistant Director and all hearings before Budget Bureau and Congress have been concluded for Fiscal Year 1972."⁵⁸⁹

Assistant Director Brennan's proposal for shifting bombing cases was not a new one. In 1968, the Inspection Division had conducted a study of the desirability of transferring antiriot and bombing investigations from the General Investigative Division to the Domestic Intelligence Division. The two divisions had jointly proposed the shift because the specific criminal investigations in these areas were "so interrelated with the gathering of intelligence in the racial and security fields that overlap constantly occurs." The Inspection Division had endorsed the transfer:

The logic of the proposed reassignments, appears unassailable. In both categories of cases the principle involved is the same, namely, that individual violations of applicable statutes arising from the activities of subversive organizations or groups should be supervised within the same division (DID) that has the basic and continuing responsibility for supervision of the overall investigations of these organizations and groups as well as of the members thereof and the development of informants within the groups. The obvious benefit . . . is the avoidance of duplication of supervisory reviews of these interrelated matters and the ready identification of individuals who may be involved in a specific violation with persons already under investigation from an intelligence standpoint. Informants who may be utilized in specific violations or who are developed in the course of investigation of such violations must of necessity be closely correlated with the supervision of these informant programs which now rests with DID. . . .⁵⁹⁰

⁵⁸⁹ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, pp. 216-223.

⁵⁹⁰ Memorandum from W. M. Fut to Mr. Tolson, Re: Proposed Transfer of Supervisory Responsibility, 8/30/68.

Despite this general agreement among middle-level FBI executives, the 1968 recommendation was not implemented. Associate Director Tolson and Director Hoover were "opposed to this proposed transfer of duties." One consideration which weighed against the shift was that the Justice Department divided supervision of these criminal cases: "antiriot cases are handled in the Criminal Division of the Department, racial bombings in the Civil Rights Division and nationalist bombings in the Internal Security Division."⁵⁹¹

By 1971 the Justice Department had consolidated these responsibilities. Assistant Director Brennan pointed out that the Department had "moved to invest the Internal Security Division with the overall responsibility of prosecuting terrorist activities regarding above-mentioned matters." Consequently, he contended that "similar reorganization" within the FBI would "enhance more effective supervision." Assistant Director Rosen of the General Investigative Division agreed:

As a practical matter substantially all antiriot laws in stigmatizations involve extremists and political terrorists. With regard to bombings, substantially all investigations deal at the outset with unknown subjects and it would be most impractical to attempt to delineate between bombings which do or do not involve terrorists. Since the act of bombing is in itself an act of terror it is logical to assume at the outset that terrorists are involved and the types of bombings delegated to the FBI by the Department's guidelines are limited to those targets most likely to be selected by political terrorists. (These targets pertain to Government property or functions, federally funded projects, diplomatic establishments, colleges and universities, and those probably perpetrated by terrorists.)⁵⁹²

The joint recommendation of Assistant Directors Brennan and Rosen was carried out later in 1971, and the unit in the General Investigative Division which supervised bombing investigations was transferred to the Domestic Intelligence Division.⁵⁹³

L. The "New" Internal Security Division and Turmoil in the FBI, 1971.

In late 1970, the Justice Department's Intelligence Evaluation Committee was secretly reconstituted as a permanent body including officials from the Central Intelligence Agency and the National Security Agency. This reorganization implemented one feature of the "Huston Plan," and the new IEC assumed broader functions in preparing regular domestic intelligence evaluations for the White House.⁵⁹⁴ The creation of a new IEC was one of several measures taken in late 1970 and early 1971 by Assistant Attorney General Robert Mardian, who replaced J. Walter Yeagley as head of the Internal

⁵⁹¹ Memorandum from W. M. Felt to Mr. Tolson, 9/4/68.

⁵⁹² Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, pp. 224-238.

⁵⁹³ Assistant Director Rosen's reference to Justice Department guidelines pertained to an agreement between the Justice Department and the Bureau of Alcohol, Tobacco, and Firearms of the Treasury Department defining their respective jurisdictions under the antibombing legislation enacted in 1970.

⁵⁹⁴ See Report on the Huston Plan.

Security Division. Under Mardian the Internal Security Division took over from the Criminal Division the supervision of prosecutions in cases of extremist violence and Selective Service violations.

One of Assistant Attorney General Mardian's most significant actions in 1971, from the viewpoint of domestic intelligence, was the preparation of a new Executive Order on federal employee security. Its first purpose was to update the standards for evaluating the "subversive activity" of potential Federal employees. In addition, the order was designed to reinvigorate the Subversive Activities Control Board, which had been created by the Internal Security Act of 1950 to register Communist organizations and their members.⁵⁹⁵ The Supreme Court had declared the provision for registration of individuals unconstitutional as a violation of the privilege against self-incrimination in 1965.⁵⁹⁶ According to Assistant Attorney General Mardian, there was a "problem resulting from the fact that the Attorney General's list has not been updated for 17 years—a failure which required Federal agencies 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." Mardian expected that the SACB would be able to "deal specifically with the revolutionary/terrorist organizations which have recently become a part of our history."⁵⁹⁷

FBI intelligence investigations of organizations were based in part on the standards for the "Attorney General's list" under Executive Order 10450, issued by President Eisenhower in 1953. Consequently, the new Executive Order 11605 issued by President Nixon in 1971, amending Executive Order 10450, substantially redefined FBI authority. The basic definitions of "subversive" organizations in the two orders compare as follows:

Executive Order 10450 (1953)

. . . totalitarian, fascist, communist, or subversive, or 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 seeking to alter the form of government of the United States by unconstitutional means.

Executive Order 11605 (1971)

. . . totalitarian, fascist, communist, or subversive, or which has adopted a policy of *unlawfully* advocating the commission of acts of force or violence to deny others 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. [Emphasis added.]

⁵⁹⁵ The new order assigned to the Subversive Activities Control Board the function of designating organizations for what had been the "Attorney General's list" to be used in evaluating applicants for Federal employment.

⁵⁹⁶ *Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965).

⁵⁹⁷ Robert C. Mardian, Address before the Atomic Energy Commission Security Conference, Washington, D.C., 10/27/71.

The 1971 order was more restrictive in its requirement of "unlawful" advocacy, but it was far broader in extending to state and local matters. The breadth of the order is shown in its more detailed standards for designation of an organization by the SACB. A group could be put on the "SACB list" if it:

engages in, unlawfully advocates, or adopts as a means of obtaining any of its purposes or objectives—

(1) The commission of acts of force or violence or other unlawful acts to deny others their rights or benefits guaranteed by the Constitution or laws of the United States or of the several States or political subdivisions thereof; or

(2) The unlawful damage or destruction of property; or injury to persons; or

(3) The overthrow or destruction of the government of the United States or the government of any State, Territory, district, or possession thereof, or the government of any political subdivision therein, by unlawful means; or

(4) The commission of acts which violate laws pertaining to treason, rebellion, or insurrection, riots or civil disorders, seditious conspiracy, sabotage, trading with the enemy, obstruction of the recruiting and enlistment service of the United States, impeding officers of the United States, or related crimes or offenses.⁵⁰⁸

Testifying before the House Appropriations Subcommittee, Assistant Attorney General Mardian linked the new order directly with FBI investigations: "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 requirements of the Executive Order."⁵⁰⁹

FBI intelligence officials anticipated that the Executive Order would have a substantial impact on their operations, as indicated in the Inspection Report:

The implementation of Executive Order 11605 will affect primarily the work of the New Left Section, Extremist Intelligence Section and Internal Security Section. . . .

So far, the Department has indicated that it intends to initiate proceedings against the Black Panther Party, Progressive Labor Party, Young Socialist Alliance, and Ku Klux Klan; however, we have not as yet had any specific requirements levied upon by the Department in these cases. Based on past experience, it can be anticipated the services of one supervisor, full time, will be required to prepare each of these cases for presentation to the SACB.

The language of Executive Order 11605 is very broad and generally coincides with the basis for our investigation of extremist groups. Conceivably, consistent with manpower available, proceedings could be initiated on most of the or-

⁵⁰⁸ Executive Order 11605, 7/2/71.

⁵⁰⁹ Hearings on the Appropriation for the Department of Justice before the House Subcommittee on Appropriations, 92d Cong., 2d Sess. 673 (1972).

ganizations we have under investigation although the Department has not indicated at this time that they will undertake any wholesale action.⁶⁰⁰

From the outset the Executive Order was the subject of serious criticism in the United States Senate, primarily on the ground that the President did not have the power to assign this new function to a Board created by statute to perform different duties. Congress ultimately refused to appropriate funds for the implementation of the order. Nevertheless, the order's provision broadening the definition of "subversive" groups still remained in effect as the standard for evaluating prospective federal employees and for FBI investigations conducted for the federal employee security program.

Hearings on Army surveillance before the Senate Subcommittee on Constitutional Rights in the spring of 1971, and the furor over the SACB order, marked the beginning of a change in the climate of opinion regarding domestic intelligence. In this environment Director Hoover and his top associates expressed growing concern over the close relationship established by Assistant to the Director William C. Sullivan and other FBI intelligence officials with Assistant Attorney General Mardian in the Justice Department.

A memorandum of an Executives Conference meeting in June 1971 exemplifies the increasing tensions within the FBI. Director Hoover's "instructions relative to being very careful in our dealings with Assistant Attorney General Mardian" were pointed out. It was made clear that Assistant Director Dwight Dalbey of the Office of Legal Counsel was to attend "at any time officials of the Department are being contacted on any policy consideration which affects the Bureau." It was specifically noted "that this was not done in connection with a recent conference held between Supervisors of the Domestic Intelligence Division and Deputy Assistant Attorney General A. William Olsen of the Internal Security Division of the Department at which time discussion ensued as to proposed changes in procedure requesting Attorney General authority for electronic surveillance."⁶⁰¹ The conflicts within the FBI that had been muted at the time of the "Huston Plan" in 1970 were now coming into the open.

One of the issues which triggered the break between Director Hoover and Assistant to the Director Sullivan had little to do with domestic intelligence. Instead, it involved an expansion of the number of FBI Legal Attache offices abroad. The details of the controversy need not be reviewed here. What is most significant is that five days after the Executives Conference meeting described above, Sullivan began expressing strong opposition to the program for expanding Legal Attache offices.⁶⁰² Director Hoover solicited the views

⁶⁰⁰ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71.

⁶⁰¹ Executives Conference Memorandum, 6/2/71. The first Assistant Director for the Office of 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, were major changes in Bureau procedure. (Memorandum from Hoover to all Bureau Officials and Supervisors, 3/8/71.)

⁶⁰² Memorandum from W. C. Sullivan to Mr. Tolson, Re: *Estimated Cost of Proposed Expansion of Foreign Liaison*, June 7, 1971.

of other FBI officials, who supported the expansion. Sullivan then replied most forcefully, making the following statements among others:

I have read the comments of the above-named men. It was somewhat more than mildly distressing and saddening to me to observe the lack of objectivity, originality, and independent thinking in their remarks. The uniformity and monolithic character of their thinking constitutes its own rebuttal. While I am certain it was not the intention of these important Bureau officials, who occupy unique roles, to create the impression in the reader's mind that they said what they did because they thought this was what the Director wanted them to say, nevertheless it seems to me this is the impression conveyed.

. . . [T]he evidence points to the fact that, because of racial conflict, student and academic revolution, and possible increase in unemployment, this country is heading into ever more troubled waters, and the Bureau had better be fully prepared to cope with the difficulties which lie ahead. This cannot be done if we spread ourselves too thin and finance operations which do not give us proper return for the dollars spent. . . .

Lastly, I am not unmindful of the fact that the Director pointed out that we could get along quite well without an expensive domestic liaison section and, therefore, he dissolved it. Applying the Director's reasoning foreign liaison, I think certainly the conclusion is valid that we can at least reduce it, with benefits to the Bureau.⁶⁰³

The final passage had reference to Director Hoover's decisions in 1970, first, to abolish the position of FBI liaison officer with the CIA, and then to eliminate the entire FBI Liaison Section dealing with other federal agencies.⁶⁰⁴

Upon reviewing Sullivan's second memorandum, one high FBI official advised Director Hoover that it appeared "more definite to me that he is more on the side of CIA, State Department and Military Intelligence Agencies, than the FBI." This official added, "There has to be something wrong for him to do such an abrupt about face at this time, after agreeing with what we have done in the past and now being unalterably opposed to any further expansion. . . ." ⁶⁰⁵

Within less than a month, Director Hoover had appointed W. Mark Felt, formerly Assistant Director in charge of the Inspection Division, to a newly created position as Sullivan's superior. During this period, Sullivan gave Assistant Attorney General Mardian the FBI's documents recording the authorization for and dissemination of information from certain wiretaps placed on executive officials and journalists during 1960-1971. The absence of these materials was not dis-

⁶⁰³ Memorandum from W. C. Sullivan to the Director. Re: *FBI Foreign Liaison Program*, 6/18/71.

⁶⁰⁴ See report on the Huston Plan.

⁶⁰⁵ R. R. Beaver, Memorandum for the Director's Personal Files, Re: W. C. Sullivan, 6/18/71.

covered by other FBI officials until after Sullivan was forced to resign in September 1971.⁶⁰⁶

Additional friction within the FBI developed in mid-1971 during the investigation of the "Pentagon Papers" matter and Daniel Ellsberg.

Assistant Director C. D. Brennan of the Domestic Intelligence Division considered the "Pentagon Papers" case a matter of overriding importance, especially in view of the White House interest. Brennan's views were summarized in an Inspection Report:

. . . [H]e commented upon the fact that the Ellsberg case might be a landmark in historical significance in view of the long range potential regarding governmental operations and the FBI's role in relation thereto. He stated that the leak in this case represented a deliberate and determined effort on the part of certain individuals to seriously disrupt and destroy the government's capacity to carry out effectively its foreign policy in various areas. Mr. Brennan noted that the past 15 to 20 years had witnessed the evolution of a new breed of fanatics who were determined to disrupt and destroy governmental operations and to alter this country's foreign policy. He further noted that the movement supported by these fanatics bordered on treason which must be dealt with if our current form of government is to survive.

In early July 1971 Director Hoover advised his subordinates that Presidential assistant H. R. Haldeman had called about the Ellsberg case and said that the President wanted regular reports. A month later, Assistant Director Brennan and other officials met with White House aide Gordon Liddy, who was "coordinating all White House interest in this matter." Liddy explained that the White House wanted the case handled as a "Bureau special". Although the FBI devoted substantial resources to the investigation, there was resistance to attempts by Assistant Attorney General Mardian and the Internal Security Division to direct the details of the FBI's inquiry.⁶⁰⁷

Moreover, Assistant Director Brennan was removed from his position in the course of the investigation. His replacement as Assistant Director for the Domestic Intelligence Division was Inspector E. S.

⁶⁰⁶ Memorandum from T. J. Smith to E. S. Miller, 5/13/73; FBI Summary of Interview with Robert Mardian, 5/10/73. William C. Sullivan stated that he "turned over the material, following a discussion in depth with Mr. Mardian relative to security and possible abuses of the material." (Memorandum from W. C. Sullivan to Acting FBI Director Ruckelshaus, 5/11/73.) Robert Mardian recalled that Sullivan told him Director Hoover "might use these tapes for the purpose of preserving his position as Director of the FBI." (Mardian testimony, Senate Watergate Hearings, 7/20/73, p. 2303.)

Former Attorney General John Mitchell recalled that Mardian had indicated to him "that Sullivan was furious over the way he was being treated by the Director and that for this reason he disclosed the information concerning the wiretaps to Mardian." Mitchell also said that Director Hoover had "advised him of the problems he was having with Sullivan," and Mitchell recalled "telling Mr. Hoover that he had no choice but to get rid of Mr. Sullivan." (FBI interview with John Mitchell, 5/12/73.)

⁶⁰⁷ Inspection Report, Domestic Intelligence Division, 8/17-0/0/71, pp. 4-10.

Miller, who had conducted two inspections of the Division during 1971.^{607a}

M. The "Administrative Index"

In the fall of 1971 the FBI confronted the prospect of the first serious Congressional action which might curtail domestic intelligence operations—repeal of the Emergency Detention Act of 1950. The Inspection Report completed in September 1971 viewed the possibility of repeal without great alarm:

Legislation has been introduced in the 92d Congress to repeal Title II of the ISA of 1950. In the event Title II should be repealed at a future date under new legislation, *the Government's inherent right to protect itself internally will continue to be safeguarded by the Bureau under its basic responsibility for protecting the Nation's internal security.*⁶⁰⁸ [Emphasis added.]

Congress passed the repeal measure shortly thereafter. FBI intelligence officials began at once to consider the impact on the Security Index program. They believed the Security Index should still be maintained "since the potential dangerousness of subversives is probably even greater now than before the repeal of the Act, since they no doubt feel safer now to conspire in the destruction of this country." However, they also saw a need to consult the Justice Department "to determine if there is any manner in which the essence of the Security Index and emergency detention of dangerous individuals could be utilized under Presidential powers."⁶⁰⁹

The argument for keeping the Security Index in the event of an emergency was elaborated further:

Those listed now or included under existing criteria in the future will continue to represent a potential danger to the national defense. 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. The SI, backed by our investigative files, would provide documentation of subversive backgrounds during any hearings which might be required following apprehensions.

^{607a} According to former FBI executive W. Mark Felt, Brennan was replaced as a matter "of policy." The purpose was "to put someone else into that spot who was not a protege of Sullivan," as a means of "controlling the Domestic Intelligence Division." It was Felt's "understanding" that Director Hoover "felt that Sullivan was out of hand."

Brennan was also disciplined for one aspect of his handling of the "Pentagon Papers" investigation. According to Mark Felt, "Mr. Hoover was convinced that Mr. Brennan deliberately disregarded his instructions" not to interview Louis Marx, father-in-law of Daniel Ellsberg. Felt thought Brennan "got a bum rap" and that "it was an honest error." (Felt, 2/3/76, p. 67-71.)

⁶⁰⁸ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 88.

⁶⁰⁹ Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act*, 9/17/71.

The Security Index also served useful purposes in connection with the FBI's day-to-day intelligence operations:

The SI constitutes an extremely valuable list of subversives and malcontents who constantly pose a threat to the safety of the President. Secret Service is provided a constant flow of data concerning current whereabouts and backgrounds of individuals on the SI. In addition, the SI would immediately pinpoint for our own use the identities of subversives who would require intensified investigative attention to provide evidence of espionage, sabotage, or the like. . . .

Quarterly we have furnished Passport Office of State Department a list of those on Priority I (the most potentially dangerous) so that we can be advised of travel abroad by these subjects. The list is not identified in any way as SI and since it is beneficial to us, it is believed we should continue to send it.

Repeal of the Emergency Detention Act of 1950 was not thought to affect the basis for FBI investigative authority:

Title I of the Internal Security Act of 1950, which relates to Subversive Activities Control Board, strengthened by Executive Order 11605 dated 7/2/71, provides investigative authority as do Smith Act of 1940, Communist Control Act of 1954, Fraud Against the Government, Rebellion and Insurrection, Sedition and Seditious Conspiracy, among others.

However, FBI intelligence officials believed that the Bureau's "Office of Legal Counsel should examine this more critically from a legal standpoint."¹⁰⁰ Assistant Director D. J. Dalbey, head of the Office of Legal Counsel, agreed that the repeal did not affect the FBI's "basic investigative authority:"

Our basic investigative authority for this type of case is in the Presidential directive of September 6, 1939, which still remains in effect, with updates. In addition to that there is a host of criminal statutes which are particularly applicable to the type of action-oriented subversives with whom we now deal. Principal subversives now carry guns, rob banks to get money, steal arms and ammunition, commit arson, set off bombs, incite riots, and do many other things which violate one or more criminal statutes over which this Bureau has investigative jurisdiction. From a combination of those statutes, plus the original Presidential directive on internal security, we have wide investigative authority.

Assistant Director Dalbey also endorsed the position of FBI intelligence officials regarding the Security Index:

. . . [E]limination of the Emergency Detention Act does not prevent this Bureau from carrying in its files an assessment of each principal subversive which would be sufficient to mark him for Government attention should a need arise in a national emergency.

¹⁰⁰ Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act*, 9/21/71.

Bearing in mind that the Emergency Detention Act could as easily be put back in force should an emergency convince Congress of its need, this Bureau would then be expected to have on hand the necessary action information pertaining to individuals.

Nevertheless, the FBI's Legal Counsel strongly urged that "a letter should be written to the Attorney General in which this Bureau asks for a reassessment of our investigative and record-keeping authority concerning subversive matters." This would "protect" the FBI in case "some spokesman of the extreme left" claimed that repeal of the Detention Act did, in fact, eliminate the Bureau's investigative authority.⁶¹¹

FBI intelligence officials became increasingly concerned about possible "charges by the Bureau's critics that we are evading the will of Congress." They believed it was necessary to "get some written authority from the Attorney General, not only to keep records which, in effect, represent a workable substitute for the Security Index, but also serves as a mandate for our continued investigation of subversive activity and related matters."⁶¹²

Thereupon, a letter was sent to Attorney General Mitchell soliciting his views "concerning FBI authority to continue investigations of subversive activity covered, in part, by this [Emergency Detention] Act." The letter cited as bases for continuing FBI authority the Smith Act, the Subversive Activities Control Act of 1950, the Communist Control Act of 1954, statutes relating to espionage, sabotage, rebellion and insurrection, sedition, and seditious conspiracy, as well as "certain Presidential Directives." The line of Presidential directives from President Roosevelt's order of June 26, 1939, through President Eisenhower's statement of December 15, 1953, was reviewed. The FBI Director's letter concluded:

I strongly feel that irrespective of the repeal of the Emergency Detention Act, the Federal Government must take whatever steps are necessary, within the law, to protect itself from all hostile forces bent on its destruction. We, therefore, feel that it is absolutely incumbent upon the FBI to continue investigations of those who pose a threat to the internal security of the country and to maintain an *administrative index* of such individuals as an essential part of our investigative responsibility. Such an index not only enables the FBI to pinpoint individuals who have exhibited a propensity to conduct acts inimical to national security, but also serves as an extremely valuable list of individuals who pose a continuing threat to the safety of the President and thereby enables us to provide current data to U. S. Secret Service concerning backgrounds and whereabouts of such individuals.⁶¹³ [Emphasis added.]

⁶¹¹ Memorandum from D. J. Dalbey to Mr. Tolson, Re: *Emergency Detention Act Repeal*, 9/24/71.

⁶¹² Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act Repeal*, 9/29/71.

⁶¹³ Memorandum from the FBI Director to the Attorney General, Re: *Emergency Detention Program*, 9/30/71.

The FBI made no mention of the Agitator Index, which had been abolished earlier in 1971 because "extremist subjects" were now "adequately followed" through the Security Index.⁶¹⁴

There was also no allusion to the theory advanced within the FBI that the new "administrative index" could serve as the basis for a revived Detention Program in some future emergency.

The Attorney General replied that the FBI's authority to investigate "subversive activities" on the bases cited by the Bureau was "unaffected by the repeal of the Emergency Detention Act." With respect to the Security Index, the Attorney General advised:

... [T]he repeal of the aforementioned Act does not alter or limit the FBI's authority and responsibility to record, file and index information secured pursuant to its statutory and Presidential authority. An FBI administrative index compiled and maintained to assist the Bureau in making readily retrievable and available the results of its investigations into subversive activities and related matters is not prohibited by repeal of the Emergency Detention Act.

While the Department does not desire a copy of any lists that you may compile on the basis of such records or indices, the Internal Security Division should be furnished a monthly memorandum reflecting the identity of government employees who by significant acts or membership in subversive organizations, have demonstrated a propensity to commit acts inimical to our national security.

The Justice Department was studying what to do with the "Attorney General's portfolio"—the secret plans for emergency detention.⁶¹⁵ Several months later the FBI was instructed to destroy the materials prepared for the "Attorney General's portfolio."⁶¹⁶

Upon receipt of the Attorney General's memorandum, the FBI reconstituted the Security Index as an Administrative Index (ADEX) with revised standards. FBI intelligence officials explained that, since the Justice Department would no longer review the names on the list, the FBI was "now in a position to make a sole determination as to which individuals should be included in an index of subversive individuals. Previously, the Justice Department had "frequently removed individuals who in the strictest legal interpretation should not be considered for arrest and detention." Under the new procedure the FBI could make its own "determination based not on arrest and detention but rather on overall potential for committing acts inimical to the national defense interest." This meant restructuring the Index so that it no longer stressed "membership in or affiliation with old line revolutionary organizations," such as the Communist Party. Instead, it would concentrate on the "new breed of subversive individual":

⁶¹⁴ Memorandum from G. C. Moore to C. D. Brennan, Re: *Agitator Index*, 4/21/71; SAC Letter No. 71-17, 4/27/71.

⁶¹⁵ Memorandum from Attorney General John N. Mitchell to the FBI Director, Re: Emergency Detention Program, 10/22/71.

⁶¹⁶ Memorandum from Assistant General Robert C. Mardian to the FBI Director, Re: Emergency Detention Program, 2/9/72.

He may adhere to 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, he 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.

The previous Reserve Index, which had never been disclosed to the Justice Department, would now be incorporated into Category IV of the new 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 increase under the ADEX would be "in excess of 23,000 cases the first year." including 17-18,000 individuals who "are either now being investigated or who have been investigated in the past."⁶¹⁷

The following standards for placing subjects of "security investigations" on the ADEX were sent out to the field offices:

Category I

(1) All national leaders of revolutionary organizations whose aims and purposes include the overthrow and destruction of the Government by force and violence or other unconstitutional means, and individuals affiliated therewith who have demonstrated propensity for violence against the person rather than property or have received special training in sabotage, espionage, or guerrilla warfare or have engaged in underground-type operations.

(2) Revolutionaries, though unaffiliated with any specific organization, who have demonstrated by acts or statements a propensity for violence, including acts of terrorism, assassination, or any interference with or threat to the survival and effective operation of national, state, or local Governments and of the defense efforts.

(3) National leaders of black extremist separatist organizations.

(4) Any individual who qualifies for the ADEX should be included in Category I if he is employed in or has access to a key facility.

Category II

(1) Secondary leadership of revolutionary and black extremist separatist organizations. Secondary leadership would comprise, for example, regional, state, and local leaders who are involved in policy making in fulfilling anti-U.S. objec-

⁶¹⁷ Memorandum from T. J. Smith to E. S. Miller, Re: *Security Investigations of Individuals*, 11/11/71.

tives of their respective revolutionary organizations and whose activities do not justify their inclusion in Category I.

(2) Active participants in furthering the aims and purposes of the revolutionary or black extremist separatist organization with which affiliated.

(3) Other unaffiliated revolutionaries who have demonstrated by acts or statements a propensity for violence against property rather than persons.

Category III

(1) Rank-and-file membership in, or participation in activities of, revolutionary organizations within the last five years as evidenced by overt acts or statements established through reliable sources, informants, or individuals.

(2) Leadership or activist position in affiliated fronts of revolutionary organizations within the last three years as shown by overt acts or statements established through reliable sources, informants, or individuals.

(3) 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 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 national, state, and local Governments and of the defense efforts.* [Emphasis added.]

Category IV

(1) Individuals whose activities do not meet criteria of Categories I, II, or III but who are in a position to influence others to engage in acts inimical to the national defense or are likely to furnish financial aid or other assistance to revolutionary elements *because of their sympathy, associations, or ideology.* [Emphasis added.]

Field offices were also instructed to review the cases of persons on the Reserve Index and, "where appropriate", recommend them for inclusion in the ADEX.⁶¹⁸

The assumption that the ADEX could be used as the basis for detention or other action in an emergency was made clear in the standards for Category III (3). However, when these criteria were supplied to the Justice Department in 1972, the Attorney General did not question the fact that the ADEX was more than just an administrative aid for conducting current investigations.⁶¹⁹

One 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

⁶¹⁸ Memorandum from FBI Headquarters to all SAC's, Re: *Security Investigations of Individuals*, 11/15/71.

⁶¹⁹ Memorandum from the FBI Director to the Attorney General, Re: *Security Investigations of Individuals*, 2/10/72.

President could then go to Congress "for emergency legislation permitting apprehension and detention."⁶²⁰

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."⁶²¹

N. Curtailment of FBI Domestic Intelligence

In 1971, the first serious congressional inquiry into domestic intelligence policy influenced the Army to curtail its extensive surveillance of civilian political activity and led, after Director Hoover's death in 1972, to serious reconsideration by the FBI of the legal basis for its domestic intelligence activities and eventually to a request for clarification of its authority by the Attorney General.

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."⁶²² 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 members of the Subcommittee, Senator Roman Hruska, endorsed the need for a "penetrating and searching" inquiry.⁶²³

Assistant Attorney General Robert Mardian testified before the Constitutional Rights Subcommittee in March 1971. He declared that the Justice Department's IDIU did not itself collect intelligence, but rather it relied upon information from "public sources" and from the FBI. Under questioning, Mardian admitted that neither the Department nor the Bureau had "any specific published regulation or guideline" for the collection of intelligence about civil disturbances.⁶²⁴ When this statement appeared in the press, Director Hoover asked, "What about this?"⁶²⁵ In response, FBI officials prepared a summary of the relevant Bureau Manual provisions and submitted it to the Director as the FBI's "Guidelines."⁶²⁶

⁶²⁰ Memorandum from T. J. Smith to E. S. Miller, 8/20/72.

⁶²¹ Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

⁶²² *Federal Data Banks*, 1971 Hearings, p. 1.

⁶²³ *Federal Data Banks*, 1971 Hearings, pp. 4, 7.

⁶²⁴ *Federal Data Banks*, 1971 Hearings, p. 878.

⁶²⁵ Note on news article attached to memorandum from R. D. Cotter to C. D. Brennan, 3/18/71. Hoover also noted on a column in the *Washington Post* by Alan Barth, "We must get together at once all out guidelines." Routing slip, 3/25/71.

⁶²⁶ Memorandum from R. D. Cotter to C. D. Brennan, 3/25/71.

There is no indication that the "guidelines" material or the FBI Manual provisions themselves were submitted to, or requested by, the Justice Department in 1971.⁶²⁷ 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."⁶²⁸ Director Hoover noted on a newspaper report of the testimony, "Prepare succinct memo to him on our guidelines."⁶²⁹

The FBI's summary of its "guidelines," submitted to the Acting Attorney General, in 1972, stated that the Bureau investigated "any individual" who is "affiliated with or adheres to the principles of" an organization "which has as an objective" the violent overthrow of the government or "other criminal activity detrimental to the National defense."⁶³⁰ The Bureau also made clear that the purpose of these investigations was not just to "obtain evidence for prosecution," but also

to obtain intelligence data in order to have day-to-day appraisal of strength, dangerousness, and activities of the organization; and to keep the Department of Justice and other affected Government agencies advised.

These investigations were partly based on criminal statutes, although the Bureau admitted that "subversive activity . . . often does not clearly involve a specific section of a specific statute." They were also based on the 1939 Roosevelt directives which were said to have been "reiterated and broadened by subsequent Directives."⁶³¹ [Emphasis added.]

Shortly thereafter (and only two days before Director Hoover's death), the Bureau advised Kleindienst that it was abandoning the use of the term "New Left" and substituting "Revolutionary Activities" so as to more accurately "depict" the "militant, violence-prone revolutionaries with whom we are concerned in our current investigations."⁶³²

After Director Hoover's death in May 1972, FBI intelligence officials prepared a "position paper" for Acting Director L. Patrick Gray, in

⁶²⁷ 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 reaffirmation 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 on "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)

⁶²⁸ Richard Kleindienst testimony, Hearings Before the Senate Judiciary Committee, 2/24/72, p. 64.

⁶²⁹ FBI routing slip attached to Washington Post article, 2/24/72.

⁶³⁰ The summary also stated that "affiliation" with "basic revolutionary front groups" was not a "prerequisite" for investigation, since "other individuals with anarchistic, revolutionary or extremist beliefs" were also investigated. (Attachment to Memorandum from Hoover to Kleindienst, 2/25/72.)

⁶³¹ Memorandum from Hoover to Kleindienst, 2/25/72 (attachment).

⁶³² Memorandum from the FBI Director to Acting Attorney General Kleindienst, 4/28/72.

response to his request for a review of Bureau "authority" for investigations "where there is no direct violation of law." This paper merely recited the various Presidential directives, Executive Orders, delimitations agreements, and general authorizations from the Attorney General, with no attempt at analysis. The need for "intelligence collection" to assure "proper vigilance" was introduced in the following terms:

It is clear that the aspirations of most revolutionary groups far exceed their capability to achieve their ultimate objectives. They are, however, quite capable of eroding the integrity of the democratic system by lesser acts and, if not discouraged or thwarted, might well accumulate the will and power for more decisive action. The dramatic success of the Castro revolution is a sufficient example.⁶³³

At the same time, the FBI Office of Legal Counsel began its own review of the constitutional issues; and one memorandum, anticipating the likelihood of further "congressional intervention," recommended the development of "tight internal controls and carefully developed guidelines."⁶³⁴

There was a sharp split 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. One official concluded that the FBI had "overstated our authority supposedly derived from Presidential directives," and that the Attorney General should be called upon "to provide legal guidance and advice as to just how much authority we have or need." Other intelligence officials believed that FBI policies might be "undermined" if it attempted to rely solely on "statutory authority."⁶³⁵ Nevertheless, a new Division position paper concluded that domestic intelligence investigations could practicably be based on the "core pt" 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."⁶³⁶

One of the arguments for not relying on the authority of the Presidential orders was the risk of abuse of the FBI by the White House:

Over the years it became common practice for White House staff members to telephone requests for information or investigations to Mr. Hoover's office or the office of one of his officials. Such requests were usually considered as being within the constitutional Executive power, and for the most part such requests were completely legitimate and well within the recognized scope of the FBI investigative authority.

Occasionally, however, requests were made—and complied with—which in retrospect appear to have been beyond any

⁶³³ 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. (T. J. Smith to E. S. Miller, 8/1/72)

⁶³⁴ Memorandum from J. B. Hotis to D. J. Dalbey, 5/18/72.

⁶³⁵ Memorandum from T. J. Smith to E. S. Miller, 8/1/72.

⁶³⁶ Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

recognized Executive authority. An example is a telephone request to furnish all available information to the White House concerning a forthcoming Earth Day rally in 1970. The rally, which was sponsored by groups concerned with pollution and ecology, attracted the attention of a few subversive elements, but appeared to be very much under the control of the sponsors. Senator Edmund S. Muskie spoke at the rally in Washington, D.C., and Rennie Davis, an anti-war activist with a subversive background, appeared on the same platform with Senator Muskie. A few minor disturbances erupted in some areas, but overall the Earth Day rallies were peaceful and attained their general objective, the calling of attention to environmental problems. Senator Muskie, who learned that the FBI covered the rally in Washington, was incensed that the FBI was involved. We had a poor defense and in this case, at least, it is doubtful that there was any legitimate Executive authority to have the FBI involved. In any event, it would appear that such requests should flow through channels, including the Department of Justice where possible, to assure that unreasonable and improper requests are [not] made for investigative activity.^{635a}

Acting Director Gray postponed making any formal request for advice from the Attorney General in 1972.⁶³⁷ Meanwhile, the Domestic Intelligence Division proceeded on its own to revise the pertinent Manual sections and the ADEX standard. 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." Thus, it was recommended that the list be trimmed to those who were "an actual danger now," reducing the number of persons on the ADEX by two-thirds.⁶³⁸ The Justice Department was advised of this change.⁶³⁹

The revision of the 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."

^{635a} Position Paper, 7/31/72. For an examination of other instances of political misuse of the FBI, see the Final Report on Domestic Intelligence.

⁶³⁷ 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." Note on FBI routing slip, 8/27/72.

⁶³⁸ Memorandum from Smith to Miller, 8/20/72. The anticipated reduction was from 16,260 (the current figure) to 4,786 (the top two priority categories).

⁶³⁹ Memorandum from Gray to Kleindienst, 9/18/72. The basic standard for the revised ADEX read as follows:

"Individuals, whether affiliated with organized groups or not, who have shown a willingness and capability of engaging in treason, rebellion, or insurrection, seditious conspiracy, sabotage, espionage, terrorism, guerrilla warfare, assassination of Government officials or leaders, or other such acts which would result in interference with or a threat to the survival and effective operation of national, state or local government."

Draft copies were distributed to the field for suggestions.⁶⁰ 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. 2383), seditious conspiracy (18 U.S.C. 2384) and advocating overthrow of the government (18 U.S.C. 2385). The ADEX was to be "strictly an administrative device" and should play no part "in investigative decisions or policies." The revision also eliminated "over-emphasis" on the Communist Party. 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.⁶¹

A series of regional conferences were held with field office supervisors to discuss the new standards, after which they were revised to allow greater flexibility. For example, the supervisors 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 90 days "to determine whether or not 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.⁶²

For the first time in FBI history, a copy of the Manual section for "domestic subversive investigations" was sent to the Attorney General, apparently "in connection with" a request made earlier by Senator Edward M. Kennedy who had asked to see a copy of this section at the time of the confirmation hearings for Attorney General Kleindienst in 1972.⁶³

After Clarence M. Kelley was confirmed as FBI Director, he requested guidance from the Attorney General. In a memorandum to Attorney General Elliott Richardson, Director Kelley cited Senator Sam J. Ervin's view that the FBI should be prohibited by statute "from investigating any person without that individual's consent, unless the Government has reason to believe that the person has committed a crime or is about to commit a crime." He then summarized the position paper prepared by the Domestic 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 seditious conspiracy, rebellion and insurrection laws) or had been "reduced to a fragile shell by the Supreme Court" (the

⁶⁰ Memorandum from E. S. Miller to Felt, 5/22/73. This memorandum also 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."

⁶¹ Memorandum from FBI Headquarters to all SAC's, 6/7/73.

⁶² Memorandum from FBI Headquarters to all SAC's, 8/8/73.

⁶³ Kleindienst, Senate Judiciary Committee, 2/24/72, p. 64; memorandum from Kelley to Richardson, 8/7/73.

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.

Kelley concluded that it "would be folly" to limit the Bureau to investigations only when a crime "has been committed," since the government has 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 "terrorist and revolutionaries who seek to overthrow or destroy the Government."⁶⁴⁴ [Emphasis added.]

Director Kelley's request initiated a process of reconsideration of FBI intelligence authority by the Attorney General. 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."⁶⁴⁵ The Ruckelshaus study was interrupted by his departure in the "Saturday Night Massacre" of October 1973.

The Ruckelshaus study and Kelley's request were superseded 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 Petersen.⁶⁴⁶ Even at this stage, however, 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," which were handled within the Bureau "on a strictly need-to-know basis" and thus should not be included in a study "which will be beyond the control of the FBI."⁶⁴⁷

As a result, the Petersen committee's review of COINTELPRO did not consider anything more than a brief FBI-prepared summary of

⁶⁴⁴ Memorandum from Kelley to Richardson, 8/7/73.

⁶⁴⁵ Memorandum from Ruckelshaus to Kelley, 7/20/73.

⁶⁴⁶ Memorandum from Bork to Kelley, 12/5/73.

⁶⁴⁷ Memorandum from Kelley to Bork, 12/11/73.

foreign counterintelligence operations.⁶⁴⁸ 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 did not 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.⁶⁴⁹

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. The Peterson Committee sharply rejected this view, citing the fact that the *ad hoc* equivalent of the U.S. Intelligence Board had approved the discredited "Huston plan" in 1970 and declaring, "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."⁶⁵⁰

Thus, while the Bureau was seeking guidance and clarification of its authority, at the same time 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.

O. Re-Authorization of FBI Domestic Intelligence

In the absence of any new standards imposed by the Attorney General via "guidelines" or established by statute, the Bureau continued to conduct domestic intelligence investigations under broad authorizations issued by the Justice Department in 1974. 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 statutes.

(1) Executive Order 10450, as amended

The Federal employee security program continued to be, according to the Justice Department's 1974 instructions, a substantive basis for FBI domestic intelligence investigations. An internal Bureau memorandum stated that this order:

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.⁶⁵¹

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

⁶⁴⁸ FBI memorandum, "Overall Recommendations—Counterintelligence Activity."

⁶⁴⁹ Henry Petersen testimony, 12/8/75, Hearings, Vol. 6, pp. 270-271.

⁶⁵⁰ Petersen Committee Report, p. 35.

⁶⁵¹ Memorandum from A. B. Fenton to Mr. Wannall, 7/10/74.

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 other functions, fund-raising or recruiting activities on behalf of the organization, contributions, etc.).⁶⁵²

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 with which would continue to be taken into account in evaluating prospective federal employees.⁶⁵³ The Justice Department instructed the FBI that it should undertake to "detect organizations with a potential" for falling within the terms of the order and to investigate "individuals who are active either as members of or as affiliates of" such organizations. The Departmental 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 proscription 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."⁶⁵⁴

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.⁶⁵⁵

(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

⁶⁵² Memorandum from FBI Headquarters to all SAC's, 8/16/74.

⁶⁵³ Executive Order 11785, 6/4/74. The new standard was:

"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 violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or or of any state, or which seeks to overthrow the Government of the United States or subdivision thereof by unlawful means." [Emphasis added.]

⁶⁵⁴ Memorandum from Glen E. Pommerening, Assistant Attorney General for Administration, to Kelley, 11/17/74.

⁶⁵⁵ Memorandum from Henry E. Petersen, Assistant Attorney General, Criminal Division, to Kelley, 11/13/74.

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

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.⁶⁵⁵

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 could be done, at least in part, through "liaison" with local law enforcement agencies. The FBI was expected to "be aware of disturbances and patterns of disorder," although it was not to report "each and every relatively insignificant incident of a strictly local nature."⁶⁵⁷

The Justice Department abolished the Intelligence Evaluation Committee, set up in partial implementation of the "Huston Plan," after its existence was publicized in 1973.⁶⁵⁸ The IDIU also dismantled its computerized data bank even though the basic functions of the IDIU 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.⁶⁵⁹

FBI officials considered these instructions "significant" because they now 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."⁶⁶⁰

From a legal point of view, the instructions were significant because they relied for authority on 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," as well

⁶⁵⁵ "On the other hand," the instructions stated, "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 Henry E. Petersen, Assistant Attorney General, Criminal Division, to Kelley, 10/22/74.)

⁶⁵⁷ Memorandum from Assistant Attorney General Petersen to Kelley, 10/22/74.

⁶⁵⁸ Memorandum from Assistant Attorney General Petersen to Col. Werner Michel, 6/11/78.

⁶⁵⁹ Memorandum from Assistant Attorney General Petersen to Kelley, 10/22/74; Frank Nyland testimony, 1/27/76, pp. 46-58.

⁶⁶⁰ Memorandum from J. G. Deegan to W. R. Wannall, 10/30/74.

as upon the statute (10 U.S.C. 331, et seq.) authorizing the use of troops and upon the Presidential directive of 1969 designating the Attorney General as chief civilian officer to coordinate the Government's response to civil disturbances.⁶⁵¹

(3) "Potential" Crimes

The FBI has recently abolished completely its ADEX, or administrative index of persons considered "dangerous now." However, in 1974, the Justice Department elaborated a theory to support broad power of the Executive branch to investigate groups which represent a "potential threat to the public safety," or which have a "potential" for violating specific statutes. In the case of one group, for example, the Department advised the FBI that the General Crimes Section of the Criminal Division had "recommended continued investigation" on the basis of "potential violations" of the antiriot statutes, 18 U.S.C. 2101-2102. These same instructions added that there need not be a "potential" for violation of any specific statute:

[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.⁶⁵² [Emphasis added.]

The Department's theory of executive power was also spelled out 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 was "the constitutional powers and responsibilities vested in the President under Article II of the Constitution." These powers arise from the President's duty in his oath of office to "preserve, protect, and defend the Constitution of the United States,"⁶⁵³ the Chief Executive's duty to "take care that the laws be faithfully executed,"⁶⁵⁴ the President's responsibilities as Commander-in-Chief, and his "power to conduct our foreign relations." The latter power was said to relate "more particularly to the Executive's power to conduct foreign intelligence activities here and abroad." Nevertheless, Mr. Maroney added,

We recognize the complexity and difficulty of adequately spelling out the FBI's authority and responsibility to conduct

⁶⁵¹ Memorandum from Petersen to Kelley, 10/22/74; Directive of 4/1/69, discussed at pp. 501-502.

⁶⁵² Memorandum from Assistant Attorney General Petersen to Kelley, 11/18/74.

⁶⁵³ The opinion of the Supreme Court in *United States v. United States District Court*, 407 U.S. 297 (1972), in a 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."

⁶⁵⁴ 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).]

domestic intelligence-type investigations. The concept of national security is admittedly a broad one, while the term subversive activities is even more difficult to define.⁶⁶⁶

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."⁶⁶⁷ 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 his Constitutional authority," as well as the statutes "pertaining to the national security."⁶⁶⁸

The generalized instructions issued by the Justice Department in 1974, when viewed in the larger framework of the theory of executive power upon which they were based, have presented the Congress with the formidable but essential task of developing statutory standards for FBI domestic intelligence to replace vague executive mandates. The record clearly indicates that, even though the Attorney General has promulgated more precise "guidelines," the broad claims of power in the hands of the Executive branch could readily permit a return to the vague and overbroad domestic intelligence policies of the past.⁶⁶⁹

⁶⁶⁶ 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 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 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).)

⁶⁶⁷ House Committee on Internal Security Hearings, (1974) pp. 3330-3331.

⁶⁶⁸ W. Raymond Wannall, Assistant Director for the Intelligence Division, unaddressed memorandum re: "Basis for FBI National Intelligence Investigations," 2/18/75.

⁶⁶⁹ The "guidelines" for FBI domestic security investigations developed by Attorney General Edward H. Levi and other recent developments are discussed in the Committee's Final Report on Domestic Intelligence.

DOMESTIC CIA AND FBI MAIL OPENING PROGRAMS

CONTENTS

	Page
PART I: Summary and Principal Conclusions.....	561
PART II: CIA Domestic Mail Opening.....	565
I. Introduction and Major Facts.....	565
II. New York City Mail Intercept Project.....	567
A. Operation of the program.....	567
1. The initial phase: Mail covers.....	567
2. Subsequent evolution of the project.....	569
3. Full operation of the program.....	571
B. Nature and value of the product.....	572
1. Selection criteria.....	572
2. Value of the product.....	576
C. Internal authorization and controls.....	579
1. Authorizations by Directors of Central Intelligence.....	580
2. Exemption from normal approval system.....	581
3. Administrative controls.....	582
D. External authorizations.....	584
1. Postmasters General.....	585
2. Chief Postal Inspectors.....	592
3. Attorneys General.....	592
4. Presidents.....	594
E. Termination of the project.....	599
1. Proposed termination: The 1969 Inspector General's report.....	599
2. Increasing security risks: 1971.....	600
3. William Cotter's continuing concern.....	601
4. Schlesinger's decision to suspend the project.....	603
F. Legal considerations and the "flap potential".....	604
1. Perceptions of legal issues within the Agency.....	604
2. Role of the General Counsel.....	606
3. The "flap potential".....	608
III. Other CIA Domestic Mail Opening Projects.....	611
A. The San Francisco mail intercept project.....	611
1. Operation of the project.....	612
2. Nature and value of the product.....	614
3. Termination of the project.....	615
4. Internal authorizations and controls.....	616
5. External authorizations.....	618
B. The New Orleans mail intercept project.....	620
1. Operation of the project.....	620
2. Nature and value of the product.....	622
3. Termination.....	622
4. Authorizations.....	622
C. The Hawaiian mail intercept project.....	623
D. Isolated instances of CIA mail opening.....	624
PART III: Project Hunter.....	624
I. Introduction and Major Facts.....	624
II. FBI "Discovery" of the CIA's New York Mail Intercept Project: 1958.....	625
A. A Proposed FBI mail opening program for United States-Soviet Union mail.....	625
B. Referral to Post Office Headquarters in Washington, D.C.....	626
C. James Angleton's initial contact with Sam Papike regarding HTLINGUAL.....	626
D. Decision not to challenge CIA jurisdiction.....	626
E. FBI briefing at CIA.....	627

	Page
III. Requests Levied by the FBI on the CIA's New York Mail Intercept Project.....	627
A. The procedure established.....	627
B. Categories of correspondence for requested coverage.....	628
C. Individuals and organizations placed on the watch list.....	631
IV. Product Received by the FBI from the CIA's New York Mail Intercept Project.....	631
A. Volume.....	631
B. Administrative processing of the product received.....	632
C. Nature and value of the product received.....	632
V. Termination of the Project.....	634
VI. Internal Authorization and Controls.....	635
A. Initial approval by and continuing knowledge of the Director.....	635
B. Internal controls.....	635
VII. External Authorization.....	636
A. Attorneys General.....	636
B. Postmasters General.....	636
C. Presidents.....	636
PART IV: FBI Mail Opening.....	636
I. Introduction and Major Facts.....	636
II. Description of FBI Mail Opening Programs.....	640
A. Z-Coverage.....	640
B. Survey No. 1.....	640
C. Survey No. 2.....	641
D. Survey No. 3.....	642
E. Survey No. 4.....	643
F. Survey No. 5.....	643
G. Survey No. 6.....	644
H. Survey No. 7.....	644
I. Typical operational details.....	645
J. Other instances of FBI mail opening.....	647
1. Washington, D.C. (1961).....	647
2. Washington, D.C. (1963-64).....	648
3. Southern California city.....	648
III. Nature and Value of the Product.....	648
A. Selection criteria.....	648
1. The programs based on indicators.....	648
2. The Latin-American-oriented program.....	650
3. The Asian-oriented programs.....	650
B. Requests by other intelligence agencies.....	650
C. Results of the programs.....	651
1. Counterintelligence results.....	652
2. "Positive" foreign intelligence results.....	654
3. Domestic intelligence results.....	654
IV. Internal Authorization and Controls.....	655
A. Internal authorization.....	656
B. Administrative controls by headquarters.....	657
C. Knowledge of the mail opening programs within the FBI.....	658
V. External Authorizations.....	659
A. Post Office Department.....	656
1. Postmasters General.....	659
2. Chief Postal Inspectors.....	659
B. Department of Justice.....	663
1. Robert F. Kennedy.....	663
2. Nicholas deB. Katzenbach.....	664
C. Presidents.....	668
VI. Termination of the FBI Mail Opening Programs.....	668
A. Hoover's decision to terminate the programs in 1960.....	668
1. Timing.....	668
2. Reasons.....	669
B. Recommended reinstatement.....	671
1. Within the Bureau.....	671
2. Huston plan.....	671
VII. Legal and Security Considerations Within the FBI.....	672
A. Consideration of legal factors by the FBI.....	672
1. Prior to the commencement of mail opening programs in the post-war period.....	672
2. Post-1951.....	673
B. Concern with exposure.....	675

DOMESTIC CIA AND FBI MAIL OPENING PROGRAMS

PART I: SUMMARY AND PRINCIPAL CONCLUSIONS

Between 1940 and 1973, two agencies of the federal government—the CIA and the FBI—covertly and illegally opened and photographed first class letter mail within the United States. These agencies conducted a total of twelve mail opening programs for lengths of time varying from three weeks to twenty-six years. In a single program alone, more than 215,000 communications were intercepted, opened, and photographed; the photographic copies of these letters, some dated as early as 1955, were indexed, filed, and are retained even today. Information from this and other mail opening programs—“sanitized” to disguise its true source—was disseminated within the federal establishment to other members of the intelligence community, the Attorney General, and to the President of the United States.

The stated objective of the CIA programs was the collection of foreign intelligence and counterintelligence information; that of the FBI programs was the collection of counterespionage information. In terms of their respective purposes, seven of the twelve mail opening programs were considered to have been successful by Agency and Bureau officials. One CIA project and three of the FBI programs concededly failed to obtain any significant relevant information. Another CIA operation—clearly the most massive of all the programs in terms of numbers of letters opened—was believed to have been of value to the Agency by some officials, but was criticized by many others as having produced only minimally useful foreign intelligence. Despite two unfavorable internal reviews, this program nonetheless continued unabated for twenty years.

While all of these programs responded to the felt intelligence needs of the CIA and the FBI during the “cold war” of the 1950’s and early 1960’s, once in place they could be—and sometimes were—directed against the citizens of this country for the collection of essentially domestic intelligence. In the 1960’s and early 1970’s, large numbers of American dissidents, including those who challenged the condition of racial minorities and those who opposed the war in Vietnam, were specifically targeted for mail opening by both agencies. In one program, selection of mail on the basis of “personal taste” by agents untrained in foreign intelligence objectives resulted in the interception and opening of the mail of Senators, Congressmen, journalists, businessmen, and even a Presidential candidate.

The first mail opening program began shortly before the United States entered World War II, when representatives of an allied country’s censorship agency taught six FBI agents the techniques of “chamfering” (mail opening) for use against Axis diplomatic establishments in Washington, D.C. The program was suspended after the war but reinstated during the “cold war” in the early 1950’s; the method was similar but the targets new. Shortly after this program

was reinstated, the CIA entered the field with a mail opening project in New York designed to intercept mail to and from the Soviet Union. Between 1954 and 1957, the FBI and the CIA each developed second programs, in response to post-war events in Asia, to monitor mail entering the United States from that continent; and the CIA briefly conducted a third operation in New Orleans to intercept Latin and Central American mail as well. The technique of chamfering was most widely used by the FBI during the period 1959 to 1966: in these years the Bureau operated no fewer than six programs in a total of eight cities in the United States. In July 1966, J. Edgar Hoover ordered an end to all FBI programs, but the Bureau continued to cooperate with the CIA, which acted under no such self-restriction, in connection with the Agency's New York project. In 1969, a fourth CIA program was established in San Francisco and was conducted intermittently until 1971. The era of warrantless mail opening was not ended until 1973, when, in the changed political climate of the times, the political risk—"flap potential"—of continuing the CIA's New York project was seen to outweigh its avowed minimal benefit to the Agency.

All of these mail opening programs were initiated by agency officials acting without prior authorization from a President, Attorney General, or Postmaster General; some of them were initiated without prior authorization by the Directors or other senior officials within the agencies themselves. Once initiated, they were carefully guarded and protected from exposure. The record indicates that during the thirty-three years of mail opening, fewer than seven Cabinet level officers were briefed about even one of the projects; only one President may have been informed; and there is no conclusive evidence any Cabinet officer or any President had contemporaneous knowledge that this coverage involved the actual opening—as opposed to the exterior examination—of mail. The postal officials whose cooperation was necessary to implement these programs were purposefully not informed of the true nature of the programs; in some cases, it appears that they were deliberately misled. Congressional inquiry was perceived by both CIA and FBI officials as a threat to the security of their programs; during one period of active investigation both agencies contemplated additional security measures to mislead the investigators and protect their programs against disclosure to Congress. Only in rare cases did the CIA and the FBI even inform one another about their programs.

Many of the major participants in these mail opening programs, including senior officials in policy-making positions, believed that their activities were unlawful. Yet the projects were considered to be so sensitive that no definitive legal opinions were ever sought from either the CIA's General Counsel or the Attorney General. The record is clear, in fact, that the perceived illegality of mail opening was a primary reason for closely guarding knowledge of the programs from ranking officials in both the executive and legislative branches of the government.

The legal fears of CIA and FBI officials were firmly based, for sanctity of the mail has been a long-established principle in American jurisprudence. Fourth Amendment restrictions on first class mail

opening were recognized as early as 1878, when the Supreme Court wrote in *Ex Parte Jackson*, 96 U.S. 727, 733 (1878) :

Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. 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, issued upon similar oath or affirmation, particularly describing the thing to be seized, as is required when papers are subjected to search in one's own household. No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment of the Constitution.

This principle was re-affirmed as recently as 1970 in *United States v. Van Leeuwen*, 397 U.S. 249, 251 (1970): "It has long been held," the Supreme Court there wrote, "that first-class mail such as letters and sealed packages subject to letter postage—as distinguished from newspapers, magazines, pamphlets and other printed matter—is free from inspection by postal authorities, except in the manner provided by the Fourth Amendment."

Not only the Fourth Amendment's prohibition against unreasonable searches and seizures, but First Amendment values of free speech are involved in the opening of first class mail. As Justice Holmes stated in 1921, in a dissent now embraced by prevailing legal opinion: "The use of the mails is almost as much a part of free speech as the right to use our tongues." *Milwaukee Pub. Co. v. Burleson*, 255 U.S. 407, 437 (1921). Justice William O. Douglas quoted this passage with approval in a 1965 decision which invalidated a procedure whereby incoming third and fourth class propaganda could be indefinitely detained by Postal and Customs officials—a procedure, incidentally, which had provided cover for three CIA and FBI mail opening programs.¹ *Lamont v. Postmaster General*, 381 U.S. 301, 305 (1965). In 1974, in a case involving censorship of prisoner mail, the Supreme Court also noted that "the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with the intended communication." *Procunier v. Martinez*, 416 U.S. 396, 408-409 (1974).

Statutory as well as constitutional protection has traditionally been accorded first class letter mail. Throughout the entire postwar period in which FBI and CIA mail opening programs were conducted, the statutory framework of legal prohibitions against the unauthorized opening of mail have remained essentially constant. The pertinent statutes, enacted in 1948 and substantially unchanged since then, are set forth below :

¹ See pp. 620-623, 643-644.

1. 18 U.S.C. Sec. 1701:

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined not more than \$100 or imprisoned not more than six months, or both. (June 25, 1948, ch. 645, 62 Stat. 778.)

2. 18 U.S.C. Sec. 1702:

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined not more than \$2,000 or imprisoned not more than five years, or both. (June 25, 1948, ch. 645, 62 Stat. 778.)

3. 18 U.S.C. Sec. 1703(b):

Whoever, without authority, opens, or destroys any mail or package of newspapers not directed to him, shall be fined not more than \$100 or imprisoned not more than one year, or both. (June 25, 1948, ch. 645, 62 Stat. 778; May 24, 1949, ch. 139, § 37, 63 Stat. 95; Aug. 12, 1970, Pub. L. 91-375, § 6(j) (16), 84 Stat. 778.)

The issue of proper authority for the opening of mail, which is raised by 18 U.S.C. Sec. 1703(b) above, was, until 1960, dealt with in 18 U.S.C. Sec. 1717(c): "No person other than a duly authorized employee of the Dead Letter office, or other person upon a search warrant authorized by law, shall open any letter not addressed to himself." This section was repealed in 1960 and recodified in essentially similar form at 39 U.S.C. 4057. When the Postal Service was reorganized in 1970, Section 4057 was in turn repealed and substantially recodified at 39 U.S.C. 3623(d), which provides in part:

No letter of such a class [i.e., first class] of domestic origin shall be opened except under authority of a search warrant authorized by law, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, or pursuant to the authorization of the addressee.

The only persons who can lawfully open first class mail without a warrant, in short, are employees of the Postal Service for a very limited purpose—not agents of the CIA or FBI.

In the face of the Constitution and these statutes, mail was surreptitiously opened for more than three decades—without warrant; without Congressional or clear Presidential authority; frequently without approval by senior agency officials; and, in the case of the most massive program, despite critical internal evaluations as well. Seasoned intelligence officers in both agencies genuinely believed that this activity was important to safeguard the country from foreign adversaries. But to defend the national security, they chose to employ a technique that was neither sanctioned by the laws nor authorized

by the elected leaders of the country they sought to protect. And since they defined the nature of our enemies, this technique came to be directed against American dissidents as well as foreigners.

PART II: CIA DOMESTIC MAIL OPENING

I. INTRODUCTION AND MAJOR FACTS

The CIA conducted four mail opening programs within the United States, the longest of which lasted for twenty years. These programs resulted in the opening and photographing of nearly a quarter of a million items of correspondence, the vast majority of which were to or from American residents. While the programs were ostensibly conducted for foreign intelligence and counterintelligence purposes, one former high-ranking CIA official characterized the Agency's use of this technique as a "shotgun" approach to intelligence collection;² neither Congressmen, journalists, nor businessmen were immune from mail interception. With cooperation from the FBI, domestic "dissidents" were directly targeted in one of the programs.

The major facts regarding CIA domestic mail opening may be summarized as follows:

a. The CIA conducted four mail opening programs in four cities within the United States for varying lengths of time between 1953 and 1973: New York (1953-1973); San Francisco (four separate occasions, each of one to three weeks duration, between 1969 and 1971); New Orleans (three weeks in 1957); and Hawaii (late 1954-late 1955). The mail of twelve individuals in the United States, some of whom were American citizens unconnected with the Agency, was also opened by the CIA in regard to particular cases.

b. The stated purpose of all of the mail opening programs was to obtain useful foreign intelligence and counterintelligence information. At least one of the programs produced no such information, however, and the continuing value of the major program in New York was discounted by many Agency officials.

c. Despite the stated purpose of the programs, numerous domestic dissidents, including peace and civil rights activists, were specifically targeted for mail opening.

d. The random selection of mail for opening, by CIA employees untrained in foreign intelligence objectives and without substantial guidance from their superiors, also resulted in the interception of communications to or from high-ranking United States government officials, as well as journalists, authors, educators, and businessmen.

e. All of the mail opening programs were initiated without the prior approval of any government official outside of the Agency.

f. Only five Cabinet level officials, and possibly one President, were briefed in varying degrees of detail about the New York program during the twenty years it continued, and there is no conclusive evidence that any of these officials ever authorized—or knew of—the mail opening aspect of the project. The evidence suggests that in the cases

² James Angleton testimony, 9/17/75, p. 28.

of some of these officials, their professed lack of knowledge about mail opening was due to a stated desire to remain ignorant of the details of the program.

g. No high-ranking government official was ever briefed about three of the four mail opening programs.

h. Postal officials whose cooperation was necessary to effect the programs were purposefully misled as to the purpose of the projects, the question of custody of the letters, and the fact of mail opening itself.

i. One President of the United States, whether through design or negligence, was given false and misleading information about the existence of CIA mail opening programs. In 1970, the Director of Central Intelligence signed a document for submission to the President which stated that all mail opening programs by federal agencies had been discontinued. This Director knew that at that time the most extensive CIA mail opening program continued to operate in New York.

j. Within the Agency itself, two former Directors of Central Intelligence did not authorize and apparently did not even know about any of the mail opening programs that were conducted during their tenure. Another former Director was unaware of at least one mail opening project during his term.

k. Some senior Agency officials whose approvals were sought in connection to one mail opening program were apparently deceived as to its true nature by middle-level officers. The senior officials were requested to authorize a mail cover operation only, but mail opening was both contemplated at the time of the requests and did in fact occur.

l. None of the programs was ever subjected to formal internal evaluation. Such review as did occur concluded that the largest of the programs were poorly administered and without substantial benefit to the CIA. These conclusions were ignored and the project continued.

m. Because of the extreme sensitivity of the projects and the internal pattern of compartmentation, many of those CIA components which could have derived the greatest foreign intelligence value from the product were not even aware of the mail opening programs.

n. Most of the major participants in the mail opening programs believed that the Agency's activities in this area were unlawful. No definitive legal opinion was ever sought from the CIA's General Counsel, and the evidence suggests that knowledge of the programs was purposefully withheld from him for security reasons.

o. The general reaction among Agency officials to the perceived illegality of mail opening was to fabricate "cover stories" for public consumption and to agree on a public denial of CIA domestic mail opening activity in the event such activity were exposed.

p. During periods of active Congressional investigation into invasions of privacy by federal agencies, and when persons knowledgeable of CIA mail openings were in a position to be called to testify before Congress, security precautions for mail opening programs were tightened to reduce the risk of exposure.

q. In part because of his "secrecy agreement" with the Agency, a former CIA employee who was in a position at the Postal Service to force the termination of a mail opening program was inhibited from doing so for several years. His loyalty to the CIA, even after he

left its service, prevented him from informing the Postmaster General of its existence.

r. The largest of the mail opening projects was not terminated until 1973, when, in the charged political climate of the times, it was considered too great a "political risk" to continue. It was not terminated because it was perceived to be illegal *per se*.

II. NEW YORK CITY MAIL INTERCEPT PROJECT

The CIA's New York mail intercept project, encrypted HTLIN GUAL by the Counterintelligence Staff and SRPOINTER by the Office of Security, was the most extensive of all the CIA's mail intercept programs, both in terms of the volume of mail that was opened and in terms of duration. Over the twenty year course of mail openings, more than 215,000 letters to and from the Soviet Union were opened and photographed by CIA agents in New York. Copies of more than 57,000 of these letters were also disseminated to the FBI, which learned of this operation in 1958, levied requirements on it, and received the fruits of the coverage until the project was terminated.

Despite the absence of clear authorization outside the CIA, despite the generally unfavorable internal reviews of the project in 1960 and 1969, and despite the facts that it was generally seen as illegal and that its primary value was believed by many agency officials to accrue to the FBI in the area of domestic intelligence, the momentum generated by this project from its inception in the early 1950's continued unchecked until February of 1973.

A. Operation of the Program

1. The Initial Phase: Mail Covers

The Original Proposal.—The New York mail project originated in the spring of 1952 with a proposal by the Soviet (SR) Division, supported by the Chief of the Operations Staff (now the Deputy Director for Operations) and the Office of Security, to scan exteriors of all letters to the Soviet Union and to record, by hand, the names and addresses of the correspondents. While the original plan did not contemplate the opening of mail immediately, it was recognized that "[o]nce our unit was in position, its activities and influence could be extended gradually, so as to secure from this source every drop of potential intelligence information available."³ Specifically, it was believed that such a project could:

- “furnish much live ammunition for psychological warfare;
- “produce subjects, who if proven loyal to the United States, might be good agent material because of their contacts within the Soviet Union;
- “offer documentary material for reproduction and subsequent use by our own agents;
- “produce intelligence information when read in the light of other known factors and events; and

³Memorandum from Chief, Special Security Division to Security Officer/CIA, 7/1/52. Thus, one can even at the initial stage the desire to exploit the anticipated cooperation of the Post Office Department.

—“create a channel for sending communications to American agents inside the Soviet Union.”⁴

Feasibility Study.—On July 1, 1952, the Chief of the Special Security Division recommended that “[a]s an initial step . . . we should make contact in the Post Office Department at a very high level, pleading relative ignorance of the situation and asking that we, with their cooperation, make a thorough study of the volume of such mail, the channels through which it passes and particularly, the bottle necks within the United States in which we might place our survey teams.”⁵ He advised against informing Post Office officials about the ultimate purposes of the project, however, noting that “[a]t the outset . . . as far as the Post Office Department is concerned, our main target could be the securing of names and addresses for investigation and possible future contact.”⁷

Two CIA officers from the Office of Security and the SR Division met with a representative of the International Division of the Post Office on the very day the Chief of the Special Security Division submitted the above recommendation. At this meeting, the Post Office official agreed to provide the Agency with a complete statement of “U.S.-U.S.S.R. postal accounting.”⁶

Clifton C. Garner, then Postal Inspector of the Post Office Department, was subsequently contacted by Agency personnel in the Offices of Operations and Security. It had been determined that most mail between the United States and the Soviet Union passed through the Port of New York, and on November 6, 1952, Garner was requested in writing to make arrangements for “one or two designated employees of this organization [*i.e.*, CIA] to work with an inspector of your Department, under conditions determined by you to examine a portion of this mail traffic.”⁹ While Garner cannot recall receiving this letter,¹⁰ he apparently agreed to make the necessary arrangements: one month later, Henry Montague, then Postal Inspector in Charge of the New York Division, approved the implementation of such an examination.¹¹

Commencement of the Project.—The results of the initial survey were felt to be positive, and the project commenced on a full-time basis in February 1953. Henry Montague recalls that shortly prior to the commencement of the project, he had received a telephone call from David Stephens, who replaced Garner as Chief Postal Inspector under President Eisenhower, informing him that CIA agents would come to his office within the next few days to request his cooperation.¹² According to Montague, Stephens instructed him to assist the Agency but warned him that there was to be no tampering with the mail beyond the minimum handling necessary for an exterior examination. When the agents visited Montague shortly there-

⁴ Memorandum from Chief, Special Security Division to Security Officer/CIA, 7/1/52.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Memorandum “for the record” from Edward E. Smith, 7/14/52.

⁸ Letter from George C. Carey, Assistant Director, Office of Operations to Clifton Garner, Chief Postal Inspector, Post Office Department, 11/6/52.

⁹ Staff summary of Clifton Garner interview, 8/22/75.

¹⁰ Blind CIA memorandum, 12/18/52.

¹¹ Henry Montague testimony, 6/12/75, pp. 18, 14.

after, he specifically told the agents—and, according to Montague, the agents agreed—that mail should not be opened.¹⁴ Montague then requested a subordinate in the New York Division to make the necessary arrangements and the CIA representatives were installed in a room in the New York General Post Office.

Briefing the Postmaster General.—By September 1953, after seven months of operation, the project was considered to be sufficiently productive to merit expansion beyond hand-copying information from the outside of envelopes. A CIA officer of the Soviet Division proposed “the complete photographic coverage of the cover information on all letters posted from the Soviet Union to the U.S. and vice versa.”¹⁴ Plans were made within the Agency to effect this type of coverage, but the postal officials who had cooperated thus far balked. It was noted in a January 4, 1954 internal CIA memorandum that “[f]or understandable reasons, postal authorities, at the level of our present dealings, are reluctant to extend that degree of cooperation without orders from above.”¹⁵ This memorandum recommended that the Director of Central Intelligence brief both Postmaster General Arthur E. Summerfield and President Eisenhower on the project, and secure the oral approval of the President for photographing the exteriors of letters.

Director Allen Dulles and Richard Helms, then Chief of Operations in the Plans Directorate, met with the Postmaster General and the Chief Postal Inspector, David Stephens, on May 17, 1954. Dulles told Summerfield that the New York project had proven to be very valuable and that the Agency now desired to photograph the exteriors of letter mail from the Soviet Union. No mention was apparently made of mail opening. According to Helms' notes of the meeting, the Postmaster General “did not comment specifically” on the project but seemed receptive.¹⁶ Helms continued: “When the conference broke up, I spoke to David Stevens [sic] privately and asked him if he now had all the authorization he felt he needed. He replied in the affirmative.”¹⁷ The second phase of the New York operation—photographing the exteriors of letters between the United States and the Soviet Union—began shortly after the Dulles-Summerfield meeting.¹⁸

2. Subsequent Evolution of the Project

The CI Staff Take-Over: “Move” Mail Opening.—In November 1955, James Angleton, the Chief of the Counterintelligence (CI) Staff, submitted a proposal to Richard Helms for the further expansion of the New York mail intercept project. Until then, the CIA was only receiving access to a portion of the United States-Soviet Union mail in its New York facility; Angleton recommended that “we gain access to all mail traffic to and from the U.S.S.R. which enters, departs, or

¹⁴ Montague, 6/12/76, p. 16.

¹⁵ Memorandum from CIA officer, SR/OPS to Chief, I&S, 9/23/53.

¹⁶ Memorandum from Sheffield Edwards, Director of Security, to Director of Central Intelligence, 1/4/54.

¹⁷ Memorandum from Richard Helms, Chief of Operations, OD/P to Director of Security, 5/17/54.

¹⁸ *Ibid.*

¹⁹ There is no clear evidence that President Eisenhower's approval was ever sought for photographing envelope exteriors. See pp. 504–506.

transits the United States through the Port of New York." ¹⁹ He also suggested that the "raw information acquired be recorded, indexed and analyzed and various components of the Agency furnished items of information which would appear to be helpful to their respective missions." ²⁰ Perhaps most significantly, he recommended a shift in the focus of the project from photographing the mail to opening it. Even prior to the date this proposal was submitted, some mail opening had occurred "without the knowledge of the Post Office Department on a completely surreptitious basis . . . [by] swiping a letter, processing it at night and returning it the next day." ²¹ This method, however, permitted agents to open a very limited number of items. Angleton proposed that "more [letters] could be opened" ²² if the Agency acquired a separate room which would be off limits to postal employees and which would house special processing equipment. Because he realized that the Office of Security, which had been running the program to date, did not have sufficient manpower for the proposed expansion, Angleton also recommended that primary responsibility for the project be transferred within the Plans Directorate from O/S to the CI Staff.

This proposal was approved by Helms on December 7, ²² and funds were authorized by the Acting Deputy Director for Plans on March 3, 1956. ²³ They were implemented later in 1956 when the intercept location was moved from the General Post Office in Manhattan to a secure room at LaGuardia Airport. While postal officials cooperated to the extent of providing the CIA with the room, their approval was apparently not sought for the opening of mail. ²⁴

FBI "Discovery" of the Project.—The next significant expansion of the program occurred in January 1958 when the Federal Bureau of Investigation learned of its existence and shortly thereafter began to share in the fruits of the coverage. As early as January 1954 the CIA had contemplated informing the FBI about the project, because it was recognized that "outside of its definite foreign intelligence value . . . there will be produced information affecting Internal Security." ²⁵ Possibly because relations between the CIA and the FBI were strained during the mid-1950's, ²⁶ however, the Bureau was not officially informed about the project until Bureau inquiries relative to a proposed mail intercept program of its own uncovered the existence of the CIA project. Although the FBI never contributed any resources, either human or financial, to the operation of HTLINGUA, it did levy requirements on the project and received copies of intercepted

¹⁹ Memorandum from James Angleton, Chief, Counterintelligence Staff to Chief of Operations, 11/21/55 (Attachment).

²⁰ *Ibid.*

²¹ *Ibid.*

²² Letter from CIA to the Rockefeller Commission, attachment entitled "New York Mail Intercept Program," 4/10/75.

²³ Memorandum from James Angleton, Chief, Counterintelligence Staff to Acting Deputy Director (Plans), 3/3/56.

²⁴ The CIA makes no claim that Post Office approval for mail opening was secured at this stage of the project.

²⁵ Memorandum from Edwards to DCI, 1/4/54.

²⁶ According to James Angleton, former Chief of the Counterintelligence Staff, the FBI participation was not sought prior to 1958 because the CIA's "relations with the FBI were very spotty . . . [I]t wasn't the best of relations." (Angleton, 9/17/75, p. 27.)

letters on a regular basis until the project was terminated in 1973. This aspect of the New York mail intercept project is treated in greater detail in Part III below.

The TSD Laboratory.—The final stage in the evolution of the project occurred in 1960 and 1961. By memorandum of February 25, 1960, James Angleton advised Richard Helms, now Acting Deputy Director for Plans, that the project would benefit from the establishment of a laboratory to examine a selected portion of the opened letters.²⁷ He noted that at the present time there is no capability for "searching for secret writing and/or microdots; determination as to whether items have been previously opened and technically examined . . . , [or] opening items sealed with the more difficult and sophisticated adhesives."²⁸ A laboratory, he argued, would make these activities feasible as well as enable the project staff "to increase our production about 20 percent." Helms approved the establishment of the laboratory,²⁹ and it opened, under the direction of the Technical Services Division (TSD), about one year later in March 1961.

3. Full Operation of the Program

Volume of Mail Intercepted.—According to CIA records, a total of 28,322,796 letters were made available to CIA agents in New York during the twenty year course of the project.³⁰ Of these, the exteriors of 2,705,706 letters were photographed, and 215,820 letters were actually opened.³¹ Mail opening had begun on a relatively small scale. In 1956, for example, only 832 letters were opened. But momentum developed quickly: two years later more than 8,000 letters were opened and by 1961, when the TSD laboratory was established, in excess of 14,000 letters were being opened annually. The height of the project in terms of volume was 1967, when a total of 23,617 letters were opened and analyzed.

Mechanics.—Mail was physically intercepted at LaGuardia Airport from 1956 until 1962, when the project moved to Idlewild (Kennedy) Airport. At both locations, the mechanics were essentially the same: mail to and from the Soviet Union was delivered each day by a postal clerk to a secure room in which the agents worked. Five days a week, a team of about four Office of Security personnel screened and photographed this mail. The clerk, who received an annual bonus of \$500 from the Agency for his efforts,³² also helped to sort the mail according to region within the Soviet Union, but he was never informed that selected items would be opened. According to one of the agents who processed the mail, approximately two to six bags, containing a total of 5,000 to 15,000 items of correspondence, would be delivered and sorted each day.³³ The exteriors of as many of these

²⁷ Memorandum from James Angleton, Chief, Counterintelligence Staff to Acting Deputy Director (Plans), 2/25/60.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Blind memorandum "for the record". Subject: "Approximate Statistics on CI Staff Project/HTLINGUAL Material", 1/28/75

³¹ *Ibid.*

³² Agency records show that the clerk received this bonus for six of the years he was involved with the projects. (Letter from CIA Review Staff to Senate Select Committee, 8/8/76.)

³³ CIA officer testimony, 9/30/75, pp. 39, 40.

items as possible were photographed with a Diebold machine, and from 35 to 75 letters would be selected for opening daily.^{32a} Prior to 1969, the agents "swiped"³³ the letters that had been selected for opening from the room by placing them in their pockets or an attache case, and hand carried them to the Office of Security's Manhattan Field Office for opening and photographing. From 1969 to 1973, opening and photographing were conducted at the intercept location itself.

The agents who opened the mail all attended a one-week course called "flaps and seals" (mail opening techniques), which was run by TSD at CIA Headquarters. The basic method of opening the mail was extremely simple, however: the glue on the envelopes was softened by steam from a kettle, and with the aid of a narrow stick the flap was pried open and the letter removed. One of the agents who opened the mail testified that "[y]ou could do it with your own teapot at home."³⁴ It took approximately five to fifteen seconds to open a single letter. At one point in the 1960's, the CIA developed a type of steam "oven" that was capable of handling about one hundred letters simultaneously, but its performance was judged inadequate and the agents soon returned to the kettle and stick method.

The TSD laboratory, which became operative in 1961, was originally located in the Office of Security's Manhattan Field Office and subsequently transferred to Kennedy Airport. The Office of Security personnel who opened the mail brought it to this laboratory where it was subjected to further chemical and other technical examination for secret writing and censorship techniques by the two or three TSD agents permanently assigned to the project. Because examination was time consuming, it was only possible to test a small portion of those letters which had been opened and photographed.

The original letters, which had been opened, photographed, and possibly subjected to the TSD examination, were re-sealed and returned the next morning to the airport, at which point they would be re-inserted into the mail stream. Total delay time, therefore, averaged one day. The photographic copies were then bundled and sent by registered mail or courier on a near daily basis from the Manhattan Field Office to the Office of Security at CIA Headquarters, which would forward them to CI Staff analysts. These analysts, whose number varied from a minimum of two to a maximum of six, reviewed the contents of the letters and, on the basis of their knowledge of the requirements levied by various CIA components and the FBI, either fully translated or summarized each item of correspondence. The copies of the letters were indexed and retained in the CI Staff project room at Headquarters (where they are still on file), and appropriate translations and summaries were disseminated within the Agency to the SR Division, the Office of Security, and the CI Staff itself, as well as to the FBI.

B. Nature and Value of the Product

1. Selection Criteria

Letters were selected for opening by two basic methods: (1) on the basis of a list of names known as the "Watch List," and (2) randomly,

^{32a} CIA officer testimony, 9/30/75, p. 40.

³⁴ Memorandum from Angleton to Chief of Operations, 11/21/65.

³³ CIA officer, 9/30/75, p. 40.

By one CIA estimate, the "Watch List" accounted for approximately 25% of the total volume of mail that was opened; random selection for 75%.³⁰

The Watch List.—The Watch List originated in the mid-1950's, at which time it consisted of only ten to twenty names. With the SR Division, the CI Staff, the Office of Security, and the FBI all contributing names to the list it grew rapidly, however: by the end of the project the Watch List totaled about 600 names. One reason for the growth of the Watch List is that the categories into which these individuals or organizations fell were progressively broadened over the years. In April 1957, for example, a CIA memorandum suggested five narrow categories of names:

(1) former agents or covert contract personnel who originally came from "the Denied Area" in Europe, were utilized by the Agency, and have now been resettled in the United States or Canada;

(2) defectors from "the Denied Area" in Europe who were under the control or auspices of the Agency and who have now been resettled in the United States or Canada;

(3) repatriates from the United States or Canada who were originally brought to the United States or Canada under the auspices of the Agency and who have now returned or will return to the USSR;

(4) suspected Soviet agents or other individuals either temporarily or permanently residing in the United States, who are known or suspected of being engaged in counterespionage or counterintelligence activities on behalf of the USSR; and

(5) foreign nationals, originally from the USSR and satellite countries, now residing in the United States and presently being utilized by the Agency in any capacity.³¹

Within a short time, the Watch List had expanded far beyond these relatively narrow and well-defined categories. The names of individuals who were in contact with Watch Listed persons and organizations were frequently added to the list themselves,³² and, as an August 1961 memorandum points out, a very large percentage of the names on the list were placed there because of "leads which came about through the random selection."³³

The focus of the Watch List also changed as it grew. In the early years of the project the names on the list might reasonably have been expected to lead to genuine foreign intelligence or counterintelligence information, but as the project evolved many of the names that were added to the list were far more likely to generate essentially domestic, rather than foreign, intelligence information. In 1960, for example, Richard Ober of the CIA solicited the FBI for names of domestic political radicals and black militants to include on the list. An FBI memorandum states that he "suggested to the Liaison Agent that the Bureau should not overlook the utilization of the agency's Hunter [New York mail opening] project for the development of leads in the New Left

³⁰ Memorandum from Thomas B. Abernathy "for the record", 8/21/61.

³¹ Memorandum from Chief CI/SIU/PROJECT to Deputy Chief, CI Staff, 4/24/57.

³² Staff summary of briefing by CIA Officers, 6/4/76.

³³ Memorandum from Abernathy for the record, 8/21/61.

and Black Nationalist fields. Ober admitted that traffic involving individuals in these areas might be light but that the Bureau might wish to give consideration to placing stops on certain key personalities." ⁴⁰ A handwritten notation at the bottom of this memorandum indicated that "stops . . . on black extremists" were not felt to be "warranted . . . at this time" by the Bureau, but the names of a significant number of anti-war activists and groups were submitted to the CIA, as were the names of several "black extremists" at a later date. ⁴¹ From 1958 to 1973, in fact, the FBI alone contributed a total of 286 names to the Watch List. ⁴²

While Bureau requirements clearly augmented the emerging "domestic intelligence" nature of the Watch List, CIA components also contributed generously to this trend. Among the individuals and organizations who came to be placed on the Watch List by the CIA were numerous domestic peace organizations, such as the American Friends Service Committee; political activists; scientists and scientific organizations, such as the Federation of American Scientists; academics with a special interest in the Soviet Union; authors, such as Edward Albee and John Steinbeck; businesses, such as Fred A. Praeger Publishers; and Americans who frequently traveled to or corresponded with the Soviet Union, including one member of the Rockefeller family. ⁴³

The Watch List, in short, originated with a relatively few names which might reasonably be expected to lead to genuine foreign intelligence or counterintelligence information, but soon expanded well beyond the initial guidelines into the area of essentially domestic intelligence.

Random Selection.—The documentary record of the CIA suggests that a very large percentage of the letters that were opened in the course of the New York project were to or from individuals who were not on the Watch List at all. One CIA memorandum points out that the "New York Security officers who opened the mail selected about 75 percent at random, and the remaining 25 percent was on the basis of a watchlist compiled by the CI Staff." ⁴⁴ While there is some evidence that the percentage of random openings may have decreased in the later years of the project, it always represented a significant proportion of the mail that was opened.

The CIA mail "interceptors" were not foreign intelligence or counterintelligence experts. One of the CIA agents who opened the mail in this project testified that other than memorizing the Watch List, he received no instruction at all as to what categories of mail to select. ⁴⁵ When asked the basis for opening mail to or from people who were not on the Watch List, this agent replied: "It might be according to individual taste, if you will, your own reading about current events. . . . I personally used to like to do Central and South America items

⁴⁰ Memorandum from S. J. Papich to Mr. D. J. Brennan, 1/10/69.

⁴¹ Staff summary of HTLINGUAL file review, 9/5/75; Staff summary of Project Hunter file review, 10/21/75. See p. 631 for a description of the FBI's contributions to the Watch List.

⁴² See p. 631.

⁴³ Staff summary of "Watch List" review, 9/5/75. At least one attorney specializing in civil liberties litigation—Leonard Roudin—was also placed on the Watch List by the CIA.

⁴⁴ Memorandum from Abernathy for the record, 8/21/61.

⁴⁵ CIA Officer, 9/30/75, p. 9.

[that were missent by the Post Office]. . . . [Y]ou never knew what you would hit."⁴⁶ He added: "We would try to get a smattering of everything, maybe the academic field or travel agencies or something. . . . I don't recall a specific instruction. I kind of place that under our individual tastes."⁴⁷

Indeed, this lack of instruction appears to have been a conscious policy of the Office of Security. A CIA memorandum states that the Inspector General's Office, in its review of the New York project in the early 1960's,⁴⁸ "took the position that the security officers who were selecting the mail to be opened should have some understanding of headquarters requirements so that their selection could be halfway informed on the basis of areas of interest. . . . [But the Office of Security] had a paper by [a CIA officer] which said, in effect, that the present system of purely random selection was best and that it wasn't necessary to develop any sort of coordinated approach. . . . The Office of Security apparently sees no reason why they should have their personnel trained in intelligence objectives."⁴⁹

The large random element in the selection process and the lack of formal intelligence training on the part of the agents who opened the mail combined with the "domestic" evolution of the Watch List to push the project even further from the original foreign intelligence and counterintelligence goals articulated in 1952. Over the twenty-year course of mail opening, the mail that was intercepted included that of many prominent Americans, including at least three United States Senators and a Congressman, one Presidential candidate and numerous educational, business, and civil rights leaders.⁵⁰

The "Special-Category Items" File.—The occasional random interception of politicians' mail created a situation for the CIA which was potentially very embarrassing. In August 1971, the selection and opening of a letter from United States Senator Frank Church so concerned a new chief of the CI Staff "Project" that he wrote the Deputy Chief of Counterintelligence, Raymond Rocca: "In order to avoid possible accusations that the CIA engages in the monitoring of the mail of members of the U.S. government, the C/CI may wish to consider the advisability of (a) purging such mail from the files and machine records of the Project, and (b) authorizing the issuance of instructions to the 'collectors' to cease the acquisition of such materials."⁵¹ He added: "Instructions would have to define in specific terms what categories of elected or appointed personnel were to be encompassed, and whether they extended to private mail communications."⁵² Several months later, in December 1971, a new policy for the handling of such mail was confirmed. An internal CIA memorandum dated December 22, 1971, reads in part:

In accordance with a new policy confirmed yesterday . . . ,
Project HTLINGUAL will handle henceforth as follows
items originated by or addressed to Elected or Appointed

⁴⁶ CIA Officer, 9/30/76, pp. 9, 14-15.

⁴⁷ CIA Officer, 9/30/76, p. 15.

⁴⁸ This review did not constitute a formal project evaluation. See pp. 582-583.

⁴⁹ Memorandum from Abernathy for "the record," 8/21/61.

⁵⁰ Staff summary of "Master Index" review, 9/5/76.

⁵¹ Memorandum from Chief, CI/Project to DC/CI, 8/30/71.

⁵² *Ibid.*

Federal and Senior State Officials (e.g. Governor, Lt. Governor, etc):

a. No officials in above categories are to be watchlisted;
 b. No instructions to be issued to interceptors specifically requesting or forbidding the acquisition of items in cited categories; thus acquisition will be left entirely to chance;

d. No special-category items shall be carded for inclusion in the HYLINGUAL Machine Records System;

e. Dissemination of special-category items will be at the discretion of DC/CI (and/or C/CI) only;

f. All special-category items will be filed in a separate file titled "SPECIAL-CATEGORY ITEMS", which will be kept in C/CI/Project's safe. . .⁵² (emphasis in original)

The new policy, therefore, did not prohibit the opening of letters to or from political figures; it simply created a special filing system for their mail. By the end of the project in 1973, the "Special-Category Items" file contained approximately ten photographs or summaries of correspondence to or from Senators Church and Edward M. Kennedy, one Congressman, and one Governor of an American territory.⁵³ Because the master index was on microfilm, the analysts were unable to purge all references to those politicians whose correspondence had been opened prior to December 1971.

2. Value of the Product

Foreign Intelligence and Counterintelligence.—There has been considerable debate among CIA officials over the value of the product from the New York operation to the Agency's foreign intelligence and counterintelligence mission.⁵⁴ James Angleton, who as Chief of the CI Staff was in charge of the project, was one of its most vocal supporters. He has testified that the New York project "was probably the most important overview [of Soviet intelligence activities] that counterintelligence had."⁵⁵ In a February 1973 memorandum for Director Schlesinger, Angleton, contending against termination, summarized some of the benefits to the CIA which resulted from the New York project as follows:

A. The mail intercept Project . . . provides information about Soviet-American contacts and insight into Soviet realities and the scope of Soviet interests in the academic, economic, scientific and governmental fields unavailable from any other source. The Project adds a dimension and a perspective to Soviet interests and activities which cannot be obtained from the limited resources available to this Agency and the FBI.

B. The Project is particularly productive in supporting both the Agency and the FBI in pursuing investigative and

⁵² Memorandum from Chief/CI/Project "for the record", 12/22/71.

⁵³ Letter from CIA to Senate Select Committee (Attachment), 9/28/75.

⁵⁴ The discussion in this sub-section relates only to the primary intelligence and counterintelligence value of the contents of the letters. As a by-product of the operation, TSD received a technical benefit from the opportunity to observe foreign censorship rates. (Letter from CIA to Senate Select Committee, 8/8/76.)

⁵⁵ Angleton, 9/17/76, p. 48.

operational leads to visiting Soviet students, exchange scientists, academicians and intellectuals, trade specialists and exports from organizations such as . . .

C. In many instances the Project provides the only means of detecting continuing contact between [Soviet] controlled exchange students and Americans.

D. The Project provides information otherwise unavailable about the Soviet contacts and travel of Americans to the Soviet Union. . . .

E. Project material recorded for 18 years gives basic information about Soviet individuals and institutions useful to the analyst looking for specific leads and in gauging trends in Soviet interests and policies.⁵⁵

This highly favorable assessment of the value of the product from HTLINGUAL contrasts sharply with the views of many other CIA officers. In a 1961 review of the project by the Inspector General's Office, for example it was written:

The SR (Soviet Union) Division is the project's largest customer in the Agency. Information from the CI Staff flows to the SR Support Branch and from there to the operational branches. It may include operational leads, such as the identities of individuals planning to work or reside in the USSR, or items of interest on conditions inside the country. In our interviews we received the impression that few of the operational leads have ever been converted into operations, and that no tangible operational benefits had accrued to SR Division as a result of this project. We have noted elsewhere that the project should be carefully evaluated, and the value of the product to SR Division should be one of the primary considerations.⁵⁶

A second internal review eight years later, in 1969, was no more enthusiastic. John Glennon, a former member of the Inspector General's staff which conducted this review, wrote:

. . . Although at one time this material was useful in Soviet legal travel operations and as positive information on Soviet internal economic and political matters, we find that the Clandestine Service has little interest in it now. Most of the officers we spoke to find it occasionally helpful, but there is no recent evidence of it having provided significant leads or information which have had positive operational results. The Office of Security has found the material to be of very little value. The positive intelligence from this source is meager.⁵⁷

In general, he noted that "the take from this program . . . is of little value to this Agency . . ." ^{57a} When Mr. Glennon was asked in recent public hearings whether he still agreed with this basic conclusion, he responded that, if anything, the product was probably even less valu-

⁵⁵ Memorandum from William E. Colby "for the record" (Attachment), 2/16/73.

⁵⁶ Memorandum from L. K. White, Deputy Director (Support) to Acting Inspector General (IG) (Attachment), 3/0/62.

⁵⁷ Blind memorandum, Subject: "Special Investigations Group/Project," undated.

^{57a} *Ibid.*

able than he indicated in 1969.⁵⁸ Howard Osborn, who was Director of Security from 1964 to 1974, and therefore responsible for the role played by the Office of Security during those years, agreed that his office received no value from the product. He publicly testified that "[w]e got no benefit from it at all. . . . The product was worthless."⁵⁹

Even Richard Helms, who was personally involved with the New York mail project on a decisional level from mid-1954 through the days immediately prior to the 1973 termination, was tepid in his evaluation of the project's value to the Agency. Of the product from 215,820 opened letters and nearly three million photographed envelopes, he said: ". . . I thought from time to time that the Agency got useful information out of it."⁶⁰

Domestic Intelligence.—Given the nature of the selection criteria, it is not surprising that a significant—perhaps the primary—portion of the product related to domestic, rather than foreign, intelligence concerns. The 1961 review of the project, for example, characterized the product as "largely domestic CI/CE [counterintelligence and counter-espionage]."⁶¹ This representation was repeated in the 1969 Inspector General's report⁶² and, as developed more fully below, by numerous senior Agency officials in the early 1970's.⁶³

Only to the extent that the CIA's mission was perceived as encompassing "domestic CI/CE" matters could the Agency itself benefit from this type of information. Thus, Gordon Stewart, the Inspector General whose staff reviewed the New York project and found its positive intelligence value "meager," conceded that the project in 1969 may logically have been valuable in terms of the domestic surveillance activities the Agency was then conducting. He testified that in the late 1960's and early 1970's:

. . . we were involved in compiling files on subversives in this country, the youth, and so on. And there was an enormous amount of pressure being placed on the Agency by the White House to develop, if possible, a connection between subversive organizations in this country and some external groups, say the Communists or Moscow or something of that sort. It would seem to me to be logical that if that is what you were doing, maybe at one phase this project had been regarded as useful to the Agency.⁶⁴

But it is questionable whether analysis of foreign influence on domestic political activity is within the CIA's mandate at all. Such domestic counterintelligence concerns are an aspect of internal security, which is the responsibility of the FBI, not the CIA.⁶⁵

⁵⁸ John Glennon, 10/21/75, Hearings, Vol. 4, p. 20.

⁵⁹ Howard J. Osborn, 10/21/75, Hearings, Vol. 4, pp. 80, 81.

⁶⁰ Richard Helms, 10/22/75, Hearings, Vol. 4, pp. 102, 103.

⁶¹ Memorandum from L. K. White, Deputy Director (Support) to Acting Inspector General (Attachment), 1/9/62.

⁶² Blind memorandum, Subject: "Special Investigations Group/Project," undated.

⁶³ See e.g., p. 601.

⁶⁴ Gordon Stewart testimony, 9/30/75, pp. 45, 46.

⁶⁵ There is no documentary or testimonial evidence by CIA personnel connected with the New York project, moreover, that the project did in fact establish any significant pattern of foreign influence in domestic "subversive organizations."

Value to the FBI.—The Bureau did in fact receive a great deal of product from the New York operation: for all but three years between 1958 and 1973 the FBI actually received more copies or summaries of opened letters than did any single component of the CIA.⁶⁵ In view of the large quantity of disseminations to the Bureau and the largely domestic nature of the product generally, it is understandable that CIA officials assumed that the Bureau benefited significantly from the Agency's coverage. Angleton stressed the importance of this project to the Bureau's operations when he summarized its value for Director Schlesinger in 1973;⁶⁷ this point was noted in both of the Inspector General staff's reviews⁶⁷ and in the testimony of Howard Osborn⁶⁸ and Richard Helms.⁶⁹ Several CIA officials, convinced that the project was more valuable to the FBI than to the Agency itself, even recommended that the Bureau should assume operational responsibility for it.⁷⁰

Ironically however, the testimony of Bureau officials suggests that the CIA may have mistaken quantity of product for quality. It is undeniable that the FBI received some benefit from HTLINGUAL.^{70a} But one senior Bureau official declared that any benefit received by the FBI had to be evaluated in light of the fact that the product was received gratuitously, with the expenditure of neither money nor manpower.⁷¹ He stated that the project did not provide leads to the identification of a single foreign illegal agent and that much of the product received by the FBI was worthless.⁷²

In short, it is not clear that HTLINGUAL made any substantial contribution to the CIA's legitimate foreign intelligence and counter-intelligence mission or even to its questionable domestic intelligence activities; and while Agency officials assumed that the FBI benefitted greatly from their coverage, this assumption probably overestimated the actual value to the Bureau.

C. Internal Authorization and Controls

Unlike the FBI mail opening programs, the CIA's New York project was extremely de-centralized. It germinated and evolved without the prior approval of the Director of Central Intelligence at critical stages.^{72a} It continued through the tenure of at least two Directors who were apparently not even informed of its existence. Because it had been exempted from the usual approval system, many of the division heads who would normally have to approve any proposed project of this scope were also never briefed and consequently had no opportunity to challenge the necessity or wisdom of the project. It was

⁶⁵ See table, p. 632.

⁶⁶ Memorandum from Colby "for the record" (attachment), 2/15/78.

⁶⁷ Memorandum from L. K. White to Acting Inspector General (attachment), 3/07/62; Blind-memorandum, Subject: "Special Investigations Group/Project", undated.

⁶⁸ Howard J. Osborn testimony, 8/28/76, p. 88.

⁶⁹ Helms, 10/22/76, Hearings, vol. 4, pp. 102, 103.

⁷⁰ See pp. 601, 608.

^{70a} See pp. 682-684.

⁷¹ Staff summary of William A. Branigan interview, 9/11/76.

⁷² William A. Branigan, 10/24/76, Hearings, vol. 4, p. 108.

^{72a} Allen Dulles, who was Director when the project was initiated, apparently did know about it. But there is no indication that he was informed about its mail opening aspect until May 1966, well after openings began. See pp. 580-581.

reviewed by disinterested agency components only twice during its twenty year history, in neither case extensively, and although both these reviews concluded that the operation was seriously flawed it continued until 1973, when largely external events forced its continuance.

1. Authorizations by Directors of Central Intelligence

Allen Dulles.—The New York mail project was initiated, and the first contact with the Post Office made, without the apparent authorization—or even the knowledge—of Director Allen Dulles. As noted above, two CIA officers of the Office of Security and the SR Division met with a representative of the International Division of the Post Office in July 1952 to secure statistics on the mail flow between the United States and the Soviet Union. It was largely on the basis of this overview that the Office of Security and the SR Division determined that further contact with Postal officials were desirable. CIA documents relating to the early stages of the project, however, make no reference to informing Director Dulles until September 30 of that year. In a memorandum on that date, the Chief of the SR Division wrote the Deputy Director for Plans that “[i]t is requested . . . that DCI be informed of I&S and SR Division intention to initiate action looking toward the most expeditious accumulation of information on all letter envelopes or covers passing through the New York City Post Office originating in the Soviet Union or destined for the Soviet Union.”⁷⁵

While subsequent documents reflect no explicit authorization from the DCI—nor even whether or not the DCI was informed of the mail cover operation as per the September 30 request of the Chief of the SR Division—further contacts were made with the Post Office and the first phase of the project became operational in February 1953.

The first unambiguous documentary indication that the DCI was advised of what was then referred to as SRPOINTER is not found until January 4, 1954. On that date Sheffield Edwards, the Director of Security, wrote to Director Dulles to summarize the anticipated value of the project, to explain the problem regarding the reluctance of postal officials to cooperate with the planned expansion of the project, and to request the Director to meet with the Postmaster General and the President to secure their approval for photographing the exteriors of the envelopes.⁷⁶ At this stage, the project was essentially a mail cover operation. No reference was made in that or a subsequent January 1954 memorandum⁷⁶ to Director Dulles to the possibility of actually opening the mail.

The only written approvals for the project as it subsequently developed during Dulles' tenure appear to be those of Richard Helms and the Acting Deputy Director for Plans. In December 1955, Helms approved the concept as outlined by James Angleton;⁷⁶ in February 1960, he approved establishment of the TSD laboratory.⁷⁷ The ap-

⁷⁵ Memorandum from Chief, SR to Deputy Director, Plans, 9/30/52.

⁷⁶ Memorandum from Edwards to DCI, 1/4/54.

⁷⁷ Memorandum from Sheffield Edwards, Director of Security & Central Intelligence, (DCI, 1/12/54).

⁷⁸ Letter from CIA to the Rockefeller Commission, Attachment entitled “New York Mail Intercept Program,” 4/10/75.

⁷⁹ Memorandum from Angleton to Acting Deputy Director (Plans), 2/25/60.

proval of the Acting Deputy Director for Plans was obtained for funding in March 1956.⁷⁸

While it is unclear whether Dulles was ever informed about the laboratory, he was apparently at least made aware of the fact that mail was being opened. In May 1956, he received a memorandum from James Angleton in which Angleton noted that "for some time selected openings have been conducted and the contents examined."⁷⁹

John McCone.—CIA documents do not show that Director John McCone was ever informed about the project. McCone himself testified that he was unaware of it,⁸⁰ and his testimony is consistent with that of James Angleton⁸¹ and Howard Osborn.⁸²

Admiral Raborn.—There is no evidence that indicates Director Admiral Raborn was ever made aware of the New York project.

Richard Helms.—The next Director who clearly knew about the New York mail opening project was Richard Helms, who became Acting Director in 1965 and Director in 1966. Helms had been involved with the project since 1954, and, as noted above, had personally approved the expansion of the project to include larger scale mail openings in December 1955 and a laboratory in February 1960. Numerous CIA documents reflect his continuing knowledge of and concern about the project during his tenure as Director.

James Schlesinger.—James Schlesinger, who succeeded Helms as Director in 1973, also was aware of the project. It was his order in February 1973 that led to its termination after two decades of operation.^{82a}

2. Exemption from Normal Approval System

The New York mail opening project was initially approved by Helms and the ADD/P outside—and it remained outside—the normal channels for approval and review of CIA projects. As stated in the 1961 Inspector General's report:

The activity cannot be called a "project" in the usual sense, because it was never processed through the approval system and has no separate funds. The various components involved have been carrying out their responsibilities as part of their normal staff functions. Specific DD/P approval was obtained for certain budgetary practices in 1956 and for the establishment of a TSD lab in 1960, but the normal programming procedures have not been followed for the project as a whole. . . .⁸³

When the first request for formal approval had been submitted to Helms in November 1955, a branch chief of the CI staff suggested to James Angleton that "in view of the sensitivity of this project, steps should be taken to have this proposed project approved by the Direc-

⁷⁸ Memorandum from Angleton to Acting Deputy Director, (Plans), 3/5/56.

⁷⁹ Memorandum from James Angleton, Chief Counterintelligence Staff, DD/P to Director of Central Intelligence, 5/4/56.

⁸⁰ John A. McCone testimony, 10/9/76, pp. 3, 4.

⁸¹ Angleton, 9/17/76, p. 20.

⁸² Osborn, 10/21/76, Hearings, vol. 4, p. 38.

^{82a} See pp. 603-604.

⁸³ Memorandum from L. K. White to Acting Inspector General (attachment), 3/9/62.

tor without recourse to the normal channels for presentation of projects."⁶⁶ The Director himself apparently never formally authorized the project,⁶⁷ but the thrust of the branch chief's recommendation was followed. As Angleton later explained, when a typical project "is conceived, it might cut across many jurisdictions to begin with, . . . different geographic divisions and so on, so there would have to be a signoff by the various components, and then it would go before a project review board [whose] members would be drawn from many parts of the clandestine services, and . . . you would have this tremendous opening up of the activity to a great number of people. . . . That is the reason why I think it was excepted from [the usual approval system], and that way it shortcircuited the normal project approval process."⁶⁸

Because of the perceived sensitivity of the project, in short, the CI Staff did not want those Agency components with no "need to know" to become aware of it. The security of the operation was enhanced by this exemption but the opportunity for critical evaluation by disinterested division heads was lost.

3. Administrative Controls

Internal Review and Evaluation.—In part because of its exemption from the normal approval system, administrative control over the New York project was lax. It was not a project at all in the formal sense, so there was no mechanism for periodic internal review to determine whether or not its goals were being achieved. During its twenty-year history, the project was reviewed by disinterested Agency components only twice—in 1961, and again in 1969. Both of these reviews were limited: the first review was part of an evaluation of Office of Security Operations, and so did not encompass the roles played by the CI Staff and TSD; the second review, encompassed only the role of the CI Staff.⁶⁹

The Inspector General's staff, which conducted both reviews, concluded that if the project was to continue at all, a more complete evaluation or a mechanism for periodic evaluation of the project was crucial. Specifically, the 1961 study recommended that: "The DD/P and the DD/S direct a coordinated evaluation of this project, with particular emphasis on costs, potential and substantive contributions to the Agency's mission."⁷⁰ And in 1969 the Inspector General's staff wrote that "[f]inally—and most important—a schedule for regular re-examination and re-evaluation of the product of the project and of its management, especially with respect to its security, should be established and adhered to."⁷¹

⁶⁶ Memorandum from Branch Chief to Chief, Counterintelligence Staff, 11/4/55.

⁶⁷ As noted above, there is no clear evidence that Dulles learned about the main opening aspects of the project until May 1960. Even after he learned of it, he apparently never gave formal authorization but his "approval [was] inferred" from his knowledge of it. (Memorandum from L. K. White to Acting Inspector General, 3/9/62.)

⁶⁸ Angleton, 9/17/75, pp. 53, 54.

⁶⁹ Memorandum from L. K. White to Acting Inspector General (attachment), 3/9/62.

⁷¹ Blind memorandum, Subject: "Special Investigations Group/Project", undated.

Neither of these recommendations was implemented. The only response to the 1961 recommendation was a five-page summary of the project's mechanics and results by the Director of Security.⁸⁸ This summary was apparently felt to constitute a sufficient evaluation, although there is no evidence that the Soviet Division or the FBI—the entities that were the primary recipients of the project's product—were ever asked to contribute their respective evaluations. In the case of the 1969 review, the Inspector General did discuss the study's major findings with then-Director Richard Helms, who, according to the Inspector General, "listened intently, as I recall, and that was it."⁸⁹ The system of regular re-evaluation which had been recommended was not adopted.

Administrative Problems.—The primary reason that these two studies concluded that an improved system for evaluation of the project was so essential was their common finding that, in the words of the Inspector General's staff member who conducted the 1969 review, the project "was poorly handled . . . administratively and operationally."⁹⁰ The 1961 study determined, for example, that it was impossible to analyze the project in terms of costs versus benefits to the Agency because costs were unknown: "The annual cost of this activity cannot be estimated accurately because both administration and operations have always been decentralized. The costs are budgeted by the contributing components as a part of their regular operating programs."⁹¹ It therefore recommended "that exact cost figures be developed to permit the Agency management to evaluate the activity."

In addition, these studies found that the decentralization and limited knowledge of the project within the Agency inhibited maximum exploitation of the product that was generated. The 1961 study noted that "[t]here is no coordinated procedure for processing information received through the program; each component has its own system. . . . The same material could thus be recorded in several different indices, but there is no assurance that specific items would be caught in ordinary name traces."⁹² In the 1969 review, it was suggested that the product might be useful to some Agency components that did not even know about the project.

Even among those components that did receive product from the New York project, there was no procedure for regular feedback to the CI Staff analysts as to what types of product were considered to be valuable.^{92a} The CI Staff project chief has testified that he may have received a "chance comment" from people in consumer components, but he was not regularly informed about which kinds of material were or were not useful.⁹³

⁸⁸ Memorandum from Director of Security to Deputy Director of Support, 12/20/62.

⁸⁹ Stewart, 9/30/76, p. 84.

⁹⁰ John Glennon, 9/26/76, p. 60.

⁹¹ Memorandum from L. K. White to Acting Inspector General (attachment), 3/9/62.

⁹² *Ibid.*

^{92a} Such feedback was apparently precluded by CIA compartmentation. (Letter from CIA Review Staff to Senate Select Committee, 3/3/76.)

⁹³ CIA Officer deposition, 9/19/76, p. 47. The member of the Inspector General's staff who conducted the 1969 review testified that he believed the analysts "probably did not get any feedback because there was not any value." (Glennon deposition, 9/26/76, p. 60.)

One of the most serious administrative problems was that no single person with a knowledge of the CIA's intelligence and counterintelligence requirements was in direct control of the project. As the Inspector General's staff wrote in 1961:

Probably the most obvious characteristic of the project is the diffusion of authority. Each unit is responsible for its own interests and in some areas there is little coordination. . . . There is no single point in the Agency to which one might look for policy and operational guidance on the project as a whole. Contributing to this situation is the fact that all of the units involved are basically staff rather than command units, and they are accustomed to working in environments somewhat detached from the operational front lines. . . . The greatest disadvantages are (a) there can be no effective evaluation of the project if no officer is concerned with all its aspects, and (b) there is no central source of policy guidance in a potentially embarrassing situation.⁹⁴

This theme was reiterated in the 1969 report:

If it is decided that CIA should continue to operate the mail intercept project, we believe that several steps should be taken to improve the management of the program and its effectiveness. Among these is the eventual assignment of a chief to the project who has some depth of experience in operations, especially counterintelligence operations, in order to bring to bear on the analysis of the material more seasoned judgment of its intelligence and counterintelligence value.⁹⁵

Despite these recommendations for more centralized control over the project by more experienced personnel, the project remained diffuse and informed guidance was almost non-existent.

Mail was opened and the contents analyzed and disseminated, five days a week for nearly twenty years, without a structure for the systematic evaluation of the project, without its true cost being known, without the effective exploitation of potential intelligence and counterintelligence benefits, and without any centralized coordination or guidance by a single officer trained in intelligence and counterintelligence operations. It is at least reasonable to suggest that if prior approval—and periodic reapproval—at the highest level of the Agency had been required, its defects would have been recognized and its momentum checked before 1973.

D. External Authorizations

The New York project lacked a formal structure for authorization by government officials outside as well as inside the CIA: it was never authorized in writing by any such official and the pattern of oral approval is both capricious and obscure. Placed in the light most favorable to the Agency, the CIA obtained the prior oral approval of the Postmaster General for the photographing of envelope exteriors in

⁹⁴ Memorandum from L. K. White to Acting Inspector General (Attachments), 3/9/62.

⁹⁵ Blind memorandum, Subject: "Special Investigative Group/Project", undated.

1954, and the implied, post facto permission of two Postmasters General, one Attorney General, and one President for both the mail opening and the mail cover aspects of the operation.^{92a} But the Cabinet officers who were allegedly informed of the mail openings deny such knowledge—in one case because the official acknowledged that he did not want to know and did not believe that he could or should control Agency projects that affected his own Department. In the case of the President, no documentary record of the briefing exists and the CIA official who allegedly informed him concedes that there is only a “possibility” that he “mentioned” it.

Even by its own accounting, the CIA supplied no information about this project to four Postmasters General, seven Attorneys General, and three Presidents under whom it continued. In at least one instance, knowledge of the project was consciously withheld from a Postmaster General; in another instance, a President, whether knowingly or negligently, was misled about the Agency's mail opening activities, and his apparent refusal to authorize use of this technique went unheeded.

1. Postmasters General

Arthur E. Summerfield.—Arthur Summerfield, Postmaster General during the Eisenhower Administration, was informed of the New York mail project in 1954, and, according to CIA memoranda, assented to the photographing of mail by CIA agents in connection with this project. There is no indication, however, that he approved, or was even advised of, the actual opening of mail by the Agency after that became the primary objective of the project in 1955.

As discussed in the project summary above, the first phase of the mail opening program—hand-copying information from envelope exteriors—had begun in February 1953 with cooperation from two Chief Postal Inspectors, Clifton Garner and David Stephens. But when Agency officials recommended in late 1953 that the use of photography rather than hand-copying would enable a greater volume of mail to be covered, postal authorities refused to cooperate without the express approval of the Postmaster General. A January 1954 memorandum, from Director of Security Sheffield Edwards to DCI Dulles, suggested that a meeting between Director Dulles and Summerfield was necessary to resolve the problem.^{92b}

The meeting between Dulles and Postmaster General Summerfield finally occurred about five months later, on May 17, 1954. Richard Helms, then Chief of Operations in the Plans Directorate, as well as Chief Postal Inspector Stephens and two other postal officials, were also in attendance. The only record of this meeting, a contemporaneous memorandum to Sheffield Edwards from Helms, reads in part:

... As regards SRPOINTER, the Director told the group how valuable we had found efforts in this field. He then went on to say that we would like to photograph the backs and fronts of first-class mail from the Soviet and satellite areas.

^{92a} Another President stated that he was “generally aware” that the CIA conducted “mail covers” of mail to the Soviet Union or Asia, but that he was unaware of CIA mail openings. Neither the documentary record nor the testimony of CIA officials suggests that Agency officers informed him of the covers or that he ever indicated his approval of the covers to them. See pp. 597–598.

^{92b} Memorandum from Edwards to DCI, 1/4/54.

. . . (When he had finished his exposition, the Postmaster General did not comment specifically but it was clear that he was in favor of giving us any assistance which he could) . . .⁹⁷

The Postmaster General's implied approval was apparently for photographing mail only. Richard Helms, moreover, has recently testified that: "It is my opinion today from reading the records that [Summerfield] was not told the mail was being opened or would be opened."⁹⁸ Nor is there any documentary or testimonial evidence that suggests that Summerfield was ever advised of mail openings at any time after that became the primary objective of the project in late 1955.

J. Edward Day.—J. Edward Day, who was Postmaster General under President Kennedy, from January 1961 to August 1963, also met with Director Dulles and others in regard to the New York mail intercept project. The evidence as to whether or not he was informed that mail was actually opened, however, tends to be contradictory.

In January 1961 a new administration was installed in Washington. As Mr. Helms explained:

President Kennedy had just been sworn in. It was also a new party. The Republicans had had the White House and the executive branch before, and now the Democratic Party had it, and I think Mr. Dulles felt under the circumstances that it was desirable to speak to the Postmaster General because if [the New York project] was to go forward, we needed some support for it.⁹⁹

On January 27, 1961, less than one week after Day assumed the position of Postmaster General, the Deputy Chief of the Counterintelligence Staff wrote . . . Richard Helms to give him general background information for a proposed briefing of the Postmaster General and to advise him that:

There is no record in any conversation with any official of the Post Office Department that we have admitted opening mail. All conversations have involved examination of exteriors. It seems to us quite apparent that they must feel sure that we are opening mail. . . .

It is suggested that if the new Postmaster General asks if we open any mail, we confirm that some mail is opened. He should be informed, however, that no other person in the Post Office Department has been so informed. The reasons for this suggestion are (a) Despite all of our care in the selection and clearance of personnel for a knowledge of this project, at some point, someone is likely to blow it. (b) The Postmaster General will have a better understanding of the importance of the project in the event we desire to expand it. . . .¹⁰⁰

On February 15, 1961, Director Allen Dulles, Richard Helms, and Cornelius Roosevelt, then Chief of TSD, met with the new Postmaster

⁹⁷ Memorandum from Helms to Director of Security, 5/17/54.

⁹⁸ Helms, 10/22/75, Hearings, Vol. 4, p. 84.

⁹⁹ Helms, 10/22/75, Hearings, Vol. 4, p. 91.

¹⁰⁰ Memorandum from Deputy Chief, Counterintelligence Staff to Chief of Operations, DD/P, 1/27/61.

General in his office. What transpired at that meeting is a subject of controversy. The only contemporaneous written record is a memorandum dated February 16, one day after the meeting, from Richard Helms back to the Deputy Chief of the Counterintelligence Staff. Helms wrote:

We gave him [Day] the background, development, and current status, withholding no relevant details.

After we had made our presentation, the Postmaster General requested that we be joined by the Chief Postal Inspector, Mr. Henry Montague. This gentleman confirmed what we had had to say about the project and assured the Postmaster General that the matter had been handled securely, quietly, and that there had been no "reverberations." The meeting ended with the Postmaster General expressing the opinion that the project should be allowed to continue and that he did not want to be informed in any greater detail on its handling. He agreed that the fewer people who knew about it, the better.¹⁰¹

While Helms cannot specifically recall now whether Day was informed of the fact of mail openings, he strongly suggests that Day must have been so informed. Helms recently testified as follows:

As I say, "withholding no relevant details." I assume when I wrote that I meant what I wrote. . . . I cannot imagine what the point of holding it back from him would have been. We were going down to get his permission to continue the operation, and after all, it was his Post Office, if we had lied to him, and then he had discovered through his Chief Postal Inspector that something else was going on, that would not have been a very wise way to behave, it seems to me.¹⁰²

Day's version of these events differs from Helms. Apparently Day did not believe that it was entirely "his Post Office," for in regard to sensitive CIA operations, even those that touched on postal matters, he testified: "It wasn't my responsibility. The CIA had an entirely different kind of responsibility than I did. And what they had to do, they had to do. And I had no control over them."¹⁰³ Because of this perception of the role of the Postmaster General vis-a-vis the Agency, he did not wish to know the details of the New York project. According to his account of the meeting, he interrupted Mr. Dulles before being informed that the project involved the opening of mail. 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."

¹⁰¹ Memorandum from Helms to Deputy Chief, CI, re: HTLINGUAL, 2/16/61. Henry Montague was aware of the New York operation but did not believe that it involved the opening of mail. See p. 592.

¹⁰² Richard Helms, 9/10/75, pp. 101-102.

¹⁰³ J. Edward Day, 10/22/75, Hearings, vol. 4, p. 40.

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.¹⁰⁴

Day's general recollection is given some support by an internal CIA memorandum written more than a decade later by the Chief of the CI Staff Project (HTLINGUAL). This memorandum, written in August 1971 and attached to Helms' February 16, 1961 summary, reads:

The wording of this memo leaves some doubt as to the degree to which Day was made witting. I tend to feel that he was briefed on the "mail surveillance" aspect and NOT the clandestine opening. I find some confirmation in the sentence in para. 2 "This gentleman (i.e. the Inspector Montague) confirmed what we had to say about the Project . . ." Montague was NOTWITTING [sic] OF THE clandestine opening and therefore the subject of the briefing of Day must have been mail surveillance only.¹⁰⁵ [Emphasis in original.]

Thus, it cannot be definitely said that Day knew—or did not know—of the mail openings. All that is clear is that an Agency memorandum suggests that the CIA was prepared to inform the Postmaster General of this activity; that Helms at the time believed Day had been provided with enough of the "relevant details" to interpret his reaction as general approval of the continuation of the project; and that Day's general belief was that the Postmaster General had no control over and should defer to the Agency's covert operations, even those which might involve the United States mails—he "would rather not know anything about it."^{105a}

John A. Gronouski.—There is no claim by the CIA that Mr. Gronouski, who was Postmaster General from August 1963 until November 1965, was ever informed of the CIA's New York mail intercept project. According to one internal CIA document, consideration was given to the idea of informing him in 1965 at the time of the hearings of the Senate Judiciary Subcommittee on Administrative Practice and Procedure. This subcommittee, chaired by Senator Edward V. Long of Missouri, was investigating the use of mail covers and various other techniques by federal agencies, and CIA officials were seriously concerned about "the dangers inherent in Long's subcommittee activities to the security of the Project's operations . . ." ¹⁰⁶ The idea of informing Gronouski was quickly rejected, however, "in view of various statements by Gronouski before the Long subcommittee."¹⁰⁷ 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. Such an inference is supported by the next sentence in the memorandum which reflects this conversation: "[Thomas] Karamessines agreed with this thought and suggested that, in his opinion, the President would be more inclined to go along with the idea of the operation."

¹⁰⁴ J. Edward Day, 10/22/76, Hearings, vol. 4, p. 46.

¹⁰⁵ Unaddressed memorandum from the C/CI/Project, dated "August 1970."

^{105a} J. Edward Day, 10/25/76, Hearings, vol. 4, p. 46.

¹⁰⁶ Memorandum from "CIA Officer" to "the Files," 4/28/65.

¹⁰⁷ *Ibid.*

Lawrence F. O'Brien.—There is no claim by the CIA that Mr. O'Brien, who was Postmaster General from 1965 to 1968, was ever informed of the project.

W. Marvin Watson.—Similarly, there is no suggestion that Mr. Watson, who held the office of Postmaster General in 1968 and 1969, was ever told of the project. Richard Helms has testified that he "never felt any need or compulsion to talk to Gronouski or O'Brien or Watson."¹⁰³

Winton M. Blount.—The next Postmaster General briefed about the New York mail intercept project was Winton Blount, who served in that office from the first days of the Nixon Administration in 1969 until October 1971. As with the CIA's briefing of Edward Day, however, it is not clear whether Blount was specifically informed about the mail opening aspect of the operation.

At least two reasons appear to have motivated Richard Helms, now Director of Central Intelligence, to seek a meeting with Postmaster General Blount about the New York project. First, he was strongly urged to do so by William Cotter, a former CIA employee who had been appointed Chief Postal Inspector in April 1969. In Cotter's capacity as Assistant Special Agent in Charge of the Office of Security's Manhattan Field Office during the mid-1950's, he had become aware of the Agency's mail opening project, and although he had no direct connection with the project he knew it continued during the 1960's. As Chief Postal Inspector, he was the only postal official who was aware of the CIA's mail openings, and since his responsibilities included guaranteeing the sanctity of the mail, he was uncomfortable with his knowledge.^{108a} Partly because Cotter felt bound by his secrecy agreement with the Agency,¹⁰⁹ however, he did not inform the Postmaster General about *HITLINGUAL*, nor did he initially take any steps to terminate the project.^{109a}

Cotter's discomfort increased in January 1971 when he received a letter from Dr. Jeremy Stone, Director of the Federation of American Scientists, in which Stone inquired whether the Post Office ever permitted any federal agency to open first class letter mail.¹¹⁰ Recognizing one of the names on the association's letterhead to be another former CIA employee who was also knowledgeable about the project, Cotter feared that Stone's inquiry may have been based on information supplied by this former agent. He forwarded a copy of the letter to Howard Osborn, then the CIA's Director of Security, and requested a meeting with Helms to discuss his concern about embarrassment to the Agency and to himself if the project were publicly revealed. Helms subsequently did meet with Cotter, who urged him to discuss the project with the Postmaster General. As Cotter later testified:

I felt . . . by getting the Postmaster General briefed by the CIA, the most senior people in the project, appropriate legal guidance could be obtained from the chief law officer, the At-

¹⁰³ Richard Helms testimony, 10/23/75, p. 28.

^{104a} See p. 602.

¹⁰⁵ See p. 602.

¹⁰⁶ See pp. 601-603.

¹¹⁰ Letter from Jeremy J. Stone to Mr. W. J. Cotter, 1/31/71.

torney General, and by pushing up to that arena if the project were unlawful I presumed it would have been stopped. But my concern was to get the top people aware of the project."¹¹¹

In addition to pressure from Cotter, the imminent reorganization of the Post Office also motivated Helms to arrange a briefing of Postmaster General Blount. In mid-1971, the Post Office was to become the Postal Service, and he felt that the consequent organization changes might have an adverse effect on the security of the New York operation.¹¹²

Before meeting with the Postmaster General, Helms first spoke with Attorney General Mitchell. At this meeting, which is discussed in greater detail below, Helms recalls that he requested Mitchell's advice "as to whether this thing should be taken up with Mr. Blount because of [the Post Office reorganization]." ¹¹³ According to Helms, Mitchell encouraged him to brief the Postmaster General, and a meeting was set up between Mr. Blount and Mr. Helms for June 2, 1971.

The written record of the Blount-Helms meeting on June 2 consists of a "Memorandum for the Record" written by James Angleton which described Helms' comments to top level CIA officials, including Angleton, about his recent briefings of the Attorney General and the Postmaster General. In regard to the Blount briefing, this memorandum reads as follows:

The DCI then indicated that yesterday, 2 June 1971, he had seen Postmaster General Blount. Mr. Blount's reaction . . . was entirely positive regarding the operation and its continuation. He opined that "nothing needed to be done," and rejected a momentarily held thought of his to have someone review the legality of the operation as such a review would, of necessity, widen the circle of witting persons. Mr. Helms explained to the PMG that Mr. Cotter, then Chief Postal Inspector, has been aware of the operation for a considerable period of time by virtue of having been on the staff of CIA's New York Field Office. Mr. Helms showed the Postmaster General a few selected examples of the operation's product, including an item relating to Eldridge Cleaver, which attracted the PM's special interest.¹¹⁴

Helms' subsequent testimony generally supports the accuracy of this memorandum. On the question of whether or not Blount was informed that the New York project involved mail opening, he testified that "[i]t is my recollection that I told him we were opening mail in New York."¹¹⁵

¹¹¹ William J. Cotter testimony, 8/7/76, pp. 51-52.

¹¹² Helms, 9/10/76, pp. 117-118.

¹¹³ Helms, 9/10/76, pp. 118-119.

¹¹⁴ Blind memorandum "for the record," 6/8/71.

¹¹⁵ Helms, 9/10/76, p. 120.

Blount recalls the meeting with Helms, but does not believe that he was informed about the mail opening aspects of the project. In public session, Mr. Blount testified:

Well, as I recall, Mr. Helms explained to me about a project that he told me had been going on for a great number of years. I don't know whether he said 15 years or what, but there was some indication in my mind that this had been going on for at least 15 years, that it was an ongoing project. It was a project of great sensitivity and great importance to the national security of this country and that he wanted to inform me about it.

... [M]y best recollection is, he told me this was a project in which the Post Office was cooperating with the CIA, that there were a couple of postal employees in New York City that I believe he told me were the only ones who really were involved or knew about this project, that the way in which it operated was that the postal employee would remove from the mail stream letters going to the Soviet Union and give it to two or three CIA employees, and whatever they did with it, it was reintroduced into the mail stream the next day. That's about the ending of my recollection.¹¹⁶

He added that he did not recall either asking Helms what was done with the mail or being informed by him that the mail was opened by CIA agents.¹¹⁷ While he did recall that Eldridge Cleaver's name was "mentioned," he did not believe that he was shown samples of Cleaver's opened mail or that Helms indicated in any way that Cleaver's mail had been opened.¹¹⁸

On the statement in Angleton's memorandum that he "rejected a momentarily held thought of his to have someone review the legality of the operation", Blount agreed that he considered asking the General Counsel of that Post Office for a legal opinion, but insisted that this consideration was not based on his knowledge or assumption that mail was being opened.¹¹⁹ Whatever doubts he had about the legality of the operation described by Helms were assuaged when Helms informed him that he had seen or was about to see the Attorney General on this matter.¹²⁰ Blount does not recall, however, ever discussing the legality—or any other aspect of the project—with the Attorney General personally; he accepted Helms' statement that Mitchell was knowledgeable about the project and "decided to let the Attorney General handle the legality of it."¹²¹

Blount does not recall taking any action on the basis of his briefing by Helms; he made no further inquiries of the CIA or within his own Department about the conduct of the mail project and did not raise the matter with any other Cabinet officer or the President. As he later testified, "[M]y attitude was that if it is legal, I wanted to do what we could do to cooperate with the Central Intelligence Agency on a

¹¹⁶ Winton M. Blount, 10/22/75, Hearings, Vol. 4, pp. 40, 47.

¹¹⁷ Blount, 10/22/75, Hearings, Vol. 4, p. 47.

¹¹⁸ Blount, 10/22/75, Hearings, Vol. 4, p. 49.

¹¹⁹ Blount, 10/22/75, Hearings, Vol. 4, p. 47.

¹²⁰ Blount, 10/22/75, Hearings, Vol. 4, p. 50.

¹²¹ Blount, 10/22/75, Hearings, Vol. 4, p. 50.

matter they considered of highest priority to this country and that dealt with national security."¹²²

Elmer T. Klassen.—There is no evidence that Elmer Klassen, who succeeded Blount as Postmaster General in 1971 and remained in that position through the termination of the project in 1973, was ever briefed on any aspect of the New York project.

2. Chief Postal Inspectors

The various roles of the Chief Postal Inspectors in regard to the New York mail intercept operation have been alluded to above. It is sufficient here to note that while all of the men who held this office during the course of the project—Clifton Garner (until 1953); David Stephens (1953 to 1961); Henry Montague (1961 to 1969); William Cotter (1969 to 1975)—were apparently aware of the mail cover aspects, only one—William Cotter—clearly knew that mail was also being opened by the CIA.

Garner had initially been contacted in November 1952 by CIA officials in the Offices of Operations and Security and apparently consented to the first survey of mail between the United States and the Soviet Union in New York.^{122a} Montague helped implement this survey and the early operation of the project in 1953 in his position as Postal Inspector in Charge of the New York Region.^{122b} As Chief Postal Inspector in 1961, he also attended part of the briefing of Edward Day by Allen Dulles, Richard Helms, and Cornelius Roosevelt.^{122c} Stephens instructed Montague to cooperate with the CIA in regard to the project in 1953 and was present at the Summerfield briefing in May 1954.^{122d} There is no evidence (or claim by the CIA) that any of these three men knew that the CIA project involved the opening of mail, however. As noted above, Montague has also testified that Stephens instructed him, and he in turn instructed the CIA agents who visited him in 1953, that mail opening would not be permitted.

William Cotter was therefore the first Chief Postal Inspector who was clearly aware of all aspects of the mail project. Despite his initial reluctance to take any action on the basis of his knowledge, Cotter was instrumental in arranging the Helms-Blount briefing in 1971 and ultimately in the termination of the project in 1973. His role in the project's termination is discussed below.^{122e}

3. Attorneys General

There is no evidence in the record that any Attorney General before or after John Mitchell was ever informed about the CIA's New York project. At a minimum, Mitchell was briefed about certain CIA mail covers by Richard Helms on June 1, 1971, but as with the Day and Blount briefings, the evidence about Mitchell's knowledge of mail opening and the New York project specifically, tends to be contradictory.

¹²² Winton M. Blount, 8/13/75, p. 24.

^{122a} See p. 568.

^{122b} See pp. 568-569.

^{122c} See pp. 583-584.

^{122d} See pp. 568-569.

^{122e} See pp. 500-601.

The background for the Mitchell briefing has been described above: William Cotter, concerned about the letter he had received from Jeremy Stone and uncomfortable with his knowledge of the mail openings in New York, urged Richard Helms to discuss the operation with the Postmaster General; in addition, the imminent reorganization of the Post Office cast the future security of the project in doubt. Rather than go to the Postmaster General directly, Helms chose to consult first with the Attorney General, in part to seek Mitchell's opinion as to whether or not Mr. Blount should be informed. As Mr. Helms publicly explained,

... it was quite clear that [Mitchell] had a particular role for the President in sort of keeping an eye on intelligence matters and on covert action matters. . . . He was sort of, I think, a watchdog for the President, so I have consulted with Mr. Mitchell on a variety of the problems affecting the Agency over time that I would not have gone to the normal Attorney General about, nor would the normal Attorney General have been necessarily privy to these things.¹²³

According to a CIA memorandum dated June 3, 1971, two days after the June 1 meeting between the Director and the Attorney General, Helms told a group of ranking CIA officials that he had briefed Mitchell about the operation and "Mr. Mitchell fully concurred in the value of the operation and had no 'hang-ups' concerning it."¹²⁴ Helms elaborated on this meeting with Mitchell in his recent public testimony, stating that he

told him [Mitchell] about this operation, what it was doing for us, that it had been producing some information on foreign connections, dissidents, and terrorists, a subject in which he was intensely interested, and that we might have a problem when the U.S. Postal Service was founded. And I asked if it wouldn't be a good idea that I go and see the Postmaster General, Mr. Blount, and talk with him about this and see how he felt about it and to get some advice from him. And, it was my recollection that Mr. Mitchell acquiesced in this and said, "Go ahead and talk to Mr. Blount."¹²⁵

When asked whether or not he told Mitchell that the project involved the opening of mail, Helms replied: ". . . I don't recall whether I said specifically we are opening X numbers of letters. But the burden of my discussion with him, I don't see how it could have left any alternative in his mind because how do you find out what somebody is saying to another correspondent unless you have opened the letter?"¹²⁶

John Mitchell has acknowledged meeting with Helms on June 1, 1971, and recalls a discussion of "mail covers," but on the basis of his recollection denies that Helms told him mail was opened.¹²⁷ He does not remember being informed of any of the details of the New York operation, and believes that even the discussion of mail covers was in

¹²³ Helms, 10/22/75, Hearings, vol. 4, p. 87.

¹²⁴ Blind memorandum "for the record," 6/3/71.

¹²⁵ John Mitchell testimony, 10/2/75, pp. 13-14.

¹²⁶ Helms, 10/22/75, Hearings, vol. 4, pp. 87, 88.

¹²⁷ John Mitchell 10/2/75, pp. 13-14.

relation to an intelligence operation distinct from one that would fit the description of the New York project.¹²⁸ The former Attorney General testified that, as he recalled, "the discussion of the mail was ancillary to another discussion that was not extensive, and . . . it had to do with mail covers, or at least I assumed it [did] . . ." ¹²⁹ He added that he had no recollection of Helms' asking his advice as to whether or not the Postmaster General should be briefed on any CIA project,¹³⁰ and that the first time he became aware that the CIA had opened mail in the United States was when these operations were publicly revealed in 1974 and 1975.¹³¹

James Angelton testified that he also met with John Mitchell during Mitchell's tenure as Attorney General, described the New York project to him, and showed him some samples of the product, specifically, a copy of a letter from Kathy Boudin.¹³² Angelton does not recall the possible date of such a meeting, however.

Mitchell does not recall ever having met with Angelton, or even having heard his name until recently.¹³³

4. Presidents

There is no documentary evidence that any President ever authorized the CIA's New York mail opening project. With the possible exception of Lyndon Johnson in 1967 or 1968, there is no CIA claim that any President was even informed of it.¹³⁴ While proposals were made by CIA officials in 1954 and again in 1965 to advise the President of the existence of HTLINGUAL, it does not appear that these proposals were implemented. In the context of the so-called "Huston Plan" deliberations, moreover, CIA officials actually withheld knowledge of the ongoing New York project from the President's representative and from President Nixon himself. And despite President Nixon's eventual refusal to authorize the use of "covert mail coverage" (mail opening) as an intelligence collection technique (after a brief period of approval), the CIA project continued without interruption for another two years.

1954 Proposals to Seek the Approval of President Eisenhower.— In a January 4, 1954 memorandum from Sheffield Edwards, then Director of Security to Allen Dulles, Director of Central Intelligence, it

¹²⁸ Mitchell, 10/2/75, p. 12.

¹²⁹ Mitchell, 10/2/75, p. 12.

¹³⁰ Mitchell, 10/2/75, p. 13.

¹³¹ Mitchell, 10/2/75, p. 13. It should also be noted that John Mitchell was not involved in the preparation of the so-called "Huston Report," which is discussed at pp. 506-507. The "Huston Report" made no reference to continuing CIA mail opening programs. It did, however, state that federal agencies had employed this technique in the past and that its use had been discontinued—a description which accurately fit only the FBI mail opening programs. When Mitchell learned of the proposal to sanction mail opening on a Presidential level, he urged President Nixon to withdraw his support for the plan. See Senate Select Committee Report on the Huston Plan.

¹³² Angelton, 9/17/75, pp. 105-107.

¹³³ Mitchell, 10/2/75, p. 9.

¹³⁴ As noted below, President Nixon stated that he was aware of CIA mail covers on mail to the Soviet Union or Asia, although he was unaware of mail openings. The CIA makes no claim that he was directly advised by Agency officers of the mail covers or that he indicated his approval of the mail covers to the Agency. See pp. 507-508.

was recommended that the Director and the Postmaster General (after having been himself briefed) meet with "and then seek oral approval of [the] President."¹²⁴ This recommendation was reiterated in a second memorandum from Edwards to Dulles eight days later.¹²⁵

In later years, it was assumed by some CIA officers that Dulles had in fact briefed President Eisenhower on the program. The 1969 review of the project by the Inspector General's staff, simply states, without citation: "It is believed that Mr. Dulles briefed President Eisenhower on this subject."¹²⁶ Richard Helms has also testified that "I always assumed that Mr. Dulles, before we went to see Mr. Summerfield, had checked this out with President Eisenhower. I do not recall his ever specifically saying [that] to me, that was sort of an assumption on my part, that something of this importance he would have checked out and he would have proceeded on to his appointed task of speaking to the Postmaster General."¹²⁷

Summerfield himself had only been informed of the mail cover aspects of the project in 1954, however; the Agency apparently never returned to inform him that mail opening later became the primary program objective. Helms added, moreover, that he had never seen any documentary confirmation of a meeting between Director Dulles and the President in regard to the project.¹²⁸ Beyond the proposals themselves and the later undocumented assumptions by CIA officials, there is no evidence that President Eisenhower was ever informed about any aspect of the New York operation.

1965 Proposal to Inform President Johnson.—In 1965, the Long Subcommittee hearings on the use of mail covers and other investigative techniques by federal agencies caused the Agency serious concern about possible Congressional discovery and revelation of the project. It is noted above that in September 1965, as a result of this concern, CIA officials briefly considered informing Postmaster General Gronouski of the project. When this proposal was rejected, presumably because Gronouski had cooperated extensively with the Subcommittee, Thomas Karamessines, then Acting Deputy Director for Plans, "suggested that, in his opinion, the President would be more inclined to go along with the idea of the operation."¹²⁹ Karamessines "gave instructions that steps should be taken to arrange to pass through McGeorge Bundy to the President after the subcommittee has completed its investigation."¹³⁰ Apparently, however, this was not done. Mr. Bundy does not recall ever having been informed of the project;¹³¹ neither Thomas Karamessines nor Richard Helms knew of any attempt to inform Bundy so that he could in turn inform the President;¹³² and there is no documentary record of such an attempt.

¹²⁴ Memorandum from Edwards to DCI, 1/4/54.

¹²⁵ Memorandum from Edwards to DCI, 1/12/54.

¹²⁶ Blind memorandum, Subject: "Special Investigations Group/Project," undated.

¹²⁷ Helms, 9/10/75, p. 116.

¹²⁸ *Ibid.*

¹²⁹ Memorandum from "CIA Officer" to "the Files," 4/23/65.

¹³⁰ *Ibid.*

¹³¹ Staff summary of McGeorge Bundy interview, 4/10/76.

¹³² Helms 10/22/75, Hearings, Vol. 4, p. 115; Thomas Karamessines testimony, 10/8/75, p. 7.

The Helms-Johnson Meeting: 1967-1968.—Although it does not appear that President Johnson was contemporaneously informed about the mail project after the 1965 recommendation to do so, Richard Helms claims that he may have advised him about it in 1967 or 1968. Toward the end of President Johnson's term in office, the President instructed Helms to prepare a report detailing the truth or falsity of columnist Drew Pearson's allegation about CIA assassination attempts. Helms recalls that the President also asked him whether the CIA was engaged in any other operations that "might be regarded as sensitive."¹⁴² It is Helms' belief that they then "discussed two or three items, . . . [and] it was at that time that I think I mentioned [the New York project]."¹⁴³ When asked whether or not he indicated to the President that mail was opened in connection with the project, Helms said that "[i]f I discussed this with President Johnson I would not have deluded him by using one terminology to convey something else. I would have said, 'We are getting into Russian mail,' or something. I was not that kind of fellow with people."¹⁴⁴ There are no CIA documents relating to this discussion, however, and Helms himself is not positive that it in fact occurred, only that "there was a possibility that I discussed . . . this letter opening thing on that occasion."¹⁴⁵

Huston Plan: 1970.—During the summer of 1970, the so-called "Huston Plan" meetings and report presented the CIA with a clear opportunity to inform the President of their mail opening project.¹⁴⁶ But this opportunity was apparently never taken.

As a result of his perceived need for more effective domestic intelligence, Richard Nixon instructed representatives of the major federal intelligence agencies to meet under the guidance of Tom Charles Huston and to prepare a series of options designed to achieve this goal. One of the options subsequently discussed at the four meetings that summer was the use of "covert mail coverage" (i.e. mail opening) directed against both foreign and domestic targets. Although the CIA's New York project was ongoing at the time, the CIA representatives at these meetings, James Angleton and Richard Ober, did not advise this group of intelligence experts about its existence, and the final report—to which Angleton and Ober contributed and which Richard Helms signed—was submitted to the President containing the statement that "covert coverage has been discontinued."¹⁴⁷ At no time was either Huston, the President's representative, or the President himself informed that the CIA was then opening mail.

According to Angleton, the New York project was not revealed to the group because it was considered to be compartmented knowledge and such a revelation would serve "no useful purpose," especially in light of the security considerations which had been articulated by the National Security Agency's representative.¹⁴⁸ But he also conceded

¹⁴² *Ibid.*

¹⁴³ Helms, 10/23/75, p. 28.

¹⁴⁴ Helms, 10/23/75, p. 30.

¹⁴⁵ Helms, 10/23/75, pp. 30, 31.

¹⁴⁶ See Senate Select Committee Report on the Huston Plan.

¹⁴⁷ *Special Report: Interagency Committee on Intelligence (Ad Hoc)* (the "Huston Report"), June 1970, p. 20.

¹⁴⁸ Angleton, 9/17/75, p. 107.

that neither Huston nor the President himself were told about the project in private.¹⁴⁹

Of the statement in the final report that all covert mail coverage had been discontinued, Richard Helms said:

... 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.¹⁵⁰

Helms agreed, however, that on the face of the report the President could not have known that covert mail coverage in fact continued,¹⁵¹ and he stated that at no time did he personally ever inform President Nixon about the CIA's use of this technique in the New York project.^{151a} The President, in short, was given a report—signed by Helms—which explicitly said mail opening had been discontinued when it had not.

On July 23, 1970, Tom Charles Huston wrote Director Helms that the President had approved the relaxation of restrictions on a number of the investigative techniques discussed in the final report.¹⁵² For the first time in the history of the CIA's mail project, the Agency had what appeared to be Presidential authorization for "covert mail coverage," although not specifically for the New York program, about which the President remained ignorant.^{152a} But five days after Huston informed Helms of the President's approval, the authorization was withdrawn and Helms was asked to return the memorandum reflecting the original approval.¹⁵³ Now the situation was reversed: a President had addressed the issue of the use of mail opening as an investigative technique and ultimately refused to endorse it. Despite the withdrawal of Presidential approval, however, the CIA did not terminate the New York project. The project continued for nearly three years after these events, and the CIA continued to open mail within the United States in the face of an apparent Presidential prohibition of this technique.

President Nixon's "General Awareness" of CIA Mail Covers but Not of Mail Openings.—Former President Nixon recently stated that he was aware of the CIA's use of mail covers but not of its mail opening operations. He explained:

While President, I remember being generally aware of the fact that the Central Intelligence Agency, acting without a warrant, both during and prior to my Administration, conducted mail covers of mail sent from within the United States to:

A. The Soviet Union; or

¹⁴⁹ Angleton, 9/17/75, p. 114.

¹⁵⁰ Helms, 10/22/75, Hearings, vol. 4, p. 95.

¹⁵¹ Helms, 10/22/75, Hearings, vol. 4, p. 95.

^{151a} Helms, 10/22/75, Hearings, vol. 4, p. 89.

¹⁵² Memorandum from Tom Charles Huston to Richard Helms., 7/23/70.

^{152a} See p. 508.

¹⁵³ See the Senate Committee Report on the Huston Plan.

B. The People's Republic of China.

However, I do not remember being informed that such mail covers included unauthorized mail openings.^{153a}

He also noted that he did "not recall receiving information, while President, that any agency or employee of the United States Government, acting without a warrant, opened mail" in any program that would fit the description of the CIA's New York mail opening project or any other CIA or FBI mail opening project.^{153b}

There is no claim in the documentary record or in the testimony of any CIA official that the Agency ever informed President Nixon about any aspect of the New York project. Nor is there any claim that the President ever indicated to the CIA his approval of any aspect of this particular project, even the use of mail covers. Richard Helms, for example, testified in 1975 that he "never recall[ed] discussing [the New York mail opening project] with President Nixon,"^{153c} and added (before the former President made the comments quoted above) that "What President Nixon knew about it, I don't know to this day."^{153d}

Dissemination of Information to the White House.—According to a March 1971 CIA memorandum, sanitized information generated by the New York mail opening project was disseminated to the White House even after the President's July 1970 rejection of the use of this technique. This memorandum lists the types of information accumulated through the project, including data about "peace activists, anti-government groups, black radicals and other militant dissidents."¹⁵⁴ It continues: "In all the above, HTLINGUAL provides the White House . . . coverage of overseas contacts and activity of persons within the United States who are of critical concern from the viewpoint of internal national security, including bombing and terrorism."¹⁵⁵

At least one former White House official—John D. Ehrlichman—has testified that from his reading of the intelligence reports provided to the White House he was able to determine that mail was being intercepted. When asked whether he knew of a program of intercepting mail between the United States and Communist countries, Ehrlichman replied: "I knew that was going on because I had seen reports that cited those kinds of sources in connection with this, the bombings, the dissident activities"¹⁵⁶ He stated that he "assumed,"¹⁵⁷ but was not positive, that this was a CIA operation: "Maybe the way the things is [sic] couched, it is always obscurely put as to what the sources are, but it could have been the FBI for all I know."¹⁵⁸ He did not know

^{153a} Responses of Richard Nixon to Senate Select Committee Interrogatories, 3/9/70, pp. 4, 5. Neither the documentary nor the testimonial record provide a clear explanation of how Mr. Nixon learned of CIA mail covers.

^{153b} Response of Richard Nixon to Senate Select Committee Interrogatories, 3/9/70, p. 1.

^{153c} Richard Helms, 10/22/75, Hearings, vol. 4, p. 80.

^{153d} *Ibid.*

¹⁵⁴ Blind memorandum "for the record." Subject: "Value of HTLINGUAL Operation." 8/29/71.

¹⁵⁵ *Ibid.*

¹⁵⁶ John Ehrlichman deposition, President's Commission on CIA Activities, 4/17/75, p. 98.

¹⁵⁷ Ehrlichman deposition, 4/17/75, p. 98.

¹⁵⁸ Ehrlichman deposition, 4/17/75, p. 98.

whether the President was aware of this program,¹⁵⁹ however, and could not recall ever personally discussing the matter with him.¹⁶⁰

Ehrlichman added that he did not know of any conversation within the White House about the legality or propriety of such a program nor of any inquiry made by the White House.¹⁶²

The lack of a formal approval structure for HTLINGUAL outside, as well as inside the CIA, is plain: Cabinet officers were sometimes briefed, but much more frequently ignored (sometimes consciously so); no documentary record reflects the one possible "mention" of the project to a President; another President was misled; and the closest resemblance to a Presidential policy directive prohibiting mail opening went unheeded.

It is difficult to generalize from an inconsistent record, but these are among the conclusions that may be tentatively offered in regard to external authorization for the project: the agency desired external authority but was reluctant to ask for it, either for fear of refusal, out of concern with security, or simply because it was less complicated to maintain the status quo. If Cabinet officers were informed of mail openings, it was done so circuitously; only the minimum knowledge necessary to secure their approval was imparted. The officers who were briefed, for their part, apparently did not want to know the details, did not want to be held accountable, and deferred to the Agency on national security matters.

E. Termination of the Project

1. Proposed Termination: The 1969 Inspector General's Report

Four years before the actual termination of the project, the Inspector General's staff formally recommended that consideration be given to discontinuance. Its 1969 survey of HTLINGUAL had revealed that:

The principal customer is and has been the FBI . . . [which] several years ago initiated a similar program to cover mail to and from Bloc countries. It discontinued the program because of the inherent sensitivity, but would dislike having us discontinue a similar one. We are sympathetic to the Bureau's position, but question whether their interest is sufficient justification for our assuming risk of most serious embarrassment.¹⁶³

¹⁵⁹ Ehrlichman deposition, 4/17/75, p. 98.

¹⁶⁰ Ehrlichman deposition, 4/17/75, p. 10. When asked about Ehrlichman's testimony, former President Nixon responded as follows:

"I do not recall John Ehrlichman ever informing me that he knew, or suspected, that some of the information in intelligence reports received by the White House was derived by means of mail openings. I do not know of course what intelligence reports Mr. Ehrlichman was referring to in his testimony. However, with regard to intelligence reports which I may have reviewed, I do not recall concluding or suspecting that the information—or any part thereof—was derived by means of mail openings."

(Response of Richard Nixon to Senate Select Committee Interrogatories, 3/9/70, p. 5.)

¹⁶² Ehrlichman deposition, 4/17/75, p. 10.

¹⁶³ Blind memorandum, Subject: "Special Investigations Group/Project," undated.

This finding, coupled with the conclusion that the project was "of little value to this Agency,"¹⁶⁴ led the Inspector General's staff to recommend that the Director should negotiate with the FBI to take over the project or, in the event that the FBI should decline to assume responsibility, he should discontinue it.

Informally, the author of the 1969 report, John Glennon, had already discussed the possibility of an FBI takeover of the project with Sam Papich, Bureau liaison to the FBI, and he knew that there was virtually no chance the FBI would assume responsibility for it. According to Glennon, Papich told him "that the Bureau would not run it . . . and he implied that they just would not want to be involved in opening mail. I suppose because of the flap potential."¹⁶⁵ Glennon was not surprised by the Bureau's attitude. He testified:

[I]t was fine of the Bureau not to take it over because we should not be doing it in the first place. If somebody else is foolish enough to do it, I can see the Bureau wanting to take advantage of it . . . [and] if the Agency got egg on its face, the Bureau would not get egg on its face."¹⁶⁶

Because he knew the FBI would not take over the project, Glennon acknowledged that the recommendation in the 1969 report was, in effect, a straight recommendation to abandon HTLINGUAL.¹⁶⁷

When the 1969 report was presented to the Director, however, Helms did not attempt to engage the FBI in negotiations over responsibility for the project. Rather, he "asked to have the FBI contacted to find out their feeling about the value of this operation [and was] told that they thought it was valuable and would hate to see it terminated."¹⁶⁸ In balancing the perceived value to the FBI on the one hand, and the stated lack of value to several Agency components on the other, Helms decided in favor of continuing the project.¹⁶⁹

2. Increasing Security Risks: 1971

The question of terminating or turning over the project to the FBI came to the fore again in the spring of 1971, after Chief Postal Inspector William Cotter had received the letter from Dr. Jeremy Stone on behalf of the Federation of American Scientists inquiring whether the Post Office permitted any federal agencies to open mail. For reasons described above, Cotter viewed the letter as a genuine threat to the security of the New York project and believed his own position as Chief Postal Inspector would be seriously compromised if knowledge of the project were publicized. When he communicated his concern to Director of Security Howard Osborn, Osborn relayed it to Helms. Prompted by this new security risk, and possibly by additional security problems inherent in the imminent reorganization of the Post Office, Helms convened a meeting of top CIA officials on May 19, 1971, to discuss the future of HTLINGUAL.

On the agenda were such security problems as the Stone letter, the postal clerk who brought the mail to the CIA's "interceptors" at JFK

¹⁶⁴ *Ibid.*

¹⁶⁵ Glennon, 9/25/75, pp. 61, 62.

¹⁶⁶ Glennon, 9/25/75, p. 66.

¹⁶⁷ John Glennon, 10/21/75, Hearings, Vol. 4, p. 23.

¹⁶⁸ Helms, 10/22/75, Hearings, Vol. 4, p. 103.

¹⁶⁹ *Ibid.*

Airport, and Cotter's inability to testify truthfully before a Congressional committee that he had no knowledge of CIA mail opening. The subject of FBI exploitation of the project was also discussed.¹⁷⁰ Thomas Karamessines, the Deputy Director for Plans, forcefully argued that in light of these security risks CIA involvement in the project should cease, and the FBI should assume responsibility for it. According to the minutes of the meeting:

On the question of continuance, the DDP [Karamessines] stated that he is gravely concerned, for any flap would cause the CIA the worst possible publicity and embarrassment. He opined that the operation should be done by the FBI because they could better withstand such publicity, inasmuch as it is a type of domestic surveillance. The D/S [Howard Osborn] stated that he thought the operation served mainly a Bureau requirement.¹⁷¹

James Angleton contended that the project should be continued by the Agency: "The C/CI [Angleton] countered that the Bureau would not take over the operation now, and could not serve essential CIA requirements as we have served theirs; that, moreover, CI Staff sees this operation as *foreign* surveillance."¹⁷² When Helms asked whether or not the project should be continued "in view of the known risks," Angleton replied "that we can and should continue to live with them."¹⁷³

Apparently Helms was not entirely convinced by Angleton's arguments. At one point during the meeting, according to Howard Osborn, he turned to Angleton and asked, "If this project is so . . . important to the FBI, why . . . don't they take it over?"¹⁷⁴ Osborn testified that Angleton responded by noting that the FBI could not do so under the stringent limitations on investigative techniques imposed by J. Edgar Hoover.¹⁷⁵

The course of action that Helms finally decided upon has been recited above: he met with Cotter personally and was urged to inform the Postmaster General; before informing Mr. Blount, he also called on Attorney General Mitchell. Since Helms believed that both of these Cabinet officers had assented to the mail opening operation, he again supported its continuance. When he reported the favorable results of these briefings to the same group of CIA officials at a subsequent meeting on June 3, the minutes of that meeting show that "all present were gratified."¹⁷⁶ The only instruction Helms gave to those in charge of the project was to tighten security measures, and the project continued.

3. William Cotter's Continuing Concern

The Secrecy Agreement and Cotter's Dilemma.—After Helms briefed Blount on the New York project, William Cotter recalls that

¹⁷⁰ Blind memorandum, "for the Record," Subject: "DCI's Meeting Concerning HTLINGUAL," 5/19/71.

¹⁷¹ Blind memorandum, "for the Record," Subject: "DCI's Meeting Concerning HTLINGUAL," 5/19/71.

¹⁷² *Ibid.* [Emphasis in original].

¹⁷³ *Ibid.*

¹⁷⁴ Osborn, 8/28/75, p. 60.

¹⁷⁵ *Ibid.*

¹⁷⁶ Blind memorandum "for the Record", Subject: "Meeting at DCI's Office Concerning HTLINGUAL", 6/3/71.

he received a telephone call from Blount, who informed him that the briefing had occurred and instructed him, in effect, to "carry on with the project."¹⁷⁷ He was informed that the Attorney General had been advised of the project as well. Cotter's anxiety decreased with the knowledge that Blount and Mitchell had been briefed and apparently supported the project,¹⁷⁸ but his peace of mind proved to be short-lived: in the latter part of 1971, Blount resigned as Postmaster General, and Mitchell stepped down as Attorney General shortly thereafter. Cotter was again the highest ranking Government official outside of the CIA and FBI who knew of the CIA's mail opening project.

From the first days of his tenure as Chief Postal Inspector, Cotter had been concerned about the New York mail project. He testified:

I was aware that when I assumed the capacity of Chief Postal Inspector I became responsible for enforcing the Postal laws, [and I also] became aware of the high, high sensitivity of Postal Inspectors with regard to violations of Section 1702 [of Title 18 of the United States Code, which prohibits tampering with the mail]. We arrest people every day for . . . opening mail, stealing, and so forth, and so I was very, very uncomfortable with [knowledge of this] project.¹⁷⁹

Entrusted with this responsibility, Cotter had felt constrained by the letter and the 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."¹⁸⁰ "After-coming from eighteen years in the CIA," Cotter said, "I was hypersensitive, perhaps, to the protection of what I believed to be a most sensitive project . . ." ¹⁸¹ For this reason, he had written a response to the Jeremy Stone letter that by his own admission was untrue, explaining later that, "If I responded . . . accurately to Mr. Stone, it would have blown the whole operation for the CIA . . ." ¹⁸² For the same reason, he had never informed Postmaster General Blount about the project, although, as noted above, he encouraged Helms to do so after he had been Chief Postal Inspector for two years. The minutes of the May 19, 1971, meeting in Director Helms' office aptly summarized Cotter's situation: ". . . in an exchange between the DCI and the DDP it was observed that while Mr. Cotter's loyalty to the CIA could be assumed, his dilemma is that he owes loyalty now to the Postmaster General."¹⁸³

When Blount resigned, Cotter did not know whether the project had ever been described to Blount's former deputy and successor as Postmaster General, Elmer Klassen. He again chose not to raise the matter with the new Postmaster General directly, but began communicating his concern to Howard Osborn and Thomas Karamnessines at the Agency.¹⁸⁴

¹⁷⁷ William Cotter testimony, 8/7/75, p. 60.

¹⁷⁸ Cotter, 8/7/75, p. 107.

¹⁷⁹ Cotter, 8/7/75, p. 45.

¹⁸⁰ Cotter, 10/22/75, Hearings, vol. 4, p. 74.

¹⁸¹ *Ibid.*

¹⁸² Cotter, 8/7/75, p. 98.

¹⁸³ Blind memorandum, "for the record," 5/10/71.

¹⁸⁴ Cotter, 8/7/75, p. 107.

Cotter's Ultimatum.—Although Osborn and Karamessines were sympathetic to his position and were themselves convinced that the project should be stopped, Cotter's periodic expressions of concern resulted in neither a briefing of Postmaster General Klassen nor a termination of HTLINGUAL. "Since I wasn't getting any action on the part of the CIA," Cotter testified, "I suggested to Mr. Osborn that unless I received some indication that this project had been approved at an exceedingly high level in the United States Government, I was going to withdraw the Postal Service support."¹⁸⁵ Osborn recalls that Cotter specifically referred to authorization at the Presidential level—he would no longer be satisfied by the Postmaster General's approval—and that he set a deadline of February 15, 1973.¹⁸⁶

Effect of Watergate.—By the time Cotter presented the CIA with his ultimatum, the Watergate revelations had contributed to the creation of a national political climate vastly different from that during the project's infancy and growth. An increasing number of CIA officials connected with the New York operation believed that the time was ripe for its termination and welcomed Cotter's position as an opportunity to force the reexamination of its relative advantages and disadvantages. Howard Osborn testified that he "shared [Cotter's] concern. I thought it was illegal and in the Watergate climate we had absolutely no business doing this."¹⁸⁷ He discussed the matter with William Colby, newly appointed DDP, who, according to Osborn, agreed that the project was illegal and should not be continued, "particularly in a climate of that type."¹⁸⁸

4. Schlesinger's Decision to Suspend the Project

When James Schlesinger, who had succeeded Richard Helms as Director of Intelligence, learned of Cotter's ultimatum, he scheduled briefings by Colby and James Angleton about the future of HTLINGUAL. Colby argued that the "substantial . . . political risk [of revelation was] not justified by the operation's contribution to foreign intelligence and counterintelligence collection."¹⁸⁹ Angleton, a strong supporter of the project in the past, attempted to persuade the new Director that the operation was valuable and still merited continuance.¹⁹⁰

According to a contemporaneous memorandum by William Colby, Schlesinger was unconvinced that "the product to the CIA [was] worth the risk of CIA involvement."¹⁹¹ The Director decided on a two-pronged course of action. First, he "directed the DDCI [Deputy Director Vernon Walters] to discuss the activity with the Acting Director, FBI [L. Patrick Gray], with a view to offering the FBI the opportunity to take over the project, including the offer to detailing the CIA personnel involved to the FBI to implement it under FBI direction and responsibility."¹⁹² Second, Schlesinger agreed, in

¹⁸⁵ Cotter, 8/7/75, p. 109.

¹⁸⁶ Osborn, 8/28/75, pp. 86, 87.

¹⁸⁷ Osborn, 8/28/75, p. 90.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.* memorandum, Subject: "Mail Intercept Program," 2/14/73.

¹⁹⁰ James Angleton, 9/17/75, pp. 80, 81.

¹⁹¹ Memorandum from W. E. Colby "for the Record," 2/15/73.

¹⁹² *Ibid.*

light of Cotter's ultimatum, to suspend the operation "unless Mr. Cotter would accept its continuance for the time being under our assurances that the matter is being prosecuted at a very high level."¹⁹⁷

Cotter refused to extend his deadline, and William Colby authorized the suspension of the project on February 15, 1973. Colby notified Howard Osborn of the suspension and Osborn instructed the Office of Security's Manhattan Field Office to shut down the operation that afternoon. There is no evidence that any attempt was subsequently made to secure Presidential approval, and when the FBI refused to assume operational responsibility (for reasons discussed below), the suspension proved to be permanent.

F. Legal Considerations and the "Flap Potential"

Within the Agency, the legality of the New York mail opening project was perceived to be dubious at best. Among those agents and officers connected with it who considered its legal implications at all, some believed that the project would have been illegal but for the internal and external approvals which they assumed—sometimes erroneously—had been granted. Most simply recognized HTLINGUAL to be illegal but rationalized it nonetheless. The general reaction to the questionable legality of the project was neither to stop it nor to seek a definitive opinion as to its legal status; it was to tighten security in order to reduce the risk of exposure to Congress and the general public. The evidence regarding its termination, moreover, suggests that it was finally discontinued not so much because it was thought to be illegal *per se*, as because the so-called "flap potential"—the risk of embarrassment to the CIA that stemmed from its dubious legality—was seen to outweigh its foreign intelligence and counterintelligence value to the Agency.

1 Perceptions of Legal Issues Within the Agency

Generally, those agents who served on the "front lines" of the New York project, the interceptors and the analysts, did not concern themselves with legal issues at all; they did not ask if what they were doing was within or outside the law, and they were not told. As one of the agents who opened the mail in the New York facility said, "We would speculate when an Attorney General or a Postmaster would change, or even a President, if they would be briefed, [but] this would be knowledge which would never concern us. We would never be told . . . [Our work] was something that one entered into and did."¹⁹⁸

Among those Agency officials in a policymaking position, a few have testified that while they knew the legality of the project to be questionable, they believed that prior approvals internally and externally made it at least arguably lawful. Thomas Karamessines, former Deputy Director for Plans, for example, stated that because he believed the project had been discussed with a Postmaster General and Chief Postal Inspector, both of whom, he understood, had approved of it, the project must have fallen within an exception of the general statutory prohibition against mail opening.¹⁹⁹ His belief was buttressed by the participation of the FBI, the chief law enforcement agency in the country, and by the fact that he was told—erroneously—that Post

¹⁹⁷ *Ibid.*

¹⁹⁸ CIA Officer, 9/30/75, pp. 35, 36.

¹⁹⁹ Thomas Karamessines testimony, 10/8/75, p. 22.

Office Department lawyers had participated in the briefings of Postal officials and that at least one President had approved it.¹⁹⁰ Richard Helms also testified that he did not assume the project was necessarily illegal. Since Allen Dulles, a former Director and eminent lawyer, knew of the project and presumably had "made his legal peace with [it]," Helms said that he never seriously questioned its legal status while it continued under his own tenure.¹⁹⁷ This testimony is partially contradicted, however, by the fact that in 1970 Helms signed the Huston Report, in which covert mail coverage (mail opening) was specifically described as illegal and without the "sanction of law."¹⁹⁸ Helms and the other signers of the Report presented the President of the United States with the option of authorizing a technique which they themselves characterized as unlawful.

Most of the Agency officials who have testified on this subject simply assumed that mail opening was illegal. Gordon Stewart, who was appointed Inspector General by Richard Helms in 1968 and reviewed the Staff's role in the project in 1969, said flatly, "[O]f course we knew that this was illegal."¹⁹⁹ When he discussed the 1969 report with Helms, he believed it was "unnecessary" to raise the matter of its illegality "since everybody knew that it was [illegal] and it didn't seem to me that I would be telling Mr. Helms anything that he didn't know."²⁰⁰ Howard Osborn agreed with this characterization of the project's legal status. He testified that at one point in the early 1970's, he approached Karamessines and "said this thing is illegal as hell."²⁰¹ Even James Angleton, the project's strongest supporter and, as Chief of the CI Staff, the official most directly responsible for its operation, testified that his understanding of its legality was simply: "That it was illegal."²⁰² When asked how he could rationalize conducting a program he believed to be illegal, he answered that in his opinion, the project's benefit to the national security outweighed legal considerations.²⁰³

The documentary record of the project supports the views of those officials who testified that within the Agency the project was perceived as illegal. References to the lack of legal authority for mail opening in peacetime are found in internal memoranda written as early as 1955²⁰⁴ and 1962.²⁰⁵ An internal document dated September 26, 1963, explicitly states: "There is no legal basis for monitoring postal communications in the United States except during time of war or national emergency when the President creates an independent government agency called the Office of Censorship . . ." ²⁰⁶ It notes that "for

¹⁹⁰ Karamessines testimony, 10/8/75, pp. 22, 23. Karamessines stated that ". . . I have gathered since that this may have been erroneous information given to me or a misunderstanding on my part." (Karamessines, 10/8/75, p. 23.)

¹⁹¹ Richard Helms, 10/22/75, Hearings, vol. 4, p. 94.

¹⁹² Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 30.

¹⁹³ Gordon Stewart testimony, 9/30/75, p. 28.

¹⁹⁴ Stewart, 9/30/75, p. 32.

¹⁹⁵ Osborn, 8/28/75, p. 30.

¹⁹⁶ Angleton, 9/24/75, Hearings, vol. 2, p. 88.

¹⁹⁷ *Ibid.*

¹⁹⁸ Blind memorandum "for the Record". Subject: "HTLINGUAL," 11/7/55.

¹⁹⁹ Memorandum from Deputy Chief, Counterintelligence Staff to Director, Office of Security, 2/1/62; Memorandum from Sheffield Edwards, Director of Security to Deputy Director (Support), 2/21/62.

the purposes of the above statement, the word monitoring is given the meaning of examining the contents of postal communications without necessarily notifying addressee or sender that this is being done."

During the course of the project, there was only one documented attempt to develop a legal theory on which mail opening could be predicated; paradoxically, it was presented in the context of an argument for terminating, not continuing, the project. In the paper which William Colby used to brief James Schlesinger about the project in its final days, Colby wrote:

- ♦ While the recording of the addresses and return address is totally legal, the opening of first-class mail is in conflict with 39 U.S. Code Section 4057. A contention can be made that the operation is nonetheless within the Constitutional powers of the President to obtain foreign intelligence information or to protect against foreign intelligence activities (powers statutorily recognized in 18 U.S.C. Section 119 [sic], with respect to bugging and wiretapping).²⁰⁷

Two Postmasters General who were briefed on at least some aspects of the New York project—Edward Day and Winton Blount—testified that such an argument may have merit; for this reason, neither was certain that the CIA's New York project was plainly illegal.²⁰⁸

The United States Supreme Court held in *United States v. United States District Court*, 407 U.S. 297 (1972), however, that the statutory section to which Colby apparently referred does not represent an affirmative recognition by Congress of Presidential power with regard to foreign intelligence and counterintelligence; it is, in effect, a statement of Congressional neutrality and deference to the judiciary in defining the scope of the President's power if any in this area. This section, moreover, relates to electronic surveillance only; those statutes which prohibit warrantless mail opening²⁰⁹ contain no analogous "ex-

²⁰⁶ Memorandum from Chief, CI Project to Chief, Division 9/20/68.

²⁰⁷ Blind memorandum, Subject: "Mail Intercept Program," 2/14/78. From the context of the second sentence, it appears that the correct statutory citation should be Title 18, Chapter 119, Sections 2510-20, rather than 18 U.S.C. Section 119. The specific section to which Mr. Colby apparently refers is 18 U.S.C. 2511(3).

²⁰⁸ Edward Day, 10/22/76, Hearings, p. 53; Blount, 10/22/76, Hearings, p. 53. Day added that:

"If the CIA lawyers concluded that the CIA could not open mail to and from Communist countries in the early 1960's without violating the law, I think the CIA needs better lawyers.

"One can't answer such a unique legal question merely by reading from various postal statutes and citing court decisions relating to warrantless mail openings from the 19th century, which did not involve spying, cold war or subversive activities. A less simplistic approach to the problem is required.

"For example, statutes clearly say it is a crime to kill or attempt to kill someone with premeditation. These statutes, and others making felonies of arson, kidnapping, etc., do not say 'except in time of war.' But we all know that exception is read into these laws (even if the killing or arson was in a 'war' of doubtful legality ordered by Lyndon Johnson and Richard Nixon).

"In my opinion, the statutes relating to opening of mail must similarly have read into them an exception for opening mail to and from Communist countries by the CIA in time of cold war."

(Letter from J. Edward Day to the Chief Counsel, Senate Select Committee, 10/24/76.)

²⁰⁹ See p. 504.

ception." Furthermore, even if the President may constitutionally authorize warrantless mail opening for national security reasons, no President ever clearly authorized this program specifically or (with one five-day exception in 1970^{209a}) the use of mail opening as an investigative technique generally.

Regardless of its merits, this first attempt at developing a legal theory to justify HTLINGUAL was not even set forth until February 14, 1973—one day before the suspension of the project. For twenty years prior to this date, the New York project had continued without the benefit of any perceived legal support.

2. Role of the General Counsel

The CIA's General Counsel was not asked for a legal opinion on Colby's theory. At no time, in fact, was the General Counsel ever requested to evaluate the legal aspects of the New York project; all the evidence, including the statement of the holder of this office himself,^{209b} suggests that the General Counsel was never even aware of the project's existence.

Thomas Abernathy, who, as a member of the Inspector General's staff in the early 1960s had been in charge of the first review of the New York project, conceded that his review did not include consultations with the General Counsel, because legal matters were a matter for "top management."²¹⁰ The 1969 review, headed by Inspector General Gordon Stewart, also bypassed the Office of the General Counsel. Stewart testified to at least two reasons why the General Counsel had no input into the project evaluation. First, the Inspector General's line of authority ran only to the Director of Central Intelligence; he had no independent authority to consult the General Counsel directly.²¹¹ Second, he believed that the security of the project precluded his broadening the circle of witting persons, even when the person to be included would be the Agency's own General Counsel.²¹² He testified:

Well, I am sure that it was held back from him [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.²¹³

Richard Helms also testified that he never consulted the General Counsel with regard to the legality of the operation, nor did he know of any attempt by anyone else to do so.²¹⁴ He stated that in general, "sometimes we did [consult the General Counsel for statutory interpretations]; sometimes we did not. I think the record on that is rather spotty, quite frankly."²¹⁵

^{209a} See p. 507.

^{209b} Staff summary of Lawrence Houston interview, 10/15/75.

²¹⁰ Thomas Abernathy testimony, 0/20/75, p. 47.

²¹¹ Stewart, 0/30/75, p. 30.

²¹² *Ibid.*

²¹³ Stewart, 0/30/75, p. 29.

²¹⁴ Helms, 0/10/75, p. 58.

²¹⁵ Helms, 0/10/75, p. 59.

3. The "Flap Potential"

Because many Agency officials connected with the project viewed it as illegal, and because many of these officials also saw it as essentially domestic surveillance and therefore outside the CIA's jurisdiction in any event, there was general concern over the project's so-called "flap potential." This term was used by Agency officials to describe the risk of embarrassment to the CIA that would result from the revelation of such a project to the general public and to Congress. It was this concern over the project's flap potential that led to a general tightening of security, to the creation of "cover stories," and other strategies in case of exposure, and, ultimately, to the termination of the project.

In the CI Staff's original proposal in November 1955 to expand the New York project to include large-scale mail opening, James Angleton 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."²¹⁶ He noted, therefore, that "[i]n the event of compromise of the aspect of the project involving internal monitoring of the mails, serious public reaction in the United States would probably occur. Conceivably, pressures would be placed on Congress to inquire into such allegation . . ." At this point, however, he was confident that such inquiries could be thwarted. He continued: ". . . but it is believed that any problems arising could be satisfactorily handled."²¹⁷ He wrote that the "cover story" was that the CIA interceptors were in fact "doing certain research work on foreign mail. . ."²¹⁸

The review of the Office of Security's role in the project in the early 1960s raised the "flap potential" problem again. The Inspector General's report formally recommended that: "An emergency plan and cover story be prepared for the possibility that the operation might be blown."²¹⁹ In response to this recommendation, the Deputy Director of Security suggested that in case of a local compromise in New York, the "Office of Security would utilize its official cover to explain any difficulties," and noted that "high-level police contacts with the New York City Police Department are enjoyed, which would preclude any uncontrolled inquiry in the event police action was indicated."²²⁰ If citizens complained about lost mail, he suggested that the proper course should be "referral to the Post Office Department for a normal official inquiry into lost registered mail."²²¹ Finally, if the project was revealed by a disgruntled Agency employee, the Deputy Director of Security wrote that the charge "may be answered by complete denial of the activity."²²²

The Deputy Chief of the Counterintelligence Staff also responded to the Inspector General's recommendation for a cover story. He wrote that "a 'flap' will put us 'out of business' immediately and may give

²¹⁶ Blind memorandum "for the Record", Subject: "HTLINGUAL," 11/7/55.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ Memorandum from L. K. White to Acting Inspector General (Attachment), 3/0/62.

²²⁰ Memorandum from Deputy Director of Security to Chief, CI Staff, 1/11/62.

²²¹ Memorandum from Deputy Director of Security to Chief, CI Staff, 1/11/62.

²²² *Ibid.*

rise to grave charges of criminal misuse of the mails by government agencies,"²²³ and argued:

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 U.S. 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.²²⁴

The views of the Deputy Chief of the CI Staff were adopted by the Director of Security Sheffield Edwards in February 1962.²²⁵

Three years later, the Long Subcommittee's investigation was believed to increase the risk of project exposure. An internal CIA memorandum dated April 23, 1965, states:

Mr. Karamessines [Assistant Deputy Director for Plans] felt that the dangers inherent in Long's subcommittee activities 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.²²⁶

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.²²⁷ No security changes were made, but Karamessines recommended that the program should be brought to the attention of President Johnson.

Although the Long subcommittee investigation did indeed "cool off" in 1966, the elevation of William Cotter to the position of Chief Postal Inspector in 1969 again raised the specter of discovery by Congress. A CIA internal memorandum written on the day that Cotter was sworn in shows that both Agency officials

²²³ Memorandum from Deputy Chief, Counterintelligence Staff, to Director, Office of Security, 2/1/62.

²²⁴ *Ibid.*

²²⁵ Memorandum from Sheffield Edwards, Director of Security, to Deputy Director (Support), 2/21/62.

²²⁶ Memorandum from "CIA Officer" to "the Files", 4/23/65.

²²⁷ *Ibid.*

and Cotter himself recognized that whereas Henry Montague did not know of the mail opening aspects of the project and, therefore, could "testify under oath on the Hill in such a way as to—in effect—protect HTLINGUAL[,] Cotter will not be in such a position and will be particularly vulnerable in the event of a flap in view of his own past affiliation with the Agency."²²⁸ The minutes of the meeting of top Agency officials in the Director's office on May 19, 1971, also make clear that their concern over the Jeremy Stone letter focused largely on the fact that Cotter "would be unable to [deny knowledge of mail opening] under oath"²²⁹ before a congressional committee, as Mr. Montague had been able to do, if the letter created adverse publicity.

The various recommendations for terminating the project before 1973 were predicated not on the perceived illegality of the operation *per se*; but, to the extent legal factors were present at all, they were based on the "flap potential" stemming from its questionable legal status. The 1969 Inspector General's report, for example, cited lack of value to the Agency and "the continued flap potential inherent in this program"²³⁰ as grounds for its formal recommendation to request the FBI to assume responsibility for the project or, if the Bureau refused, to consider its discontinuance. The report did not raise legal questions directly, even though the then-Inspector General testified that he believed the project to be illegal at the time. At the May 1971 meeting of Agency officials concerning the security of HTLINGUAL, Deputy Director for Plans Thomas Karamessines also recommended that CIA involvement be discontinued because "any flap would cause the CIA the worst possible publicity and embarrassment"²³¹—not because of the illegality of the project itself.

When the project was finally terminated in 1973, the evidence suggests that the decision did not turn on a determination that it was illegal—indeed, for the first time it was suggested that it might be legal. Rather, Director James Schlesinger accepted William Colby's evaluation that "[t]he political risk of revelation of CIA's involvement in this project is in any case substantial . . . [and] is not justified by the operation's contribution to foreign intelligence and counterintelligence collection."²³²

In short, many of its major participants saw the New York project as illegal. While a few CIA officials believed that it was lawful, neither the General Counsel nor the Attorney General^{232a} was ever consulted for a legal opinion. Agency officials reacted to the project's generally

²²⁸ Memorandum from SA/C/CI "for the Record," 4/7/69.

²²⁹ Blind memorandum, Subject: "DCI's Meeting Concerning HTLINGUAL," 5/19/71.

²³⁰ Blind memorandum, Subject: "Special Investigations Group Project," undated.

²³¹ Blind memorandum, Subject: "DCI's Meeting Concerning HTLINGUAL," 5/19/71.

²³² Blind memorandum, Subject: "Mail Intercept Program", 2/14/73.

^{232a} When Richard Helms was asked in public session whether, during his meeting with Attorney General John Mitchell in 1971, Mr. Mitchell expressed an opinion as to the legality of the project, he replied that Mitchell "had not, and added, "I went to see him for a purpose . . . [a]nd my purpose . . . to get his advice as to whether it was desirable to see Mr. Blount, the Postmaster General, on this mail operation." (Helms, 10/22/76, Hearings, vol. 4, p. 99). As noted above, Mr. Mitchell does not recall being informed of the New York mail opening project at all and there is no indication in the record that any other Attorney General was ever so informed.

perceived illegality, especially when it was threatened by congressional investigations, by focusing even more closely on the security precautions necessary to prevent exposure. Cover stories, designed to obscure the CIA's true activities, were fabricated, and, in recognition of the absence of any "legal excuse," it was ultimately agreed that the project's very existence should be flatly denied in the event of a serious "flap." "Admission" was a strategy that apparently was never considered. The project was finally terminated when, in a new political climate created by Watergate, it was decided that the political risk inherent in conducting such an operation clearly outweighed the project's minimal value to the Agency.

III. OTHER CIA DOMESTIC MAIL OPENING PROJECTS

While the New York project was clearly the most massive one, the CIA also conducted at least three other domestic mail opening projects: in San Francisco, on four separate occasions between 1969 and 1971; in New Orleans, for three weeks in 1957; and in Hawaii, for approximately one year in 1954 and 1955. In addition, the domestic mail of twelve foreign nationals, CIA employees, and American citizens unconnected with the Agency was also opened during particular investigations.

These mail opening projects present many of the major themes of the New York project: the lack of authorization, both internal and external; the deception of postal officials; the random selection of mail for opening; the attention to the correspondence of American "dissidents", despite the stated foreign intelligence and counter-intelligence purposes; and the lack of formal review and evaluation. Some of these other programs were more tightly administered than the New York projects, and others more successful in achieving their goals, but taken as a whole the same patterns emerge. In several cases—such as the San Francisco mail project, for which internal approvals were secured through misrepresentation of its true nature; and the Hawaiian project, which was initiated by a sole field agent without any authorization from Headquarters—these themes are even more clearly defined.

A. *The San Francisco Mail Intercept Project*

The San Francisco mail intercept project, known as WEST-POINTER by the Office of Security and KMSOURDOUGH within the Plans Directorate, involved the exterior examination and opening of mail from an East Asian country to the United States. It was conducted jointly by the Far East Division (FE) and TSD, with the Office of Security providing cover and support. While referred to as a single project, it actually involved four separate trips, each of one to three weeks duration, by CIA personnel from Headquarters to the San Francisco area, in September 1969, February and May 1970, and October 1971. Only envelope exteriors were inspected on the first trip, but mail was both opened and subjected to chemical tests on the latter three. Although authorizations were obtained from the Director and from the Deputy Director of Plans and the Director of Security, the record suggests that these authorizations were for a mail cover opera-

tion only—not for mail opening. There is no evidence that any approval by Cabinet level officials or the President was ever secured for this project.

1. Operation of the Project

The Initial Phase.—In mid-1969, TSD personnel requested the Asian operations unit to assist them in determining the validity of TSD's assumption that mail from an East Asian country to the United States was subjected to intensive censorship. Originally, the mail stream was to be intercepted abroad: the CIA's East Asian stations undertook a survey of mail from the Asian country to the United States and conducted "dry runs" of possibilities for its interception. Because of the inherent risk and expense of an operation in Asia, however, and in light of TSD's experience with the New York project, it was decided that the project should be conducted in the United States after the mail had arrived but prior to its sorting and delivery.

In late August 1969, two TSD officers met with James Conway, Deputy Chief Postal Inspector in Washington, for the dual purpose of requesting information on mail entering the United States from this Asian country and to secure his permission for the exterior examination of such mail by CIA agents. Conway's response was favorable,²³² and, at a subsequent meeting in September, the mechanical details for the operation were arranged.

In late September, two agents from TSD traveled to California for a visual examination of incoming mail from this Asian country in the air mail facility at the San Francisco International Airport. In the company of a Postal Inspector, they received access to and examined approximately 1,600 letters in five days before returning to Washington. This trip constituted only a feasibility study to assess the potential of a full-scale operation prior to the commitment of Agency funds and personnel; no mail was opened.

The Second Trip.—The results of the first trip were apparently successful, and in early October the Chief of TSD approved a second, larger scale survey of mail for the purpose of examining it for censorship techniques.²³⁴ The Far East Division, recognizing the foreign intelligence potential of the project, also became involved in order to collect postal intelligence and positive intelligence. During the next two months, approvals for a joint TSD/FE operation in San Francisco were obtained from the Deputy Director for Plans, Thomas Karamezianis; the Director of Security, Howard Osborn; and the Director, Richard Helms.²³⁵

The Deputy Chief Postal Inspector was again contacted and, in January 1970, granted his permission for a second session of CIA access to incoming Asian mail.²³⁶ Two TSD and two FE officers then flew to San Francisco and met with the Regional Postal Inspector in Charge, who had been notified of their appearance by Conway, to arrange for the mechanical details. Mail processing on this trip commenced on February 5, 1970, and continued for one week only, until

²³² See pp. 618-619.

²³³ Blinn memorandum, Subject: "Chronology of Authority for MKSOUR DOUGH", undated.

²³⁴ *Ibid.*

²³⁵ See pp. 618-619.

February 12. The mail was picked up by a Postal Inspector at the San Francisco airport and delivered—in the company of an armed Office of Security agent—to a second Postal Inspector and the four TSD and FE personnel at a local Post Office. It was screened and the exteriors photographed during non-working hours at the Post Office, in the presence of the Postal Inspector. From 5 to 80 letters per day were selected for opening by the CIA agents and “lifted”²³⁷ by surreptitiously placing them in their pockets while the Inspector was temporarily out of the room or had his back turned. These letters were taken, at the end of each day, to a TSD laboratory in a CIA facility nearby for opening and chemical testing. The opened letters would then be resealed and returned by the CIA agents to the mail stream within 48 hours. During the one week of operation, a total of 7,014 letters were screened and 133 opened.²³⁸ The majority of these letters were incoming from the Asian country to the United States, but a CIA memorandum indicates that at least one bag of outgoing mail to that country was also made available to the agents.²³⁹

The Third Trip.—CIA records pertaining to the third trip to San Francisco are fragmentary. A handwritten “dairy” of a TSD officer, however, contains an entry on April 4, 1970, to the effect that a memorandum written (for planned destruction) about the second trip “justifies further such trips, both on FI [foreign intelligence] and CI [counterintelligence] grounds as well as TSD technical needs.”²⁴⁰ On April 28, this officer noted that the “next phase will include re-run of phase two, presumably in the same format. . . .”²⁴¹ He also noted that the random selection of a female TSD agent for the project was the “only significant flaw” of the planned trip, since some of the other agents felt that “the presence [of a female] on the team is inappropriate and that things of this sort have caused trouble in the past. . . .”

James Conway was contacted and approved the operation for a third time in early May 1970,²⁴² and TSD and FE representatives again traveled to San Francisco to process mail between May 4 and May 27. During these three weeks, a total of 2,800 letters were screened. While Agency memoranda show that a portion of these letters were surreptitiously removed “to the TSD laboratory for opening and testing (with the assistance of a large handbag of the female team member”²⁴³ who apparently did make the trip), there are no precise figures as to the number of letters opened. In addition to airmail, some surface mail was also made available to CIA agents on this trip.

The Fourth Trip.—A fourth trip was proposed in August 1971, in part “to take advantage of the impending visit of the President of the United States to Asia.”²⁴⁴ In addition to examination for

²³⁷ Memorandum form “Identity #4”, Subject: Sourdough Capsule Summary, 10/15/71.

²³⁸ Blind memorandum, Subject: “Summary of the February 1970 San Francisco Mail Intercept Operation,” undated.

²³⁹ Memorandum from Identity #4, Identity #5, and Identity #6 “for the Record,” 2/20/76.

²⁴⁰ Blind “notes by CIA officer”, undated.

²⁴¹ *Ibid.*

²⁴² See pp. 618-619.

²⁴³ Memorandum from Identity #4, Identity #5 and Identity #6, “for the Record”, 2/20/76.

²⁴⁴ Memorandum from CIA officer to Chief, Technical Services Division, 8/17/71.

ensorship techniques and the collection of positive intelligence, which had been the purpose of the last two trips, it was anticipated that this fourth operation could also determine the "attitudes of Asians toward the present discussion between Mao and Nixon as expressed to close friends and relatives."²⁴⁵ Internal authorizations were obtained in September from the Deputy Director for Plans, the Chief of the Far East Division, the Director of Security, and the Director, although Helms noted that the operation should be limited to two weeks. William Cotter, the Chief Postal Inspector, was contacted about the project but he referred the Agency to Conway, who was now the Regional Inspector in Charge in San Francisco. Conway approved the San Francisco operation for a fourth time²⁴⁶ and screening and opening commenced on October 1, 1971. Between October 1 and October 15, when the fourth trip was terminated, three FE and two TSD agents processed a total of 4,500 items.

Although Agency documents state that mail opening did occur, it cannot be determined how many of the processed letters were actually opened.

2. Nature and Value of the Product

Selection Criteria.—According to an internal CIA memorandum, letters were selected for opening and testing on the basis of indications of censorship or operational interest: "Some [letters] would be chosen by the TSD team chief based upon heavy censorship or indicators that the letter should be more thoroughly examined at the Lab. Some would be chosen by CIA officers based on certain locations of mailings or possibly the individual to whom the letter was addressed or the kind of stationery that had been used."²⁴⁷ As was the case in New York, there was a Watch List for the San Francisco project. While this list was destroyed after the fourth and final trip, it is possible to partially reconstruct the categories of persons of interest from the project justification sent to Thomas Karamessines in September 1971 and from the "Sourdough Capsule Summary" prepared after the last trip.

The former memorandum refers to the goal of intercepting mail from former residents of the United States who had been approached by the Agency while residing in the United States and who had since returned to Asia.²⁴⁸ The "Sourdough Capsule Summary" reveals that among the persons whose mail was intercepted were many Americans living in an Asian country, including expatriots and former missionaries. It was also stated that the agents "saw several items" from a member of the Southern Christian Leadership Conference, and noted, "Black Panthers—we saw nothing from this group."²⁴⁹

Foreign Intelligence and Technical Value.—The documentary record suggests that the San Francisco project was considered to be successful in achieving its foreign intelligence and technical objectives. The 1971 project justification sent to Thomas Karamessines by FE, for example, noted that "[t]he primary purpose of previous . . .

²⁴⁵ Memorandum from Acting Chief FE/DPA to Chief, FE Division, 9/13/71.

²⁴⁶ See pp. 618-619.

²⁴⁷ Memorandum from Identity #4, Identity #5, and Identity #6, "for the Record", 2/20/75.

²⁴⁸ Memorandum from Acting Chief, FE/DPA to Chief, Far East Division (approved by Thomas Karamessines), 9/13/71.

²⁴⁹ Memorandum from "Identity #4," Subject: "SOURDOUGH CAPSULE SUMMARY," 10/15/71.

SOURDOUGH efforts was the collection of [the Asian country's] postal intelligence but each effort produced useful positive intelligence [such as] background information used as a basis for recruitment attempts and risk assessment of using U.S. letter drops for [foreign-based] agents."²⁵⁰ The subsequent report on the fourth trip to San Francisco described it as a "highly successful mission" also.²⁵¹

According to the "Sourdough Capsule Summary," the positive intelligence collected during the final trip included information on such topics as the health and activities of the Asian country's leaders and its internal events.²⁵² TSD also considered the technical results of their examination for censorship techniques to be valuable because, as stated in a 1970 memorandum, "(this was the first time it was possible to exert some measure of scientific control" in testing for the presence of censorship techniques."²⁵³

Domestic Intelligence Value.—In contrast to the New York project, the primary value of the San Francisco project does not appear to have been in the area of domestic intelligence or counterintelligence. Some essentially domestic intelligence information was nonetheless collected, however, as evidenced by the reference in the project summary to the "several items" of correspondence from a member of SCLC that the Agency personnel "saw." The project justification for the fourth trip also noted that the two SOURDOUGH operations in 1970 had provided "leads for domestic operations (Asian operations) and the FBI."²⁵⁴

There is no evidence that the FBI levied any requests on—or even knew of—the San Francisco project. The Bureau apparently received sanitized domestic intelligence leads from Sourdough, but there was no formalized procedure for requesting or receiving such information from it. One of the agents involved in the project speculated that the strained relations between the FBI and the Agency during this period may have inhibited the CIA from advising the Bureau of SOURDOUGH's existence.²⁵⁵

3. Termination of the Project

The fourth trip to San Francisco in October 1971 proved to be the final visit, but exactly how the project was formally terminated is unclear. A December 1974 memorandum reads in part: "There is no information in the Office of Security's file on Project WESTPOINT ER concerning when or by whom the decision was made to terminate the project."²⁵⁶ No other memoranda regarding the project shed any light on this question.

²⁵⁰ Memorandum from Acting Chief, FE/DTA to Chief, Far East Division, 9/13/71.

²⁵¹ Memorandum from "Identity # 15," "for the Record," 10/19/71.

²⁵² Memorandum from "Identity #4," "for the Record," Subject: SOURDOUGH CAPSULE SUMMARY," 10/15/71.

²⁵³ Blind memorandum, Subject: "Summary of the February 1970 San Francisco Mail Intercept Operations," undated.

²⁵⁴ Memorandum from Acting Chief, FE/DTA to Chief, Far East Division, 9/13/71.

²⁵⁵ President's Commission on CIA Activities Within the United States, staff summary of CIA officer interview, 3/17/75.

²⁵⁶ Memorandum from Deputy Chief, Security Support Division to Deputy Director of Security, 12/24/74.

The reason for the termination is more apparent, however. According to a June 1973 memorandum to the Chief, East Asia Division (formerly the Far East Division):

The operation achieved the objectives of (a) determining the extent of [an Asian country's] censorship of mail to the USA and (b) the nature of the mail itself. It was terminated since the risk factor outweighed continuing an activity which had already achieved its objectives.

Thus, the "risk factor" or "flap potential" was again a crucial factor in the decision to terminate a mail opening program.

4. Internal Authorizations and Controls

Authorizations.—The lax pattern of internal authorization that characterized the New York mail project was repeated in the San Francisco project. There is no documentary evidence of any authorization—even by the Chief of TSD—prior to the initial contact with the Post Office in August 1969 or the first San Francisco trip in September. On October 6, 1969, the TSD Chief gave his approval for the formalized institution of the project, but according to the handwritten "diary" of a TSD agent, the Chief of TSD insisted that at least Thomas Karamessines, and "possibly [the] Attorney General or even the President," must concur before the project could be fully implemented.²⁵⁸

Superficially, the subsequent internal chain of oral approvals was complete, if somewhat complex. The TSD Chief personally contacted Karamessines, who "agreed in principle" but requested TSD to secure concurrences from the CI Staff and Howard Osborn (Director of Security) before he would approach the Director on this matter. The Deputy Chief of the CI Staff was briefed and concurred. (Despite a statement in the "diary" that the Deputy Chief of the CI Staff "will clear with C/CI [the Chief of the CI Staff]," this apparently was never done: James Angleton cannot recall ever having been informed about this project.²⁵⁹) On October 23, Osborn was also briefed by TSD and FE personnel; he approved, but conditioned his approval on clearance from the Director. Karamessines was told of Osborn's position on October 27, and together they briefed the Director. Helms reacted favorably and, on November 4, 1969, TSD was advised to proceed with the project.²⁶⁰

The record does not reveal any specific authorization for the third trip, but a project justification memorandum for the fourth trip was signed by Thomas Karamessines on September 20, 1971. He recalled that this written authorization—unique for SOURDOUGH—was necessary to except the project from the suspension of certain types of Agency activities with respect to an Asian country during the President's Asian trip, which had been requested by the State Department to avoid possible embarrassment to the United States.²⁶¹ According to

²⁵⁸ Blind memorandum, Subject: "Chronology of Authority for MKSOUR DOUGH," undated.

²⁵⁹ Angleton, 9/17/75, p. 101.

²⁶⁰ Blind memorandum, Subject: "Chronology of Authority for MKSOUR DOUGH," undated.

²⁶¹ Thomas Karamessines testimony, 10/8/75, pp. 14-16; CIA officer, (President's Commission staff summary), 3/17/75.

an October 1971 memorandum written shortly after the final trip, approvals had also been secured from Howard Osborn and Richard Helms.²⁶²

Although the authorization chain appears to be relatively complete, the testimonial evidence suggests that in 1969, when Karamessines, Osborn, and Helms approved phase two of the project, all three of these officials believed they were approving a mail cover—not a mail opening—operation. Osborn testified that the TSD and FE personnel who briefed him on the project presented it as an operation “whereby they could inspect the exterior of envelopes to and from [an Asian country].”²⁶³ He continued: “. . . I did not know that they were going to open it; I had no idea they opened the mail. And I found out socially and personally from one of the people involved about a year ago [i.e., 1974] that they opened the mail.”²⁶⁴

When asked whether or not he was misled in order to secure his approval, Osborn stated:

Yes, indeed—I wasn't misled but perhaps it seemed when [they] got out there and found out how easy it was to get it—but I don't know, I wasn't told that they were to open mail. That isn't the circumstances under which I briefed Mr. Helms. . . . [If I had known it involved mail opening] I would not have approved it. The Director might have approved it, but it wasn't the way I briefed it. . . .²⁶⁵

Karamessines stated that the first time he can recall knowing that the project involved mail opening rather than a mail cover was in September 1971, when he signed the written authorization for the fourth San Francisco trip. He testified that when he approved the project in 1969 he, too, had been led to believe that it was simply a mail cover operation.²⁶⁶

Richard Helms cannot recall whether he understood the project to involve mail opening or not, but stated that it is probable, in light of the testimony of Osborn and Karamessines, who were his only sources of information about SOURDOUGH, that he was unaware of its mail opening aspects.²⁶⁷

Thus, after the initial phase of the operation was completed, approvals were secured from the Deputy Director of Plans, the Director of Security, and the Director, but it appears that these approvals, whether purposefully or inadvertently, were based on a fundamental misunderstanding about the nature of the project.

Administrative Controls.—The documentary record reveals that five justification or summary memoranda were written for the project, four of which pertained to the last trip only. It is possible that more would have been written but for Howard Osborn's October 1969 admonition, reflected in the TSD agent's “diary,” “to avoid preparing or exchanging any formal communications in writing re project.”²⁶⁸

²⁶² Memorandum from Identity No. 15 “for the record,” 10/19/71.

²⁶³ Osborn, 8/28/75, pp. 58, 59.

²⁶⁴ Osborn, 8/28/75, p. 59.

²⁶⁵ Osborn, 8/28/75, pp. 60, 64–65.

²⁶⁶ Karamessines, 10/8/75, p. 12.

²⁶⁷ Helms, 9/10/75, p. 127.

²⁶⁸ Blind memorandum, Subject: “Chronology of Authority for MKSOUR DOUGH,” undated.

There is no indication in the record that the San Francisco project was ever evaluated by the Inspector General's office.

5. External Authorizations

The pattern of external authorizations, or, more accurately, of the relative absence of external authorizations, also parallels that of the New York project. Those postal officials whose cooperation was necessary to implement SOURDOUGH were briefed, but none was told the true nature of the project. Although there are some suggestions in the record that the Attorney General and the President should be informed, and that the Postmaster General had been informed, there is no direct evidence that any of these briefings ever occurred.

Postal Officials.—James Conway, Deputy Chief Postal Inspector during the first three trips and Regional Postal Inspector in Charge during the fourth trip, was contacted by CIA agents about, and subsequently approved, all four of these operations. His uncontradicted testimony, however, is that he was never informed that the project involved mail opening and, in fact, that he explicitly instructed the agents not to open mail or remove it from postal facilities.²⁶⁹

At the first meeting between TSD personnel and Conway about the project on August 26, 1969, the Deputy Chief Postal Inspector was told that the CIA's "interest lay in the possible use of international mail channels from [an Asian country] for private correspondence involving secret writing."²⁷⁰ According to an internal Agency memorandum prepared shortly after this meeting, however, it had been explained to him that "the survey we hoped to be able to conduct did not involve opening envelopes or photographing letters, but the possibility that this might become desirable in the future, though not mentioned, was not foreclosed."²⁷¹ At the subsequent meeting in September between Conway and these officers, one of the officers "brought up the question of broadening the scope of the survey to be performed in San Francisco to include chemical testing of the mail . . ."²⁷² The memorandum on this meeting reads in part: ". . . he [Conway] acquiesced after brief deliberation when [the CIA officer] asked whether we could include this testing as part of the survey without going out of bounds. It was clear that the key factor in this decision was the fact that the envelopes would not be opened."²⁷³ Conway agrees with this characterization of the basis of his decision, and testified that he explicitly instructed these agents that no mail should be opened.²⁷⁴

Conway approved the second stage of the project on January 13, 1970, after another meeting with Agency officials. In order to ensure his approval, these officials presented him with "an imaginative cover story"²⁷⁵ to the effect that the project was necessary for certain scientific reasons.²⁷⁶ Conway nonetheless conditioned his approval on

²⁶⁹ James Conway testimony, 8/8/75, p. 30.

²⁷⁰ Memorandum from C/TSD/CCG/CRB to "the File," 8/26/69.

²⁷¹ *Ibid.*

²⁷² Memorandum from C/TSD/CCG/CRB "for the File," 9/15/69.

²⁷³ *Ibid.*

²⁷⁴ Conway, 8/8/75, p. 30.

²⁷⁵ Deputy Chief, Security Support Division memorandum, 12/24/74.

²⁷⁶ Blind memorandum, Subject: "Chronology of Authority for MKSOUR DOUGH," undated.

total Post Office control of the operations. According to the January 13 entry in the TSD "diary," Conway "approved in principal 'processing' of material but on P. O. premises and under P. O. control . . . Opening has not been mentioned."²⁷⁷ In fact, the cover story was inaccurate, letters were surreptitiously removed from postal premises, and mail was opened. While Conway's approval was sought and received for the final two operations as well, all of the evidence, including his own testimony, suggests that he never learned of the mail opening aspect of the project.

It is also the claim of the Regional Postal Inspector in Charge who worked out the local arrangements for the first three trips, that he was informed neither of the purpose of the project nor of the planned or actual mail openings.²⁷⁸ This claim is supported by the agency's own documents.^{278a}

Chief Postal Inspector William Cotter, who played a central role in the story of the New York project, was also aware of SOUR DOUGH, but, like Conway and the Regional Inspector, he has testified that he had no knowledge that it involved mail opening.^{278b} In November 1969, Howard Osborn spoke to Cotter about the San Francisco project. Osborn, who stated that he did not know that mail opening was contemplated himself, assured the Chief Postal Inspector that for the Agency's purposes exterior testing and surveying was sufficient and that mail would not be opened.^{278c} Cotter was not un-receptive but, according to an agency document explained that he wanted the project "to go slowly and develop gradually."²⁷⁹ Because of his past CIA affiliation, Cotter also insisted that his assistant, Conway, should ultimately determine the degree of Postal Service Cooperation.²⁸⁰ He testified that he did not alert Conway to the possibility that the CIA agents may attempt to open the mail because mail opening was not an aspect of the project as he understood it and because "one doesn't have to tell or admonish a seasoned Postal Inspector what his responsibilities are . . ."²⁸¹

Cotter apparently had no further contact with the San Francisco project until the fall of 1971, when he was contacted about the planned fourth trip. According to an Office of Security trip report prepared in October 1971:

The Assistant Postmaster General for Inspection [Cotter] was contacted for his approval. He firmly indicated he did not know anything about the project, nor did he want to know. He stated, however, that he would advise James Conway, [now the] Regional Inspector in San Francisco, that I would be in touch with him on 27 September 1971, and that we should be guided by Conway's decision.²⁸²

²⁷⁷ *Ibid.*

²⁷⁸ Staff summary of Earl Ingebright interview, 5/30/75.

^{278a} Blind notes by CIA officer, undated, "Feb. 2" entry.

^{278b} Cotter, 8/7/75, p. 113.

^{278c} Osborn, 8/28/75, pp. 60, 61, 65.

²⁷⁹ Blind memorandum, Subject: "Chronology of Authority for MKSOUR DOUGH," undated.

²⁸⁰ Cotter, 8/7/75, p. 70.

²⁸¹ Cotter, 8/7/75, p. 72.

²⁸² Memorandum from Identity No. 15, "for the Record," 10/19/71.

There is no evidence that Postmaster General Winton Blount, the only Postmaster General under whom the project was conducted, ever knew of or approved SOURDOUGH. A 1973 CIA document addressed to Howard Osborn stated that "TSD understands (but has no evidence) that Mr. Helms briefed Postmaster Blount. Is this so, do you know?"²⁵³ But Helms has made no claim that he did brief Mr. Blount about this project,²⁵⁴ and there is no testimonial or documentary indication that TSD's understanding on this matter was correct.

Attorney General and President.—As noted above, when the Chief of TSD approved the formal institution of Sourdough on October 6, 1969, he stated that concurrences from the Deputy Director for Plans and "possibly [the] Attorney General or even the President" would be necessary prior to implementation. There is no evidence, however, that either Attorney General Mitchell or President Nixon, the only holders of these offices during the course of the project, were briefed about the San Francisco mail openings either before or after they occurred. President Nixon did state that he was "generally aware" of CIA mail covers "of mail sent from within the United States to . . . the Soviet Union . . . or the People's Republic of China,"^{254a} but he disclaimed knowledge of any CIA mail opening program.^{254b}

Sourdough's record on external authorizations, in short, is even less complete than that of the New York project. Those postal officials who learned of the project in general terms were misled on the subject of opening and deceived on the subject of custody, and no Cabinet level official—or the President of the United States—apparently knew of the project at all.

B. The New Orleans Mail Intercept Project

A third CIA mail intercept project, encrypted "Project SETTER," was conducted in New Orleans for two and one-half weeks during 1957. This project, which was conducted by the CI Staff with cover and support functions provided by the Office of Security, involved the screening and opening of first class international surface mail transiting New Orleans enroute to and from South and Central America. Unlike the New York and the San Francisco projects, SETTER was operated with the cooperation of the United States Customs Service. There is no record of any internal authorization above the level of Deputy Director of Security and Deputy Chief of the CI Staff, and the only apparent external approval was by a Division head in the Customs Service, who stated that he was unaware the project involved the opening of mail. According to Agency documents, the project generated no useful intelligence information.

1. Operation of the Project

At the time of the New Orleans project, the Customs Service had Congressional authority under the Foreign Agents Registration Act.

²⁵³ Transmittal slip from CH/OCCR to Mr. Osborn (sic), 6/7/73.

²⁵⁴ Helms, 9/10/75, p. 110.

^{254a} Response of Richard Nixon to Senate Select Committee Interrogatories, 3/9/76, pp. 4, 5.

^{254b} Response of Richard Nixon to Senate Select Committee Interrogatories, 3/9/76, pp. 1, 5.

as amended by the Cunningham Act, to intercept and examine third and fourth class incoming mail from abroad which was suspected to contain Communist propaganda. In the early 1950's, Customs had established its first "control unit" designed to accomplish that purpose; additional "control units" were subsequently set up in at least nine other cities in the United States. Under pressure from certain members of Congress who were outraged at the "venomous propaganda"²⁸⁵ passing through New Orleans, the Customs Service planned a feasibility survey in August 1957 to determine whether or not it would be possible to establish a "control unit" in that city as well.

The Agency learned of the planned survey and in mid-July a meeting, attended by the Deputy Chief of the CI Staff, the Deputy Director of Security, and Soviet Bloc Division personnel, was called to discuss its possible exploitation by the CIA. "Based on experience with SRPOINTER [the New York project]," an Agency document reads, "CI Staff and O S personnel . . . agreed that CIA personnel would participate in the survey at New Orleans."²⁸⁶

Even prior to this meeting, Irving Fishman, the head of the Customs Service's Restricted Merchandise Division, which maintained the "control units", had apparently agreed in principle to CIA participation in the survey. He was contacted in New York by the Assistant Special Agent in Charge of the Office of Security's Manhattan field office on July 18 "to discuss details of the operation."²⁸⁷

Fishman and two of his associates left New York for New Orleans at the end of July to work out the arrangements for the Customs survey with the local postmaster. They were joined by four CIA agents during the first week of August, and the operation began on August 6. Each working day for the next two and one-half weeks, one of the Customs personnel went to the New Orleans mail dock to select approximately 25 bags of surface mail from various Central and South American locations that had been unloaded in New Orleans for transshipment to other points in Central and South America. These bags were brought to an office in the Parcel Post Annex of the Federal Building each morning for Customs and CIA scrutiny. While Fishman and the other Customs Service employees searched for communist propaganda by opening third and fourth class mail in the office itself, the CIA agents screened, opened, and photographed first class mail in an adjacent walk-in vault. The agents' CIA affiliation was known to at least two of the Customs officials: postal employees who worked in the building, however, were informed that they were Customs Service personnel. At the end of each day, the mail would be re-sealed, re-bagged, and returned to the mail dock.

Between August 6 and August 23, when the project was terminated, a total of 700 items were photographed and 60 items, mainly first class letters, were opened for examination and photographic reproduction of the contents.²⁸⁸

²⁸⁵ Staff summary of Customs Agent interview, 8/10/57.

²⁸⁶ Blind memorandum, Subject: "Project SETPTER," undated.

²⁸⁷ Memorandum from "Identity #13" to Deputy Director of Security, 10/9/57.

²⁸⁸ Blind memorandum, Subject: "Project SETPTER," undated; Memorandum from Identity #13, to Deputy Director of Security, 10/9/57.

2. Nature and Value of the Product

Selection Criteria.—The agents who participated in the New Orleans project were furnished a "Watch List" of names by the CI Staff to aid in the selection of items for opening.²⁹⁰

Beyond the Watch List itself, however, it appears that the members of the interception team were given little guidance by their superiors. One member of this group stated that at no time was he instructed what types of items to select.²⁹⁰

According to a project summary prepared in October 1957, ". . . an effort (was) made to obtain a representative sampling from the various countries available. Both business and personal mail was examined. . . ." ²⁹¹

Value of the Product.—Agency memoranda indicate that SETTER resulted in the collection of no useful intelligence information. The project summary, for example, states: "On-the-spot check of items examined against CI Staff Watch List, and subsequent CI Staff examination of the material processed to date has developed no 'hits' on Watch List names, and, other than propaganda, no material having an intelligence value."²⁹²

3. Termination

The lack of any significant intelligence value, coupled with the stated impossibility of examining a representative sample of the 20,000 bags of mail that transited New Orleans weekly,^{292a} apparently led to the termination of Project SETTER. No formal termination of the project is recorded, however.

4. Authorizations

Internal Authorizations.—Both the Deputy Director of Security and the Deputy Chief of the CI Staff attended the July 1957 meeting at which CIA participation in the New Orleans survey was agreed upon. There is no evidence, however, of any internal authorization above the level of these officials. Although the CI Staff had sole operational responsibility for the project, James Angleton, the Chief of the CI Staff at the time, testified that he had no contemporaneous knowledge of it.²⁹³

External Authorizations.—The only documented approval by a government official outside the CIA was that of Irving Fishman, the head of the Restricted Merchandise Division of the Customs Service. Only through his cooperation, both before and during the period of activity, was the implementation of the project possible at all. According to the October 1957 project summary, Fishman and one of his two associates "were aware, prior to the inception of the operation, of the nature of the BANJO [mail opening] operation."²⁹⁴ Both Fishman and the associate referred to in the memorandum, how-

²⁹⁰ Memorandum from Identity #13 to Deputy Director of Security, 10/0/57.

²⁹⁰ Staff summary of "CIA officer" interview, 6/10/75.

²⁹¹ Memorandum from Identity #13 to Deputy Director of Security, 10/0/57.

²⁹² Memorandum from Identity #13 to Deputy Director of Security, 10/0/57.

^{292a} Blind memorandum, subject: "Project SETTER," undated.

²⁹³ Angleton, 9/17/75, p. 101.

²⁹⁴ Memorandum from Identity #13, to the Deputy Director of Security, 10/A/75.

ever, have stated that they cannot recall any opening of first class mail by the CIA agents.²⁹⁵

There is no evidence that the Postmaster of New Orleans, who arranged for the Customs survey, knew of any mail opening by the CIA in connection with the project. The Customs survey itself, of which he was evidently aware, was entirely legal at the time.

C. The Hawaiian Mail Intercept Project

A fourth CIA mail intercept project was conducted in the Territory of Hawaii for about one year during the mid-1950's.²⁹⁶ It was initiated, without prior authorization from Headquarters, by the Agency's sole representative in Honolulu. Like the New Orleans project, it involved the cooperation of the Customs Service.

According to the agent who conducted the Hawaiian project, local personnel of the Customs Service approached him in late 1954 to request his assistance in identifying incoming political propaganda from Asia that had been intercepted by Customs officials acting under the Cunniffman Act.²⁹⁷ The CIA officer agreed and, after a short period of time, noticed the presence of censorship chemicals on a portion of the mail from one of the country's being covered. Less than a week after he began to assist the Customs personnel, he started surreptitiously removing packets of mail for further exterior examination. By early 1955, without the knowledge of Customs officials, the agent was both opening and photographing items he had removed from the Customs facility.

In March 1955, he sent a formal report of these activities to CIA headquarters, noting that he had photographed the contents of approximately six hundred communications and tested four hundred. Included in the report was an evaluation of the results to date; specifically, an analysis of the Asian country's censorship techniques and other postal and positive intelligence information he had collected. According to the CIA officer, his report was very favorably received and he was encouraged to continue.

The CIA officer stated that for approximately two months in early 1955, he was joined by an FBI agent as well. A local FBI agent in Honolulu, who had received instructions to concentrate on Asian counterintelligence matters, apparently learned from Customs officials that the CIA officer participated in their examination of incoming propaganda. He contacted the CIA officer, was informed of the project, and notified Bureau Headquarters. The CIA officer stated that with his concurrence, an FBI agent trained in mail opening techniques was assigned the task of assisting him in his interception effort. The Bureau can locate no documents pertaining to this operation, however.

The CIA officer continued the project on his own after FBI participation ceased. In November 1955, he was transferred to a station in the continental United States, and the Hawaiian project was terminated.

²⁹⁵ Staff summary of Irving Fishman interview, 8/12/75; staff summary of Customs agent interview, 8/9/75.

²⁹⁶ The description that follows is based on an interview of the participating agent by the Rockefeller Commission staff.

²⁹⁷ President's Commission on CIA Activities Within The United States' staff summary of a CIA officer interview, 3/18/75.

D. Isolated Instances of CIA Mail Opening

In addition to generalized mail intercept projects, the CIA has also targeted the mail of particular individuals within the United States. At least twelve such instances of mail opening, directed against foreign nationals, Agency employees, and American citizens unconnected with the CIA are recorded in Agency files.²⁹⁷

PART III: PROJECT HUNTER

I. INTRODUCTION AND MAJOR FACTS

"Project Hunter" was the cryptonym given by the FBI to the receipt of information from the CIA's New York mail intercept program. The FBI first became aware of this operation in January 1958, approximately three and one-half years after the CIA began opening mail between the Soviet Union and the United States. In February 1958, the Bureau began to levy requirements on the CIA's project and received product from it continually from that time until the discontinuance of the project. In total, copies or summaries of more than 57,000 items of intercepted correspondence were disseminated by the CIA to the FBI, either on the basis of general guidelines established by the Bureau or on the basis of particular names of individuals and organizations for which the Bureau desired coverage. While most of these names and categories could reasonably be expected to generate counterespionage information—which was the stated purpose of the FBI's collaboration on the project—Bureau targets also included peace organizations, antiwar leaders, black activists, and women's groups. When the New York mail intercept project was terminated in 1973 and the FBI declined the opportunity to assume responsibility for it, Project Hunter ceased after fifteen years of operation.

The most pertinent facts about Project Hunter may be summarized as follows:

(a) The FBI knew of and levied requirements on the CIA's New York mail intercept project from 1958 until the project was terminated in 1973.

(b) Although the collection of counterespionage information was the stated purpose of Project Hunter, the Bureau specifically requested information on numerous individuals and organizations in the antiwar, civil rights, and women's movements, and on such general categories as "government employees" and "protest organizations."

(c) The FBI received copies or summaries of more than 57,000 intercepted communications between 1958 and 1973. At the height of the project in 1966, the CIA disseminated 5,984 of the 15,499 items that had been opened to the Bureau—more than were disseminated to any one customer component of the CIA itself.

(d) The product was moderately valuable in terms of the FBI's counterespionage mission, but much of the correspondence has been characterized as "junk" by FBI personnel familiar with the program. It provided no leads to the identification of foreign illegal agents.

(e) No consideration was given to terminating FBI involvement in the CIA's New York intercept program when the Bureau's own proj-

²⁹⁷ Blind memorandum, Subject: "Domestic Surveillance," undated.

ects were terminated in 1966 because information from the project was received at no expense or risk to the FBI.

(f) FBI officials decided against assuming responsibility for the CIA's New York mail intercept project in 1958 and again in 1973 because of its complexity, expense, and the inherent security risks, not primarily because of legal considerations.

II. FBI "DISCOVERY" OF THE CIA'S NEW YORK MAIL INTERCEPT PROJECT: 1958

A. *A Proposed FBI Mail Opening Program for United States-Soviet Union Mail*

In 1957, FBI officials were extremely concerned about the presence of Soviet and other hostile illegal intelligence agents in the United States.²⁹⁸ The FBI had recently uncovered Rudolph Abel and at least three other illegal agents, yet no effective methods of locating and identifying illegal agents generally were then known. Bureau officials did not feel that they had been entirely successful in their attempts in the past, and searched for a means by which the communication links between the illegal agents and their principals could be intercepted.²⁹⁹

On January 10, 1958, an allied nation's counterintelligence agency informed the FBI that when Soviet illegal agents throughout the world wished to meet with their principals, they were under instructions to send a communication to a particular address in the Soviet Union.³⁰⁰ Against the background of the Bureau's concern for locating and identifying illegal agents, the significance of this information was readily apparent: if the FBI could screen mail between the United States and the Soviet Union, it would be possible to intercept communications bearing this particular address and, it was hoped, trace the letter back to the illegal agent.

In 1958, mail between the United States and the Soviet Union was routed through air mail facilities in New York City and Washington, D.C. On the basis of its newly-acquired information, therefore, FBI Headquarters immediately instructed the New York and Washington Field Offices "to institute confidential inquiries with appropriate Post Office officials to determine the feasibility of covering outgoing correspondence from the U.S. to the U.S.S.R., looking toward picking up a communication dispatched to the aforementioned address."³⁰¹ On January 21, 1958, the Special Agent in Charge of the New York Field Office, notified Headquarters that his preliminary inquiries indicated that covert mail coverage would be possible at LaGuardia airport.

This was not the FBI's first attempt to utilize mail opening as an investigative technique in the counterintelligence field: at the time these inquiries were being made, the Bureau was conducting two mail opening programs of its own in the cities of Washington, D.C. and San Francisco (see Part IV, p. 636), and in the case of the Washington, D.C. program, the cooperation of the Post Office Department had been enlisted in delivering mail to Bureau agents.

²⁹⁸ Donald E. Moore testimony, 10/1/75, p. 9.

²⁹⁹ *Ibid.*

³⁰⁰ Memorandum from A. H. Belmont to Mr. Beardman, 1/22/58.

³⁰¹ *Ibid.*

B. Referral to Post Office Headquarters in Washington, D.C.

After the SAC in New York had made his preliminary inquiries, which made the prospects for successful implementation of the project appear favorable, he received a telephone call from the Chief Postal Inspector, David Stephens, in Washington, D.C., who informed him that he could not authorize Post Office cooperation after all because "something had happened in Washington on a similar matter."³⁰²

He advised that FBI Headquarters should discuss the matter further with his office in Washington.

C. James Angleton's Initial Contact with Sam Papich Regarding HTLINGUAL

The SAC in New York relayed the Chief Postal Inspector's advice to FBI Headquarters, but before Headquarters was able to initiate a meeting with Postal officials in Washington, James Angleton, then Chief of the Counterintelligence Staff of the CIA, contacted Sam J. Papich, FBI Liaison to the CIA, on the matter to which Stephens had apparently referred.³⁰³ Angleton stated that it had come to his attention, through the Post Office, that the FBI was making inquiries into the possibility of covering mail between the United States and the Soviet Union, and that the CIA expected to be contacted by the FBI concerning this possibility. He then informed Papich "on a personal basis"³⁰⁴ that the CIA was already conducting an extensive operation, based in New York, which involved the opening of mail to and from the Soviet Union. He stated that this project was one of the largest and most sensitive of all CIA covert operations, and that "the sole purpose for the coverage was to identify persons behind the Iron Curtain who might have some ties in the U.S. and who could be approached in their countries as contacts and sources for the CIA."³⁰⁵

Alan Belmont, then Assistant Director for the Domestic Intelligence Division, was informed of this operation by Papich and noted in a memorandum to Mr. Boardman, then Assistant to the Director, that "[i]t would appear that our inquiries of the Post Office officials in New York have flashed out a most secret operation of the CIA."³⁰⁶

D. Decision Not to Challenge CIA Jurisdiction

Papich testified that FBI officials were greatly concerned over what was viewed as a possible intrusion by the CIA into the counterintelligence jurisdiction of the FBI, and he stated that he "anticipated all hell was going to break loose."³⁰⁷ In fact, however, the jurisdictional dispute which Papich anticipated never occurred. Rather, the FBI decided to capitalize on the situation by receiving the benefits of the program without the expense and manpower requirements which would accompany a more active role in its operation. Belmont wrote to Boardman:

The question immediately arises as to whether CIA in effecting this coverage in New York has invaded our juris-

³⁰² *Ibid.*

³⁰³ Memorandum from Belmont to Boardman, 1/22/58; Angleton, 9/17/75, p. 42.

³⁰⁴ Memorandum from Belmont to Boardman, 1/22/58.

³⁰⁵ Memorandum from Belmont to Boardman, 1/22/58; This was clearly not the sole purpose of the New York Project even in the 1960's. See pp. 507-508.

³⁰⁶ Memorandum from Belmont to Boardman, 1/22/58.

³⁰⁷ Papich, 9/22/75, p. 07.

diction. In this regard, it is believed that they have a legitimate right in the objectives for which the coverage was set up, namely, the development of contacts and sources of information behind the Iron Curtain. . . . At the same time, there is an internal security objective here in which, because of our responsibilities, we have a definite interest, namely, the identification of illegal espionage agents who may be in the United States. While recognizing this interest, it is not believed that the Bureau should assume this coverage because of the inherent dangers in the sensitive nature of it, its complexity, size, and expense. It is believed that we can capitalize on this coverage by pointing out to CIA our internal security objectives and holding them responsible to share their coverage with us.³⁰⁴

This memorandum was routed to the Director, and Hoover's approval—the phrase "OK. H."—appears on the last page.

E. FBI Briefing at CIA

On January 24, 1958, Sam Papich met with James Angleton, Sheffield Edwards, and a third CIA officer at the Agency.³⁰⁵ Papich told the group that he had reason to believe, from the FBI inquiries of Post Office officials in New York (and without mentioning Angleton's admission two or three days earlier), that the CIA had a mail coverage project in New York. The CIA representatives then proceeded to give Papich a full briefing on the CIA's mail intercept program, and agreed to "handle leads" for the Bureau.³⁰⁶ Papich was also told that Postmaster General Summerfield had approved the photographing of mail by the CIA but that the CIA did not have permission of the Post Office Department to open mail.³⁰⁷ In addition, the address given the Bureau by the allied counterintelligence agency was supplied to the CIA for use in the New York project.

Neither Angleton nor anyone else in the CIA was told at this time of either of the FBI's own on-going mail opening programs. According to the testimony of William Branigan, former FBI Section Chief of a section dealing with espionage matters, there was no reason to inform CIA about the Bureau's own mail opening programs since both of the programs then involved "strictly a domestic situation involving persons in the United States . . . [and] solely within the jurisdiction of the FBI."³⁰⁸

III. REQUESTS LEVIED BY THE FBI ON THE CIA'S NEW YORK MAIL INTERCEPT PROJECT

A. The Procedure Established

The "Hunter" procedure for requesting and receiving information was established in early February 1958. On February 6, James Angleton wrote the FBI Director to advise the Bureau of the form in which

³⁰⁴ Memorandum from Belmont to Boardman, 1/22/58.

³⁰⁵ Memorandum from A. H. Belmont to L. V. Boardman, 2/6/58.

³⁰⁶ Memorandum from Belmont to Boardman, 2/6/58.

³⁰⁷ Papich, 9/22/75, p. 37.

³⁰⁸ William A. Branigan, 10/9/75, p. 11.

requests should be made and information would be disseminated.³¹³ Designating correspondence between the two agencies which related to the New York project as "Project Hunter", Angleton suggested that the Bureau number all requests for placing particular persons on the Watch List in consecutive order as "Hunter Request Number —." Identifying data about the requested person should be placed on a three by five card, with instructions as to the duration of the person's name on the Watch List and the type of treatment desired ("e.g., photograph exterior only; open and photograph contents as well, etc."). General requirements based on letter content or the class of the sender or addressee, could also be accommodated by the CI Staff project analysts.

Correspondence from the CIA to the FBI which contained information derived from the project was to be labeled consecutively, "Hunter Report Number —."

B. Categories of Correspondence for Requested Coverage

At least five sets of categories of correspondence for which the Bureau desired coverage were transmitted to the CIA between 1958 and 1973. The focus of the original categories was clearly counter-espionage, but subsequent general requirements became progressively more domestic in their focus and progressively broader in their scope. By the end of the project, one requirement simply asked for the intercepted correspondence of "New Left activists, extremists and other subversives."³¹⁴

The first set of categories of correspondence for which the FBI desired coverage was set forth in a memorandum from Alan Belmont to Mr. Boardman dated February 6, 1958.³¹⁵ This memorandum was approved by Hoover, and Sam Papich advised the CIA of the Bureau's interest in these categories on February 11. They were:

- (1) All correspondence of a suspicious nature, et cetera.
- (2) All correspondence indicating that the Soviets may be utilizing a hostage situation, i.e., correspondence indicating pressure being exerted on Soviet citizens who have close relatives in the U.S. or pressure being exerted on individuals in U.S.
- (3) Any information appearing in correspondence indicating weaknesses or dissatisfaction on the part of any Soviet presently in the United States so that the Bureau might give consideration to feasibility of approaching such individuals for defection or double agent purposes.
- (4) Any information appearing in correspondence indicating Soviet control or direction of the CPU.S.A. [Communist Party, USA.]³¹⁶

If the CI Staff analysts were not certain whether a particular letter fit into one of these four categories, they clearly gave the Bureau the benefit of their doubt. In August 1961, these categories had to be refined because of the large percentage of valueless letters (95% by one informed estimate)³¹⁷ which the CIA disseminated to the Bureau

³¹³ Memorandum from James Angleton to Director, FBI, 2/0/58.

³¹⁴ See p. 630.

³¹⁵ Memorandum from Belmont to Boardman, 2/0/58.

³¹⁶ *Ibid.*

³¹⁷ Project Supervisor #1 testimony, 10/1/75, p. 60.

in the first three and one-half years of the Hunter operation.³¹⁸ The FBI informed the CIA that it was not interested in correspondence involving general travel arrangements of Americans travelling to Russia, personal letters with no intelligence value, letters to and from exchange students, and "holiday greeting" traffic.³¹⁹ The Bureau stated, however, that it was specifically interested in receiving any correspondence in the following categories:

(1) Any traffic in the above-mentioned non-desired categories wherein the translator feels there is some intelligence significance. . . .

(2) Any traffic wherein it is revealed U.S. addressee or addressor is a U.S. Government employee or is employed in a sensitive industry, i.e., missile field.

(3) Any traffic wherein we have an obvious intelligence interest such as an open offer by an individual to assist Soviets, an indication an individual is going to Russia and wants to become a citizen or wherein an individual professes pro-Soviet or pro-communist sympathies.³²⁰

Other categories relating to particular espionage cases were also set forth.

The reference to "U.S. Government employee[s]" in category (2) was intended to be limited to employees in sensitive positions, according to one of the Bureau officials who formulated these categories.³²¹ But such limitation is not evident on the face of the request. The Bureau literally requested all intercepted correspondence to or from all Federal employees, from the lowest Civil Service level to, presumably, the level of the Cabinet, the Congress, and the President.

On February 13, 1962, an additional category was requested by the FBI.³²² This request was for any correspondence from the United States to the Soviet Union which contained any of the "indicators" on the outside of the envelope which suggested that the correspondence was from an illegal agent to his principal. The Bureau had acquired knowledge of these indicators in 1959 and used this knowledge in connection with several of its own mail opening programs in the period 1959 through 1966. Dissemination by the CIA to the FBI of correspondence which was opened on the basis of these indicators was code-named "Hunter-Don."

The categories were enlarged again on October 31, 1962. Among the new categories of correspondence desired by the FBI were the following:

- (1) All material emanating from Puerto Rico of an anti-U.S. nature and pro-Soviet.
- (2) Data re U.S. peace groups going to Russia and while in Russia.
- (3) Data indicating death of any U.S. Communist abroad.
- (4) Any traffic from or to U.S. students in Moscow or to U.S. persons who were former students in Moscow.

³¹⁸ Project Supervisor #1 testimony, 10/1/75, p. 60; Branigan, 10/9/75, p. 84.

³¹⁹ Memorandum from W. A. Branigan to W. C. Sullivan (attachment), 8/21/61.

³²⁰ Memorandum from Branigan to Sullivan, (attachment), 8/21/61.

³²¹ Branigan testimony, 10/9/75, p. 70.

³²² Memorandum from W. A. Branigan to W. C. Sullivan, 2/15/62.

(5) Any traffic between U.S. persons who are with a current exposition or a previous exposition in the USSR.³²³

In addition, the CIA was informed that the FBI had no interest in the correspondence of Soviet-bloc immigrants desiring to repatriate to the Soviet Union, legitimate American tourists in the Soviet Union, and American professors in academic research who corresponded with their counterparts in the Soviet Union.

A final revision of the guidelines occurred in March 1972, when James Angleton was told that the following were among the types of traffic which continues to be of interest to the FBI:

1. Current and former Soviet exchange students, visitors, researchers and scientists.

2. Current and former Soviet official visitors.

4. U.S. exchange students, researchers, and persons who have been in the USSR with American exhibitions and delegations.

6. . . . [P]ersons on the Watch List: known communists, New Left activists, extremists and other subversives; suspected and known espionage agents; individuals known to be of interest to the Soviets because of their specialized knowledge or work on classified matters . . .

7. Communist party and front organizations . . . extremist and New Left organizations.

8. Protest and peace organizations, such as People's Coalition for Peace and Justice, National Peace Action Committee, and Women's Strike for Peace.

9. Communists, Trotskyites and members of other Marxist-Leninist, subversive and extremist groups, such as the Black Panthers, White Panthers, Black Nationalists and Liberation groups, Venceremos Brigade, Venceremos organization, Weathermen, Progressive Labor Party, Worker's Student Alliance, Students for a Democratic Society, Resist, Revolutionary Union, and other New Left groups. This would include persons sympathetic to the Soviet Union, North Korea, North Vietnam and Red China.

10. Cubans and pro-Castro individuals in the U.S.

11. Traffic to and from Puerto Rico and the Virgin Islands showing anti-U.S. or subversive sympathies.³²⁴

This final set of requirements clearly reflected the domestic turmoil of the late 1960's and early 1970's. The process that began fourteen years earlier as a means of discovering Soviet intelligence efforts in the United States had expanded to encompass detection of the activities of

³²³ *Ibid.*

³²⁴ Routing slip from J. Edgar Hoover to James Angleton (attachment), 3/10/72.

domestic dissidents of all types. Even those merely "sympathetic"—in the opinion of CI Staff analysts—to selected communist nations fell within the scope of the requirements.

C. Individuals and Organizations Placed on the Watch List

In addition to the general categories set forth above for which the FBI desired CIA mail coverage, the Bureau also submitted the names of particular individuals and organizations for inclusion on the CIA's Watch List. According to existing FBI records, "Hunter Request" numbers reached 286 by 1973, that is, the names of 286 individuals and organizations were submitted by the Bureau during the course of the Hunter Project.³²⁵

The majority of these names were clearly in the counterespionage area, but the specific requests also included: *The National Guardian*, Student Non-Violent Coordinating Committee, National Mobilization Committee to End the War in Vietnam, Students for a Democratic Society, *Ramparts*, Clergy and Laymen Concerned about Vietnam, the Liberation News Service, Jeremy J. Stone (Director of the Federation of American Scientists), Center for the Study of Public Policy, Linus Pauling, and the Institute for Policy Studies.³²⁶

Aside from the 286 "Hunter Request" names submitted by the FBI for inclusion on the Watch List, about 180 more names were provided to the CIA for use in the special Latin America mail screening operation, known as Hunter-Vince, which was run in conjunction with Hunter and which lasted for approximately one month in 1963.³²⁷ On December 12, 1962, Liaison Agent Sam Papich had been informed by the CIA that because mail from the United States to a Latin America country was temporarily discontinued, all such mail would be shipped to that country from New York City, and the CIA intended to expand their coverage to include the screening and opening of a portion of this mail.³²⁸ The FBI expressed an interest in sharing the benefits of this coverage and submitted approximately 180 names of American and foreign citizens who were on the Security Index.^{328a}

This aspect of the program, which commenced on February 21, 1963, was suspended on March 19, less than one month later.

IV. PRODUCT RECEIVED BY THE FBI FROM THE CIA'S NEW YORK MAIL INTERCEPT PROJECT

A. Volume

According to a CIA document dated January 23, 1975, a total of 57,846 separate items were disseminated to the FBI from the CIA project.³²⁹ The yearly figures, from 1958 when the first product was

³²⁵ Staff summary of Project Hunter Index file review, 10/20/75.

³²⁶ Staff summary of Project Hunter file review, 10/20/75; Staff summary of HTLINGUAL file review, 9/5/75.

³²⁷ Memorandum from S. J. Papich to D. J. Brennan, 12/13/62.

³²⁸ Memorandum from S. J. Papich to D. J. Brennan, 12/13/62.

^{328a} The Security Index was a list of people to be detained in time of war or national emergency.

³²⁹ Blind CIA "Memorandum for the Record," Subject: "Approximate Statistics on CI Staff Project, HTLINGUAL Material," 1/23/75.

disseminated to the Bureau, until the termination of the project, are as follows:

Year	Total items opened	Items disseminated to FBI
1958	8,633	666
1959	13,299	1,964
1960	12,725	2,342
1961	14,025	3,520
1962	13,932	3,017
1963	16,748	4,167
1964	14,904	5,396
1965	13,309	4,503
1966	15,499	5,984
1967	23,617	5,863
1968	12,288	5,322
1969	9,821	5,384
1970	10,207	4,975
1971	9,018	2,701
1972	8,060	1,400
1973	2,273	64*
Total (entire duration)	215,820	57,846

* Blind CIA memorandum "for the Record," 1/23/75.

B. Administrative Processing of the Product Received

After the FBI liaison agent picked up the Hunter reports at CIA Headquarters, he would bring them to a single desk within the Soviet Section of the Domestic Intelligence Division. The person in charge of this desk was responsible for reviewing all of the correspondence and routing it to interested supervisors in the Division. Copies of the correspondence would then be returned to the control desk and either destroyed, if deemed to be of no value, or filed in a secure area, separated from the rest of the FBI files. Due to the sensitivity of the project, copies of the correspondence never went into a case file directly, although a cross-reference in the case file allowed the retrieval of any relevant correspondence.

Knowledge of the project was limited to the operational sections within the Domestic Intelligence Division at Headquarters. Neither the Criminal Division nor any of the field officers were ever advised of the nature of the source. When significant information was developed from Hunter, it would be paraphrased to disguise the true source prior to dissemination to the field officers or other divisions: an informant symbol replaced the term "Project Hunter" on all such correspondence. Field offices would be informed that "[Informant symbol], a most sensitive and reliable source, advised that (individual or organization) of (address) was in contact with (individual or organization) during (month, year). . . . According to the informant. . . ." ³³² The field offices were also warned that information from this source should not be disseminated outside the Bureau nor set out in any investigative report, and that information from the informant should be utilized for lead purposes only. ³³³

C. Nature and Value of the Product Received

During the fifteen years of Hunter's operation, the Bureau received information which was considered valuable in both its counterintel-

³³² Memorandum from FBI SA #4 to W. A. Branigan, 11/20/62.

³³³ *Ibid.*

ligence and its domestic intelligence efforts; it also received a significant volume of material that was valueless. Project Hunter revealed, for example, the location and future plans of a large number of individuals of investigative interest to the FBI, and the "pro-communist sympathies" of numerous American citizens, but it did not lead to the identification of any foreign illegal agents.³³⁴

Typical counterintelligence information generated from the program, as stated in the annual FBI evaluation reports, included: "travel plans to the USSR of numerous Communist Party subjects; . . . data indicating pro-Soviet sympathies of U.S. individuals; . . . data indicating a U.S. person may be serving as a Soviet courier; . . . data indicating the existence of particular Russian social and art clubs in the U.S.; . . . data indicating a desire of U.S. students to study in USSR; . . . contacts in this country of Security Index (SI) subjects vacationing and studying abroad; . . . [d]ata regarding current and former U.S. exchange students show[ing] Soviet and U.S. contacts before and after return, romantic involvements, sympathies and difficulties encountered in Russia; . . . plans of seven individuals to repatriate to the USSR; . . . U.S. contacts with current and former known and suspected Soviet agents now in the USSR . . ."³³⁵

In addition, essentially domestic intelligence was received "regarding persons involved in the peace movements, anti-Vietnam demonstrations, women's organizations, 'teach-ins' . . . racial matters, Progressive Labor Party, Students for a Democratic Society, DuBois Clubs, Students Non-Violent Coordinating Committee, and other organizations."³³⁶ The fact that an aide to a United States Senator requested a Moscow dance company to perform in the United States was discovered through Hunter and duly filed,³³⁷ as was the fact that the foreign-born wife of a man who would shortly become an aide to Secretary of Agriculture Orville Freeman expected to be in a position to become friendly with President Kennedy.³³⁸

Information such as that listed above was considered to be valuable by the Bureau.³³⁹ A 1966 evaluation of Hunter by the FBI's Domestic Intelligence Division stated that "[t]he value of this material is shown by the fact that there was an increase of 53% in the number of new cases opened on the basis of information furnished by the source. . . . More than 260 new cases were opened and 96 cases were reopened. The majority of new cases were opened on the basis of travel to the USSR and contacts of U.S. citizens, Latin Americans, and

³³⁴ Branigan, 10/24/75, Hearings, Vol. 4, p. 168. The FBI defines "illegal agent" as "a highly trained specialist in espionage tradecraft. He may be a [foreign] national and/or a professional intelligence officer dispatched to the United States under a false identity. Some illegals are trained in the scientific and technical field to permit easy access to sensitive areas of employment". (FBI Monograph, "Intelligence Activities Within the United States by Foreign Governments," 3/20/75.)

³³⁵ Memorandum from W. A. Branigan to A. H. Belmont, 12/5/60; memorandum from W. A. Branigan to W. C. Sullivan, 6/9/61; memorandum from W. A. Branigan to W. C. Sullivan 12/5/61; memorandum from Supervisor #1 to W. A. Branigan, 10/20/62; memorandum from W. A. Branigan to W. C. Sullivan, 11/2/62; memorandum from Project Supervisor #2 to W. A. Branigan, 8/21/64, 8/30/65, 8/24/66, and 8/28/69.

³³⁶ Memorandum from Project Supervisor #2 to W. A. Branigan, 8/24/66.

³³⁷ Memorandum from Branigan to Sullivan, 6/0/61.

³³⁸ *Ibid.*

³³⁹ Branigan, 10/0/75, p. 78.

Cubans in the U.S. with individuals in the USSR." ³⁴⁰ A 1973 informational memorandum routed to Acting Director Patrick Gray noted that "[w]e have always considered the product from Project Hunter as valuable to our investigative interests." ³⁴¹

As discussed in Part II above, however, this project was not as valuable to the FBI's counterespionage mission as CIA officials assumed it to be. Large numbers of intercepted communications were received from the Agency, but many of them—95 percent according to the FBI Special Agent ³⁴² who was in charge of the administrative aspects of Hunter for five years—were considered valueless, either because they contained nothing of counterintelligence value or because the information supplied merely duplicated information already in the Bureau case files. ³⁴³ William A. Branigan agreed that much of the product could be characterized as "junk." ³⁴⁴ and asserted that the relative value of this project must be evaluated in light of the fact that this source cost the Bureau nothing, either in terms of dollars or in terms of manpower. ³⁴⁵

V. TERMINATION OF THE PROJECT

All of the FBI's own mail opening programs were discontinued in mid-1966, ³⁴⁶ yet Bureau officials gave no thought at that time to terminating the Hunter Project. As explained by Mr. Branigan, Hunter was considered to be a CIA operation. It was operated at no cost or risk to the Bureau. There was therefore no reason to cut off this source when the Bureau's own programs were terminated. ³⁴⁷ Thus, the FBI continued to receive the fruits of mail opening long after its own agents were prohibited from operating the mail themselves.

Project Hunter was also not terminated for approximately three years after J. Edgar Hoover wrote a footnote in the 1970 "Huston Report" which contained this language: "The FBI is opposed to implementing any covert mail coverage [i.e., mail opening] because it is clearly illegal and it is likely that, if done, information would leak out of the Post Office to the press and serious damage would be done to the intelligence community." ³⁴⁸ The FBI Director, therefore, was apparently willing to allow the Bureau to receive information from a source that he himself described as "clearly illegal" and which he believed could seriously jeopardize the American intelligence community.

Project Hunter was only terminated when the CIA itself suspended the New York operation in mid-February 1973, for reasons which are discussed in Part II above. At that time, the FBI was approached by Agency representatives to determine whether or not the Bureau wished to assume responsibility for the project, since the Bureau had been

³⁴⁰ Memorandum from Project Supervisor #2 to Branigan, 8/24/66.

³⁴¹ Memorandum from W. A. Branigan to E. S. Miller, 2/15/73.

³⁴² Project Supervisor #1, 10/1/75, p. 60.

³⁴³ Branigan, 10/9/75, p. 81; Project Supervisor #1, 10/1/75, p. 60.

³⁴⁴ Branigan, 10/24/75, Hearings, vol. 4, p. 168.

³⁴⁵ Staff summary of W. A. Branigan interview, 9/11/75.

³⁴⁶ See pp. 608-670.

³⁴⁷ Branigan, 10/9/75, p. 60.

³⁴⁸ Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 31.

the largest consumer of information developed from this source.³⁴⁰ Lieutenant General Vernon A. Walters, Deputy Director of the CIA, scheduled a meeting with Acting FBI Director Gray on February 16, 1973 to discuss this possibility.³⁴¹ The Bureau, however, declined to assume responsibility for the project, primarily because of the attendant expense, manpower requirements, and security problems. According to William Branigan, legal considerations were not a factor in this decision: it was simply thought to be too large and risky an operation to be undertaken by Bureau agents.³⁴² The suspension of operations therefore proved to be permanent.

VI. INTERNAL AUTHORIZATION AND CONTROLS

A. Initial Approval by and Continuing Knowledge of the Director

It is clear that FBI Director Hoover personally approved Project Hunter from its inception. Hoover's initial and his written "OK" are signed on the first document in the Project Hunter policy file, the January 22, 1958, memorandum from A. H. Belmont to L. V. Boardman, which sets out the basic facts regarding CIA coverage and possible use of such coverage.³⁴³ He also personally approved the first (1958) and the final (1972) guidelines that went to the Agency,³⁴⁴ the initial policy memorandum dealing with the handling of Hunter material,³⁴⁵ and informational memoranda regarding the "Hunter-Vince" (Latin American mail) aspect of the program.³⁴⁶

In March 1961, the FBI was informed by James Angleton that the CIA had developed a laboratory capability in New York City to test intercepted correspondence for microdots and other secret writing techniques.³⁴⁷ The CIA offered the use of this laboratory to the Bureau if Bureau agents should ever want to use it. (Apparently this was never used by the FBI.)³⁴⁸ Hoover was informed of the laboratory and the CIA offer in a March 10, 1961, memorandum, on which he penned the phrase "Another inroad!"³⁴⁹

Acting Director L. Patrick Gray was also made aware of Project Hunter by at least February 16, 1973, the date he initialed the February 15, 1973, memorandum from W. A. Branigan to E. S. Miller and was scheduled to meet with Lt. General Walters regarding the possible take-over of the project by the FBI.³⁵⁰ This, however, was one day after the project was actually terminated.

B. Internal Controls

Several of the internal controls which were developed for Project Hunter have already been noted. Knowledge of the true nature of

³⁴⁰ Angleton, 0/17/75, p. 42; Papich, 0/22/75, p. 70.

³⁴¹ Memorandum from Branigan to Miller, 2/15/73.

³⁴² Branigan, 10/0/75, p. 80.

³⁴³ Memorandum from Belmont to Boardman, 1/22/58.

³⁴⁴ Memorandum from Belmont to Boardman, 2/0/58; J. Edgar Hoover routing slip (attachment), 3/10/72.

³⁴⁵ Memorandum from W. A. Branigan to A. H. Belmont, 4/21/58.

³⁴⁶ Memorandum from W. R. Wannall to W. C. Sullivan, 3/27/63.

³⁴⁷ Memorandum from D. E. Moore to A. H. Belmont, 3/10/61.

³⁴⁸ Moore, 10/1/75, p. 15.

³⁴⁹ Memorandum from Moore to Belmont, 3/10/61.

³⁵⁰ Memorandum from Branigan to Miller, 2/15/73.

this source was closely held to those sections within the Domestic Intelligence Division which had a need-to-know; dissemination of information outside Headquarters was always disguised and Field Offices were cautioned that the information could be used for lead purposes only. In addition, the project was evaluated at least annually by the Project Supervisor. These evaluations, which summarized the information received from the project during the previous year, were passed up through channels and generally were reviewed by at least an Assistant to the Director.³⁶⁰

VII. EXTERNAL AUTHORIZATION

A. Attorneys General

There is no evidence that any Attorney General was ever informed by Bureau officials about the existence of Project Hunter. It was explained by one Bureau official that since the project was a CIA rather than an FBI project, there was no need to seek Justice Department approval or even to inform Justice Department officials about the fact that mail was being opened in the project.³⁶¹

B. Postmasters General

There is also no evidence that any FBI official ever informed any Postmaster General or Chief Postal Inspector about Project Hunter. The February 15, 1973 memorandum from W. A. Branigan to E. S. Miller states that "[a]rrangements for the [CIA project] were obviously worked out between the Agency and Post Office officials and we are not privy to the details".³⁶²

C. Presidents

There is similarly no evidence that any President was aware of Project Hunter.

PART IV: FBI MAIL OPENING

I. INTRODUCTION AND MAJOR FACTS

The FBI, like the CIA, conducted several mail opening programs of its own within the United States. Eight programs were conducted in as many cities between the years 1940 and 1966; the longest was operated, with one period of suspension, throughout this entire twenty-six year period; the shortest ran for less than six weeks. FBI use of this technique was initially directed against the Axis powers immediately before and during World War II, but during the decade of the 1950's and the first half of the 1960's all of the programs responded to the Bureau's concern with communism.

At least three more limited instances of FBI mail opening also occurred in relation to particular espionage cases in the early 1960's.

Significant differences may be found between the FBI mail opening programs and those of the CIA. First, the stated purposes of the two sets of program generally reflects the agencies' differing intelligence

³⁶⁰ Project Supervisor #1, 10/1/75, p. 38.

³⁶¹ Branigan, 10/9/75, p. 90.

³⁶² Memorandum from Branigan to Miller, 2/15/73.

jurisdiction: the FBI programs were, in the main, fairly narrowly directed at the detection and identification of foreign illegal agents rather than the collection of foreign positive intelligence. Thus, no premium was placed on the large-scale collection of foreign intelligence information *per se*: in theory (if not always in practice), only information that might reasonably be expected to provide leads in counterespionage cases was sought. Because of this, the total volume of mail opened in Bureau programs was less than that in the CIA programs. An equally important factor contributing to the smaller volume of opened mail lay in the selection criteria used in several of the FBI's programs. These criteria were more sophisticated than the random and Watch List methods used by the CIA; they enabled trained Bureau agents to make more reasoned determinations, on the basis of exterior examinations of the envelopes, as to whether or not the communications might be in some sense "suspect." Third, the FBI mail opening programs were much more centralized and tightly administered than the CIA programs. All but one (which resulted in a reprimand from the Director) received prior approval at the highest levels of the Bureau. They were evaluated and had to be reapproved at least annually. Several of them—unlike the CIA's New York project—were discontinued on the basis of unfavorable internal evaluations. This high degree of central control clearly mirrored the organizational differences between the FBI and the CIA, and is not limited to mail opening operations alone. Finally, there is less evidence that FBI officials considered their programs to be illegal or attempted to fabricate "cover stories" in the event of exposure. Bureau officials, for the most part, apparently did not focus on questions of legality or "flap potential" strategies; they did not necessarily consider them to be legal or without the potential for adverse public reaction. They simply did not dwell on legal issues or alternative strategies at all.

In some respects, the Bureau's mail opening programs were even more intrusive than the CIA's. At least three of them, for example, involved the interception and opening of entirely domestic mail—that is, mail sent from one point within the United States to another point within the United States. All of the CIA programs, by contrast, involved at least one foreign "terminal". The Bureau programs also highlight the problems inherent in combining criminal and intelligence functions within a single agency: the irony of the nation's chief law enforcement agency conducting systematic campaigns of mail opening is readily apparent.

Despite their differences, however, the FBI mail opening programs illustrate many of the same themes of the CIA programs. Like the CIA, the FBI did not secure the approval of any senior official outside its own organization prior to the implementation of its programs. While these programs, like the CIA's, involved the cooperation of the Post Office Department and the United States Customs Service, there is no evidence that any ranking official of either agency was ever aware that mail was actually opened by the FBI. Similarly, there is no substantial evidence that any President or Attorney General, under whose office the FBI operates, was contemporaneously informed of the programs' existence. As in the case of the CIA, efforts were also made to prevent word of the programs from reaching the

ears of Congressmen investigating possible privacy violations by federal agencies. The record, therefore, again suggests that these programs were operated covertly, by virtue of deception, or, at a minimum, lack of candor on the part of intelligence officials.

Although the FBI relied on more sophisticated selection criteria in some of their programs, moreover, one again sees the same type of "overkill" which is inherent in any mail opening operation. These criteria, while more precise than the methods used by the CIA, were never sufficiently accurate to result in the opening of correspondence to or from illegal agents alone. Indeed, even by the Bureau's own accounting of its most successful program, the mail of hundreds of American citizens was opened for every one communication that led to an illegal agent. And several of the FBI programs did not employ these refined criteria: mail in these programs was opened on the basis of methods much more reminiscent of the CIA's random and Watch List criteria.

In the FBI programs one again sees the tendency of this technique, once in place, to be used for purposes outside the agency's institutional jurisdiction. While the Bureau has no mandate to collect foreign positive intelligence, for example, several of the programs did in fact result in the gathering of this type of information. Moreover, the record reveals for a second time the ease with which these programs can be directed inward against American citizens: the Bureau programs, despite their counterespionage purpose, generated at least some information of a strictly domestic nature, about criminal activity outside the national security area, and, significantly, about antiwar organizations and their leaders.

Perhaps the most fundamental theme illustrated by both the FBI's and the CIA's programs is this: that trained intelligence officers in both agencies, honestly perceiving a foreign and domestic threat to the security of the country, believed that this threat sanctioned—even necessitated—their use of a technique that was not authorized by any President and was contrary to law. They acted to protect a country whose laws and traditions gave every indication that it was not to be "protected" in such a fashion.

The most pertinent facts regarding FBI mail opening may be summarized as follows:

(a) The FBI conducted eight mail opening programs in a total of eight cities in the United States for varying lengths of time between 1940 and 1966.

(b) The primary purpose of most of the FBI mail opening programs was the identification of foreign illegal agents; all of the programs were established to gather foreign counterintelligence information deemed by FBI officials to be important to the security of the United States.

(c) Several of these programs were successful in the identification of illegal agents and were considered by FBI officials to be one of the most effective means of locating such agents. Several of the programs also generated other types of useful counterintelligence information.

(d) In general, the administrative controls were tight. The pro-

grams were all subject to review by Headquarters semiannually or annually and some of the programs were terminated because they were not achieving the desired results in the counterintelligence field.

(e) Despite the internal FBI policy which required prior approval by Headquarters for the institution of these programs, however, at least one of them was initiated by a field office without such approval.

(f) Some of the fruits of mail openings were used for other than legitimate foreign counterintelligence purposes. For example, information about individuals who received pornographic material and about drug addicts was forwarded to appropriate FBI field offices and possibly to other federal agencies.

(g) Although on the whole these programs did not stray far from their counterespionage goals, they also generated substantial positive foreign intelligence and some essentially domestic intelligence about United States citizens. For example, information was obtained regarding two domestic anti-war organizations and government employees and other American citizens who expressed "pro-communist" sympathies.

(h) A significant proportion of the mail that was opened was entirely domestic mail, *i.e.*, the points of origin and destination were both within the United States.

(i) Some of the mail that was intercepted was entirely foreign mail, *i.e.*, it originated in a foreign country and was destined to a foreign country, and was simply routed through the United States.

(j) FBI agents opened mail in regard to particular espionage cases (as opposed to general programs) in at least three instances in the early 1960's.

(k) The legal issues raised by the use of mail opening as an investigative technique were apparently not seriously considered by FBI officials while the programs continued. In 1970, however, after the FBI mail opening programs had been terminated, J. Edgar Hoover wrote that mail opening was "clearly illegal".

(l) At least as recently as 1972, senior officials recommended the reinstatement of mail opening as an investigative technique.

(m) No attempt was made to inform any Postmaster General of the mail openings.

(n) The Post Office officials who were contacted about these programs, including the Chief Postal Inspector, were not informed of the true nature of the FBI mail surveys, *i.e.*, they were not told that the Bureau contemplated the actual opening of mail.

(o) The FBI neither sought nor received the approval of the Attorney General or the President of the United States for its mail opening programs or for the use of this technique generally.

(p) Although FBI officials might have informed Justice Department attorneys that mail was opened in two or three particular espionage cases and might have informed an Attorney General of some mail screening operations by the Bureau, no attempt was made to inform the Justice Department, including the Attorney General, of the full extent or true nature of these operations.

(q) There is no evidence that any President of the United States ever knew of any ongoing FBI mail opening program.

II. DESCRIPTION OF FBI MAIL OPENING PROGRAMS

The eight FBI mail opening programs are summarized below.

A. Z-Coverage

Z-Coverage, the first and the longest running FBI mail opening program, originally involved the opening of mail addressed to the diplomatic establishments of Axis powers in Washington, D.C.; in later years, mail coming to similar establishments of several communist nations was targeted. The stated purpose of the program was "to detect individuals in contact with these establishments who might be attempting to make contact for espionage reasons, for purposes of defecting or who might be illegal agents."³⁶³

This program was initiated in 1940, before the United States entry into World War II, with FBI agents who had been trained in the technique of "chamfering" (mail opening by representatives of an allied country's censorship agency.³⁶⁴ It was suspended after the war but reinstated in Washington, D.C. in the early or mid-1950's on the recommendation of the local FBI field office.³⁶⁵ For more than a decade, mail from both foreign and domestic points of origin was intercepted at the Main Post Office, brought to the FBI Laboratory for opening and photographing, and returned to the Post Office prior to delivery. In 1959, Z-Coverage was extended to New York City as well. As implemented in New York, about 30 to 60 letters addressed to various diplomatic establishments in that city were intercepted at the Grand Central and Lenox Hill Post Offices each day for opening and photographing at the New York Field Office.³⁶⁶ Some registered mail sent to these establishments was opened as well.³⁶⁷

Despite its perceived success at both locations, Z-Coverage was terminated in July 1966.

B. Survey No. 1

Survey No. 1 operated in a total of six cities for varying lengths of time between 1959 and 1966. It involved the opening of certain outgoing mail to selected cities in Europe, Asia, and the Americas, and was considered to be the most successful of all the FBI's mail opening programs. Its purposes, as summarized in a 1961 FBI memorandum, were two: "(1) to identify persons corresponding with known espionage mail drops in Europe, and (2) to identify persons in the United States who are directing letters to possible mail drops in Europe and whose letters appear to be the product of an illegal agent."³⁶⁸

Survey No. 1 was first instituted in New York City on October 1, 1959, as a direct result of knowledge the FBI had recently acquired about the means by which foreign illegal agents communicated to their principals abroad. Once in operation, Bureau agents, in a secure room

³⁶³ Letter from FBI to Senate Select Committee, 9/8/75.

³⁶⁴ Memorandum from C. E. Hennrich to A. H. Belmont, 9/7/51.

³⁶⁵ Memorandum from E. T. Turner to C. E. Hennrich, 6/25/51; FBI SA #5 testimony, 10/10/75, pp. 4, 5.

³⁶⁶ FBI Special Agent #1 statement, 9/10/75, p. 23.

³⁶⁷ FBI Special Agent #1 statement, 9/10/75, pp. 38, 39.

³⁶⁸ Memorandum from W. A. Branigan to A. H. Belmont, 5/25/61.

at Idlewild Airport's Airmail Facility screened more than 425,000 letters from the United States to points in Western Europe each week.³⁶⁹ Selected items—a total of 1,011 in seven years³⁷⁰—were returned to the New York Field Office for opening and photographing prior to reinsertion into the mailstream. In August 1961, after nearly two years of operation in New York, FBI officials believed that Survey No. 1 was so successful that it was extended to four additional cities—Boston, Los Angeles, Seattle, and Washington, D.C.³⁷¹—where coverage included mail not only to European cities but to Asia and the Americas as well. Survey No. 1 was also extended to Detroit on a sixty-day trial basis in April 1962.³⁷²

The expanded coverage in all cities but Washington did not prove to be as successful as the original effort in New York, however. After thirteen months of operation in Los Angeles, seventeen months in Seattle, one year in Boston, and four months in Detroit, a decision was made at Headquarters to terminate the program in these cities because of "unproductivity and manpower needs."³⁷³ After February 1963, therefore, Survey No. 1 operated only in New York and Washington. In these two cities the annual evaluations³⁷⁴ continued to praise the effectiveness of Survey No. 1 and it was continued to operate at both locations until all of the mail opening programs were terminated in mid-1966.

C. Survey No. 2

Survey No. 2 operated in New York City, Detroit, and San Francisco for varying lengths of time between March 1961 and March 1962; its purpose was again the location and identification of illegal agents.³⁷⁵ No. 2 was, in essence, an inverse No. 1: incoming mail to urban postal zones in which illegal agents were believed likely to reside was screened and opened, on the basis of the same criteria used in Survey No. 1, in an attempt to intercept the other half of the communication link between illegal agents and their principals. Since mail coming into these postal zones was screened irrespective of the point of origin, much of the mail that was opened was entirely domestic mail.³⁷⁶

Survey No. 2 originated as an outgrowth of No. 1. It was first implemented on March 8, 1961, in postal zones 23, 24, and 25 in New York City, with Post Office employees rather than Bureau agents screening the incoming mail.³⁷⁷ The Post Office personnel were briefed by the FBI as to the selection criteria but were not informed of the true nature of the program. When they discovered a suspect commu-

³⁶⁹ Memorandum from W. A. Branigan to Mr. Sullivan, 8/31/61.

³⁷⁰ W. Raymond Wannall testimony, 10/22/75, p. 5.

³⁷¹ Memorandum from W. A. Branigan to W. C. Sullivan, 8/4/61.

³⁷² Memorandum from FBI Headquarters to Detroit Field Office, 4/13/62: Serious consideration was given by FBI officials to extending this program to five other American cities as well. Such an extension was rejected largely for security reasons. (Memorandum from W. A. Branigan to W. C. Sullivan, 8/4/61.)

³⁷³ Memorandum from W. A. Branigan to W. C. Sullivan, 4/8/64.

³⁷⁴ E.g., Memorandum from New York Field Office to FBI Headquarters, 4/5/60.

³⁷⁵ Letter from FBI to Senate Select Committee, 9/8/75.

³⁷⁶ Branigan, 10/9/75, p. 5.

³⁷⁷ Memorandum from W. A. Branigan to Mr. Sullivan, 8/31/61.

nication, it was turned over to the FBI and, without their knowledge, opened and photographed at the field office before being returned to the mailstream. On the basis of "test" letters sent by the Bureau, however, their performance was judged inadequate and, in September 1961, FBI agents replaced the postal workers in screening the mail.³⁷⁸

In October 1961, the program was also extended to both Detroit (zone 31 and the Hamtramck area)³⁷⁹ and San Francisco (all mail sent to that city from New York and Washington) on a trial basis.³⁸⁰

Survey No. 2 was considered unsuccessful in all of these cities and was consequently discontinued in Detroit and San Francisco in February 1962, and in New York—after a total of approximately 2,350 letters had been opened—³⁸¹ on March 9, 1962.^{381a}

D. Survey No. 3

Survey No. 3 was conducted in New York City from June 1963 to June 1964, and involved the opening of mail (irrespective of point of origin) addressed to known or suspected intelligence agents employed at a diplomatic establishment. The purpose of Survey No. 3 was to detect contacts of an intelligence nature with these agents, who, FBI officials believed, received such mail using the secure cover of their diplomatic employment.³⁸²

This program was apparently an outgrowth of the Bureau's coverage of mail to various other diplomatic establishments in New York (Z-Coverage). Although its precise genesis is undocumented, one of the participants in the program recalled that the idea originated with another agent, then involved with Z-Coverage, who felt that existing coverage was inadequate and should be expanded.³⁸³ Headquarters subsequently approved the idea, and, on June 25, 1963, Survey No. 3 was instituted in New York.

Each working day for the next year, a single agent from the New York office went to the Grand Central Post Office where a postal clerk brought him all the mail that was addressed to the Post Office box of the targeted diplomatic establishment—approximately 200 letters per day, according to the agent who was assigned to this task.³⁸⁴ On the basis of a list of about thirty diplomatic officials, which was compiled from public source information, the agent segregated the mail addressed to these officials and carried the letters—estimated by him to average five or six per day—³⁸⁵ to the New York office for opening and photographing.

Survey No. 3 was not considered to be successful by the Bureau and was discontinued on June 26, 1964.

³⁷⁸ *Ibid.*

³⁷⁹ Memorandum from W. A. Branigan to W. C. Sullivan, 10/2/61.

³⁸⁰ Memorandum from FBI Headquarters to San Francisco Field Office, 10/18/61.

³⁸¹ Memorandum from Branigan to Sullivan, 8/31/61; memorandum from Mr. Branigan to Mr. Sullivan, 12/21/61; memorandum from New York Field Office to FBI Headquarters, 3/1/62.

^{381a} Memorandum from W. A. Branigan to W. C. Sullivan, 8/3/62.

³⁸² Letter from FBI to Senate Select Committee, 9/8/75.

³⁸³ Staff summary of FBI Special Agent #6 interview, 8/12/75.

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

E. Survey No. 4

Survey No. 4 was conducted in Miami, Florida, between January 1963 and July 1966. It involved the screening and opening of certain airmail from Miami and San Juan, Puerto Rico, to two Latin American countries for the purpose of locating clandestine communications in particular espionage cases.³⁸⁶

Survey No. 4 developed from an espionage case in which the Bureau had learned that a Latin American intelligence agent who operated in the United States but whose true identity was unknown, was under instructions to transmit material to his country's intelligence service by mail. In order to intercept this agent's written communications, Bureau officials at Headquarters formulated a plan to screen and selectively open mail from San Juan and Miami to that country utilizing their knowledge of its intelligence correspondence, and on December 21, 1962, they authorized the Miami Field Office to implement the program.³⁸⁷

While the program was initially instituted as a response to a single espionage case, it soon developed into a more generalized survey to detect clandestine communications from any suspected espionage agent working for the same country. Its scope was further broadened on December 9, 1963, when the Miami office was instructed to cover mail from that city to another Latin American country as well.³⁸⁸

Bureau agents in Survey No. 4 screened between 12,000 and 20,000 letters per day at the Biscayne Annex Post Office in Miami.³⁸⁹ A total of 400 letters were opened,³⁹⁰ either in the Post Office itself, or, when secret writing or microdots were suspected, in the FBI Laboratory in Washington, to which they were flown for more sophisticated examination before reinsertion into the mailstream.³⁹¹

Survey No. 4 was considered to be successful but was terminated along with other FBI mail opening programs, in July 1966.

F. Survey No. 5

Survey No. 5 was the first of three FBI mail opening programs which were conducted in San Francisco and directed against Asian communists and their sympathizers. It began in September 1954 and continued until January 1966. This survey originally involved the physical inspection of third and fourth class propaganda from a Far East Asian country; after August 1956, incoming first class letter mail was selectively opened and photographed as well. The stated purpose of this program was to identify individuals in the United States who, because of the nature of their foreign contacts, were believed to constitute a threat to the internal security of the United States.³⁹²

Like the CIA's New Orleans and Hawaiian mail intercept projects, Survey No. 5 was initially an extension of the Customs Service examination of propaganda material entering the United States from abroad.

³⁸⁶ W. R. Wannall, 10/13/75, p. 21.

³⁸⁷ Memorandum from FBI Headquarters to Miami Field Office, 12/21/62.

³⁸⁸ Memorandum from FBI Headquarters to Miami Field Office, 12/9/63.

³⁸⁹ Wannall, 10/13/75, p. 30.

³⁹⁰ Wannall, 10/22/75, p. 12.

³⁹¹ Memorandum from FBI Headquarters to Miami Field Office, 12/21/62.

³⁹² Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61.

Customs Service cooperation ceased, however, on May 26, 1965, as a result of the Supreme Court's decision in *Lamont v. Postmaster General of the United States*, 381 U.S. 301 (1965), which invalidated the statutory authority under which Customs conducted its propaganda inspection.³⁹³ Contact was subsequently made with officials of the Post Office and, with their assistance, No. 5 Survey recommenced at the Rincon Annex Post Office on July 7, 1965.

Approximately 13,500 items of mail were screened in two hour periods each day by Bureau agents who participated in this program.³⁹⁴ A daily average of 50 to 100 of these letters were returned to the San Francisco Field Office for opening and photographing prior to their reinsertion into the mailstream.³⁹⁵

Survey No. 5 was terminated on January 24, 1966, "for security reasons involving local changes in postal personnel."³⁹⁶

G. Survey No. 6

Survey No. 6 was also conducted in San Francisco, operating from January 1964 until January 1966. This program involved the screening and opening of outgoing mail from the United States to the same Far East Asian country; it was essentially an inverse Survey No. 5. The stated purposes of Survey No. 6 were to obtain foreign counter-intelligence information concerning Americans residing in the Far East Asian country; to detect efforts to persuade scientists and other persons of Asian descent residing in the United States to return to that country; to develop information concerning economic and social conditions there; and to secure information concerning subjects in the United States of a security interest to the Bureau who were corresponding with individuals in that Asian country.³⁹⁷

In June 1963, the New York Field Office had extended its Survey No. 1 coverage to include airmail destined for Asia, which was then handled at the same location where European mail was processed. When Post Office procedures changed a few months later, and the Asian mail was routed through San Francisco rather than New York, Headquarters instructed the San Francisco office to assume responsibility for this coverage. The program operated, with one period of suspension, for two years until January 24, 1966, when it was terminated for the same security reasons as the Survey No. 5.³⁹⁸ Figures as to the volume of mail screened and opened cannot be reconstructed.

H. Survey No. 7

Survey No. 7 was conducted in San Francisco from January to November 1961. It involved the screening and opening of mail be-

³⁹³ See p. 563. W. Raymond Wannall testified: "I don't think [this] decision made any difference with regard to the legality or illegality of that operation which we were conducting or the illegality of the operation which was beyond the interception of the propaganda starting in 1950." W. Raymond Wannall 10/24/75. Hearings, Vol. 4, pp. 160, 1970.

³⁹⁴ Memorandum from S. B. Donahoe to A. H. Belmont, 2/23/61.

³⁹⁵ Memorandum from Donahoe to Belmont, 2/23/61; memorandum from San Francisco Field Office to FBI Headquarters, 3/11/60.

³⁹⁶ Memorandum from San Francisco Field Office to FBI Headquarters, 5/19/66.

³⁹⁷ Letter from FBI to Senate Select Committee, 9/8/75.

³⁹⁸ Memorandum from San Francisco Field Office to FBI Headquarters, 5/10/60.

tween North Americans of Asian descent for the purpose of detecting Communist intelligence efforts directed against this country.³⁹⁹

Survey No. 7 evolved from the Survey No. 5 and particular espionage cases handled by the San Francisco Field Office. Without instructions from Headquarters, that office initiated a survey of mail between North Americans of Asian descent in January 1961, and informed Headquarters of the program shortly after it was implemented. On February 28, 1961, Headquarters officials instructed San Francisco to terminate the program because the expected benefits were not believed to justify the additional manpower required by the FBI Laboratory to translate the intercepted letters.⁴⁰⁰ The San Francisco Field Office was permitted to use this source when it was deemed necessary in connection with particular espionage cases, but even this limited use proved unproductive. It was terminated on November 20, 1961, after a total of 83 letters had been opened.⁴⁰¹

I. Typical Operational Details

The specific operational details of the eight programs described above obviously varied from program to program. The New York Field Office's conduct of Survey No. 1 represented a pattern that typified these programs, however, in terms of mechanical aspects such as the physical handling of the mail itself. In August 1961, before the extension of Survey No. 1 to Boston, Los Angeles, Seattle, and Washington, D.C., the New York Office was instructed to describe the operational details of this Survey as implemented in that city for the benefit of field offices in the four additional cities. A memorandum was subsequently prepared for distribution to these cities, pertinent portions of which are reproduced below:

[Survey No. 1] in New York is located in a secure room at the U.S. Post Office Airmail Facility, New York International Airport, Idlewild, New York. . . . This room . . . measures approximately 9 feet wide by 12 feet long and . . . is locked at all times, whether or not the room is in use . . . Postal employees have no access to this room which is known to them as the Inspector's Room.

Seven Special Agents are assigned to [Survey No. 1] on a full-time basis. The survey operates 7 days a week and personnel work on rotating 8-hour shifts. . . . Personnel assigned to the survey work under the guise of Postal Inspectors and are known to Post Office personnel as Postal Inspectors working on a special assignment. . . .

. . . [B]y arrangement with the postal officials, [mail] pouches to destinations in which we have indicated interest are not sealed but are placed in front of the [Survey No. 1] room. The [Survey No. 1] personnel then take the bag into the room, open the pouch, untie the bundles, and review the

³⁹⁹ Memorandum from San Francisco Field Office to FBI Headquarters, 1/19/61; Memorandum from San Francisco Field Office to FBI Headquarters, 11/27/61.

⁴⁰⁰ Memorandum from FBI Headquarters to San Francisco Field Office 2/28/61.

⁴⁰¹ Wannell, 10/22/75, p. 16; Memorandum from San Francisco Field Office to FBI Headquarters, 11/27/61.

mail. Any suspect letters are held aside and the rest are re-bundled and returned to the pouch. The pouch is then closed and placed outside the door to the room on a mail skid. Postal employees then take that pouch, seal it with a lead seal and place it aside for, or turn it over to, the carrier. . . .

It should be noted that the mail must be turned over by the Post Office Department to the carrier one hour before departure time . . .

. . . Each day, one of the Agents is selected as a courier, and when the opportunity presents itself, he returns to the Field Office with the suspected communications. At the Field Office, he or another Agent who has been trained by the Bureau in certain techniques opens the communications. The envelope and its contents are photographed . . . There will be instances where the Field Office, upon opening the communication, may deem it advisable to immediately notify the Bureau and possibly fly it by courier to the Bureau for examination by the Laboratory. Before making any arrangements to fly the communication to the Bureau, the Field Office should consider the time the examination will take and the time the suspected communication may be placed back in the mail without arousing any suspicion on the part of the addressee.

After the communication has been photographed and resealed, the courier returns to the airport and places the suspected communication in the next appropriate outgoing pouch examined in the [Survey No. 1] Room. If time permits, the pouch is held in the room until the suspected communication is returned.⁴⁹²

A device developed by the FBI Laboratory and maintained at participating field offices facilitated the opening process. While this device was relatively simple, it was not as primitive as the kettle and stick method utilized by the CIA agents who opened mail in the New York project and allowed for greater efficiency: the FBI's opening process was reported to take only a second or two for a single letter,⁴⁹³ in contrast to five to fifteen seconds for the CIA. According to one of the agents involved, special training in the use of this device was given at the field office rather than at Headquarters, and was only of one or two days duration,⁴⁹⁴ in contrast to the week-long training sessions required of CIA mail openers.

Filing and internal dissemination procedures also varied somewhat from program to program. In Z-Coverage, the negatives of the photographic copies were filed at the field offices in New York and Washington for approximately one year after interception, after which time they were destroyed.⁴⁹⁵ If the developed prints were believed to contain valuable counterintelligence information, they would be disseminated to appropriate supervisors within the field office for placement in a confidential central file or a particular case file. In the latter case,

⁴⁹² Memorandum from New York Field Office to FBI Headquarters, 8/20/61.

⁴⁹³ FBI Special Agent 1 statement, 9/10/75, p. 14.

⁴⁹⁴ FBI Special Agent 1 statement, 9/10/75, pp. 11, 12.

⁴⁹⁵ Staff summary of FBI Special Agent 7 interview, 9/15/75.

the true source would be disguised by an informant symbol, although, as one supervisor in the New York office noted, the nature of the source would be clear to those familiar with Bureau operations.⁴⁰⁶

No index was maintained of the names of all senders and/or addressees whose mail was intercepted, as was maintained by the CIA in the New York project. In rare cases when a letter was considered to be of exceptional counterintelligence value, a photograph would be sent to Headquarters as well. As a general rule, however, there was no dissemination, either of the photographs themselves or of abstracts of the letters, to other field offices.⁴⁰⁷

These procedures generally applied to Survey No. 1 and Survey No. 2 as well, but in these two surveys the photographs of intercepted letters were dated and numbered, and one copy or abstract was placed in a control file maintained by each participating field office.

In Surveys No. 5 and No. 6, the San Francisco Field Office was responsible for conducting "name checks" on all individuals sending or receiving mail that had been opened. If, on the basis of the name check or the text of the letter itself, it was determined that the intercepted letter had intelligence value, a copy of the letter (if written in English) or of the translation (if written in a foreign language) was placed in the main files of the San Francisco office. That office was also responsible for paraphrasing the contents of letters in which other field offices may have had an intelligence interest, and disseminating the information to them in a manner which would not reveal the true source of the information. Except for letters written in a foreign language, photographs of which were sent to Washington for translation, copies were not sent to Headquarters unless the letter was of particularly great intelligence value.

J. Other Instances of FBI Mail Opening

In addition to the eight mail surveys described in sections A through H above, it has also been alleged that a Bureau agent actively participated in the CIA's Hawaiian mail intercept project during the mid-1950s. The CIA representative in Honolulu who conducted this operation stated that an FBI agent assisted him in opening and photographing incoming mail from Asia for a period of two months in early 1955.⁴⁰⁸ No supporting Bureau documents could be located to confirm this participation, however.

Aside from generalized surveys of mail, several isolated instances of mail opening by FBI agents occurred in connection with particular espionage cases. It was, in fact, a standard practice to attempt to open the mail of any known illegal agent. As stated by one former Bureau intelligence officer: ". . . anytime . . . we identified an illegal agent . . . we would try to obtain their mail."⁴⁰⁹ FBI agents were successful in this endeavor in at least three cases, described below.

1. Washington, D.C. (1961)

One isolated instance of mail opening by FBI agents occurred in Washington, D.C., in 1961, preceding the local implementation of

⁴⁰⁶ *Ibid.*

⁴⁰⁷ *Ibid.*

⁴⁰⁸ See p. 423.

⁴⁰⁹ Moore, 10/1/75, p. 75.

Survey No. 1. This case involved the opening of several items of correspondence from a known illegal agent residing in the Washington area to a mail drop in Europe. The letters, which were returned to the FBI Laboratory for opening, were intercepted over a period in excess of six months.¹¹⁰

2. Washington, D.C. (1963-64)

A second mail opening project in regard to a particular espionage case occurred for approximately one and one-half years in Washington, D.C., in 1963 and 1964, in connection with the FBI's investigation of known Soviet illegal agents Robert and Joy Ann Baltch. This case was subsequently prosecuted, but the prosecution was ultimately dropped, in part, according to FBI officials, because some of the evidence was tainted by use of this technique.¹¹¹

3. Southern California

A third isolated instance of mail opening occurred in a southern California city for a one to two-month period in 1962. This project involved the opening of approximately one to six letters received each day by a suspected illegal agent who resided nearby. The suspected agent's mail was delivered on a daily basis to three FBI agents who worked out of the local resident FBI office, and was opened in a back room in that office.¹¹²

III. NATURE AND VALUE OF THE PRODUCT

A. Selection Criteria

Those FBI mail opening programs which were designed to cover mail to or from foreign illegal agents utilized selection criteria that were more refined than the "shotgun" method¹¹³ used by the CIA in the New York intercept project. Mail was opened on the basis of certain "indicators" on the outside of the envelopes that suggested that the communication might be to or from an illegal agent. The record reveals, however, that despite the claimed success of these "indicators" in locating such agents, they were not so precise as to eliminate individual discretion on the part of the agents who opened the mail, nor could they prevent the opening of significant volumes of mail to or from entirely innocent American citizens. Mail in those programs which were designed for purposes other than locating illegal agents, moreover, was generally opened on the basis of criteria far less narrow and even more intrusive than these "indicators."

1. The Programs Based on Indicators

Before 1959, the FBI had developed no effective means to intercept the communication link between illegal agents and their principals. In Z-Coverage, selection was originally left to the complete discretion of

¹¹⁰ Moore, 10/1/74, pp. 72-74; Branigan, 10/9/75, pp. 33, 34; memorandum from W. A. Branigan to W. C. Sullivan, 4/4/61.

¹¹¹ Moore, 10/1/75, p. 38; Branigan, 10/9/75, pp. 34, 35. Justice Department officials have testified that the prosecution was dropped for other reasons. See pp. 664-665.

¹¹² Postal Inspector #1 deposition, 9/16/75, pp. 23, 46; Branigan, 10/9/75, pp. 30-32.

¹¹³ Angleton 9/17/75, p. 28.

the agents who screened the mail based on their knowledge and training in the espionage field. The focus was apparently on mail from individuals rather than organizations, and typewritten letters were considered more likely to be from foreign agents than handwritten letters.¹¹⁴ In March 1959, however, the FBI was able to develop much more precise selection criteria through the identification and subsequent incommunicado interrogation of an illegal agent. During the course of his interrogation by Bureau agents, he informed the FBI of the instructions he and other illegal agents were given when corresponding with their principals.¹¹⁵ Particular characteristics on the outside of the envelope, he advised them, indicated that the letter may be from such an agent.

Armed with a knowledge of these "indicators," the FBI agents involved in Z-Coverage were capable of a more selective and accurate means of identifying suspect communications. Survey No. 1 and Survey No. 2 were expressly developed to exploit this knowledge.¹¹⁶ While Survey No. 1 also utilized a Watch List which consisted of the addresses of known or suspected mail drops abroad, as well as the (generally fictitious) names of known or suspected foreign intelligence agents,¹¹⁷ the primary selection criteria in both Surveys No. 1 and No. 2 were the "indicators" about which the Bureau learned in early 1959.¹¹⁸

By means of the "indicators," the Bureau did, in fact, identify three illegal agents through these programs.¹¹⁹ But even by the Bureau's own accounting of the number of letters that were opened in the programs, it is clear that the mail of hundreds of innocent American citizens was opened and read for every successful lead obtained.¹²⁰ The random element in the selection process was never eliminated; although FBI officials at Headquarters instructed agents in the field to select only letters with multiple "indicators" on their face,¹²¹ the field agents frequently opened letters with but one "indicator", which could often be of such a common nature that it could be found on most letters mailed in the United States.¹²²

One of the FBI agents who opened mail stated that he was trained in counterespionage work generally, and in the identification of the indicators specifically, but he conceded that in the final analysis "it was strictly my own judgment" as to which items would be selected for opening.¹²³ Perhaps as a result of such personal discretion on the part

¹¹⁴ FBI Special Agent #1 statement, 9/10/75, p. 20.

¹¹⁵ Wannall, 10/21/75, p. 3.

¹¹⁶ Staff Summary of Branigan Interview, 9/11/75.

¹¹⁷ Memorandum from Washington Field Office to FBI Headquarters, 6/27/63.

¹¹⁸ Wannall, 10/21/75, p. 3.

¹¹⁹ Wannall, 10/21/75, p. 5.

¹²⁰ In Z-Coverage, one participating agent testified that he opened 30 to 60 letters each day. (Note 306, *supra*.) In Survey No. 1, a total of 1,011 were opened in New York City alone; statistics on the number of letters opened in the five other cities in which this survey operated cannot be reconstructed. (Note 370, *supra*.) In Survey No. 2, 2,350 letters were opened by the New York office; statistics for the Detroit and San Francisco offices are unavailable. (Note 381, *supra*.)

¹²¹ Branigan, 10/9/75, pp. 21, 22.

¹²² FBI special Agent #1 statement, 9/10/75, p. 25.

¹²³ FBI Special Agent #1 statement, 9/10/75, p. 19.

of participating agents, Survey No. 1 generated essentially domestic intelligence on at least two American antiwar organizations as well as genuine counterespionage information.⁴²⁵

In short, knowledge of the indicators did enable the Bureau to be more precise in the selection of mail than was previously possible, but this knowledge was not so precise as to totally eliminate the discretion—or bias—of the agents involved.

2. *The Latin American-Oriented Program*

In Survey No. 4, which involved the interception of mail to two Latin American nations, letters were selected for opening on the basis of lists of (a) known fictitious names used by illegal agents to address correspondence to their principals, and (b) accommodation addresses used by a foreign intelligence service for receiving clandestine communications.⁴²⁶ The "indicators" discussed above were not utilized in this or the Asian-oriented mail opening programs.

3. *The Asian-Oriented Programs*

Survey No. 5 and Survey No. 6 both employed seven general categories as selection criteria:

- (a) Letters to or from a university, scientific, or technical facility;
- (b) Letters to or from a doctor;
- (c) Letters to or from selected Security Index subjects residing in the United States;
- (d) Letters to or from an Asian country where certain scientific activities were reportedly taking place;
- (e) Letters to or from individuals who were known to be "turncoats" from the Korean conflict;
- (f) Letters believed to emanate from an Asian Communist intelligence service based on covers of which the FBI was aware; and
- (g) Letters indicating illegal travel of Americans to denied areas in Asia.⁴²⁷

Even if one assumes that these guidelines were strictly observed by the agents opening the mail, (which, given some of the results of these programs as set forth below,⁴²⁸ is not necessarily as accurate assumption) there was obviously ample room for the capture of large numbers of entirely personal communications with no counterintelligence value at all.

The selection criteria utilized in Survey No. 7 cannot be reconstructed.

B. *Requests by Other Intelligence Agencies*

No large-scale requirements were levied upon the FBI's mail opening programs by any other intelligence agency. Bureau officials, in fact, severely restricted knowledge of their programs within the in-

⁴²⁵ See p. 655.

⁴²⁶ Wannall, 10/13/75, p. 22.

⁴²⁷ Letter from FBI to Senate Select Committee, 10/20/75. This letter also stated that the "Watch List" was maintained because "the limitations involved in reviewing over 13,000 letters a day within a two-hour period did not allow sufficient time to compare these letters with a list of names."

⁴²⁸ See op. 654-655.

telligence community; only the CIA knew of any of the Bureau's programs, and officers of that agency were formally advised about the existence of only one of the eight, Survey No. 1.

In July 1960, Bureau Headquarters originally rejected the recommendation of the New York Field Office to inform the CIA of Survey No. 1 in order to obtain from it a list of known mail drops in Europe for use in the program.⁴²⁹ Headquarters then wrote: "Due to the extremely sensitive nature of the source . . . the Bureau is very reluctant to make any contacts which could possibly jeopardize that source. Therefore, the Bureau will not make any contact with CIA to request from it [such a] list . . . The Bureau will, however, continue to exert every effort to obtain from CIA the identities of all such mail drops in the normal course of operations."⁴³⁰

Within six months of this rejection, however, Headquarters officers changed their minds: Donald Moore, head of the Espionage Research Branch and Sam Papich, FBI liaison to the CIA, met with CIA representatives in January 1961 to inform them of Survey No. 1 and to exchange lists of known or suspected mail drops.⁴³¹ CIA provided the Bureau with a list of 16 mail drops and accommodation addresses and the name and address of one Communist Party member in Western Europe,⁴³² all of which were subsequently furnished the New York office for inclusion in Survey No. 1 coverage. The exchange of this information did not evolve into a reverse Project Hunter, however. While the Agency may have contributed a small number of additional addresses or names during the next five years, no large-scale levy of general categories or specific names was ever made by the CIA or solicited by the FBI. According to Donald Moore, the particularized nature and objectives of Survey No. 1, especially when contrasted with the CIA's New York project, precluded active CIA participation in the program.⁴³³

While there is no other evidence that any members of the intelligence community knew of or ever levied requests on the Bureau's mail opening programs, they did receive sanitized information from these programs when deemed relevant to their respective needs by the Bureau.⁴³⁴

C. Results of the Programs

In terms of their counterespionage and counterintelligence *raison d'être*, several of the Bureau's programs were considered to be successful by FBI officials; others were concededly ineffective and were consequently discontinued before the termination of all remaining FBI surveys in 1966. Significantly, some of the surveys also generated large amounts of "positive" foreign intelligence—the collection of which is outside the Bureau's mandate—and information regarding the domestic activities and personal beliefs of American citizens, at least some of which was disseminated within and outside the FBI. The Bureau surveys did remain more focused on their

⁴²⁹ Memorandum from Director, FBI to SAC, New York, 7/11/60.

⁴³⁰ *Ibid.*

⁴³¹ Memorandum from W. A. Branigan to A. H. Belmont, 2/28/61.

⁴³² *Ibid.*

⁴³³ Moore, 10/1/75, p. 55.

⁴³⁴ See p. 654.

original goal than did the CIA programs. But in them—whether because the selection criteria were overbroad, or because these criteria were not scrupulously adhered to, or both—one again sees the tendency of mail opening programs to produce information well beyond the type originally sought.

1. Counterintelligence Results

Five of the eight FBI mail openings programs—Z-Coverage, Surveys 1, 4, 5, and 6—were clearly seen to have contributed to the FBI's efforts in the area of counterintelligence. The relative success of these programs, in fact, led many Bureau officials to conclude that mail opening—despite its legal status—was one of the most effective counter-espionage weapons in their arsenal.⁴³⁵ The primary value of these five programs to the Bureau is summarized below:

Z-Coverage.—A lack of pertinent documentary and testimonial evidence prevents a meaningful evaluation of Z-Coverage during World War II, but a 1951 memorandum reflecting the Washington Field Office's recommendation for its reinstatement noted that "while Z-Coverage was utilized valuable information of an intelligence nature was obtained . . ." ⁴³⁶

In evaluating the program during the 1950s and 1960s, Bureau officials have rated it highly in terms of the counterintelligence results it produced. W. Raymond Wannall, former Assistant Director in charge of the Domestic Intelligence Division, testified about two specific examples of mail intercepted in Z-Coverage which revealed attempts on the part of individuals in this country to offer military secrets to foreign governments.⁴³⁷ In the first case, the FBI intercepted a letter in July 1964, which was sent by an employee of an American intelligence agency to a foreign diplomatic establishment in the United States. In the letter, the employee offered to sell information relating to weapons systems to the foreign government and also expressed an interest in defecting. The Defense Department was notified, conducted a potential damage evaluation, and concluded that the potential damage could represent a cost to the United States Government of tens of millions of dollars. In the second case, which occurred in mid-1964, an individual on the West Coast offered to sell a foreign government tactical military information for \$60,000.

Survey No. 1.—Survey No. 1 was considered to be one of the most successful of all the Bureau mail opening programs. In New York and Washington, a total of three illegal agents—the identification of which has been described by one senior FBI official as the most difficult task in counterintelligence work⁴³⁸—were located through No. 1.⁴³⁹ In addition, numerous letters were discovered which contained secret writing and/or were addressed to mail drops in Western Europe. Survey No. 1 in Boston, Los Angeles, Seattle, and Detroit was not successful, however, and as noted above, was discontinued in those cities on the basis of "unproductivity and manpower needs."⁴⁴⁰

⁴³⁵ E.g., FBI Special Agent #2 deposition, 9/16/75, pp. 61, 62.

⁴³⁶ Memorandum from E. T. Turner to C. E. Henrich, 6/25/51.

⁴³⁷ Wannall, 10/22/75, pp. 16-18.

⁴³⁸ Staff Summary of Branigan interview, 9/11/75.

⁴³⁹ Wannall, 10/21/75, p. 5.

⁴⁴⁰ Memorandum from Branigan to Sullivan 4/8/64.

Survey No. 4.—Survey No. 4 resulted in the identification of the illegal agent whose presence in the United States had originally motivated development of the survey. In addition, this program led to the detection of a second intelligence agent operating in this country and to the discovery of approximately 60 items of correspondence which contained secret writing either on the letter itself or on the envelope containing the letter.⁴¹

Survey No. 5.—FBI officials have testified that Survey No. 5 was a very valuable source of counterintelligence (and interrelated positive intelligence) information about an Asian country. W. Raymond Wannall stated that its "principal value probably related to the identification of U.S. trained scientists of [Asian] descent who were recalled or who went voluntarily back to [an Asian country]."⁴² Because of this, he continued, the FBI was able to learn vital information about the progress of weapons research abroad.⁴³

Survey No. 6.—Survey No. 6 was also believed to be a valuable program from the perspective of counterintelligence, although it was suspended for a nine-month period because the manpower requirements were not considered to outweigh the benefits it produced. Through this survey the FBI identified numerous American subscribers to Asian communist publications; determined instances of the collection of scientific and technical information from the United States by a foreign country; and recorded contacts between approximately fifteen Security Index subjects in the United States and Communists abroad.⁴⁴

The Other Programs.—Three of the FBI's programs were not believed to have produced any significant amount of counterintelligence information. Bureau officials testified that they "had very little success in connection with [Survey No. 3]."⁴⁵ and it was consequently discontinued after one year of operation. Similarly, no positive results were obtained through Survey No. 2 in any of the three cities in which it operated. Although the San Francisco office, for example, opened approximately 85 new cases as a result of Survey No. 2, all of these cases were resolved without the identification of any illegal agents, which was the goal of the program.⁴⁶ As one Bureau official stated in regard to Survey No. 2: "The indicators were good, but the results were not that good."⁴⁷ It, too, was terminated after approximately one year of operation.

Finally, the results of Survey No. 7, which was initiated without prior approval by Headquarters, were also considered to be valueless. Of the 83 letters intercepted in the program, 79 were merely exchanges of personal news between North Americans of Asian descent. The other four were letters from individuals in Asia to individuals in the United States, routed through contacts in North America, but were

⁴¹ Wannall, 10/22/75, p. 12.

⁴² Wannall, 10/13/75, p. 77.

⁴³ Wannall, 10/13/75, pp. 77-78.

⁴⁴ Memorandum from W. R. Wannall to W. C. Sullivan, 5/22/64.

⁴⁵ Wannall, 10/22/75, p. 11.

⁴⁶ Memorandum from W. A. Branigan to W. C. Sullivan, 8/3/62.

⁴⁷ Branigan, 10/22/75, p. 9.

solely devoted to personal information.⁴⁴⁸ As noted above, Headquarters did not believe that this coverage justified the additional manpower necessary to translate the items and the San Francisco Field Office was so advised.

2. "Positive" Foreign Intelligence Results

Although the FBI has no statutory mandate to gather positive foreign intelligence, a great deal of this type of intelligence was generated as a byproduct of several of the mail opening programs and disseminated in sanitized form to interested government agencies. In an annual evaluation of Survey No. 5, for example, it was written:

This source furnishes a magnitude of vital information pertaining to activities within [an Asian country]; including its economical [sic] and industrial achievements . . . A true picture of life in that country today is also related by the information which this source furnishes reflecting life in general to be horrible due to the lack of proper food, housing, clothes, equipment, and the complete disregard for a human person's individual rights.⁴⁴⁹

Another evaluation stated that this program had developed information about such matters as the "plans and progress made in construction in railways, locations of oil deposits, as well as the location of chemical plants and hydraulic works."⁴⁵⁰ It continued: "While this is of no interest to the Bureau, the information has been disseminated to interested agencies." Survey No. 6 even identified, through the interception of South American mail routed through San Francisco to an Asian country, numerous "[Asian] Communist sympathizers" in Latin America.⁴⁵¹

W. Raymond Wannall, former head of the Bureau's Domestic Intelligence Division, explained that "as a member of the intelligence community, the FBI [was aware] of the positive intelligence requirements [which were] secularized within the community in the form of what was known as a current requirements list, delineating specific areas with regard to such countries that were needed, or information concerning which was needed by the community. So we contributed to the overall community need."⁴⁵² He conceded, however, that the FBI itself had no independent need for or requirement to collect such positive intelligence.⁴⁵³ Just as the CIA mail opening programs infringed on the intelligence jurisdiction of the FBI, therefore, so the FBI programs gathered information which was without value to the Bureau itself and of a variety that was properly within the CIA's mandate.

2. Domestic Intelligence Results

In addition to counterespionage information and positive foreign intelligence, the FBI mail opening programs also developed at least some information of an essentially domestic nature. The collection of

⁴⁴⁸ Memorandum from FBI Headquarters to San Francisco Field Office, 2/28/61.

⁴⁴⁹ Memorandum from San Francisco Field Office to FBI Headquarters, 3/11/60.

⁴⁵⁰ Memorandum from S. B. Donahue to A. H. Belmont, 2/23/61.

⁴⁵¹ Memorandum from San Francisco Field Office to FBI Headquarters, 4/20/64.

⁴⁵² Wannall, 10/13/75, pp. 59, 60.

⁴⁵³ Wannall, 10/13/75, p. 60.

this type of information was on a smaller scale and less direct than was the case in the CIA's New York project, for none of the FBI programs involved the wholesale targeting of large numbers of domestic political activists or the purposefully indiscriminate interception of mail. Nonetheless, the Bureau programs did produce domestic intelligence. An April 1966 evaluation of Survey No. 1, for example, noted that "organizations in the United States concerning whom informant [the survey] has furnished information include . . . [the] Lawyers Committee on American Policy towards Vietnam, Youth Against War and Fascism . . . and others."¹⁵¹

An evaluation of the Survey No. 5 stated that that program had developed "considerable data" about government employees and other American citizens who expressed pro-Communist sympathies, as well as information about individuals, including American citizens, who were specifically targeted as a consequence of their being on the FBI's Security Index.¹⁵² Examples of the latter type of information include their current residence and employment and "anti-U.S. statements which they have made."¹⁵³

Another evaluation of a Bureau program noted that that program had identified American recipients of pornographic material and an American citizen abroad who was a drug addict in correspondence with other addicts in the New York City area;¹⁵⁴ it indicated that information about the recipients of pornographic material was transmitted to other field offices and stated that "pertinent" information was also forwarded to other Federal agencies.¹⁵⁵

Given the ready access which Bureau agents had to the mail for a period of years, it is hardly surprising that some domestic intelligence was collected. Indeed, both logic and the evidence support the conclusion that if any intelligence agency undertakes a program of mail opening within the United States for whatever purpose, the gathering of such information cannot be avoided.

IV. INTERNAL AUTHORIZATION AND CONTROLS

While the FBI and the CIA mail opening programs were similar in many respects, the issue of authorization and control within these agencies highlight their differences. The pattern of internal approval for the CIA mail opening programs was inconsistent at best: the New York project began without the approval of the Director of Central Intelligence; at least two Directors were apparently not even advised of its existence; and it is unclear whether any Director knew the details of either mail opening programs.¹⁵⁶ Administrative controls in the case of the CIA projects, especially the twenty-year New York operation, were clearly lax: periodic reevaluation was non-existent and operational responsibility was diffused.¹⁵⁷

¹⁵¹ Memorandum from New York Field Office to FBI Headquarters, 4/4/66.

¹⁵² Memorandum from San Francisco Field Office to FBI Headquarters, 3/11/60.

¹⁵³ *Ibid.*

¹⁵⁴ Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61.

¹⁵⁵ Memorandum from Donahoe to Sullivan, 9/10/61; memorandum from San Francisco Field Office to FBI Headquarters, 7/28/61

¹⁵⁶ See pp. 580-581.

¹⁵⁷ See pp. 582-584.

Probably as a function of the FBI's contrasting organizational structure, the mail opening programs conducted by the Bureau were far more centrally controlled by senior officials at Headquarters. With one significant exception, the FBI mail programs all received prior approval from the highest levels of the Bureau, up to and including J. Edgar Hoover, and the major aspects of their subsequent operation were strictly regulated by officials at or near the top of an integrated chain of command.

A. Internal Authorization

While the documentary record of FBI mail opening programs is incomplete, that evidence which does exist reveals J. Edgar Hoover's explicit authorization for the following surveys:

- The extension of Survey No. 1 to Los Angeles, Boston, Seattle, and Washington, D.C., on August 4, 1961;⁴⁶¹
- The re-authorization of Survey No. 1 in New York, on December 22, 1961;⁴⁶²
- The re-authorization of Survey No. 1 in New York and Washington, D.C., on April 15, 1966;⁴⁶³
- The extension of Survey No. 2 to three additional postal zones in New York and its implementation with FBI rather than Post Office employees, on August 31, 1961;⁴⁶⁴ and
- The institution of Survey No. 6 in San Francisco, on November 20, 1963.⁴⁶⁵

The documentary evidence also reveals authorizations from former Associate Director Clyde Tolson and/or the former Assistant Director in charge of the Domestic Intelligence Division, William C. Sullivan, for the following surveys:

- The extension of Survey No. 1 to Detroit on April 13, 1962;⁴⁶⁶
- The extension of Survey No. 2 to Detroit on October 4, 1961;⁴⁶⁷
- The re-authorization of Survey No. 2 in New York on December 26, 1961;⁴⁶⁸ and
- Administrative changes in the filing procedures for the Survey No. 5 on June 28, 1963.⁴⁶⁹

Further, unsigned memoranda and airtels from Headquarters, "Director, FBI," authorized the extension of Survey No. 2 to San Francisco on October 18, 1961,⁴⁷⁰ and the institution of Survey No. 4 on December 21, 1962.⁴⁷¹ Bureau procedures normally require that such memoranda and airtels must be seen and approved by at least an

⁴⁶¹ Memorandum from W. A. Branigan to W. C. Sullivan, 8/4/61.

⁴⁶² Memorandum from W. A. Branigan to W. C. Sullivan, 12/22/61.

⁴⁶³ Memorandum from W. A. Branigan to W. C. Sullivan, 4/15/66.

⁴⁶⁴ Memorandum from W. A. Branigan to W. C. Sullivan, 8/31/61.

⁴⁶⁵ Memorandum from W. A. Branigan to W. C. Sullivan, 8/31/61.

⁴⁶⁶ Memorandum from FBI Headquarters to Detroit Field Office, 4/13/62.

⁴⁶⁷ Memorandum from FBI Headquarters to Detroit Field Office, 10/4/61.

⁴⁶⁸ Memorandum from FBI Headquarters to New York Field Office, 12/26/61.

⁴⁶⁹ Memorandum from W. R. Wannell to W. C. Sullivan, 6/28/63.

⁴⁷⁰ Memorandum from FBI Headquarters to San Francisco Field Office, 10/18/61.

⁴⁷¹ Memorandum from FBI Headquarters to Miami Field Office, 12/21/62.

Assistant Director, and there is no reason to assume that this did not occur in these instances.

Despite the absence of some authorizing documents, witness testimony is consistent—and often emphatic—on the point that unwritten Bureau policy required J. Edgar Hoover's personal approval before the institution of a new mail opening program or even the initial use of mail opening as a technique in specific espionage cases.⁴⁷² The approval of at least the Assistant Director for the Domestic Intelligence Division, moreover, was required for the periodic re-authorization or the extensions of existing mail surveys to additional cities, as well as for their termination, upon the recommendation of the field office involved. The only surveys for which this policy was apparently violated were Survey No. 7 and possibly—though this is unclear—Survey No. 1.

The testimony of senior FBI officials conflicts on whether Hoover actually authorized the formal institution of Survey No. 1 in New York in 1959, or whether he merely approved the general concept of a mail opening program utilizing the recently acquired knowledge of the "indicators," but not Survey No. 1 in particular. The former heads of the Espionage Research Branch at Headquarters and of the Espionage Division at the New York Field Office both believe the former to be the case;⁴⁷³ the Section Chief of the section at Headquarters out of which the program was run testified to the latter.⁴⁷⁴ Even if Hoover only approved the general concept of such a project, however, he was soon aware of the program, and, as noted above, authorized its extension to four additional cities in August 1961.

Survey No. 7 was initiated by the San Francisco Field Office on its own motion without prior approval from Washington. When Headquarters was advised of the implementation of this program,⁴⁷⁵ ranking FBI officials immediately demanded justification for it from the Field Office,⁴⁷⁶ subsequently determined the justification to be inadequate, and ordered its termination as a generalized survey.⁴⁷⁷ The last sentence of the instruction to end the program warns: "Do not initiate such general coverage without first obtaining specific Bureau authority."⁴⁷⁸

Unlike most of their CIA counterparts, then, it appears that the Bureau's mail opening programs were—with one clear exception—personally approved by the Director before their implementation, and at the highest levels of the organization before major changes in their operation. In the one certain case where prior Headquarters approval was not secured, the field office which implemented the programs was reprimanded.

B. Administrative Controls by Headquarters

FBI Headquarters exerted tight, centralized control over the mail opening programs in other ways as well. One manifestation of this control was found in the periodic evaluations of each program required of every participating field office for the benefit of Head-

⁴⁷² For example, Moore, 10/1/75, p. 60; Wannell, 10/13/75, pp. 70, 71.

⁴⁷³ Moore, 10/1/75, pp. 58-60; FBI Special Agent #2 testimony, 9/10/75, p. 18.

⁴⁷⁴ Branigan, 10/24/75, Hearings, vol. 4, p. 152.

⁴⁷⁵ Memorandum from San Francisco Field Office to FBI Headquarters, 1/19/61.

⁴⁷⁶ Memorandum from FBI Headquarters to San Francisco Field Office, 2/3/61.

⁴⁷⁷ Memorandum from FBI Headquarters to San Francisco Field Office, 2/28/61.

⁴⁷⁸ *Ibid.*

quarters. In general, written evaluations were submitted semiannually for the first few years of the operation of a program in a city; and annually thereafter.⁴⁸⁹ These evaluations frequently contained such headings as: "Origin;" "Purpose;" "Scope;" "Cost;" "Overall Value;" and "Operation of Source." Every field office was also obligated to determine whether the counterintelligence benefits from each program justified its continuation in light of manpower and security considerations; on the basis of this recommendation and other information supplied, Headquarters then decided whether to re-authorize the program until the next evaluation period or order its termination. The net effect of this system of periodic reexamination was that FBI officials were far better informed than were CIA officials of the true value of the programs to their organization. It was difficult for a program to continue unproductively without the knowledge of the highest ranking officials of the Bureau: as noted above, several programs—Surveys No. 2, 3, and 7—were in fact discontinued by Headquarters before 1966 because the results as set forth in the evaluations were felt to be outweighed by other factors.

Also in contrast to the CIA mail opening programs, the Bureau programs were conducted at the field level with Special Agents who were experienced in intelligence work and given detailed instructions regarding the "indicators" and other selection criteria.⁴⁹⁰ No control procedure could ever eliminate the individual discretion of these agents—ultimately, selection was based on their personal judgment. But Headquarters ensured through the training of these agents that their judgment was at least more informed than that of the Office of Security "interceptors" in the CIA's New York project, who were neither foreign intelligence experts nor given guidance beyond the Watch List itself as to which items to select.⁴⁹¹ At both the Field Office and the Headquarters levels, moreover, responsibility for the operation of the programs was not diffused, as it was in the CIA's New York project but was centralized in the hands of experienced senior officials within a single chain of command.

C. Knowledge of the Mail Opening Programs Within the FBI

Officials of the Domestic Intelligence Division at Headquarters carefully controlled knowledge and dissemination procedures of their mail opening programs within the FBI itself. Knowledge of the operations was strictly limited to the Domestic Intelligence Division. The Criminal Division, for example, was never advised of the existence of (and so never levied requests on) any of these programs, but an internal memorandum indicates that it may have received information generated by the programs without being advised of the true source.⁴⁹² Some FBI witnesses assigned to espionage squads which were engaged in mail opening even testified that they were unaware of other mail opening programs being conducted simultaneously by other espionage squads in the same field office.⁴⁹³

⁴⁸⁹ W innall, 10/18/75, p. 69.

⁴⁹⁰ Branigan, 10/9/75, pp. 21, 22; FBI Special Agent #1 statement, 9/10/75, p. 24.

⁴⁹¹ See pp. 574-575.

⁴⁹² Memorandum from San Francisco Field Office to FBI Headquarters, 7/28/61: see p. 655.

⁴⁹³ Staff Summary of FBI Special Agent #6 interview, 8/21/75; staff summary of Special Agent #7 interview, 9/15/75; FBI Special Agent #1 statement, 9/10/75, p. 57.

The direct dissemination of the photographic copies of letters or abstracts between field offices was prohibited, but Headquarters avoided some of the problems caused by restricted knowledge in the CIA programs by requiring these offices to paraphrase the contents of letters in which other field offices might have an intelligence interest and disseminate the information to them in sanitized form.

Thus, control over the major aspects of the programs was concentrated at the top of the FBI hierarchy to a degree far greater than that which characterized the CIA programs. With few exceptions, senior officials at Headquarters initially authorized the programs, maximized central influence over their actual operation, restricted knowledge of their existence within the Bureau, and regulated the form in which information from them should be disseminated.

V. EXTERNAL AUTHORIZATIONS

Despite the differences between the FBI's and the CIA's mail opening programs with regard to internal authorization, the respective patterns of authorization outside the agencies were clearly parallel. There is no direct evidence that any President or Postmaster General was ever informed about any of the FBI mail opening programs until four years after they ceased. While two Attorneys General may have known about some aspect of the Bureau's mail interceptions—and the record is not even clear on this point—it does not appear that any Attorney General was ever briefed on the full scope of the programs. Thus, like the CIA mail opening programs, the Bureau programs were isolated even within the executive department. They were initiated and operated by Bureau officials alone, without the knowledge, approval, or control of the President or his cabinet.

A. Post Office Department

The FBI mail opening programs, like those of the CIA, necessitated the cooperation of the Post Office Department. But the record shows that the Bureau officials who secured this cooperation intended to and did in fact accomplish their task without revealing the FBI's true interest in obtaining access to the mail; no high ranking Postal official was apparently made aware that the FBI actually opened first class mail.

1. Postmasters General

There is no evidence that any Postmaster General was ever briefed about any of the FBI mail opening programs, either by the FBI directly or by a Chief Postal Inspector. Henry Montague, who as Chief Postal Inspector was aware of the mail cover (as opposed to the mail opening) aspect of several Bureau programs, stated that he never informed the Postmaster General because he "thought it was our duty to cooperate in this interest, and really, I did not see any reason to run to the Postmaster General with the problem. It was not through design that I kept it away from . . . the Postmaster General. . . . It was just that I did not see any reason to run to [him] because he had so many other problems."⁴⁸

2. Chief Postal Inspectors

It is certain that at least one and probably two Chief Postal Inspectors were aware of the fact that Bureau agents received direct access

⁴⁸ Henry Montague testimony, 10/2/75, p. 31.

to mail, and in one case permission may have been given to physically remove letters from the mailstream as well, but there is no direct evidence that any Chief Postal Inspector was ever informed that FBI agents actually opened any mail.

Clifton Garner.—Clifton Garner was Chief Postal Inspector under the Truman administration during the period when Z-Coverage may have been reinstated in Washington, D.C. No FBI testimony or documents, however, suggest that his approval was sought prior to this reinstatement, nor can he recall being contacted by Bureau officials about such a program.⁴⁸⁶

David Stephens.—Henry Montague testified that prior to the 1959 implementation of Z-Coverage in New York, when he was Postal Inspector in Charge of that region, he was instructed by Chief Postal Inspector David Stephens to cooperate with Bureau agents in their proposed program of special "mail covers."⁴⁸⁷ As Montague recalls, Stephens approved the "mail cover" operation and left the mechanical arrangements up to him. Donald Moore has also testified that Stephens must have been contacted by Bureau officials in Washington prior to the implementation of Survey No. 1 in the same year,^{487a} although he did not participate in any such meeting himself, and no other FBI official who testified could shed any light on who might have made such contact. There is no evidence, however, that Stephens was ever informed that mail would actually be opened by Bureau agents in either program.

Henry Montague.—As Postal Inspector in Charge of the New York Region, Montague followed David Stephens' instructions to cooperate with the FBI regarding Z-Coverage and made the necessary mechanical arrangements within his office. He stated, however, that he was told by the Bureau representatives who came to see him, including Donald Moore (whose testimony is consistent),⁴⁸⁸ that this was a mail cover rather than a mail opening operation.⁴⁸⁹ He was simply informed that the Bureau had an interest in obtaining direct access to particular mail for national security reasons and that his cooperation would be appreciated. While he realized that even this type of access was highly unusual, he agreed because ". . . they knew what they were looking for; we did not. . . . [T]hey could not give any names to the Postal Service, as far as I knew, for mail to look for. . . . [P]erhaps they knew who the agent might be, or something of this sort, which knowledge was not ours and which, at that time, I did not feel was in our province to question."⁴⁹⁰ Montague also acknowledged that during his tenure as Postal Inspector in Charge of the New York Region, he may have known of an FBI operation at Idlewild Airport (Survey No. 1) as well, but stated that he had no "positive recollection" of it.⁴⁹¹

As Chief Postal Inspector from 1961 to 1969, Montague personally authorized Postal Service cooperation with the Bureau's programs in

⁴⁸⁶ Staff summary of Clifton Garner interview, 8/22/75.

⁴⁸⁷ Montague, 10/2/75, pp. 6, 8.

^{487a} Moore, 10/1/75, p. 62.

⁴⁸⁸ Moore, 10/1/75, p. 70.

⁴⁸⁹ Montague, 10/2/75, pp. 13, 15.

⁴⁹⁰ Montague, 10/2/75, p. 11.

⁴⁹¹ Montague, 10/2/75, p. 17.

at least two instances, and in one case possibly approved the removal of selected letters by Bureau agents to a point outside the postal facility in which they worked. According to a 1961 FBI memorandum, it was recommended by Bureau officials and approved by Director Hoover that Postal officials in Washington should be contacted "to explore the possibility of instituting" Survey No. 2.⁴⁹² In February of that year, Donald Moore met with Montague about this matter, explaining only—according to both Moore and Montague—that the program would involve screening the mail and that it was vital to the security of the country.⁴⁹³ The fact that the FBI intended to open selected items was apparently not mentioned. Because he "felt it was our duty to cooperate with the Agency which was responsible for the national security in espionage cases,"⁴⁹⁴ Montague agreed to assist the Bureau. On this occasion, however, he indicated that he would prefer to have postal employees rather than FBI agents conduct the "cover" since "it was our position that whenever possible . . . the mail should remain in the possession of the Postal Service."⁴⁹⁵

Less than two years later, Montague did allow Bureau agents to screen mail directly in Survey No. 4. A 1962 FBI memorandum noted that the FBI liaison to the Post Office approached him on December 19 to secure his approval for the Bureau's plan to cover mail from Miami to a Latin American country.⁴⁹⁶ According to this memorandum, Montague did approve and authorized the removal of selected letters to the FBI laboratory as well. The former Chief Postal Inspector remembers approving the screening aspects of the project and knowing that mail left the custody of postal employees,⁴⁹⁷ but cannot recall whether or not he specifically granted his permission for flying certain letters to Washington.⁴⁹⁸ He testified, in any event, that he was not informed that mail would be opened.⁴⁹⁹

In June 1965, Montague reconsidered his original approval of the project, possibly in light of Senator Edward Long's investigation into the use of mail covers and other techniques by federal agencies. A June 25, 1965, FBI airtel from the Miami office to Headquarters reads in part: "[The Assistant Postal Inspector in Charge of the Atlanta Region] said that due to investigations by Senate and Congressional committees, Mr. Montague requested he be advised of the procedures used in this operation."⁵⁰⁰ Montague had appeared before the Long Subcommittee and had testified on the subject of mail covers several times earlier that year, but he recalls that his concern in determining the procedures used in Survey No. 4 in June focused more on the new Postal regulations regarding mail covers that were issued about that time than on the Senate hearings.⁵⁰¹ Regardless of his motivation, Montague asked the Assistant Postal Inspector in Charge to ascertain the details of the Miami operation; the procedures were described

⁴⁹² Memorandum from W. A. Branigan to Mr. Sullivan, 8/31/61.

⁴⁹³ Montague, 10/2/75, p. 25; Moore, 10/1/74, p. 60.

⁴⁹⁴ Montague, 10/2/75, p. 26.

⁴⁹⁵ Montague, 10/2/75, p. 28.

⁴⁹⁶ Memorandum from FBI Headquarters to Miami Field Office, 12/21/62.

⁴⁹⁷ Montague, 10/2/75, pp. 65, 71.

⁴⁹⁸ Montague, 10/2/75, p. 60.

⁴⁹⁹ Montague, 10/2/75, p. 55.

⁵⁰⁰ Memorandum from Miami Field Office to FBI Headquarters, 6/25/65.

⁵⁰¹ Montague, 10/2/75, pp. 60, 70.

to this postal official by representatives of the Miami Field Office, apparently without mention of the fact that mail was actually opened; and the Assistant Postal Inspector reported back to Montague, who found them to be acceptable and did not withdraw his support for the survey.⁵⁰²

Montague has stated that he was never informed that FBI agents in Survey No. 4 or in any of the other Bureau programs intended to or actually did open first class mail. This testimony is supported by that of Donald Moore, who on at least two occasions was the Bureau representative who sought Montague's cooperation for the programs. Moore does not believe that he ever told Montague that mail would be opened; ⁵⁰⁴ he said, moreover, that it was "understood" within the Bureau that Postal officials should not be informed.⁵⁰⁵ Of his meeting with Montague about Z-Coverage, for example, Moore stated: "I am sure I didn't volunteer it to him and, in fact, would not volunteer it to him" because of the belief that such information should be closely held within the Bureau.⁵⁰⁶ He added that it was a general, though unwritten, policy that whenever Bureau agents contacted Postal officials concerning the mail programs "it was understood that they would not be told [that mail opening was contemplated]." ⁵⁰⁷

Montague, for his part, did not specifically warn FBI agents against tampering with the mail because they were Federal officers and he trusted them not to do so. He stated:

I do not recall that I asked [if they intended to open mail], because I never thought that would be necessary. I know that we never opened mail in connection with a mail cover. I knew that we could not approve it, that we would not approve any opening of any mail by anybody else. Both the CIA and the FBI were Government employees the same as we were, had taken the same oath of office, so that question was really not discussed by me. . . .

With regard to the CIA when they first started [in 1953], we did put more emphasis on that point that mail could not be tampered with, that it could not be delayed, because, according to my recollection, this was the first time that we had had any working relationship with the CIA at all. With the FBI, I just did not consider that it was necessary to emphasize that point. I trusted them the same as I would trust another 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.⁵⁰⁸

In short, it does not appear that any senior postal official knew that the FBI opened mail. Postal officials did cooperate extensively

⁵⁰² Memorandum from Miami Field Office to FBI Headquarters, 6/25/65; Montague, 10/2/75, p. 71.

⁵⁰⁴ Moore, 10/1/75, pp. 65, 66, 70.

⁵⁰⁵ Moore, 10/1/75, p. 70.

⁵⁰⁶ Moore, 10/1/75, p. 70.

⁵⁰⁷ Moore, 10/1/75, p. 70.

⁵⁰⁸ Montague, 10/2/75, pp. 15, 16.

with the Bureau, but out of trust did not ask whether mail would be opened and because of a concern for security they were not told.

B. Department of Justice

The record presents no conclusive evidence that any Attorney General ever knew of any of the FBI mail opening programs. The evidence summarized below, does suggest that one and possibly two Attorneys General may have been informed of selected aspects of the Bureau's mail operations, but generally supports the view that no Attorney General was ever briefed on their full scope.

1. Robert F. Kennedy

New York Field Office Briefings.—On April 5, 1962, and again on November 4, 1963, Attorney General Robert F. Kennedy visited the FBI's New York field office was briefed in foreign espionage matters. The person who briefed him on these occasions, the Assistant Special Agent in Charge for the Espionage Division, testified that he may have mentioned the mail intercept projects then being conducted by the New York field office to the Attorney General, but has no definite recollection whether he did or not.⁵⁰⁰ Other participants at these briefings could not recall the technique of mail opening being discussed,⁵¹⁰ nor do the internal FBI memoranda relating to the briefings indicate that the topic arose.⁵¹¹

The Baltch Case.—It is also possible, though again the evidence is far from conclusive, that Robert Kennedy learned that mail opening was utilized in the Baltch investigation, which is described on page 648. On July 2, 1963, FBI agents arrested two alleged Soviet illegal agents who used the names Robert and Joy Ann Baltch, they were indicted for espionage on July 15. Several conferences were held between FBI representatives and Assistant Attorney General for Internal Security, J. Walter Yeagley, regarding this case and the possibility that some of the evidence was tainted.⁵¹² Yeagley subsequently briefed Kennedy on the problems involved in prosecuting the Baltchs.⁵¹³ Donald E. Moore, who was one of the FBI representatives who discussed the Baltch case with Yeagley, testified that he believed, though he had no direct knowledge, that the fact of mail opening did come to the attention of the Attorney General in this context.⁵¹⁴ Yeagley, however, cannot recall being specifically advised that mail was opened (although he knew that a "mail intercept or cover" had occurred) and stated that he did not inform Kennedy about any mail openings.⁵¹⁵

⁵⁰⁰ FBI Special Agent #2, 9/16/75, pp. 44-47.

⁵¹⁰ Staff Summary of FBI Special Agent #7 interview, 9/15/75; staff summary of Courtney A. Evans interview, 9/17/75; staff summary of FBI Special Agent #3 interview, 9/19/75.

⁵¹¹ Memorandum from New York Field Office to FBI Headquarters, 4/5/62; memorandum from New York Field Office to FBI Headquarters, 11/4/63; memorandum from C. A. Evans to Mr. Belmont, 11/4/63.

⁵¹² Memorandum from W. A. Branigan to W. C. Sullivan, 10/8/64.

⁵¹³ *Ibid.*

⁵¹⁴ Moore, 10/1/75, pp. 38, 39.

⁵¹⁵ J. Walter Yeagley statement, 10/15/75; staff summary of J. Walter Yeagley interview, 10/10/75.

Other Espionage Cases.—Internal FBI memoranda concerning at least two other espionage cases that were considered for prosecution while Kennedy was Attorney General, also raise the possibility that Justice Department attorneys, including Yeagley, may have been advised of mail openings that occurred.⁵¹⁶ Yeagley cannot recall being so advised, however, and, as noted above, stated that he never informed the Attorney General of any mail openings.⁵¹⁷ There is no indication in the memoranda, moreover, that these matters were ever raised with Kennedy.

2. Nicholas deB. Katzenbach

The Baltch Case.—The Baltch case did not come to trial until early October 1964, when Nicholas deB. Katzenbach was Acting Attorney General. At the time the trial commenced, FBI representatives, including Donald Moore, conferred with Thomas K. Hall, a Justice Department attorney who was assigned to the case, again on the subject of tainted evidence.⁵¹⁸ Hall then discussed the case with Katzenbach and, according to an FBI internal memorandum, "Katzenbach recognized the problems, but felt in view of the value of the case, an effort should be made to go ahead with the trial even if it might be necessary to drop the overt act where our tainted source is involved. . . ." ⁵¹⁹ Because he subsequently determined that the case "could not be further prosecuted without revealing national security information," ⁵²⁰ however, Katzenbach ordered the prosecution to be dropped entirely.

In fact, there were at least two sources of tainted evidence other than mail opening involved in the Baltch case—a surreptitious entry and a microphone installation—and it is only these which Katzenbach recalls.⁵²¹ He testified that although he did discuss the taint issues with both Hall and Joseph Hoey, the United States Attorney who originally presented the government's case, neither of them brought to his attention the fact of mail opening.⁵²² Hoey's recollection supports this contention: a Bureau memorandum suggests that Hoey may have learned of a "mail intercept" in the case,⁵²³ but he recalls neither being informed of an actual opening nor conferring with the Acting Attorney General about any issue related to mail.⁵²⁴ Assistant Attorney General Yeagley recalls discussing the case generally with Katzenbach also, and "may have informed him of the mail intercept or cover which had occurred," but Yeagley stated that he had no definite knowledge himself that the "intercept or cover" involved the actual opening of mail, and so would not have been in a position to advise him that it did.⁵²⁵

⁵¹⁷ Memorandum from W. A. Branigan to W. C. Sullivan, 8/11/64; memorandum from Mr. Branigan to Mr. Sullivan, 9/14/64.

⁵¹⁸ Yeagley statement, 10/15/75; staff summary of Yeagley interview, 10/10/75.

⁵¹⁹ Memorandum from D. E. Moore to W. C. Sullivan, 10/2/64.

⁵²⁰ *Ibid.*

⁵²¹ Nicholas deB. Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 203.

⁵²² *Ibid.*

⁵²³ *Ibid.*

⁵²⁴ Memorandum from Moore to Sullivan, 10/2/64.

⁵²⁵ Staff summary of Joseph Hoey interview, 11/24/75.

⁵²⁶ Yeagley statement, 10/15/75; staff summary of Yeagley interview, 10/10/75.

Katzenbach has testified that he was never aware of the Bureau's use of mail opening in any espionage investigation.⁵²⁹ He added:

Even if one were to conclude that the Bureau did in fact reveal that mail had been opened and that this fact was relayed by lawyers in the [Baltch] case to me, I am certain that that fact would have been revealed by the FBI—and I would have accepted it—as an unfortunate aberration, just then discovered in the context of a Soviet espionage investigation, not a massive mail-opening program. In that event, nothing would have led me to deduce that the Bureau was, as a matter of policy and practice, opening letters.⁵²⁷

The Long Subcommittee Hearings.—According to Donald Moore, he and Assistant Director Alan H. Belmont did inform Mr. Katzenbach at the time of the 1965 Long Subcommittee hearings that Bureau agents screened mail both inside and outside postal facilities as a matter of practice, although he does not claim that the subject of actual opening arose.

In February of that year, the Long Subcommittee directed Chief Postal Inspector Montague to provide it with a list of all mail covers, including those in the areas of organized crime and national security, by federal agencies within the previous two years. As a result of this and other inquiries by the Subcommittee, especially regarding electronic surveillance practices, President Johnson requested Katzenbach to coordinate all executive department matters under his investigation.⁵²⁸

In executing this responsibility, Katzenbach met with Moore, Belmont, and Courtney Evans, a former FBI Assistant Director who had retired from the Bureau but was then working as a special assistant to the Attorney General, on February 27, 1965, to discuss problems raised by the Subcommittee which affected the FBI.⁵²⁹ One of the subjects discussed at that meeting was the question of Bureau access to the mail. Four days earlier, the Chief Postal Inspector had testified before the Subcommittee that he had no knowledge of any case in which mail left the custody of Postal employees during the course of a mail cover.⁵³⁰ At the time, Montague did know that this practice had occurred⁵³¹—indeed, as Chief Postal Inspector he had approved the direct screening of mail by FBI agents in Survey No. 4⁵³²—but he believed that “there was an understanding . . . that national security cases were not included within this particular part of the hearing.”⁵³³ According to Moore, Katzenbach had been made aware of the possible

⁵²⁹ Nicholas de-B. Katzenbach testimony, 10/11/75, p. 35.

⁵²⁷ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 204.

⁵²⁸ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 204, memorandum from A. H. Belmont to Mr. Tolson, 2/27/65.

⁵²⁹ *Ibid.*

⁵³⁰ Henry Montague testimony, Senate Subcommittee on Administrative Practice and Procedure Hearings, 2/23/65, Part I, pp. 210-212; Montague 10/2/75, p. 60.

⁵³¹ Montague, 10/2/75, p. 71.

⁵³² Montague, 10/2/75, p. 55.

⁵³³ Montague, 10/2/75, p. 60.

inaccuracy of Montague's testimony, and the Bureau officials consequently "pointed out [to the Attorney General] that we do receive mail from the Post Office in certain sensitive areas. . . ." ⁵³⁴ Moore believes moreover, that they informed him that this custody was granted in on-going projects rather than isolated instances. ⁵³⁵

Katzenbach acknowledged that he was aware, while Attorney General, that "in some cases the outside of mail might have been examined or even photographed by persons other than Post Office employees," ⁵³⁶ but he stated that he never knew the FBI gained custody to mail on a regular basis in large-scale operations. ⁵³⁷ He also testified that the time of the February meeting he considered Montague's testimony to be "essentially truthful." ⁵³⁸ While the record shows that he spoke to Senator Long less than a week after this meeting, ⁵³⁹ Katzenbach stated that this was in regard to the requested list of all mail covers by federal agencies rather than the issue of mail custody. ⁵⁴⁰ The testimony of Courtney Evans, who was also present at the February 27 meeting, supports that of Katzenbach: at no time, Evans said, was he personally ever made aware that FBI agents received direct access to mail on an on-going basis. ⁵⁴¹

Moore does not claim that he told Katzenbach that mail was actually opened by Bureau agents. According to him, this information was volunteered by neither Belmont nor himself and Katzenbach did not inquire whether opening was involved. ⁵⁴² 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 is that anytime one additional person becomes aware of it, there is a potential for the information to . . . go further." ⁵⁴³

Probably the strongest suggestion in the documentary evidence that Katzenbach may have been made aware of actual FBI mail openings at the time of the Long Subcommittee hearings is found in a memorandum from Hoover to ranking Bureau officials, dated March 2, 1965. This memorandum reads, in part:

The Attorney General called and advised that he had talked to Senator Long last night. Senator Long's committee is looking into mail covers, et cetera. The Attorney General stated he thought somebody had already spoken to Senator Long as

⁵³⁴ Moore, 10/1/75, p. 31.

⁵³⁵ Moore, 10/1/75, p. 44.

⁵³⁶ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 205.

⁵³⁷ Katzenbach testimony, 10/11/75, p. 35.

⁵³⁸ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 15.

⁵³⁹ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 205; memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/2/65.

⁵⁴⁰ Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 205.

⁵⁴¹ Courtney A. Evans affidavit, 10/21/75.

⁵⁴² Moore, 10/1/75, p. 33.

⁵⁴³ Moore, 10/1/75, p. 48.

he said he did not want to get into any national security area and was willing to take steps not to do this. The Attorney General stated that Mr. Fensterwald [Chief counsel to the Subcommittee] was present for part of the meeting and Fensterwald had said that he had some possible witnesses who are former Bureau agents and if they were asked if mail was opened, they would take the Fifth Amendment. The Attorney General stated that before they are called, he would like to know who they are and whether they were ever involved in any program touching on national security and if not, it is their own business, but if they were, we would want to know. The Attorney General stated the Senator promised that he would have a chance to look at the names if he wanted to, personally and confidentially, and the list would have any names involving national security deleted and he would tell the Senator how many but no more.⁶⁴⁴

Katzenbach testified as follows concerning his passage:

[Even] assuming the accuracy of the memo, it is not consistent with my being aware of the Bureau's mail opening program. Had I been aware of that program, I naturally would have assumed that the agents had been involved in that program, and I would scarcely have been content to leave them to their own devices before Senator Long's committee. Moreover, it would have been extremely unusual for ex-FBI agents to be interviewed by the Senate committee staff without revealing that fact to the Bureau. In those circumstances both the Director and I would have been concerned as to the scope of their knowledge with respect to the very information about mail covers which the Senator was demanding and which we were refusing, as well as about any other matters of a national security nature. If the witnesses in fact existed (which I doubted strongly), then both the Director and I wanted to know the extent of their knowledge about Bureau programs, and the extent of their hostility toward the FBI. That is a normal concern that we would have had anytime any ex-FBI agent testified before any Congressional committee on any subject.⁶⁴⁵

The most that can reasonably be inferred from the record on possible knowledge of FBI mail opening by Attorneys General is this: one or two Attorneys General may have known that mail was opened in connection with particular espionage investigations, and one Attorney General may have learned that the FBI regularly received mail from the Post Office and that five former FBI agents possibly opened mail. Evidence exists which casts doubt on the reasonableness of even these inferences, however. More significantly, there is no indication in either the documents or the testimony that the approval of any Attorney General was ever sought prior to the institution of any Bureau

⁶⁴⁴ Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/2/65.

⁶⁴⁵ Katzenbach statement, 12/3/75, Hearings, Vol. 6, pp. 205, 206.

program, and despite a clear opportunity to inform Attorney General Katzenbach of the full scope and true nature of these operations in 1965, he was intentionally not told. In the name of security, the Bureau neither sought the approval of nor even shared knowledge of its programs with the Cabinet officer who was charged with the responsibility of controlling and regulating the FBI's conduct.

The first uncontroverted evidence that any Attorney General knew of the FBI mail opening programs is not found until 1970, four years after the programs were terminated. John Mitchell, upon reading the 1970 "Huston Report", learned that the Bureau had engaged in "covert mail coverage" in the past, but that this practice had "been discontinued."⁵⁴⁶ While the report itself stated that mail opening was unlawful,⁵⁴⁷ however, Mitchell did not initiate any investigation, nor did he show much interest in the matter. He testified:

I had no consideration of that subject matter at the time. I did not focus on it and I was very happy that the plan was thrown out the window, without pursuing any of its provisions further. . . . I think if I had focused on it I might have considered [an investigation into these acts] more than I did.⁵⁴⁸

C. Presidents

There is no evidence that any President was ever contemporaneously informed about any of the FBI mail opening programs. In 1970, Bureau officials who were involved in the preparation of the "Huston Report" apparently advised Tom Charles Huston that mail opening as an investigative technique had been utilized in the past, for this fact was reflected in the report which was sent to President Nixon.⁵⁴⁹

VI. TERMINATION OF THE FBI MAIL OPENING PROGRAMS

A. Hoover's Decision to Terminate the Programs in 1966

1. Timing

By mid-1966 only three FBI mail opening programs continued to operate: Z-Coverage in New York and Washington, Survey No. 1 in those same cities, and Survey No. 4 in Miami. Three of the programs—No. 2, No. 3, and No. 7—and the extensions of Survey No. 1 to four cities other than New York and Washington had all been terminated prior to 1966 because they had produced no valuable counterintelligence information while tying up manpower needed in other areas.⁵⁵⁰ Two of the programs—Surveys No. 5 and 6—had been suspended in January 1966 for security reasons involving changes in local postal personnel and were reinstated. As the San

⁵⁴⁶ See Senate Select Committee Report on the Huston Plan, p. 61; Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 26.

⁵⁴⁷ Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 30.

⁵⁴⁸ John N. Mitchell, 10/24/75, Hearings, Vol. 4, p. 145.

⁵⁴⁹ Special Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 20.

⁵⁵¹ See pp. 653-654.

San Francisco Field office informed Headquarters in May of that year in regard to both programs: "While it is realized that these sources furnished valuable information to the Federal Government, it is not believed the value justifies the risk involved. It is not recommended that contact with sources be re-instituted."⁵⁵²

The remaining three programs were all terminated in July 1966 at the direct instruction of J. Edgar Hoover. Apparently this instruction was delivered telephonically to the field offices;⁵⁵³ no memoranda explicitly reflect the order to terminate the programs. There is no evidence that the FBI has employed the technique of mail opening in any of its investigations since that time, although the FBI continued to receive the fruits of the CIA's mail opening program until 1973.

2. Reasons

Given the perceived success of these three programs the reasons for their termination are not entirely clear. While all FBI officials who testified on the subject were unanimous in their conclusion that the decision was Hoover's alone, none could testify as to the precise reasons for his decision.

At least three possible reasons are presented by the record. First, the Director may have believed that the benefits derived from mail opening were outweighed by the need to present espionage cases for prosecution which were untainted by use of this technique. Regardless of whether or not the mail opening in the Baltch case was actually a factor in Acting Attorney General Katzenbach's decision to drop the prosecution, for example, Bureau officials believed that their use of the technique in that case did in fact preclude prosecution.⁵⁵⁴ On a memorandum dealing with the evidentiary issues in the Baltch case, Hoover wrote the following notation: "We must immediately and materially reduce the use of techniques which 'taint' cases."⁵⁵⁵

Second, Hoover may have believed that the Attorney General and other high government officials would not support him in the FBI's use of questionable investigative practices. It is known that Hoover cut back on a number of other techniques in the mid-1960's: the use of mail covers by the FBI was suspended in 1964,⁵⁵⁶ and in July 1966—the same month which saw the end of the mail opening programs—Hoover terminated the technique of surreptitious entries by Bureau agents.⁵⁵⁷ In a revealing comment on a 1965 memorandum regarding the Long Subcommittee's investigation of such techniques as mail covers and electronic surveillance, Hoover wrote:

I don't see what all the excitement is about. I would have had no hesitation in discontinuing all techniques—technical coverage [i.e. wiretapping], microphones, trash covers, mail covers, etc. While it might handicap us I doubt they are as valuable

⁵⁵² Memorandum from San Francisco Field Office to FBI Headquarters, 5/19/66.

⁵⁵³ Wannall Testimony 10/18/75, p. 45.

⁵⁵⁴ See p. 640.

⁵⁵⁵ Memorandum from W. A. Branigan to W. C. Sullivan, 9/29/64.

⁵⁵⁶ *Ibid.*

⁵⁵⁷ Memorandum from W. C. Sullivan to C. D. DeLoach, 7/10/66.

as some believe and none warrant FBI being used to justify them.⁵⁵⁸

His lack of support from above had been tentatively suggested by some witnesses as a reason for this general retrenchment. Donald Moore, for example, surmised that:

There had been several questions raised on various techniques, and some procedures had changed, and I feel that Mr. Hoover in conversation with other people, of which I am not aware, decided that he did not or would not receive backing in these procedures and he did not want them to continue until the policy question was decided at a higher level.⁵⁵⁹

While former Attorney General Katzenbach testified that he was unaware of the FBI mail openings, his views on this subject tend to support Moore's. He speculated that the reason the programs were terminated in 1966 may have related to the then-strained relations between Mr. Hoover and the Justice Department stemming from the case of *Black v. United States*^{559a} and the issue of warrantless electronic surveillance.⁵⁶⁰ Hoover had wanted the Justice Department to inform the Supreme Court, in response to an order by the Court that the type of warrantless microphone surveillance that occurred in that case had been authorized by every Attorney General since Herbert Brownell. Katzenbach, not believing this to be so, approved a Supplemental Memorandum to the Court which simply stated that microphone installations had been authorized by long-standing "practice." According to Katzenbach, "this infuriated Hoover. . . . He was very angry, [and] that may have caused him to stop everything of this kind."⁵⁶¹

A third, related reason was suggested by W. Raymond Wannall, former Assistant Director in charge of the FBI's Domestic Intelligence Division. Wannall believed that there was a genuine "question in [Hoover's] mind about the legality" of mail opening, and noted that by at least 1970, as expressed in one of the Director's footnotes in the Huston Report, Hoover clearly considered mail opening to be outside the framework of the law.⁵⁶² This footnote also suggests that, like CIA officials, Hoover was concerned that the perceived illegality of the technique would lead to an adverse public reaction damaging to the FBI and other intelligence agencies if its use were made known. His note to President Nixon read:

The FBI is opposed to implementing any covert mail coverage [i.e., mail opening] because it is clearly illegal and it is likely that, if done, information would leak out of the Post Office to the press and serious damage would be done to the intelligence community.⁵⁶³

⁵⁵⁸ Memorandum from Belmont to Tolson, 2/27/65.

⁵⁵⁹ Moore, 10/1/75, p. 29.

^{559a} 385 U.S. 20 (1966).

⁵⁶⁰ Katzenbach, 10/11/75, p. 58.

⁵⁶¹ *Ibid.*

⁵⁶² Wannall, 10/13/75, p. 70.

⁵⁶³ Huston Report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 31. Hoover permitted the Bureau to receive the fruits of illegal mail opening by the CIA, however.

B. Recommended Reinstitution

1. Within the Bureau

Whatever the reasons for it, the FBI Director's decision to terminate all mail opening programs in 1966 was not favorably received by many of the participating agents in the field. As one official of the New York Field Office at the time of the termination testified:

... the inability of the government to pursue this type of investigative technique meant that we would no longer be able to achieve the results that I felt were necessary to protect the national security, and I did not feel that I wanted to continue in any job where you are unable to achieve the results that really your job calls for. . . . That was a big influence on my taking retirement from the FBI.⁵⁶⁴

Several recommendations came in from the field to consider the reinstatement of the mail opening programs between 1966 and the time of Hoover's death in 1972.⁵⁶⁵ None of them was successful. A 1970 internal FBI memorandum, for example, reflects the recommendation of the New York office that the programs be reinstated,⁵⁶⁶ but Headquarters suggested that this course was "not advisable at this time."⁵⁶⁷ Underlining the words "not advisable," Hoover noted: "Absolutely right."

There is no evidence that any recommendation to reinstitute these programs ever reached the desk of an Acting Director or Director of the Bureau after Hoover's death.

2. Huston Plan

The only known attempt to recommend reinstatement of FBI mail opening by officials outside the FBI is found in the Huston Report in 1970.⁵⁶⁸ The Report itself stated that mail opening did not have the "sanction of law,"⁵⁶⁹ but proceeded to note several advantages of relaxing restrictions on this technique, among them:

1. High-level postal authorities have, in the past, provided complete cooperation and have maintained full security of this program.

2. This technique involves negligible risk of compromise. Only high echelon postal authorities know of its existence, and personnel involved are highly trained, trustworthy, and under complete control of the intelligence agency.

3. This coverage has been extremely successful in producing hard-core and authentic intelligence which is not obtainable from any other source. . . .⁵⁶⁹

⁵⁶⁴ FBI Special Agent #2, 9/16/75, pp. 61, 62. It should be noted that this view ignores the availability of the warrant procedure for opening mail when there is probable cause to believe that a crime—including espionage—has occurred or is about to occur.

⁵⁶⁵ Branigan, 10/9/75, p. 54.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ Memorandum from Branigan to Sullivan, 3/31/70.

⁵⁶⁸ See generally, Senate Select Committee Report on the Huston Plan.

⁵⁶⁹ Special report: Interagency Committee on Intelligence (Ad Hoc), June 1970, p. 30.

⁵⁷⁰ *Ibid.*

Primarily because of the objections Hoover expressed in the footnote he added, which are discussed above, this aspect of the Huston Plan was never implemented, however.

VII. LEGAL AND SECURITY CONSIDERATIONS WITHIN THE FBI

During the years that the FBI mail opening programs operated, Bureau officials attempted only once, in 1951, to formulate a legal theory to justify warrantless mail opening, and the evidence suggests that they never relied upon even this theory. At the same time, there is little in the record (until Hoover's comment in the 1970 Huston Report) to indicate that Bureau officials perceived mail opening to be illegal, as many CIA officials did. The FBI officials who directed the programs apparently gave little consideration to factors of law at all; ironically, it appears that of the two agencies which opened first class mail without warrants, that agency with law enforcement responsibilities and which was a part of the Justice Department gave less thought to the legal ramifications of the technique. Despite its inattentive attitude toward legal issues, the Bureau was at least as concerned as the CIA that disclosure of their programs outside the FBI—even to its own overseer, the Attorney General, and especially to Congress—would, as Hoover wrote in 1970, "leak . . . to the press and serious[ly] damage" the FBI.⁶⁷⁴ To avoid such exposure, the Bureau, like the CIA, took measures to prevent knowledge of their programs from reaching this country's elected leadership.

A. Consideration of Legal Factors by the FBI

1. Prior to the Commencement of Mail Opening Programs In the Post-War Period

In June 1951, when the Washington Field Office recommended to Headquarters that consideration should be given to the reinstatement of Z-Coverage, it was specifically suggested that Bureau officials determine whether or not Postal Inspectors have the authority to order the opening of first class mail in espionage cases.⁶⁷⁵ Headquarters conducted research on this possible legal predicate to the peacetime reinstatement of the program, and the results were summarized in a second memorandum on Z-Coverage in September 1951.⁶⁷⁶ The basic conclusion was that Postal Inspectors had no authority to open mail; only employees of the Dead Letter Office and other persons with legal search warrants had such power. It was argued, however, that Postal Inspectors may have sufficient legal authority to open even first class mail whose contents were legally non-mailable under 18 U.S.C. Section 1717. This class of non-mailable items included, and includes today, "[e]very letter . . . in violation of sections . . . 793, 794 [the espionage statutes] . . . of this title . . ." Since it was a crime to mail letters whose contents violated the espionage statutes, it was reasoned it may not be unlawful to intercept and open such letters, despite the general prohibition against mail opening found in 18 U.S.C. Sections 1701, 1702, and 1703. The study concluded:

. . . it is believed that appropriate arrangements might be worked out on a high level between the Department and the

⁶⁷⁴ See p. 670.

⁶⁷⁵ Memorandum from E. T. Turner to C. E. Hennrich, 6/26/51.

⁶⁷⁶ Memorandum from C. E. Hennrich to A. H. Belmont, 9/7/51.

Postmaster General or between the Bureau and the appropriate Post Office officials whereby the mail of interest to the Bureau could be checked for items in violation of the espionage and other security statutes which are itemized in Title 18, U.S. Code Section. . . . It is respectfully suggested that appropriate discussions be held on this matter.⁵⁷⁷

This theory ignores the fact that the warrant procedure itself responds to the problem of non-mailable items. If, on the basis of an exterior examination of the envelope or on the basis of facts surrounding its mailing, there exists probable cause for a court to believe that the espionage statutes have been violated, a warrant may be obtained to open the correspondence. If the evidence does not rise to the level of probable cause, the law does not permit the mail to be opened. There is no indication, in any event, that discussions were ever held with any Postmaster General or Attorney General in an attempt to either test or implement this theory. While Z-Coverage was in fact reinstated after this study was made, it was conducted with FBI personnel rather than Postal Inspectors, and its mail opening aspect was apparently unknown to any high-ranking Postal officials. In regard to the recommendation that "appropriate discussions be held on this matter," Assistant to the Director Alan Belmont penned the notation, "No action at this time. File for future reference."⁵⁷⁸

2. Post-1951

After the mail opening programs were underway, there was apparently no further consideration by FBI officials of the legal factors involved in the operations. Unlike that regarding CIA mail opening, the documentary record on the FBI programs does not contain references (until 1970, four years after the programs ceased) to the illegality of mail opening; nor does it suggest that mail opening was considered legal. At most, the record reveals the recognition by Bureau officials that evidence obtained from their surveys was tainted and, hence, inadmissible in court,⁵⁷⁹ but not the recognition that the technique was invalid *per se*. Indeed, after the Supreme Court decisions in *Nardone v. United States*, 302 U.S. 379 (1937) and 308 U.S. 338 (1939), this distinction was explicitly made in the area of electronic surveillance: while the *Nardone* decisions prohibited the admission in court of evidence obtained from wiretapping, the cases were not interpreted by the Bureau to preclude use of the technique itself, and the practice continued.⁵⁸⁰

The testimonial record, moreover, clearly suggests that legal considerations were simply not raised in contemporaneous policy decisions affecting the various mail surveys: W. Raymond Wannall, William Branigan, and others have all so testified.⁵⁸¹ None of these officials has any knowledge that any legal theory—either the one which was filed for "future reference" in 1951 or one based on a possible "national security" exception to the general prohibition against mail opening—was ever developed by Bureau officials after 1951 to justify their programs

⁵⁷⁷ *Ibid.*

⁵⁷⁸ *Ibid.*

⁵⁷⁹ Memorandum from Branigan to Sullivan, 9/20/64; memorandum from * * * to Sullivan, 10/2/64.

⁵⁸⁰ See Senate Select Committee Report on FBI Electronic Surveillance.

⁵⁸¹ Branigan, 10/9/76, pp. 18, 39, 40; Wannall, 10/24/76, Hearings, Vol. 4, p. 149.

legally, or that a legal opinion from the Attorney General was ever sought. To these officials, such justification as existed stemmed not from legal reasoning but from the end they sought to achieve and an amorphous, albeit honestly held, concept of the "greater good." As William Branigan stated: "It was my assumption that what we were doing was justified by what we had to do."⁵⁸² He added that he believed "the national security" impelled reliance on such techniques:

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.⁵⁸³

At least some of the agents who participated in the mail opening program have testified that they believed the surveys were legal because they assumed (without being told) that the programs had been authorized by the President or Attorney General, or because they assumed (again without being told) that there was a "national security" exception to the laws prohibiting mail opening.⁵⁸⁴ Those officials in a policy-making position, however, apparently did not focus on the legal questions sufficiently to state an opinion regarding the legality or illegality of the programs, nor did they advise the field offices or participating agents about these matters.

Only in the 1970's, at least four years after the FBI mail opening programs ceased, is there any clear indication that Bureau officials, like those of the CIA, believed their programs to be illegal. As noted above, Hoover's footnote to the 1970 Huston Report described the technique as "clearly illegal;" and in the recent public hearings on FBI mail opening, W. Raymond Wannall testified that, as of 1975, "I cannot justify what happened. . . ."⁵⁸⁵

In light of the Bureau's major responsibilities in the area of law enforcement and the likelihood that some of the espionage cases in which mail opening was utilized would be prosecuted, it is ironic that FBI officials focused on these legal issues to a lesser degree than did their CIA counterparts. But the Bureau's Domestic Intelligence Division made a clear distinction between law enforcement and counterintelligence matters; what was appropriate in one area was not necessarily appropriate in the other. As William Branigan again testified:

In consideration of prosecuting a case, quite obviously [legal factors] would be of vital concern. In discharging counterintelligence responsibilities, namely to identify agents in the United States to determine the extent of damage that they are causing to the United States . . . we would not necessarily go into the legality or illegality. . . . We were trying to identify agents and we were trying to find out how this country was being hurt, and [mail opening] was a means of doing it, and it was a successful means.⁵⁸⁶

⁵⁸² Branigan, 10/0/75, p. 41.

⁵⁸³ *Ibid.*

⁵⁸⁴ FBI Special Agent #2 statement, 0/10/75, p. 10; Staff Summary of FBI Special Agent #7 interview, 0/15/75, Vincent E. Ruchl; 10/14/75, pp. 70, 73.

⁵⁸⁵ Wannall, 10/24/75, Hearings, vol. 4, p. 170.

⁵⁸⁶ Branigan, 10/0/75, pp. 40-41.

B. Concern with Exposure

Although Bureau officials apparently did not articulate the view prior to 1970 that mail opening was necessarily illegal, they did believe that their use of this technique was so sensitive that its exposure to other officials within the executive branch, the courts, Congress, and the American public generally should be effectively prevented. This fear of exposure may have resulted from a perceived though unexpressed sense that its legality was at least questionable; it was almost certainly a consequence of a very restricted, even arrogant, view of who had a "need to know" about the Bureau's operations. But whatever its source, this concern with security clearly paralleled the CIA's concern with the "flap potential" of their projects and resulted in similar efforts to block knowledge of their use of this technique from reaching the general public and its leaders.

The reluctance of FBI officials to disclose the details of their programs to other officials within the executive branch itself has been described above: there is no clear evidence that any Bureau official ever revealed the complete nature and scope of the mail surveys to any officer of the Post Office Department or Justice Department, or to any President of the United States. It was apparently a Bureau policy not to inform the 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.⁵⁵⁷ When Attorney General Katzenbach met with Donald Moore and Alan Belmont on the subject of Bureau custody of mail, Moore testified that he did not inform the Attorney General about the mail opening aspect of the projects because of security reasons: "anytime one additional person becomes aware of it, there is a potential for the information to . . . go further."⁵⁵⁸ One Bureau agent at Headquarters who was familiar with the mail programs (but not in a policy-making position) also speculated that the questionable legal status of this technique may have been an additional reason for not seeking the Attorney General's legal advice. He testified as follows:

Q. Do you know why the opinion of the Attorney General was apparently or probably not sought?

A. Because of the security of the operation. I would imagine that would be the main reason. It was a program we were operating. We wanted to keep it within the Bureau itself--and the fact that it involved opening mail.

Q. What do you mean by the last statement, ". . . the fact that it involved opening mail"?

A. That was not legal, as far as I knew.⁵⁵⁹

With respect to the Justice Department generally, only the minimum knowledge necessary to resolve a specific prosecutive problem was imparted. Donald Moore said of his meeting with Assistant Attorney General Yeagley about the Balth case, for example, that he did not disclose to him the FBI's general use of this technique: "I am sure it was confined to the issue at hand, which was anything at all which

⁵⁵⁷ See p. 662.

⁵⁵⁸ Moore 10/1/75, p. 48.

⁵⁵⁹ FBI Special Agent #5, 10/10/75, p. 80.

involved the prosecution of Baltch."⁵⁹⁰ Even the term "mail opening" was avoided, and the more ambiguous term "mail intercept" was used:⁵⁹¹ while susceptible of only one meaning within the FBI, the latter term was apparently misinterpreted by Yeagley and other Justice Department officials with different assumptions about Bureau operations.⁵⁹²

The FBI's concern with exposure extended to the courts as well. In an internal memorandum regarding the Baltch case, it was written that "under no circumstances is the Bureau willing to admit [to the court] that a mail intercept was utilized. . . ."⁵⁹³

Similarly, FBI officials, like their counterparts in the CIA, did not want their use of this technique known to Congress. One senior Bureau official testified that the FBI feared that the Long Subcommittee's 1965 investigation could publicly expose the mail programs;⁵⁹⁴ another that such Congressional exposure could "wrack up" the Bureau.⁵⁹⁵ Attorney General Katzenbach had been requested by the President to coordinate executive branch responses to inquiries by the Subcommittee, but the FBI was apparently not content with his efforts in preventing the disclosure of "national security" information generally. To ensure that their mail surveys, as well as certain practices in the area of electronic surveillance, remained unstudied, Bureau officials themselves directly attempted to steer the Subcommittee away from probing these subjects.

Alan Belmont's February 27, 1965, memorandum reflecting his meeting with the Attorney General about Henry Montague's testimony on mail custody, reads in part: "I told Mr. Katzenbach that I certainly agree that this matter should be controlled at the committee level but that I felt pressure would have to be applied so that the personal interest of Senator [Edward] Long became involved rather than on any ideological basis."⁵⁹⁶ The memorandum continues: "I called Mr. DeLoach [an Assistant Director of the FBI] and briefed him on this problem in order that he might contact Senator [James O.] Eastland in an effort to warn the Long committee away from those areas which would be injurious to the national defense. (Of course, I made no mention of such a contact to the Attorney General.)" According to an FBI memorandum, J. Edgar Hoover himself subsequently contacted Senator Eastland, who, he reported, "is going to see Senator Long not later than Wednesday morning to caution him that [the chief counsel] must not go into the kind of questioning he made of Chief Inspector Montague of the Post Office Department."⁵⁹⁷

The strategy worked. The Subcommittee never learned of the FBI's use of mail opening as an investigative technique. Despite the fact that in 1965 the FBI conducted a total of five mail opening programs in

⁵⁹⁰ Moore, 10/1/75, p. 49.

⁵⁹¹ Moore, 10/24/75, Hearings, Vol. 4, p. 160.

⁵⁹² Staff summary of Yeagley interview, 10/10/75; Yeagley statement, 10/15/75; Staff Summary of Hoy interview, 11/24/75.

⁵⁹³ Memorandum from Moore to Sullivan, 10/2/64.

⁵⁹⁴ Moore, 10/24/75, hearings, Vol. 4, p. 162.

⁵⁹⁵ Branigan, 10/9/75, p. 50.

⁵⁹⁶ Memorandum from Belmont to Tolson, 2/27/65.

⁵⁹⁷ Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/1/65.

the United States—and despite the fact that in that year alone more than 13,300 letters were opened by CIA agents in New York—the Subcommittee, the general public, the Attorney General, and apparently even Henry Montague himself accepted as true Montague's testimony that year that:

The seal on a first-class piece of mail is sacred. When a person puts first-class postage on a piece of mail and seals it, he can be sure that the contents of that piece of mail are secure against illegal search and seizure.⁵⁹⁸

⁵⁹⁸ Statement of Henry B. Montague before the Senate Subcommittee on Administrative Practice and Procedure, 2/23/65, p. 3.



CIA INTELLIGENCE COLLECTION ABOUT AMERICANS: CHAOS AND THE OFFICE OF SECURITY

CONTENTS

	Page
I. Introduction	681
A. CHAOS	681
B. MERRIMAC and RESISTANCE	682
C. Special security investigations	683
D. The investigation	683
E. Summary of the issues	684
1. Statutory authority	684
a. Counterintelligence	685
b. Protecting sources and methods of intelligence	686
2. Statutory prohibitions	686
3. Questions raised by CHAOS	688
4. Questions raised by the Office of Security Programs	688
II. History and Operation of CHAOS	688
A. Background	689
B. Authorization of CHAOS	691
C. The November 1967 peace movement study	693
D. Operation of the CHAOS program and related CIA projects	693
1. Gathering information	695
2. Processing, storage and control of CHAOS information	696
3. Reporting by CIA	696
a. Studies	698
b. Special reports	698
c. Disseminations to the FBI	699
E. 1969 expansion of CHAOS	699
1. The review of CHAOS for the President	701
2. Domestic contact service	703
3. CHAOS agents	704
4. Project 2	705
5. Provision to CHAOS of NSA and mail intercepts	705
F. Reduction, limitation and termination of CHAOS	705
1. Reduced reporting priority	705
2. Reaction to Inspector General's Survey	707
3. Termination of CHAOS	708
III. Issues Raised by CHAOS and Related Projects	708
A. The propriety of the CHAOS mission	711
B. Domestic intelligence collection	712
1. Domestic contact service	712
2. Domestic reporting by CIA agents	713
a. CHAOS agents	714
b. Project 2 agents	714
3. Propriety of domestic reports by agents during preparation	715
C. Assistance to FBI internal security investigations	715
D. Maintenance of files on Americans	717
E. Approaches to determining foreign direction of domestic dissent	717
1. The nature of counterintelligence work	719
2. Political setting of investigations	720

	Page
IV. Office of Security Programs.....	721
A. Project RESISTANCE.....	721
B. Project MERRIMAC.....	723
C. Special security investigations.....	726
D. Issues raised by the Office of Security Programs and Investi- gations.....	727
1. Protecting the CIA from potential violence.....	727
2. Sensitive security investigations.....	730

CIA INTELLIGENCE COLLECTION ABOUT AMERICANS: CHAOS AND THE OFFICE OF SECURITY

I. INTRODUCTION

One of the main controversies raised by recent practices of the Central Intelligence Agency is the question of intelligence collection about Americans. Unlike the FBI, the CIA was intended to focus on foreign intelligence matters. Charges have been made, however, suggesting that the CIA spied on thousands of Americans and maintained files on many more, all in violation of its statutory charter.

Senate Resolution 21, establishing the Select Committee, authorized inquiry into the extent of covert intelligence efforts against Americans and their legality under CIA's charter. It specifically authorized review of the need for new legislation to protect American citizens and to clarify the authority of CIA. This included the tension under present law between the authority of the Director of Central Intelligence to protect sources and methods of intelligence, on the one hand, and the prohibition on CIA exercising police powers and internal security functions, on the other.

This report discusses the results of a staff inquiry into the major CIA programs which involved collection of information about Americans: the CHAOS, MERRIMAC and RESISTANCE programs and the special security investigations undertaken by the Office of Security.

A. Chaos

The most extensive program of alleged "domestic spying" by CIA on Americans was the "CHAOS" program. CHAOS was the centerpiece of a major CIA effort begun in 1967 in response to White House pressure for intelligence about foreign influence upon American dissent. The CHAOS mission was to gather and evaluate all available information about foreign links to racial, antiwar and other protest activity in the United States. CHAOS was terminated in 1974.

The CHAOS office participated in the preparation of some half dozen major reports for higher authorities, all of which concluded that no significant role was being played by foreign elements in the various protest movements. This repeatedly negative finding met with continued skepticism from the White House under two administrations and pressures for further inquiry. In response to this skepticism CHAOS continued to expand its coverage of Americans in order to increase White House confidence in the accuracy of its findings.

A second major element of the CHAOS operation was to pursue specific inquiries from the FBI about the activity of particular Americans traveling abroad.

CHAOS received a great deal of information regarding Americans from CIA stations abroad, as well as from the FBI itself. In addition, CHAOS eventually received such information from its own agents who participated in domestic dissident activity in America in order to develop radical "credentials" as cover for overseas assignment. CHAOS also obtained information about Americans from other domestic CIA components, from the CIA mail opening project and from a National Security Agency international communications intercept program.¹

In the process, the CHAOS project amassed thousands of files on Americans, indexed hundreds of thousands of Americans into its computer records, and disseminated thousands of reports about Americans to the FBI and other government offices. Some of the information concerned the domestic activity of those Americans.

B. Merrimac and Resistance

The MERRIMAC and RESISTANCE programs were both run by the CIA Office of Security, a support unit of the CIA charged with safeguarding its personnel, facilities and information.

Project MERRIMAC involved the infiltration by CIA agents of Washington-based peace groups and black activist groups. The stated purpose of that program was simply to obtain early warning of demonstrations and other physical threats to the CIA. The collection requirements, however, were broadened to include general information about the leadership, funding and activities and policies of the targeted groups.

Project RESISTANCE was a broad effort to obtain general background information for predicting violence which might create threats to CIA installations, recruiters or contractors and for security evaluation of CIA applicants. From 1967 until 1973, the program compiled information about radical groups around the country, particularly on campuses. Much of the reporting to headquarters by field offices 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 more active collection techniques such as informants.

In addition, both MERRIMAC and RESISTANCE supplied information for the CHAOS program.

C. Special Security Investigations

Finally, there was a group of specific security investigations undertaken either to find the source of newsleaks, or to determine whether government employees were involved in espionage or otherwise constituted security risks. Investigations were made of former CIA employees, employees of other government agencies, newsmen and other private individuals in this country. Physical surveillance, electronic surveillance, mail and tax return inspection, and surreptitious entry have been used on various occasions.

¹ These last two are the subjects of separate Committee reports.

They were not part of a particularly organized program, and were conducted on a case-by-case basis. But they raise questions about what kinds of security investigations are within the CIA's lawful authority, and also about what kinds of techniques are permissible, even when such investigations are authorized.

D. The Investigation

The Committee staff investigation of each of these areas has included interviews, depositions, and documentary review of available files.

Each of these areas had been examined intensively by the Rockefeller Commission on CIA Activities within the United States before the Select Committee was given access to the files and to some of the persons involved.²

The Committee staff conducted an independent review of these programs. At the same time, an effort was made to avoid duplication of the extensive testimonial record already made by the Commission, and to take additional testimony only when necessary to clarify the record or to explore additional issues which arose. Hence, this report includes citation to both testimony given to the Select Committee and the Rockefeller Commission.

Part Two of this report reviews the evolution and operation of the CHAOS program. Part Three considers the questions which the history of CHAOS raises about future CIA programs. Part Four reviews more briefly the Office of Security programs and considers the questions which they raise.

E. Summary of the Issues

Before turning to the description of these programs, the remainder of this introduction summarizes the issues which these programs present for congressional decision.

Three themes are fundamental. First, to what extent did any of these activities exceed the lawful authority of the CIA under its charter in the 1947 National Security Act? The answer is not always clear; the statute's legislative history is often obscure at best.

Second, what should be the extent of the CIA's authority in the future? Whatever the limits of present law, now is the time to reassess which intelligence operations impinging upon Americans are appropriate for the CIA, and which best left to others.

Finally, in reviewing the CHAOS program, particularly, the Congress must look beyond judging past legality or reallocating functions among Federal agencies. For the American citizen, the fact that his Government keeps a file on his associations, or monitors his travel and his advocacy of dissent, is far more important than the question of which office in the bureaucracy is doing it. Ultimately the activity discussed in this report bears on the question of what kinds of intelligence operations are proper undertakings for any part of the Government.

² See generally, *Report of the Commission on CIA Activities Within the United States*, June 1975.

1. Statutory Authority

The legality of the CIA activity involves, first, the general positive statutory authority on which it can be based, and second, specific prohibitions which might supersede or limit the affirmative authority and responsibilities of the CIA.

(a) *Counterintelligence*.—CIA's charter in the 1947 National Security Act speaks of "intelligence." The legislative history establishes that this means "foreign intelligence" in the case of the CIA. The only explicitly specified duties of the CIA are to "correlate and evaluate intelligence relating to the national security." However, the CIA's role as an intelligence gatherer was understood at the time of enactment; the provision that the National Security Council may assign CIA "other functions and duties" has been accepted as implied authority for clandestine foreign intelligence collection. In addition, the legislative history of the 1947 Act and the 1949 Central Intelligence Act recognize that the CIA would perform training and other functions in the United States in support of its overseas intelligence efforts.^{2a}

Like foreign intelligence, the term "counterintelligence" is not dealt with explicitly in the 1947 Act. In the broad sense, however, counterintelligence may be viewed as one facet of "foreign intelligence activities." Counterintelligence is the effort to learn about foreign intelligence activities and to thwart hostile attempts to penetrate our own intelligence activity or to conduct operations against us.

Organizationally, the CIA and other intelligence agencies distinguish positive intelligence collection from counterintelligence. It has long been assumed, however, that CIA's general charter in foreign intelligence, includes authority for counterintelligence activity abroad. Although it was not expressly addressed by Congress during the passage of the 1947 Act, it is hard to imagine, for example, that foreign intelligence collection was implicitly authorized, but that Congress precluded CIA efforts *abroad* to ascertain hostile threats to the security of its own operations or to learn about enemy espionage.

Treating counterintelligence as part of "foreign intelligence" within the meaning of the 1947 Act, the Executive branch has viewed CIA as having statutory authority for the collection, collation and evaluation of counterintelligence. Pursuant to this authority National Security Intelligence Directive 5 designated the Director of Central Intelligence to coordinate all counterintelligence abroad.³ The Directive defines counterintelligence comprehensively:

b. Counterintelligence is defined as that intelligence activity, with its resultant product, devoted to destroying the effectiveness of inimical foreign intelligence activities and undertaken to protect the security of the nation and its personnel, information and installations against espionage, sabo-

^{2a} See "The Central Intelligence Agency: Statutory Authority," in the Committee's Final Report on Foreign and Military Intelligence.

³ The National Security Intelligence Directives, or so-called "NSCIDS" have been promulgated by the National Security Council to provide the basic organization and direction of the intelligence agencies within their statutory framework.

tage and subversion. Counterintelligence includes the process of procuring, developing, recording, and disseminating information concerning hostile clandestine activity and of penetrating, manipulating or repressing individuals, groups or organizations conducting such activity. [Emphasis added.]⁴

Under this directive the CIA was given *primary* responsibility for the conduct of counterintelligence operations abroad, and is also tasked with maintaining central counterintelligence files for the entire intelligence community. All agencies are directed to provide the CIA with any information appropriate for such a central file and such material maintained by the CIA is to be "collated and analyzed for appropriate dissemination." NSCID 5 does not purport to give the CIA authority to conduct counterintelligence activities in the United States.⁵

It is this directive regarding CIA's counterintelligence responsibility that the director of CHAOS testified was the authority for the program. He claimed that the mission of determining and reporting on the extent and nature of foreign links to American dissident protest activity was an assignment within the CIA's counterintelligence responsibility.⁶

(b) *Protecting Sources and Methods of Intelligence.*—The MERRIMAC and RESISTANCE programs were premised on a more explicit provision of authority under the 1947 Act. The Act provides that:

The Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure.⁷

The responsibility is given to the Director of Central Intelligence, rather than to the Central Intelligence Agency. However, the Office of Security within the Agency has been the administrative arm to implement the Director's duty in this regard.

This authority has been read by the CIA to authorize protection of CIA personnel and facilities against any kind of "security threat" including the possibility of violent demonstrations by the public. That was the stated basis for undertaking the MERRIMAC and RESISTANCE programs.⁸ The legislative history of this provision suggests it was included essentially to allay the concern of the military services that the new civilian agency would not itself operate with adequate safeguards to protect the services' intelligence secrets to which the CIA gained access.⁹

The individual special security investigations examined in this report were also justified by a claim of authority derived from the Director's responsibility to protect intelligence "sources and methods."

⁴ National Security Intelligence Directive Number 5.

⁵ *Ibid.*

⁶ Richard Ober testimony, 10/28/75, pp. 53-54.

⁷ 50 U.S.C. 403(d)(3).

⁸ See pp. 84.

⁹ Lawrence Houston testimony, Commission on CIA Activities Within the United States, hereinafter cited as the Rockefeller Commission, 3/17/75, p. 1054-55.

2. Statutory Prohibitions

Juxtaposed to CIA's counterintelligence authority and the Director's charge to protect sources and methods, are specific constraints on the activity in which CIA may engage. The 1947 Act provides in Section 403(d) (3):

That the Agency shall have no police, subpoena, law enforcement powers or internal security functions.

Neither "internal security functions" nor "law enforcement powers" are defined in the statute. Nor is the scope of "internal security" for purposes of this ban directly discussed within the legislative history. The legislative history, however, does reflect the public concern at the time that the CIA might become a secret police agency, an American "Gestapo," spying on opponents of the government in power.¹⁰ Moreover, "internal security functions" are distinguished in the statutory prohibition from law enforcement and police powers, suggesting that the "functions" limitation covered intelligence investigation and not merely arrest or prosecution.

Thus, one purpose of the section was to prevent this new foreign intelligence organization from investigating American citizens.

3. Questions Raised by CHAOS

When does CIA collection and use of information about Americans exceed its authority to engage in foreign intelligence work, including counterintelligence? And when does it violate the specific ban on the CIA performing internal security functions?

A review of CHAOS reveals the blurred line between permissible foreign counterintelligence and prohibited internal security. Traditionally, the concept of internal security has not been confined to groups which were considered purely domestic. It has included inquiry into the foreign connections of domestic groups considered to pose an internal security threat.

¹⁰ General Vandenberg, who was then head of the Central Intelligence Group, the CIA's predecessor, testified as one of the main witnesses for the legislation. In the Senate hearings, he commented on the directive setting up the Group, from which the prohibition was taken:

"One final thought in connection with the President's directive: It includes an express provision that no police, law enforcement, or internal security functions shall be exercised. These provisions are important, for they draw the lines very sharply between the CIG and the FBI. In addition, the prohibition against police powers or internal security functions will assure that the Central Intelligence Group can never become a Gestapo or security police." (Hoyt Vandenberg testimony, Armed Services Committee, Hearings on S. 758, Pt. 3, 1947, p. 407.)

Another witness for the bill, Dr. Vannevar Bush, was asked during the House hearings to comment on the concern the new agency might become a "Gestapo." Dr. Bush testified:

"I think there is no danger of that. The bill provides clearly that it is concerned with intelligence outside of this country, that it is not concerned with intelligence on internal affairs. . . .

"We already have, of course, the FBI in this country, concerned with internal matters, and the collection of intelligence in connection with law enforcement internally."

(Vannevar Bush testimony, House Committee on Expenditures in the Executive Departments, Hearings on H.R. 2810, 1947, p. 550.)

Indeed, the preeminent "internal security" concern of the late 1940s was Communist subversion of the Government aided or directed from abroad.¹¹

Therefore, if the CIA's counterintelligence authority is broadly construed to include examining ties between domestic groups and foreign elements, there is a question whether such authority is consistent with the specific prohibition on internal security functions.

The CHAOS program presents these questions with respect to both the overall mission undertaken by the CIA, and the specific tasks which the CIA performed:

—CIA received and maintained considerable information about the domestic activities and relationships of American individuals and organizations. Much of that material was collected in the first instance by the FBI, police or other confidential sources, who turned it over to the CIA. The Agency maintained it in files on those persons and groups and made use of it the CHAOS operation.

—The CIA prepared several analyses of student dissent in America and other reports which included material of domestic protest activities.

—Undercover agents of the CHAOS program, while in the United States in preparation for overseas assignment or between assignments, provided substantial information about domestic activities of dissident groups, as well as information providing leads about possible foreign ties.

—In a few instances the CIA agents appear to have been encouraged to participate in specific protest activity or to obtain particular domestic information.

Even if the basic mission of CHAOS was appropriate for the CIA, the question remains whether the way in which the CIA implemented that mission should be permitted.

Another aspect of this issue is the degree to which the CIA assisted the internal security operations of the FBI. Much of the CHAOS arrangements for coverage of Americans abroad was in response to specific FBI requests. The CIA also gave the FBI considerable information about the activities of Americans here, not limited to evidence of crimes, which had been developed in the course of the CHAOS operation.

Thus, a separate question is the point at which CIA assistance to the FBI's internal security investigations may constitute participation in a forbidden function.

Finally CHAOS raises a fundamental question about the kind of intelligence investigations, by *any* Government agency, which are acceptable to a free society. Should investigating foreign control of domestic dissent be done through screening Americans to see if their international travel or contacts reflect hostile foreign direction? Or

¹¹ The concern about wholly "domestic" internal security threats from groups deemed completely independent of any foreign influence is a fairly recent development.

should the Government be able to investigate the "foreign connections" of Americans only when substantial indication of illegal conspiracy is acquired in the course of counterintelligence work against the hostile foreign elements themselves?

4. Questions Raised by the Office of Security Programs

The questions raised by the Office of Security activities are the scope and limits of the Director's authority to protect intelligence sources and methods.

Does that authority include a general mission to protect the physical security of the CIA against violent domestic disorder?

What are the Director's responsibilities and legal authority to safeguard intelligence activities through investigations of personnel from other government agencies, or private citizens? What is his proper role with respect to CIA employees? And what techniques may he employ to detect and counter those threats which are within that authority?

In addition, the "sources and methods" authority under the 1947 Act must be considered in conjunction with the restraints expressly imposed on the CIA. Is the Director's power to protect sources and methods limited by the denial to the CIA of law enforcement and police powers and internal security functions?

The MERRIMAC and RESISTANCE programs also raise the question of the relationship between the Director's authority to protect sources and the prohibition on internal security functions. Neither were limited to gathering information of imminent demonstrations which threatened the CIA. Both programs involved collection of intelligence on dissident activity generally and both suggest that the "protection of sources and methods," read broadly, can become a mandate to scour the society for possible threats to the CIA, thereby rendering meaningless the ban on performing internal security functions.

PART II: HISTORY AND OPERATION OF CHAOS

1. Background

Operation CHAOS was not an intelligence mission sought by the CIA. Presidents Johnson and Nixon pressed the Director of CIA, Richard Helms, to determine the extent of hostile foreign influence on domestic unrest among students, opponents of the Vietnam war, minorities and the "New Left." By all the testimony and available evidence, it was this pressure which led to the creation and expansion of a special office in the CIA to coordinate the efforts to respond.

The decisions to initiate the CHAOS program and, subsequently, to expand the effort, were made in the context of increasing domestic unrest in the United States.

The nonviolent policy of civil rights efforts in the first half of the Sixties was being challenged by militant "Black Power" advocates urging confrontation with the white majority. On July 29, 1967, following serious disturbances in the Nation's cities, which comprised the worst period of racial riots in American history, President Johnson had established the National Commission on Civil Disorders (the "Kerner Commission") to investigate their origins.¹²

¹² Executive Order No. 11305, 7/20/67.

Organized demonstrations and international conferences protesting America's role in the Vietnamese war also became an increasing concern to the Government.

In April 1967, there were large antiwar demonstrations in San Francisco and New York. In May the International War Crimes Trials, sponsored by Bertrand Russell in regard to U.S. activity in Vietnam, began in Stockholm. In July 1967, there was a major international conference of peace groups in Stockholm. In September, a wide range of American activists in domestic peace groups, student and black organizations met with groups from other countries who were opposed to American involvement in Vietnam, including North Vietnam, in Bratislavia, Czechoslovakia. Finally, on October 21, 1967, there were large scale protest activities in Washington, including a march on the Pentagon, and worldwide demonstrations of support for opposition to continued American involvement in Vietnam.

Government concern about domestic unrest continued throughout 1968, with riots following the death of Martin Luther King in April, continuing student violence at campuses from coast to coast, stepped-up antiwar protest activity, and violence at the National Democratic Party Convention in Chicago.

During the remaining five years for which the CHAOS program lasted, 1969-1974, racial disorders diminished but the intensity of antiwar demonstration and student violence increased and then subsided after 1972.

B. Authorization of CHAOS

Against this backdrop of unrest, the CIA's systematic investigation of possible foreign involvement began with two assignments made by Director Richard Helms in the late summer and fall of 1967.

In August, Helms established a program to coordinate and improve the CIA's coverage abroad of American dissidents. Helms does not claim a specific presidential request for a new CIA program in this area. Rather, Helms testified that he was acting in general response to President Johnson's insistent interest in the extent of foreign influence on domestic dissidents. Helms testified that:

President Johnson was after this all the time. I don't recall any specific instructions in writing from his staff, particularly, but this was something that came up almost daily and weekly.¹³

Helms summarized his response to the presidential overtures:

But what I am attempting to say is that 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 these subjects," 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. And the setting up of this unit was what I conceived to be a proper action in an effort to see if we couldn't improve the Agency's performance in this general field.¹⁴

¹³ Richard Helms testimony, Rockefeller Commission, 1/13/75, p. 103.

¹⁴ Helms, Rockefeller Commission, 4/28/75, pp. 2434-5.

The Deputy Director of Plans, Thomas Karamessines also testified to his understanding of the White House pressures precipitating CHAOS.¹⁵

As a result, Helms sought to have the CIA try to pull together all the pertinent information already being received and to use the resources available for better intelligence coverage.

Within CIA, there is no written directive from Helms to Karamessines, his deputy for the Plans Directorate, to establish the CHAOS program.¹⁶ The first recorded authorization is an August 15, 1967, memorandum from Karamessines to James Angelton, Chief of the Counterintelligence Staff.

Karamessines' memorandum refers to discussions earlier that day among himself, Angelton and Helms and asks Angelton to designate a staff officer to run the program. The memorandum contemplated the conduct of operations to collect intelligence. It also acknowledged the program's "domestic counterintelligence aspects," and the need for dissemination of the information obtained to domestic agencies. The memorandum requested:

b. The exclusive briefing of specific division chiefs and certain selected officers in each division, on the aims and objectives of this intelligence collection program with definite domestic counterintelligence aspects.

c. The establishment of some sort of system by Dick Ober (or whatever officer you select) for the orderly coordination of the operations to be conducted, with the responsibility for the actual conduct of the operations vested in the specific area divisions.

d. The identification of a limited dissemination procedure which will afford these activities high operational security while at the same time getting the information to the appropriate departments and agencies which have the responsibility domestically.¹⁷

Angleton chose Richard Ober to head what became the Special Operations Group within the Counterintelligence Staff. Ober had already been involved in a more limited inquiry into possible foreign links to American dissidents.

In the beginning of 1967, Ramparts magazine had published an expose of various CIA activities and relationships with private institutions in America. Ober had been investigating the possibility of ties between foreign intelligence services and persons associated with the magazine, or their friends. He had begun to build a computerized file on dissident activists in America with some connection to the Ramparts organization. By the time he was given the more general CHAOS assignment in August 1967, Ober estimates he had indexed several hundred Americans and had created perhaps fifty actual files. However, there was no indication that the Ramparts inquiry was expected to lead to a larger investigation of American protest.¹⁸

¹⁵ Thomas Karamessines testimony, Rockefeller Commission, 2/24/75, p. 1001-2.

¹⁶ The program did not become known as "CHAOS" until a year after its inception *infra*, pp. 27-28, but, for continuity, it is so referred to throughout this report.

¹⁷ Memorandum from Thomas Karamessines to James Angelton, 8/15/67, p. 1.

¹⁸ Richard Ober testimony, 10/28/75, pp. 4-5; Ober, Rockefeller Commission, 3/28/75, pp. 5-7.

Ober first sought to pull together the Agency's holdings and information readily available here and abroad which would be pertinent to his assigned inquiry.

The scope of that inquiry had not been defined in Karamessines' August 15 memorandum, which was simply entitled: "Overseas Coverage of Subversive Student and Related Matters." The first direct statement of the target was included in an August 31 cable to the field describing the collection requirement:

In light of recent and current events which of major interest and deep concern to highest levels here, Headquarters has established program for keeping tabs on radical students and U.S. Negro expatriates as well as travelers passing through certain select areas abroad. Objective is to find out extent to which Soviets, Chicomoz and Cubans are exploiting our domestic problems in terms of espionage and subversion. High sensitivity is obvious.¹⁹

The cable also advised that a special reporting channel had been established with a cryptonym limiting distribution at Headquarters of any traffic. The recipient chiefs of station were told to control knowledge of the program and the information collected and to destroy the cable itself after reading. Cable distribution was to be limited at Headquarters to the Division Chiefs controlling the station or base involved, Angelton and Karamessines or his deputy.²⁰

C. The November 1967 Peace Movement Study

CIA's inquiry into foreign ties of American dissidents intensified at the end of October 1967. This time, responding to a specific White House request, Helms directed CIA to produce a study on the "International Connections of the U.S. Peace Movement."²¹ Presumably, this request was precipitated by the October 21 demonstrations and arrests at the Pentagon and the worldwide antiwar demonstrations on the same day.

Ober testified that the scope of his own operation soon came to include antiwar activists, as well as student radicals and black nationalists. But it was his participation in the October CIA study for the President which firmly set Vietnam protest as a major target of the CHAOS office's efforts.²²

The study was written by the Intelligence Directorate of the Agency.²³ Ober coordinated the Plans Directorate contribution and the receipt of material from the FBI and other Federal agencies.²⁴

¹⁹ CIA Headquarters cable to several field stations, August 1967, p. 1.
²⁰ Memorandum from Deputy Chief Counterintelligence Staff to Cable Secretary, 8/17/73.

²¹ There is no written record of this request, but Helms' transmittal note to President Johnson states, "here is the Study of the U.S. Peace Movement you requested." (Cover Memorandum from Richard Helms to President Johnson, 11/15/67.)

²² Ober, 10/28/73, pp. 10-17.

²³ The Intelligence Directorate is the component with the primary analytical and evaluation responsibilities in the CIA.

²⁴ Richard Ober, Memorandum for the Record: "International Connections of the U.S. Peace Movement." 10/31/67, p. 1.

Both the "peace movement" and "foreign connections" were broadly defined. According to Ober's memorandum of his meeting with the Directorate of Intelligence officers in charge of the study, American organizations "affiliated with the overall Peace Movement" as well as peace organizations themselves, were to be included. "Foreign connections" were defined to include associations with the American Communist Party.²⁵

With the approval of A. G. L. Karamessines and Helms, Ober sent a second reporting requirement to the stations, this time asking for information on foreign connections to the peace movement. The information was to be handled in another restricted channel separate from the one provided for responses to the August inquiry on radical students and black activists. The November 1967, cable to multiple addresses told the stations:

Headquarters is participating in high level interdepartmental survey of international connections of anti-Vietnam war-movement in U.S. For purposes this study, we are attempting to establish nature and extent of illegal and subversive connections that may exist between US organizations or activists involved 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.]²⁶

Since Director Helms had asked for the report within two weeks, the stations were asked only to furnish information on hand or readily available.²⁷

The conclusions of the review were essentially negative. The study noted that the diversity and loose structure of the peace movement in America permitted the more active leaders to coordinate some of the activities on an international scale and it cited the simultaneous demonstrations on October 21, both here and abroad. But the CIA found little evidence of actual foreign direction or control, or evidence that any international dialogue went beyond consultation and coordination.²⁸

However, these conclusions were explicitly tentative. Director Helms' letter of transmittal to the President states reservations about the adequacy of the intelligence community's coverage of the target:

From this intimate review of the bulk of the material on hand in Washington, we conclude that there are significant holes in the story. We lack information on certain aspects of the movement which could only be met by levying requirements on the FBI.

²⁵ Richard Ober, Memorandum for the Record, "International Connections of the U.S. Peace Movement", 11/1/67, p. 1.

²⁶ CIA book cable from Acting Deputy Director for Plans to various field stations, November 1967, pp. 1-2.

²⁷ CIA book cable from Acting Deputy Director for plans to various field stations, November 1967, p. 2.

²⁸ "International Connections of the U.S. Peace Movement," CIA study prepared by the Office of Current Intelligence, 11/15/67, Summary, pp. 2-3.

First we found little or no information on the financing of the principal peace movement groups. Specifically, we were unable to uncover any sources of funds for the costly travel schedules of prominent peace movement coordinators, many of whom are on the wing almost constantly.

Second we could find no evidence of any contact between the most prominent peace movement leaders and foreign embassies, either in the U.S. or abroad. Of course, there may not be any such contact, but on the other hand, we are woefully short of information on the day-to-day activities and itineraries of these men.

Finally, there is little information available about radical peace movement groups on U.S. college campuses. These groups are, of course, highly mobile and sometimes even difficult to identify, but their more prominent leaders are certainly visible and active enough for monitoring.²⁹

D. Operation of the CHAOS Program and Related CIA Projects

The assignment of responsibility to Ober in August 1967 and the CIA's study of the peace movement in November, set the initial pattern of the Agency's inquiry into foreign powers and American dissidents.

Ober's office served as the focal point and clearinghouse for Agency efforts on this question, and along with the analysts in the Intelligence Directorate, provided the expertise for Director Helms to respond to the White House interest.

As it developed, the CHAOS mission included three related tasks:

- (1) to coordinate and expand CIA's own collection of relevant information and to obtain pertinent material from other government agencies;
- (2) to process, control and retain the information as it became available;
- (3) to provide the results for dissemination by CIA to the White House, other high level offices and interested agencies.

At the same time, CHAOS performed a second role. It serviced the FBI's own requirements for information about foreign contacts and travel of Americans. Ober regarded responding to the Bureau's requests for coverage of Americans abroad as an accepted part of his responsibilities.³⁰

1. Gathering Information

The two main sources of information received by CHAOS were the CIA's stations abroad, and the FBI at home.

For example, the CIA received all of the FBI's reports on the American peace movement.³¹

The material received from the FBI included information about foreign travel, contacts, and communications of Americans. Much of

²⁹ Memorandum from Richard Helms to President Johnson, 11/15/67, p. 1.

³⁰ Ober, 10/24/75, pp. 8, 22.

³¹ Richard Ober memorandum for the record, "Daily Progress Report," 11/1/67, p. 1.

it was simply information about individual activists or groups and their domestic activities. In many instances, FBI reports would contain both kinds of information.³²

By June 1970, these FBI reports were pouring into CHAOS at the rate of over 1,000 a month.³³

The background information on individuals provided by the FBI served as a "data base" of names, and intelligence about the associations between different dissident elements. This background information could be used to develop leads, and to understand the significance of reports directly relating to foreign contacts.³⁴

The other basic source of information was the reporting from the CIA's overseas stations. Using the special reporting channel, the stations supplied reports from their own assets and also supplied whatever CHAOS information was obtained from the liaison with local intelligence services.

On June 25, 1968, a message was sent to various European stations advising that recent high level discussions had underscored the need for increasing the coverage of American black, student and antiwar dissidents abroad. The stations were asked to engage friendly foreign intelligence services more fully in that effort. Headquarters said that foreign intelligence services covering their own dissidents might be able to provide more information on the foreign contacts of American citizens.³⁵

This cable was followed shortly by another multi-station message which repeated the general reporting requirement as follows:

As many of you know, Headquarters is engaged in a sensitive high priority program concerning foreign contacts with US individuals and organizations of the "Radical Left." Included in this category are radical students, antiwar activists, draft resisters and deserters, black nationalists, anarchists and assorted "New Leftists." The objective is to discover the extent to which Soviets, ChiComs, Cubans and other Communist countries are exploiting our domestic problems in terms of subversion and espionage. Of particular interest is any evidence of foreign direction, control, training or funding.³⁶

The cable also directed even tighter control over the reporting procedures. The two previously separate channels for reporting information on antiwar and on black or student activists were combined into the single restricted handling cryptonym "CHAOS."³⁷

Information supplied CHAOS by the stations was of two types. First there was the general outstanding requirement for any intelli-

³² Committee staff review of CHAOS individual and organization files.

³³ Memorandum from Richard Ober to James Angleton re CHAOS, 6/9/70, p. 9.

³⁴ James Eatinger testimony, 10/14/75, pp. 10, 12-13. "James Eatinger," (Ober's deputy at CHAOS) testified under alias.

³⁵ CIA cable from Thomas Karamessines to various European stations, June 1968, p. 1.

³⁶ CIA cable from Thomas Karamessines to various field stations, July 1968, p. 1.

³⁷ CIA cable from Thomas Karamessines to various field stations, July 1968, pp. 1-3.

gence pertinent to the CHAOS mission as defined in the basic cable instructions. Second, the stations were asked to respond to specific inquiries. Such requests from Ober might relate to an upcoming international conference or the activities of particular foreign person suspected of being involved in efforts to influence American unrest. Frequently these special inquiries were triggered by travel of particular Americans to the area and a CHAOS request for coverage of their activities and contacts.³⁸

2. Processing, Storage and Control of CHAOS Information

As the material flowed into CHAOS from stations, domestic CIA components, and the FBI, it was analyzed, indexed and filed. Every name of individuals and organizations was extracted and referenced in the central CHAOS computer system known as "HYDRA." This system served as the reference index to all of the office's holdings.³⁹

If a report on one individual referred to others, their names would be indexed also. Any information which was received about an individual for whom CHAOS maintained a file, went into his file.⁴⁰ There was no winnowing of the material before its entry into the permanent record system of CHAOS.⁴¹

Once the informant was indexed and filed, the HYDRA computer system permitted its prompt retrieval. By checking a name in HYDRA, one could find all the cables, memoranda or other documents referring to that individual, whether he was the subject of the material or merely mentioned in passing.⁴² It should be emphasized, however, that CHAOS did not maintain a separate file on every American whose name was indexed in the computer. In many instances the computer would refer a searcher to the file of another person, or some other CHAOS holdings in which the subject individual was mentioned, but there was not enough material to open a file. Thus, there were an estimated 300,000 Americans indexed in HYDRA, but only an estimated 7,500 Americans for whom actual files were maintained.⁴³

The tight control maintained over communication of CHAOS information from the CIA's stations was continued at Headquarters. The special reporting channel and restricted handling assured that the cable traffic would be seen only by a few high-level officials in

³⁸ Staff review of CHAOS files.

³⁹ Testimony of Chief, International Terrorism Group, CIA, Rockefeller Commission, 3/10/75, pp. 1484-1489.

⁴⁰ Chief, International Terrorism Group, CIA, Rockefeller Commission, 3/10/75, pp. 1488-1489.

⁴¹ Batinger testimony, 10/14/75, pp. 11-12.

⁴² Chief, International Terrorism Group, CIA, Rockefeller Commission, 3/10/75, pp. 1485-1488.

⁴³ Chief, International Terrorism Group, CIA, Rockefeller Commission, 3/10/75, pp. 1488-90.

In addition to the distinction between files and names indexed, the varying figures as to the number of CHAOS files reflect other ambiguities. For example, the "file" on many individuals and groups ran several volumes, sometimes ten or more, for the active leaders and organizations. Thus the Rockefeller Commission cites 1,000 "files" on private organizations, while the CIA notes that these multiple files actually were maintained on only 107 groups. (Letter from Director William Colby to Vice President Rockefeller with attachment of CIA comments on the Rockefeller Commission Report, 6/25/75, attachment, p. 8.)

the area divisions of the Plans Directorate, Karamessines, Angleton and their deputies or designees.⁴⁴

Tight security was maintained over the information deemed most sensitive, even within the CHAOS office itself. The information in the HYDRA computer system was compartmented into several layers of increasing sensitivity and correspondingly more restricted access. Only CHAOS officers cleared for access to the more restricted streams of information could retrieve the items on an individual which involved sensitive sources and methods or other tightly held intelligence.⁴⁵

3. Reporting by CIA

CIA disseminated the information gathered on foreign ties of American dissidents in three forms: major studies prepared for the President; special reports for the White House and other senior officials on individual items of information; and routine reporting to the FBI.

(a) *Studies.*—On November 20, 1967, at the request of Director Helms, the CIA began an investigation of "Demonstration Techniques" both here and abroad.⁴⁶

On December 21, 1967, Helms sent President Johnson a followup review of the November Study on the United States Peace Movement.⁴⁷

On January 5, 1968, Helms sent to the White House an interim study of "Student Dissent and Its Techniques in the U.S.," "which is part of our continuing examination of this general matter. It is an effort to identify the locus of student dissent and how widespread it is."⁴⁸ The forty-page paper dealt exclusively with American student activists and the bulk of it contained much the same kind of material on the Students for a Democratic Society (SDS) that formed the chapter of "Restless Youth," CIA produced a year later.

"Student Dissent" briefly noted that Communist front groups did not control the student organizations, and that American student groups had not forged significant links with foreign radicals.⁴⁹ The report concentrated on domestic matters and analyzed the makeup, strength, motivation, strategy and views of the American students. It concluded, for example, that

Except on the issue of selective service, the student community appears generally to support the Administration more strongly than the population as a whole.⁵⁰

⁴⁴ Richard Ober, Memorandum for the Record, re CHAOS Traffic Distribution, 5/20/69.

⁴⁵ Chief, International Terrorism Group, CIA, Rockefeller Commission, 3/16/75, pp. 1505-1506.

⁴⁶ Richard Ober Memorandum for the Record: "Demonstration Techniques," 11/20/67.

⁴⁷ "The Peace Movement: A Review of Developments Since 15 November," 12/21/67.

⁴⁸ Letter from Richard Helms to President Johnson, 1/5/68, with attached study "Student Dissent and Its Techniques in the U.S."

⁴⁹ Student Dissent and Its Techniques in the U.S., 1/5/68, Summary p. ii.

⁵⁰ Student Dissent and Its Techniques in the U.S., 1/5/68, Summary, p. i.

The last analytical study prepared for President Johnson, "Restless Youth," was finished in the fall of 1968. "Restless Youth" is a detailed sociological and political analysis of student unrest throughout the world.⁵¹ It found common sources of alienation and hostility to established institutions in many countries, but concluded that, in each nation, student dissent was essentially homegrown and not stimulated by an international conspiracy.⁵²

The version sent to the White House included a section on the SDS in the United States. Helms cover memorandum to the President stated:

Some time ago you requested that I make occasional round-up reports on youth and student movements worldwide. Responding to this request and guided by comments and suggestions from Walt Rostow, we have prepared the attached study. You will, of course, be aware of the peculiar sensitivity which attached to the fact that CIA has prepared a report on student activities both here and abroad.⁵³

Helms did not testify that the White House had requested the section on domestic student protest. Rather, he said that since the White House had wanted a study of possible international orchestration of protest activity, it did not seem sensible to leave out the American scene, so it was included.⁵⁴

The section on the United States was drawn largely from public sources. An updated, unabridged version was sent to Henry Kissinger for President Nixon in February of the following year. Helms stated his concern more explicitly in the transmittal letter for that version:

Herewith is a survey of student dissidence worldwide 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.⁵⁵

This first series of studies for the White House were all prepared by the CIA's Intelligence Directorate, with continuing assistance from CHAOS in providing material from overseas stations, other CIA components, and the FBI.⁵⁶ The CHAOS office, itself, only began to produce the studies itself following further White House requests in the summer of 1969, discussed below. Copies of the material collected for the 1967 and 1968 studies on the Peace movement and on student dissent, however, were also indexed and retained by the CHAOS operation for its own files.

⁵¹ "Restless Youth," 9/4/68.

⁵² "Restless Youth," conclusions, p. 1, 9/4/68.

⁵³ Memorandum from Richard Helms to President Johnson, 9/4/68.

⁵⁴ Helms, Rockefeller Commission, 4/28/75, p. 244.

⁵⁵ Letter from Richard Helms to Henry Kissinger, 2/18/69.

⁵⁶ In other words, the procedures used in the first Peace Movement study were continued in this period. See p. 169, *supra*.

(b) *Special Reports.*—In addition to the formal studies CIA prepared for the President, Ober prepared occasional reports, so-called "M," memoranda, of particularly sensitive or timely intelligence items for high level distribution to the White House, the Attorney General, Secretary of State, and similar officials. During the entire history of CHAOS there were 34 such M memoranda.

The content of M memoranda varied. They included, for example, information that a foreign government was making a grant to a dissident protest group in America, information regarding a reported kidnapping and murder plot against high government officials; and information about speeches made by radical leaders while abroad. Essentially these were one-shot reports about some contact or cooperation between foreign elements and American radicals, rather than an analysis of such links.⁵⁷

One or two of the earliest memoranda did deal with plans for domestic protests.

In connection with the anticipated demonstrations in Washington at the end of October 1967, Helms had requested all available information to be furnished the administration:

In any event, I want to be sure that any information you gentlemen acquire through whatever channels, is promptly passed to appropriate Federal authorities, including the White House, the Secret Service, the FBI, and anyone else who counts. I am under the impression that this "do" may turn out to be a humdinger, and I want to insure that we have clean hands in passing along any information that *we turn up in the normal course of business.* [Emphasis added.]⁵⁸

On October 10, the CIA distributed a memorandum to the White House, recounting "unevaluated information" about alleged plans for racial disturbances at the time of the October 21 demonstrations and the alleged involvement of a particular black leader.⁵⁹

Richard Ober, at the request of Director Helms, also provided the Kerner Commission with a series of 26 reports. The Executive Order establishing the Commission had directed all agencies, to the extent permitted by law, to provide information and otherwise assist its efforts.⁶⁰ The material supplied by the CIA primarily consisted of reports on overseas travel and statements by American black leaders and allegations of foreign efforts to exacerbate racial unrest in America. However, they included some of the early memoranda on reported plans for domestic disorders, which appear to be from domestic sources and to have little relevance to the question of foreign links.⁶¹

(c) *Dissemination to the FBI.*—By far the main tangible product of CHAOS was extensive dissemination of raw reports to the FBI. Information deemed of interest to the Bureau was put in memorandum form and sent through special channels directly from the

⁵⁷ Staff review of M memoranda.

⁵⁸ Memorandum from Richard Helms to Deputy Directors for Plans and Intelligence, and Director of Security, 9/20/67.

⁵⁹ M Memorandum No. 10, 10/9/67.

⁶⁰ Exec. Order No. 11866, 7/29/67, p. 2.

⁶¹ Committee Staff review of memoranda provided to the Kerner Commission.

CHAOS office to the FBI. In many instances it was information about Americans which CHAOS had sought in response to a specific FBI request. Most typically, the Bureau would notify Ober that it wished coverage of Americans whose overseas travel it had learned about in advance.⁶²

In addition, CHAOS obtained information pursuant to its general collection requirements from stations abroad, and wholly domestic information about dissident activities obtained in the course of its operations. This, too, was disseminated to the FBI, if it was deemed pertinent to the Bureau's concerns about such Americans. Ober testified that he regarded any names in reports sent to CHAOS by the FBI as a standing requirement from the FBI for information which CHAOS obtained about those persons.⁶³

E. 1969 Expansion of Chaos

The CHAOS operation was expanded and given renewed impetus in 1969, when the new Nixon administration expressed the same concern about foreign influence on domestic unrest as had its predecessors.

1. The Review of CHAOS for the President

On June 20, 1969, Tom Huston, Staff Assistant to the President, asked the CIA for a review of its progress:

The President has directed that a report on foreign Communist support of revolutionary protest movements in this country be prepared for his study. . . . "Support" should be liberally construed to include all activities by foreign Communists designed to encourage or assist revolutionary protest movements in the United States.

On the basis of earlier reports submitted to the President on a more limited aspect of this problem, it appears that our present intelligence collection capabilities in this area may be inadequate.⁶⁴

Huston asked for both a substantive review and a survey of the effectiveness of resources the CIA was employing, and what gaps might exist "because of either inadequate resources or a low priority of attention."⁶⁵ This study was the first one actually produced by the CHAOS office.

The review was completed within 10 days. Deputy Director Cushman summarized the results in his letter of transmittal:

2. The information collected by this Agency provides evidence of only a very limited amount of foreign Communist assistance to revolutionary protest movements in the United States. There is very little reporting on Communist assistance in the form of funding or training and no evidence of Communist direction or control of any United States revolutionary protest movement. The bulk of our information illustrates

⁶² Ober, 10/30/75, p. 88.

⁶³ Ober, 10/28/75, p. 45.

⁶⁴ Memorandum from Tom Huston to the Deputy Director of CIA, 6/20/69, p. 1.

⁶⁵ Memorandum from Tom Huston to the Deputy Director of the CIA, 6/20/69, p. 1.

Communist encouragement of these movements through propaganda methods.

3. Since the summer of 1967, this Agency has been attempting to determine through its sources abroad, whether or not there is any significant Communist direction or assistance to revolutionary groups in the United States. We have been collaborating closely in this effort with the Federal Bureau of Investigation and disseminating information to it. Existing Agency collection resources are being employed wherever feasible and new sources are being sought through independent means as well as with the assistance of foreign intelligence services and the Federal Bureau of Investigation. Of course, the Katzenbach guidelines have inhibited our access to certain persons who might have information on efforts by Communist intelligence services to exploit revolutionary groups in the United States.⁶⁶

Two additional studies were prepared by CHAOS, which were essentially revisions of this 1969 review. In 1970, as part of the CIA contribution to the work of the Interdepartmental Committee on Intelligence which led to the so-called "Huston Plan," CHAOS prepared an update of the 1969 study.⁶⁷ A similar revised version was prepared in 1971.

The 1971 report, "Definition and Assessment of Existing Internal Security Threat—Foreign," concluded that hostile foreign governments were committed to exploiting United States unrest as much as possible. But, apart from a few isolated instances, the study concluded that the main "assistance" was still in the form of exhortation and encouragement through international conferences and statements of support by foreign figures. The summary of foreign Communist influence on the New Left and radical student groups stated:

There is no evidence, based on available information and sources, that foreign governments, organizations, or intelligence services now control U.S. New Left movements and/or are capable at the present time of directing these movements for the purpose of instigating open insurrection or disorders; for initiating and supporting terrorist or sabotage activities; or for fomenting unrest and subversion in the United States Armed Forces, among government employees, or in labor unions, colleges and universities, and mass media.

In summary, foreign funding, training, propaganda, and other support does not now play a major role in the U.S. New Left. International fronts and conferences help to promote New Left causes, but at present the U.S. New Left is basically self-sufficient and moves under its own impetus.⁶⁸

⁶⁶ Memorandum from Gen. Robert Cushman to Tom Charles Huston, 6/30/69, transmitting "Special Report on Foreign Communist Support to Revolutionary Protest Movements in the U.S.," p. 1.

⁶⁷ See Huston Plan Report.

⁶⁸ Report, "Definition and Assessment of Existing Internal Security Threat—Foreign," 1/5/71, pp. 1-3. Thereafter, Richard Ober also used the CHAOS office to prepare the CIA contributions on foreign aspects of domestic unrest for the Intelligence Evaluation Committee established in the wake of the aborted Huston Plan. See Huston Plan Report.

The conclusions with regard to black activists were the same.

Following the Huston memorandum of June 1969, questioning the adequacy of the CIA's efforts, the CHAOS program was expanded to develop better sources of information, and an improved capability to process it.

In September, Helms issued a memorandum regarding CHAOS to the heads of the Directorates. Helms told the Deputy Directors that he had:

recently reviewed the Agency's efforts to monitor those international activities of radicals and black militants which may affect the national security. I believe that we have the proper approach in discharging this sensitive responsibility, while strictly observing the statutory and de facto proscriptions on Agency domestic involvements.⁶⁹

The memo acknowledged overlapping interests of several CIA components in this area but made clear that Ober had the principal operational responsibility for coordinating collection efforts. Helms specifically requested that Ober be provided with trained analysts to process a large backlog of undigested data and skilled operations officers.⁷⁰

In the fall of 1969, CHAOS began to develop two additional programs to increase its sources of information. The first was a domestic collection program undertaken by the Domestic Contact Service.⁷¹ In the second, CHAOS developed its own agents, who were trained in the United States and then sent on reporting missions abroad.

2. Domestic Contact Service

In early 1969, Domestic Contact Service (DCS) was receiving an increasing volume of field reports on Black militant activity. Some of the material related to possible foreign association and had been routinely sent in by the field offices. On March 10, 1969, in order to channel and control this material, DCS opened a new case on "Activities of Black Militants" here and abroad.⁷²

Because of references to foreign contacts, DCS sent some of the reports to the Counterintelligence Staff and they were routed to Ober, who sought additional material.⁷³

In October 1969, Ober formally briefed DCS officials. A subsequent memorandum to DCS field offices, jointly drafted by DCS and CHAOS representatives, expanded projects to the same five subject categories used by CHAOS: black militants; radical youth groups;

⁶⁹ Memorandum from Richard Helms to the Deputy Directors for Support, Plans, Intelligence and Science and Technology, September 1969, p. 1.

⁷⁰ *Id.*, p. 2.

⁷¹ At that time in the Intelligence Directorate, the unit has since been renamed Domestic Contact Division and returned to the Operations Directorate. Its main mission is the collection of foreign intelligence information in the United States from witting Americans. In connection with that role and other tasks which support CIA's foreign operations many DCS field offices have developed a network of confidential sources and contacts with local authorities. They are also openly listed in the phone book and would receive any walk-ins or phone calls from citizens to the CIA.

⁷² Deposition of Deputy Chief, Operational Support Branch, DCS, Rockefeller Commission, 4/11/76, pp. 32-33.

⁷³ *Ibid.*

radical underground press; antiwar groups; and deserter/draft resister movements. The directive advised that:

CI's interest is primarily to ascertain the details, if any, of any foreign involvement/support/guidance/training/funding/or exploitation of above groups and movements, particularly through coverage of foreign travel, contacts and activities of the Americans involved.⁷⁴

Over 200 reports and other items were supplied by DCS to CHAOS between 1969 and 1973. Much of the material included information relating to foreign contacts of Americans; some contained "operational leads" to potential sources who might be willing to collect information when they went overseas. Other items consisted largely of information about domestic organization and activity.⁷⁵

DCS officials thought they were expected to supply domestic information about dissidents for use as background data, as well as any leads to foreign connections.⁷⁶

There was no express reference to a domestic information collection requirement in the directive sent to DCS field offices in December 1969. But the Deputy Chief of CHAOS testified that his office had indicated their appreciation to DCS for such material, which helped build the CHAOS data base.⁷⁷

Moreover, whatever the formal written requirements, CHAOS made specific requests for domestic materials and, in other instances, made follow up requests based on items which DCS field offices had sent in.

For example, CHAOS asked the Chicago Field Office for information on the "28 co-conspirators" of 12 SDS members who had been locally indicted for the Weathermen riots in Chicago the previous fall. This was supplied, as well as subsequent coverage of the legal proceedings.⁷⁸

Another CHAOS request resulted in a DCS field office obtaining from confidential sources a large report prepared by a state investigating commission on radical demonstrations in that state.⁷⁹

The CHAOS office thanked DCS for one early report on the domestic political activities of a black leader and asked for any additional information available.⁸⁰

In the beginning of 1971, however, after expressions of uncertainty about the program from the field, DCS officials sought a revised written requirement stating both a primary interest in foreign-related information and a secondary CHAOS interest in background information of a domestic nature.

DCS claimed this was merely intended to confirm the prior practice based on oral requests from CHAOS.⁸¹

⁷⁴ DCS Memorandum to Field Offices: Case 52722, 12/19/64, p. 1.

⁷⁵ Deputy Chief, Operational Support Branch, DCS, Deposition, Rockefeller Commission, 4/11/75, pp. 47, 43-44.

⁷⁶ Chief Support Branch, DCS, Deposition, Rockefeller Commission, 4/11/75, pp. 56, 61.

⁷⁷ Eatinger, 10/14/75, pp. 36-37.

⁷⁸ Field Office Reports to DCS, 4/16/70, 6/1/70.

⁷⁹ Field Office Report to DCS, 5/14/70.

⁸⁰ Undated memorandum from Richard Ober to DCS: re DCS Field Report LA-654-69 of 9/14/69.

⁸¹ Chief Support Branch, DCS, Rockefeller Commission, 4/11/75, pp. 53-56.

The draft directive stated that: . . . The second type of information concerns the activities of US radical groups but does not contain any obvious foreign implications. Such information is considered of primary interest to the FBI under its domestic security charter. DCS however has been directed to collect both types of information, with the emphasis on that pertaining to foreign involvement.⁸²

Ober refused to approve the new directive. As a result, DCS closed the old case, and opened a new one under a narrower directive. DCS reporting was to be "focused exclusively upon the collection of information suggesting *foreign involvement* in U.S. radical activities." [Emphasis in original.] Purely domestic information was to be passed locally to the FBI.⁸³

Though nowhere near as voluminous as domestic reports received by CHAOS from the FBI, the DCS material was one of the main additional sources of "domestic intelligence" in the CHAOS files.

3. CHAOS Agents

The other main source of "domestic intelligence" about Americans which went into CHAOS' files came from agents being run by the CHAOS project and a few from a related foreign intelligence operation run in close coordination with CHAOS.

The effort to develop assets targeted fully on CHAOS information began right after the White House review of the Agency's CHAOS effort in the fall of 1969. Previously, overseas reporting had come from assets already working for the various stations on other assignments. Those station assets continued to supply CHAOS information even after Ober obtained his own agent program.

Over 40 potential recruits were evaluated. About half of these were referred by the FBI, for whom they had already worked. Most of those referred by the FBI ultimately were used on a single assignment. Seven recruits developed unilaterally by the CIA also were used as CHAOS agents.⁸⁴

CHAOS agents participated in radical activity here as part of their preparation for assignment overseas. In the process, they supplied detailed information on domestic activities of Americans.

While here, the agents spent at least several weeks, and, in some cases, much longer, immersed in the radical community. This not only enhanced their radical credentials and increased their familiarity with persons and groups they might be reporting on from abroad. It also afforded their case officer with an opportunity to train them, assess their progress, test the possibility they were a plant, and evaluate how CHAOS could best use them abroad.⁸⁵ This was done by extensive debriefing of the agents on a periodic basis.⁸⁶

⁸² Draft memorandum from Director, DCS, to Field Offices, 1/6/71.

⁸³ Memorandum from Director, DCS, to Field Offices, 3/28/71.

⁸⁴ Charles Marcules testimony, Rockefeller Commission, 3/10/75, pp. 1534-1545. (For security reasons, the CHAOS agent case officer testified as "Charles Marcules.")

⁸⁵ *Ibid.*, pp. 1545-1547; 1566-1607; Ober 9/24/75, p. 40.

⁸⁶ Staff Review of CHAOS Agent Files.

According to Marcules, the agents in training were asked to report to him in detail on their activities, persons with whom they had been meeting and so forth.⁸⁷

In all of these instances, the information about individuals in dissident groups, the plans and policies of the organizations and other domestic information, as well as any leads to possible foreign connections went not only into the case file of the agent in training but also into the general CHAOS files on these individuals and groups.

4. Project 2

A separate intelligence project which also involved the use of radical credentials by American agents, furnished CHAOS with additional information about American dissidents. "Project 2" was developed in 1969 and implemented in 1970, by a particular area division at CIA.⁸⁸ It was designed ultimately to penetrate certain foreign intelligence targets through these agents, or to have them spot others who could accomplish such infiltration.

Most of the assets developed their leftist coloration by entering universities in the United States after an initial period of basic agent training. When in school, they participated in the radical community. While preparing for their future assignments, the agents filed detailed reports and were also debriefed by their case officer. In the process, they provided considerable information on their associates, dissident organizations, demonstration plans and sometimes personal information.⁸⁹ One asset submitted a 60 page report for a three week period which included detailed information on demonstrations, group meetings, and general accounts of such activity as Women's Liberation efforts in the area.⁹⁰

From the outset, the project's potential usefulness to CHAOS was recognized. All of the agent reports and debriefing contact reports were provided to CHAOS for its files.⁹¹

Once abroad on their basic intelligence mission, moreover, the Project 2 agents were explicitly directed to acquire CHAOS information as well. One memorandum regarding the overseas assignment of a Project 2 agent, stated:

His mission will be to spot, assess and develop leftists in the Maoist spectrum. . . . He will also report on CHAOS developments in [the target country].⁹²

One Project 2 agent became affiliated with an American dissident group in the foreign country which was directing its activities at personnel of American bases in that area. He began to report on both the native "radical left and the American radical left."⁹³

⁸⁷ Marcules testimony, 3/10/75, Rockefeller Commission, p. 1507.

⁸⁸ The Rockefeller Commission refers to this project in its Report as "Project 2." For continuity, the same reference is used here.

⁸⁹ Staff review of Project 2 agent files.

⁹⁰ Agent 1, contact report, Vol. 11, Agent 1 file.

⁹¹ Earl Williams testimony, 10/14/75, p. 10. (For security reasons, one of the Project 2 case officers testified as "Earl Williams.")

⁹² Memorandum from Chairman, CS Agent Panel to DDP: "Request for Approval for Nonofficial Cover Premium Pay," 8/4/70.

⁹³ Project 2 Progress Report, August-September 1971, p. 201.

5. Provision to CHAOS of NSA and Mail Intercepts

When CHAOS was in full scale operation, it also was receiving information from the CIA's mail intercept program and the interception of international communications by the National Security Agency.

The CIA mail project was run by another unit within the Counterintelligence Staff. CHAOS supplied that office with a list of 41 individuals and organizations for specific inclusion in the so-called "watch list" used as one basis for intercepting international mail.⁹⁴ The names provided by CHAOS were to be sent to the point of interception in the field, and not merely to be used to screen mail which had independently been selected and had already arrived at the project office in Headquarters.⁹⁵

CHAOS also supplied lists of individuals and organizations to the National Security Agency for inclusion in its "watch list." In addition, CHAOS had access to more general distributions of communications intelligence involving Americans which were received by the CIA from NSA.⁹⁶

F. Reduction, Limitation and Termination of CHAOS

1. Reduced Reporting Priority

With the decline of student demonstrations and antiwar activity in the latter part of 1972, the intensity of the CHAOS effort declined. A cable to several stations advised that general reporting of information regarding foreign contacts of the New Left was no longer a high priority, although routine coverage was to be maintained in order to preserve a "residual counteraction capability for possible future use." The cable noted that a high priority would continue with regard to foreign connections of New Left individuals or groups advocating or engaging in violence.⁹⁷

2. Reaction to Inspector General's Survey

At the end of 1972, the CHAOS program was subject to a high level review. In the fall of 1972, an Inspector General survey of overseas stations for a particular region raised questions about CHAOS. The survey team was not permitted to review specific CHAOS files and operations, either in the field or at Headquarters. However, questions voiced to the team by station personnel in several countries resulted in a separate memorandum from the Inspector General, William Broe to the Executive Director. Broe summarized the policy concerns expressed about CHAOS:

Even though there is a general belief that CIA involvement is directed primarily at foreign manipulation and subversive exploitation of U.S. citizens, we also encountered general concern 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. Occasionally,

⁹⁴ Memorandum from Richard Ober to Chief, CI Project, 2/15/72.

⁹⁵ James Eatinger. Memorandum for the Record: CI Project Material Handling, 10/7/71.

⁹⁶ Ober, 10/30/75, p. 16-17.

⁹⁷ CIA Headquarters Cable to several Stations, July 1972.

stations were asked to report on the whereabouts and activities of prominent persons . . . whose comings and goings were not only in the public domain but for whom allegations of subversion seemed sufficiently nebulous to raise renewed doubts as to the nature and legitimacy of the MICHAEON program.⁹⁸ [Emphasis added.]

On a practical level, the stations had complained about the burden of seeking information from the liaison service on behalf of the FBI when the local or nearby FBI representative had also requested the same information from the liaison directly.⁹⁹

Broe's memorandum caused a review of the CHAOS operation by Karamessines, Helms, William Colby, who was then the Executive Director/Comptroller of the CIA, and other senior officials. In addition to improving coordination with the FBI and briefing overseas officers with a misunderstanding of CHAOS, Helms also directed that thereafter:

A clear priority is to be given in this general field to the subject of terrorism. This should bring about a reduction in the intensity of attention to political dissidents in the United States not, or not apt to be, involved in terrorism. On a secondary level, continued discreet coverage will be maintained of counterintelligence matters, including the possible manipulation of American citizens by foreign intelligence services or their actions abroad of counterintelligence interest.¹⁰⁰

Ober had already taken on the additional duties of coordinating the CIA's efforts to combat international terrorism the previous summer.¹⁰¹ In 1973, the CHAOS program was transferred from the Counterintelligence Staff to the newly formed Operations Staff within the Plans Directorate.

On May 9, 1973, CIA Director James Schlesinger requested an inventory of all "questionable activities" in which the CIA might have engaged. One such activity on which reports were sent to the Director was CHAOS. On August 29, 1973, William Colby, who had succeeded Schlesinger as Director, issued a series of instructions regarding the questioned programs and activities. His directive in regard to CHAOS limited the CIA's own operations to focus more narrowly on collecting information about foreign nationals and organizations, rather than the Americans with whom they might be in contact:

MEMORANDUM

Subject: CHAOS

CHAOS is restricted to the collection abroad of information on foreign activities related to domestic matters. CIA will focus clearly on the foreign organizations and individuals involved and only incidentally on their American contacts.

⁹⁸ Memorandum from Inspector General to Executive Director-Comptroller, 11/9/72, p. 1.

⁹⁹ Memorandum from Inspector General to Executive Director-Comptroller, 11/9/72, p. 2.

¹⁰⁰ Memorandum from Executive Director-Comptroller to DDP, 12/20/72, p. 7.

¹⁰¹ Clandestine Service Notice—Establishment of International Terrorist Information Program, from Thomas Karamessines, 7/19/72.

As a consequence, CIA will not take on the primary responsibility for following Americans abroad, although CIA can accept a request by the FBI to be passed to an appropriate liaison service in a foreign country for the surveillance of such an American and the transmission of the results back to the FBI. It must be plainly demonstrated in each such transmission that the CIA is merely a channel of communication between the FBI and the appropriate foreign service and is not to be directly engaged in the surveillance or other action against the American involved. [Emphasis added.]¹⁰²

3. Termination of CHAOS

CHAOS was terminated as a specified collection program in March 5, 1974, by order of Director Colby. The cable announcing this to the stations also stated guidelines for future activity involving Americans:

1. This message is to notify you of the termination of the CHAOS program and to provide guidelines under which HQS has been operating for some time on certain activities formerly included in CHAOS.

2. Guidelines: All collection takes place abroad. Collection is restricted to information on foreign activities related to domestic matters. CIA will focus clearly on the foreign organizations and individuals involved and only incidentally on their American contacts. In doing this, following will apply:

A. Whenever information is uncovered as a byproduct result of CIA foreign-targeted intelligence or counterintelligence operations abroad which makes Americans abroad suspect for security or counterintelligence reasons, the information will be reported by CIA in the following manner.

(1) With respect to private American citizens abroad, such information will be reported to the FBI.

(2) With respect to official U.S. personnel abroad, such information will be reported to their parent agency's security authorities, and to the FBI if appropriate.

In both such cases, under this sub-paragraph, specific CIA operations will not be mounted against such individuals; CIA responsibilities thereafter will be restricted to reporting any further intelligence or counterintelligence aspects of the specific case which come to CIA attention as a by-product 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 involved in the specific case, CIA will respond according to the guidelines in subparagraph B below. In performing these functions CIA will be discharging its responsibilities for primary foreign counterintelligence collection abroad, particularly as assigned it under paragraphs 1B and 3B of NSCID 5.

¹⁰² Memorandum from William Colby to Deputy Director for Operation, Attachment "Memorandum: CHAOS." 8/20/73.

B. CIA may respond to written requests by the FBI for clandestine collection abroad by CIA of information on foreign terrorist or counterintelligence matters involving private American citizens. Such collection activity may involve both liaison services and unilateral operations. In the case of liaison services, whenever feasible it should be plainly demonstrated in the transmission of the request to such liaison services that CIA is acting as a channel of communication between the FBI and the appropriate foreign service. Any unilateral operational activity will require specific prior approval of the DDO and the DCI will be advised thereof. Pertinent information obtained will be provided by CIA to the FBI.¹⁰³

A new restricted channel cryptonym was provided for the controlled reporting and handling of information relating to Americans which was furnished pursuant to these guidelines.¹⁰⁴

At the same time, domestic offices of the CIA were sent a copy of the cable to stations with the additional guidance that the cable was specifically restricted to information obtained abroad:

If as a byproduct of ongoing activities, incidental information is received on U.S. citizens and it is determined that such information is inimical to U.S. interests or the Base feels that the incidental information should be reported to Headquarters, they should do so via appropriate staff channels with [a priority] indicator. Headquarters will make the final determination as to disposition of any information which is received.¹⁰⁵

PART III. ISSUES RAISED BY CHAOS AND RELATED PROJECTS

CHAOS and the related studies undertaken by the CIA for the White House sought to determine the role played by hostile foreign involvement in domestic unrest. Was that an appropriate task for the CIA under its charter?

A. *The Propriety of the CHAOS Mission*

The history of CHAOS raises a serious question whether the entire mission was a proper one for CIA. The inquiry into links between American dissidents and foreign elements inevitably involved the Agency not only in "foreign intelligence" but also in examining domestic affairs outside of its foreign intelligence jurisdiction, and, at the least, treading close to prohibited internal security functions.

Of course, the mission required "foreign intelligence" about the efforts of hostile governments or foreign groups. But it also involved acquiring and using information about the American dissidents and their activities. In order to detect and understand connections between

¹⁰³ Cable from William Colby to Field Stations, 3/5/74.

¹⁰⁴ Cable from William Colby to Field Stations, 3/5/74, p. 5.

¹⁰⁵ CIA Headquarters Cable to Domestic Bases, March 1974.

foreign elements and the Americans, the CIA felt that it had to examine both sides of the connection—the foreign and the domestic. As Ober put it:

Obviously, if you're talking about links between the foreign individuals or groups or people or groups in the United States, to understand any link you need some information on either end. So that a degree of information would have to be maintained against which you could measure your foreign information and understand whether it is relevant or not.¹⁰⁵

The inevitable involvement in the activities of Americans was increased by the fact that the scope of CIA's interest in domestic dissidents was sometimes defined in broad terms. While the emphasis was clearly placed on evidence of direct foreign funding or control, both the requested reporting and the studies provided for the President covered a much broader range of "foreign connections." As a result, CHAOS screened a wide range of individuals and groups.

For example, the CIA asked stations providing information for the 1967 study of the peace movement to report on "subversive connections" between Americans and foreign elements, but then explained that "such connections might range from *casual contacts based merely on mutual interest* to closely controlled channels for party directives."¹⁰⁷ [Emphasis added.] In that context, "subversive connections" to be reported meant no more than a possible basis for foreign powers to develop actual control or direction at some point in the future.

Similarly, the White House request in the summer of 1969 for a study of foreign communist support to American protest groups directed that "support should be liberally construed to include" encouragement by Communist countries, as well as assistance.¹⁰⁸ Thus, mere expressions of sympathy and approval conveyed to an American group would constitute a "foreign link" and make the group a subject of the CHAOS examination of foreign influence.

In the fall of 1969, anticipating a new worldwide "peace offensive," CHAOS asked stations to report on "any foreign support, inspiration, and/or guidance" to such activities in the United States.¹⁰⁹

The studies produced by CIA on the peace movement, black activist groups, and the New Left included the efforts of foreign governments to exploit or stimulate unrest through propaganda and expressions of support. In the case of the peace movement, they also discussed international coordination of antiwar activity in various countries.

The attempt to ascertain and evaluate "foreign links" so broadly defined required more than background information on a few individuals suspected of actually being agents directed by a hostile power. In a period when there was considerable international communication and travel involving American dissidents, a study of "foreign links" which included expressions of common concern, contact at conferences, or encouragement came necessarily to include a substantial segment of the more militant protest groups in America.

¹⁰⁵ Ober, 10/28/75, p. 44.

¹⁰⁷ CIA Headquarters cable to several field stations, November 1967, pp. 1-2.

¹⁰⁸ Memorandum from Tom Huston to Deputy Director of CIA, 0/20/69.

¹⁰⁹ CIA cable from headquarters to stations, November, 1969.

Moreover, the CIA examined domestic dissident activity not only to determine the extent of foreign contracts, but also to evaluate the impact they had in the domestic arena.

Isolated reports of training, directions, and limited financial assistance provided to American dissidents by hostile foreign governments were found. Instances of mutual encouragement and international coordination were far more numerous. The studies prepared by the CIA sought to weigh the significance of such instances in the context of the domestic sources of support for the American dissident movements, in order to portray accurately the role played by foreign influence.

This was the theory on which Helms and the Directorate of Intelligence justified including the study by CIA of American student protest. Acknowledging that analysis of American student groups was sensitive, they felt that one could not test the proposition that there was an underlying international conspiracy manipulating the students in each country, without examining the origins and nature of the student protests here.¹¹⁰

Yet Helms contemporaneously indicated his understanding that the section of the "Restless Youth" report by CIA analyzing American student unrest was beyond the CIA's authority.¹¹¹

Thus, whether or not the primary interest of the CHAOS mission is characterized as "foreign intelligence," the very nature of the inquiry can be said to have taken the Agency into domestic matters as well. The ultimate objective transcended any effort to limit CIA's role to "foreign intelligence." As Director Helms testified:

The jurisdiction is divided at the water's edge. When you are dealing with something that has both foreign and domestic aspects to it, I don't recall anybody having come down, I mean any President come down hard and say, all of this is for the FBI and all of this is for the agency. I mean the line has to be wavy. There is no other way to do it that I know of. It is like cutting a man down the middle.¹¹²

Did the overall CHAOS program also inherently involve the CIA in prohibited internal security functions?

If the intent of the statutory prohibition is considered to limit active investigation of Americans by the CIA only in this country, then the answer is no. The specific ways in which CHAOS was implemented still raise a problem, but the task of determining the extent and impact of foreign links to domestic unrest did not inevitably require that the CIA do such investigation itself.

On the other hand, the general thrust of the statutory prohibition can be read as a more rigid limit to the CIA's entry into the internal security field at all—not merely a geographical limitation on domestic CIA investigations. If the proscription is read that broadly, then the basic mission of CHAOS to determine the role played by foreign influence in domestic dissent violated the statutory charter.

¹¹⁰ Drexel Godfrey deposition, Rockefeller Commission, January 1975, p. 9.

¹¹¹ See *supra*, pp. 33-34.

¹¹² Helms deposition, Rockefeller Commission, 4/24/75, p. 222.

This ambiguity was reflected in the study prepared for the White House by CHAOS in June 1971 on the extent of foreign links.¹¹³ It was entitled:

Definition and Assessment of the Internal Security Threat—Foreign. [Emphasis added.]¹¹⁴

Interestingly, the Rockefeller Commission concluded that with the exception of several particulars, the CHAOS mission undertaken by CIA was a proper foreign intelligence mission. But in its basic recommendation on the CHAOS program, immediately following that conclusion, the Commission advised that the President in the future not direct "the CIA to perform *what are essentially internal security tasks.*"¹¹⁵ [Emphasis added.]

Both the 1971 study title and the Rockefeller Commission recommendation implicitly recognize that the question of foreign influence on domestic unrest or subversion is an aspect of "internal security".

Ober suggested that CHAOS could be viewed as the foreign collection, collation, analysis, and dissemination of counterintelligence. In short, he justified CHAOS as a "vertical slice" of the CIA's counterintelligence responsibilities under NSCID 5.¹¹⁶ But as the history of CHAOS shows, the inclusion of "subversion" in the definition of threats covered by "counterintelligence" under NSCID 5, meant that the effort by CIA to perform foreign collection of counterintelligence information and to produce analyses of foreign counterintelligence questions would involve it in internal security matters. Therefore, to the extent the specific prohibition of the statute applied, it superseded any general implied authority for counterintelligence work upon which NSCID 5 was predicated.

Whether or not the overall CHAOS program was proper under the CIA charter, the ways in which the project was implemented raise further questions about the limits of the CIA's authority to gather information about Americans.

B. Domestic Intelligence Collection

To what extent was the CIA involved in improper domestic intelligence collection?

In any ordinary sense of the word, the CIA had "collected" a great deal of information in the United States about Americans, which was systematically maintained in files on those persons and used in the CHAOS program.

The manner in which the CIA had acquired that information, however, varied considerably. Most of it was received from the FBI, partly in response to traces and general requests from the CIA, and partly through disseminations made routinely by the Bureau.

The CIA's own acquisition of information about dissident Americans in this country involved the reports by the Domestic Contacts

¹¹³ See *supra*, pp. 39-40.

¹¹⁴ Report, "Definition and Assessment of Existing Internal Security Threat—Foreign", 1/5/71.

¹¹⁵ Rockefeller Commission Report, pp. 149-150.

¹¹⁶ Ober, 10/28/76, p. 53, and see *supra*, pp. 8-9.

Services, the CHAOS and Project 2 agents, and by the Office of Security sources in the MERRIMAC and RESISTANCE programs.

1. Domestic Contact Service

The basic formal policy of the DCS aid to CHAOS precluded active collection efforts by the field offices. Information was to be accepted if volunteered in the course of other duties, or sent in if it was available in the local public media.¹¹⁷

As a practical matter, however, information was provided by local officials or other "confidential sources" who became alerted to the field offices' interest in such material. And some of that information was obtained through local informants or undercover agents of police intelligence units.

In one city, for example, the DCS field office was obtaining from local authorities the coverage by informants of the meetings of local chapters of New Left dissident groups.¹¹⁸ Another confidential report dealt with local funding sources for the Black Panther Party.¹¹⁹ Thus, CIA's "passive" receipt sometimes was simply one step removed from active covert collection efforts by other public agencies.¹²⁰

The DCS involvement in CHAOS was questionable, even as to leads about foreign travel or possible contacts of Americans. The essential aspect was the intentional acquisition here by CIA of information about the political activities and associations of Americans. The argument such material was useful background for a "foreign intelligence" project does not answer the basic question of whether the CIA should leave such intelligence gathering here about Americans to other federal agencies, if, indeed, such information should be collected at all.

2. Domestic Reporting by CIA Agents

The CIA was most directly involved in clandestine gathering of domestic intelligence as a result of the reporting by CHAOS and Project 2 agents while they were in the United States. Both sets of agents participated in the radical milieu here in order to develop or improve their leftist credentials and, consequently, their access to information in their overseas assignments.

The CHAOS case officer who debriefed the CHAOS agents in this country sought a complete account of the agents' activities and associates. He frequently amazed the FBI in the degree of information he could extract from the agents' experience; he was "like a vacuum cleaner."¹²¹

Since the extensive debriefings about their associates in the United States served a variety of training, assessment, and counterintelligence purposes, any information reported to the CIA in the process can be viewed as the byproduct of overseas operations. At times, however, the CHAOS agent program and, to a lesser extent, Project 2 went beyond incidental collection.

¹¹⁷ Deputy Chief, Support Branch, DCS, Deposition, 4/11/75, Rockefeller Commission, p. 45.

¹¹⁸ Memorandum from DCS to CHAOS with attached field office reports, 11/15/68.

¹¹⁹ Report from field office to DCS, 8/14/70.

¹²⁰ In addition, as already noted, DCS pursued follow-up requests from CHAOS for specific information with its local sources. See *supra*, p. 44.

¹²¹ Ober, 10/30/75, p. 66.

(a) *CHAOS Agents*.—Generally, the CHAOS agents under development were not directed to acquire information about particular targets. But the case officer would sometimes put specific questions to them, asking what they had learned about particular persons or events. Sometimes the questions had been provided by the FBI.¹²² Ober agreed that an agent trying to perform well would thereby be sensitized and implicitly directed toward obtaining information on those subjects or persons when he returned to the radical community.¹²³

In addition, not all of the CHAOS agent debriefings on domestic matters was tied to their preparation and development. When agents returned to America and reentered the radical community here pending reassignment, they continued to report on the activities of their domestic associates.¹²⁴ According to Ober, agents were sometimes expressly brought back from their overseas assignment to cover a target in the United States of particular interest to the FBI.¹²⁵

Three cases illustrate this range of circumstances in which domestic information was collected by CHAOS agents.

The first instance involved a recruit who was under assessment and not formally hired for over half a year, during which time he was debriefed on his knowledge of domestic radical activity.¹²⁶

In April 1971, after consultation with the case officer and at the time he was formally recruited as a CHAOS agent, he attended the spring demonstrations against the Vietnam war in Washington.¹²⁷

Prior to this time, the agent had not been directed to try to acquire information about domestic radicals, but had done so as a result of his continuing association with them. In the case of the Washington demonstrations, however, he was briefed in advance by the case officer, Marcules, on a number of individuals in whom the FBI was interested, as well as being asked to report any advance information about plans for the demonstrations.¹²⁸ Marcules testified it was not practical to turn Finch over to the Bureau during this period because of problems with compartmenting his identity. He also said it provided a good training opportunity.¹²⁹

¹²² Ober, 10/30/75, p. 47.

¹²³ Ober, 10/30/75, p. 60.

¹²⁴ Staff Interview of Chief, International Terrorism Group, Rockefeller Commission, 2/24/75, p. 3.

¹²⁵ Memorandum from Richard Ober to James Angelton, 6/9/70, p. 9.

¹²⁶ Bob Finch deposition, Rockefeller Commission, 4/16/75, pp. 5-6. (For security reasons, this agent testified under the alias "Bob Finch".)

¹²⁷ The case officer testified that Finch had raised the possibility and that from a security viewpoint, it would have seemed suspicious if Finch had not come. (Marcules, Rockefeller Commission, 3/10/75, p. 1550). Finch testified he could not recall whether he or Marcules first suggested his participation at the demonstrations. (Finch, Rockefeller Commission, 4/16/75, pp. 14-15.) However, a memorandum prepared by the case officer states that Finch was "willing to go" to D.C. (Marcules contact report, 4/5/71). In addition, the circumstances of his being formally recruited just in time for the assignment, and the juggling of his training schedule, strongly suggest the reporting was more planned as a collection opportunity than it was merely a fortuitous coincidence.

¹²⁸ Marcules contact report, 4/17/71.

¹²⁹ Marcules, Rockefeller Commission, 3/10/75, p. 1552.

The second instance of intensive domestic reporting involved another CHAOS agent with particularly good entree into the highest levels of a segment of the domestic radical community. He made several trips abroad and reported CHAOS information obtained overseas.¹³⁰ In addition, both during his preparation period and in between his overseas assignments, this asset reported a great deal of detailed information, some extremely personal, about individuals in this segment of the radical community and about their personal relationships.¹³¹ In the fall of 1969 it was determined that he would not be used on an overseas assignment for many months and, in the meantime, would continue to be debriefed as a source of information about his associates, in part because he did not wish to deal with the FBI.¹³² But there is no indication in the file that the personal information of an intimate nature was requested by CIA or was disseminated to the Bureau.

A third CHAOS asset had already been working for the CIA abroad. At the time he was recruited for the CHAOS effort, the agent had an opportunity to attend antiwar demonstrations in this country. He was encouraged to attend by CHAOS, which assisted his arrangements.¹³³ The agent attended a series of activities in the United States and was debriefed extensively. The information was the basis for numerous reports to the FBI on domestic antiwar efforts and plans.¹³⁴

(b) *Project 2 Agents.*—The Project 2 agents developing their credentials in this country were not directed to participate in particular dissident activities. But the principal case officer for the agents' preparation stated there was a sense of urgency to get the maximum amount of information for CHAOS from the credential building process in the United States.¹³⁵

The Deputy Chief of CHAOS testified that he briefed Project 2 agents while they were in this country. He could not recall asking the agents to collect any specific information. But he testified that the CHAOS office had requested the Project 2 case officers to ask their agents specific questions about the persons and activities they were reporting upon.^{135a}

A cover memorandum written by the Project 2 case officer attached to a debriefing report of an agent prior to his departure overseas read:

A part of the substance herein is in response to questions posed by CHAOS before I went to the West Coast. Especially the part on factionalism in the New Left and the organizational activity. Am sending a copy of this to CHAOS as per usual practice. (The attachments were collected by the asset for CHAOS at our request.)¹³⁶

¹³⁰ The agent had been a CIA source for a number of years.

¹³¹ Staff review of CHAOS agent file.

¹³² Memorandum for the Record from Charles Marcules, 10/21/70. (In agent file.)

¹³³ Marcules, Rockefeller Commission, 3/10/75, pp. 1556-1558; staff review of CHAOS agent file.

¹³⁴ Staff review of agent file.

¹³⁵ Williams, 10/14/75, pp. 8, 23.

^{135a} Eatinger, 10/14/75, pp. 50-51.

¹³⁶ Cover memorandum from Earl Williams to Acting Chief of Operations of the Project 2 area division, 7/28/70.

3. Propriety of Domestic Reports by Agents During Preparation

In those situations when CHAOS agents were directed to cover specific activity in the United States or to find out about a particular person, CIA was engaged in domestic clandestine intelligence collection about Americans.

Whether the information was sought for CHAOS' own use or at the request of the FBI, should the CIA ever be involved in domestic collection targeted against United States citizens?

It can be argued, for example, that where CHAOS and Project 2 agents were not directed to collect specific information, and were reporting domestic intelligence as a by-product of their preparation for overseas operations, that CIA was not involved in improper domestic operations.

Thus, Deputy Director Karamessines felt that the general preparation of agents through participation in domestic dissident activity, and their debriefing by CIA, was consistent with his policy that CHAOS would not engage in domestic intelligence operations. Karamessines understood that the agents would report to their case officer information which included domestic matters which would be available to CHAOS and which might be disseminated to the FBI. But he explained that CHAOS was not to conduct operations "for the purpose" of acquiring domestic information about targeted groups.¹³⁷

Such narrow definitions of the intelligence trade differ from the general public understanding of what constitutes "domestic intelligence collection" by CIA. Under this narrow definition of "domestic operations," if the ultimate purpose of the covert reporting is preparation for a foreign operation, then even the conscious acquisition of detailed domestic intelligence in the process, its systematic retention and dissemination, would be appropriate for CIA. That standard poses a potential loophole in any guidelines which purport to restrict the CIA's collection of information about Americans here in the United States. It is particularly dangerous when, as was true for CHAOS, the overseas mission itself includes reporting on Americans abroad.

If it is to be continued, does CIA use of such credential building and training techniques require strict controls on the use of any information acquired during such preparation?

C. Assistance to FBI Internal Security Investigations

A third issue is raised by the extensive pattern of assistance CHAOS provided to the FBI. Apart from the mission Helms had the CIA undertake for the White House, and the specific ways in which CHAOS sought to implement that mission, a major focus of the actual CHAOS operation became its servicing of the FBI's internal security investigations. Did the extent of that assistance bring the CIA into the realm of forbidden internal security work?

¹³⁷ Thomas Karamessines testimony, Rockefeller Commission, 2/24/75, pp. 1018-1020. A similar analysis was offered by the Chief of Counterintelligence, Ober's immediate superior. (James Angleton testimony, Rockefeller Commission, 2/10/75, p. 690.)

As just noted, the most directed use of CHAOS agents to collect domestic information in the United States was done on behalf of the FBI.

Abroad, the bulk of the CHAOS requests for coverage of specific Americans by CIA stations, foreign liaison services, or both, also resulted from FBI requests.

Both Karamessines and Ober acknowledged that the CIA through CHAOS was assisting the FBI in its performance of internal security functions.¹³⁸

They characterized that assistance as a proper part of the CIA's counterintelligence responsibility.

Karamessines testified that, as the foreign operational arm of the American counterintelligence effort, CIA has always accepted the responsibility to meet the FBI's collection requirements abroad.¹³⁹ But, collection of intelligence about Americans abroad, whether the CIA's own agents or from liaison services, can be done for internal security purposes, just as much as can intelligence operations at home.

This issue was reviewed in a different context by the Rockefeller Commission when it considered the propriety of the CIA's mail interception program. The Commission found that it exceeded CIA authority wholly apart from the statutory ban on any government agency opening mail without a warrant. The Commission concluded that:

The nature and degree of assistance given by the CIA to the FBI in the New York mail project indicate that the primary purpose eventually became *participating with the FBI in internal security functions*. Accordingly, the CIA's participation was prohibited under the National Security Act. [Emphasis added.]¹⁴⁰

In contrast to the relatively small number of formal studies and special memoranda CIA provided the White House, the CHAOS office disseminated thousands of reports to the FBI.

All told, in its seven years of operation, CHAOS sent well over 5,000 reports to the Bureau; approximately 4,400 memoranda, and some 1,000 cable disseminations.¹⁴¹

Reviewing the degree to which the product of the CHAOS operation was internal security intelligence sent to the FBI, as well as the testimony that targeted operations abroad against Americans were largely the result of specific FBI requests, one can draw a similar conclusion paralleling that analysis of the mail project: a major purpose of CHAOS activity in actual practice became its participation with the FBI in the Bureau's internal security work.

On the other hand, because CHAOS generated information of interest to the FBI in the course of pursuing its own mission, the dissemination figures combine production requested by the Bureau and also the byproduct of CHAOS which was made available to the FBI.

¹³⁸ Ober, 10/30/75, pp. 74-76; Karamessines, 10/24/75, p. 20.

¹³⁹ Karamessines, Rockefeller Commission, 2/18/75, pp. 695-900.

¹⁴⁰ Rockefeller Commission Report, p. 115.

¹⁴¹ Letter from Director William Colby to the Vice President, 7/8/75, p. 6 of Attachment.

Moreover, insofar as CHAOS watched Americans abroad at the FBI's request, CIA participation in the Bureau's internal security work, unlike the mail program, did not involve domestic CIA operations, the primary concern underlying the prohibition of international security functions to the CIA.

For the future, the question remains which intelligence agency will be the operational arm for the United States to collect information about Americans outside the country. Even if all collection of information about Americans undertaken in the United States were reserved to the FBI, there might be situations in which surveillance of Americans abroad was sought as part of an internal security or counterterrorism investigation initiated pursuant to approved criteria. In such cases, unless the FBI or some new agency had adequate capability to cover the subject's activities abroad, it would be necessary either to permit the CIA to do it, or to request coverage by the local intelligence service through an FBI legal attache or a State Department representative. And, of course, the second course would not be open unless America had a cooperative relationship with the liaison service in the foreign country.

The solution of this issue may lie less in determining what to deem the performance abroad of internal security functions than in setting restraints on the investigation of Americans by the FBI and applying those restraints to surveillance of Americans overseas, by any arm of the government.

D. Maintenance of Files on Americans

The mechanics of the CHAOS operation, both in performing the mission undertaken by the CIA and in servicing the FBI's needs, involved the establishment of files and retention of information on thousands of Americans.

To the extent that information related to domestic activity, its maintenance by the CIA, although perhaps not itself the performance of an internal security function, is a step toward the dangers of a domestic secret police against which the prohibition of the charter sought to guard. Specific standards are required for the retention of such material when its direct availability in the CIA's own files is necessary for legitimate foreign intelligence purposes and the Agency has acquired it properly. In addition, the CIA can be required to purge existing files in conformity with the new standards, and where appropriate, to purge name indexes as well.

E. Approaches to Determining Foreign Direction of Domestic Dissent

Beyond the questions CHAOS raises about the scope of CIA's authority under its charter, CHAOS also suggests the more general problems of controlling efforts by any intelligence agency to determine the nature of foreign connections to domestic unrest.

The most systematic and the quickest way to look for foreign direction of domestic unrest is to start at both ends of the suspected connection. One tries to learn what hostile intelligence services are doing, by coverage of them. But one can also begin to investigate those Americans thought most likely to have such ties. Thus, CHAOS

sought to sift through the leaders and more active segments of domestic protest movements in order to learn of travel and other foreign contacts and then to investigate the possibility that those Americans were supported or controlled by foreign powers.

The more traditional CIA policy has been to monitor hostile intelligence services and then, only if it thereby learns of their involvement with particular Americans, to investigate those Americans abroad or request an inquiry here. Generally, CIA has not tried to work backward from a surveillance of traveling Americans who seemed likely prospects in order to see what kinds of connections could be found.

The present Assistant Deputy Director of CIA for Operations, David Blee, summarized the distinction:

We have always said that we did not operate that way, but that we went about it much more inefficiently, which is by penetrating the foreign government or foreign subversive operation and finding if that led us to an American, rather than trying to see what Americans were doing, and seeing if they were in touch with those groups.

In this, we operate very differently from practically all of the other security and intelligence services, which typically watch their own citizens to see what they are doing.¹⁴²

The CHAOS program took the more "efficient" approach; it acquired information from coverage of foreign elements, but also worked back from the American end by screening foreign contacts of dissidents. As Ober testified:

At some point perhaps it should be explained that one of the reasons for having so many files on so many people was that the estimates and assessments required of the Agency in terms of possible foreign involvement with domestic activities were such that one could only give a responsible answer if one knew, of this group of people, how many had any sort of connector of significance abroad. What I am getting at indirectly, I think, is that to respond with any degree of knowledge as to whether there is significant foreign involvement in a group, a large number of people, one has to know *whether each and every one of those persons has any such connection. And having checked many, many names and coming up with no significant connections, one can say with some degree of confidence that there is no significant involvement, foreign involvement with that group of individuals.* But if one does not check the names, one has no way of evaluating that, without a controlled penetration agent of the FBI by that group, or a control penetration agent of the KGB abroad who works on the desk which deals with these matters through us. [Emphasis added.]¹⁴³

The former Deputy Director for Plans, Thomas Karamessines, testified that, in this regard, CHAOS reflected a general increase through-

¹⁴² David Blee deposition, Rockefeller Commission, 4/18/75, p. 15.

¹⁴³ Ober, Rockefeller Commission, 3/28/75, pp. 88-89.

out the intelligence community in the use of such a screening approach on American dissidents as opposed to more traditional counterintelligence efforts targeted directly at hostile foreign elements.¹⁴⁴

CHAOS suggests the dangers of any intelligence agency starting from such an investigation of Americans to find illegal or subversive foreign ties. It particularly shows how the broad impact of that approach is amplified by the dynamics of counterintelligence work, and the likely national setting of such efforts.

1. The Nature of Counterintelligence Work

Counterintelligence investigations of this type start from a data base of background information necessarily broader than the ultimate target of the inquiry. The foundation of such counterintelligence efforts is to build up a reference collection of names and organizations against which one can check information reported about possible ties between foreign elements and Americans.¹⁴⁵ Hence, the extraction of every name from materials received about domestic dissidence.

Along with the identities, the data base requires developing background information about the individuals and groups—their relationships, the status of particular individuals, their views and policies. The Deputy Chief of CHAOS testified that such background information was needed to understand the significance of the "tidbits," i.e., specific items relating to foreign connections which came to CHAOS.¹⁴⁶

As Ober explained:

I think that is significant in any counterintelligence operation, that the meaning of information in the abstract, it is very difficult to determine. You have to measure it against other information and put it into context.¹⁴⁷

Moreover, in counterintelligence work, the credo is that every bit of information about associations and activities might prove relevant—a piece of the puzzle. Thus, when CIA responded to the Rockefeller Commission's conclusions that too much information was maintained by CHAOS on wholly domestic activity, it stated:

this was due in part to the paucity of information pertinent to its foreign intelligence objectives which the operation had been able to collect *and also to the uncertainty over how much of the accumulated data might not eventually prove relevant to these objectives.* [Emphasis added.]¹⁴⁸

The bias is toward inclusion, not selectivity, in collecting information and maintaining files. Other agencies and components of the CIA, alike, were not encouraged to be selective in their provision of material to CHAOS.

The request to NSA for materials on persons CHAOS sought to have watchlisted indicated the widest possible scope. In a memorandum

¹⁴⁴ Karamessines, 10/24/75, p. 44.

¹⁴⁵ Ober, 10/28/75, p. 42.

¹⁴⁶ Ober, 10/28/75, p. 44.

¹⁴⁷ Ober, 10/28/75, p. 45.

¹⁴⁸ Letter from William Colby to Vice President Rockefeller, July 1976.

to NSA, Ober indicated that he should be sent any material obtained on those targets "regardless of how innocuous the information may appear."¹⁴⁹ Ober testified this was not indicative of his pursuit of domestic intelligence, but rather his view that NSA was not competent to judge what bits of seemingly irrelevant information might be meaningful to CHAOS. Therefore, he wanted NSA to turn everything over and let CHAOS personnel sift through it for whatever might prove fruitful to their interests.¹⁵⁰

The Director of the Office of Security, Howard Osborn, testified that Ober requested he provide all information about dissident groups obtained through Projects MERRIMAC and RESISTANCE, and not merely specific items suggesting foreign connections. According to Osborn, Ober explained that only the CHAOS office, not the Office of Security, was competent to judge what might be relevant to the CHAOS mission.¹⁵¹

2. Political Setting of Investigations

The other main source of expansive pressures on intelligence operations such as CHAOS is the political setting in which they are undertaken. Such inquiries are most likely to be pursued in times of turbulent protest and dissent from official policy. Intense Government concern about the source of that opposition is inevitable and the possibility of foreign involvement is ever present. Moreover, the administration in power may find it difficult to accept the fact that domestic opposition to policy is really indigenous.¹⁵²

In the case of CHAOS, two successive presidents were reluctant to accept the CIA's conclusions that the dissident activity against the Government was indigenous.

Director Helms testified that the White House was dissatisfied with these reports and studies because they did not show "enough foreign money and foreign influence in these dissident movements. . . . They just said you aren't doing your job, you aren't finding it out, its got to be there."¹⁵³

Ober testified that Helms never pressured him as to the findings reported by the CIA. But a steadfast determination to provide unbiased analyses, itself, creates pressure to expand an operation such as CHAOS. The dynamic is present in any effort to establish the validity of a negative finding—*no substantial foreign influence*—to the satisfaction of skeptical Government leaders. Only by increasing the coverage of American dissidents with any kind of foreign contact could the CIA hope to satisfy the White House that if there were significant links of direction and support, CHAOS would find them.

¹⁴⁹ Memorandum from Richard Ober to Office of Customer Relations, NSA, 9/14/71.

¹⁵⁰ Ober, 10/30/76, p. 10-17.

¹⁵¹ Howard Osborn testimony, 10/8/77, p. 12-14.

¹⁵² As Joseph Califano, a principal assistant to President Johnson put it, high government officials sometimes cannot 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." (Joseph Califano, 1/27/76, p. 70.)

¹⁵³ Richard Helms deposition, Rockefeller Commission, 4/24/76, p. 228.

Both Helms and Ober testified that the White House pressure for redoubled efforts was a significant factor in the continued expansion of CHAOS.¹⁶⁴

The expansive pressures created by the nature of counterintelligence work and by the difficulty of "proving a negative" to the White House, of course, are not peculiar to the CIA. They increase the danger that any intelligence agency's effort to find hostile foreign ties to domestic dissent by working back from surveillance of Americans will sweep within its scope many citizens engaged only in lawful activity.

The alternative would be to prohibit such investigations of the activity of an American dissident unless, in the course of counterintelligence efforts against hostile foreign elements, a reasonable basis was established for suspecting the American was acting illegally on behalf of the foreign power.

PART IV. OFFICE OF SECURITY PROGRAMS

The concerns about domestic unrest which led to the CHAOS program, also caused the CIA to undertake other programs through the Office of Security, the support unit of the CIA charged with protecting its personnel, facilities and operations. The Office of Security has responsibility for both physical security measures and questions of personnel security.

The Office conducts routine background investigations of prospective personnel. It has also developed files on individuals and organizations in the course of investigating individual security cases of alleged penetration or attempted penetration of CIA employees.

In 1967, the Office began two efforts which were not focused on particular security cases. Rather, they were designed to collect information about groups which might pose a threat to the Agency's physical security through violent demonstrations or other disruptive activities.

By the mid-1960s, student unrest had led to increased harassment of government recruiters, including those of CIA, at campuses throughout the country. In the fall of 1968, the CIA recruiting office at the University of Michigan was destroyed by a bomb.

1. Project Resistance

Project RESISTANCE developed out of a narrower program designed to provide direct support to CIA recruiters visiting college campuses. In February 1967, the Office of Security had directed its field offices to report on the possibilities of violence or harassment at those schools which CIA recruiters planned to visit. Subsequently, pursuant to this directive, the field offices provided information on

¹⁶⁴ Helms deposition, Rockefeller Commission, 4/24/75, p. 234; Ober deposition, Rockefeller Commission, 3/28/75, pp. 137-38. Ober also noted his independent professional judgment that in the beginning CHAOS sources were insufficient to afford confidence in its findings. Ober, 10/30/75, p. 32. Nevertheless, his and Helms' acknowledgments, as well as the circumstances of CHAOS' evolution, indicate the role played by White House dissatisfaction with the results in the program's expansion.

expected opposition to government recruiting, or to CIA in particular, and made appropriate security arrangements with campus officials if the recruitment effort took place.

The broader RESISTANCE program was initiated by the Deputy Director of the CIA for support, whose directorate included the Office of Security and who previously had been a Director of Security, himself. In December 1967, he requested the Office of Security to study campus dissidence on a systematic basis. The Deputy Director suggested that there was an increased pattern of similar activity among student protest movements and directed the Office to examine their aims, causes, attitudes and the extent of their support among the Nation's students.¹⁵⁵ The collection requirement sent to the field officers in a telegram from headquarters asked for local news clippings about campus demonstrations related both to local grievances or to national issues such as the Vietnam War.¹⁵⁶

Because of the volume of material reported by the field offices, a special unit, the Targets Analysis Branch, was established in May 1968, to process and digest the information.

The testimony and the files indicate no use of infiltrations by CIA in connection with this program. The overwhelming bulk of the information continued to be press clippings passed on to headquarters. However, the field offices also obtained information from confidential sources in the local community such as campus officials and police authorities.

For example, one field office indicated that it had already obtained information from the local law enforcement authorities and advised of additional opportunities to obtain from other police departments reports of their informants with local dissident groups.¹⁵⁷ Headquarters advised the office to utilize such sources when the information was offered to CIA.¹⁵⁸

On some occasions, the field offices were specifically requested to obtain information about particular activities or individuals, through information obtained directly by CIA personnel and material developed through confidential sources.¹⁵⁹

The analyses provided by the RESISTANCE project were criticized at one point by the Office of Security analyst who had initiated the program for primarily focusing on publicly available information:

The RESISTANCE output should not attempt to duplicate or compete with the media on such reporting. Rather it should draw on such open sources for material needed to link together the data acquired from other sources.¹⁶⁰

By the end of 1970, the Director of the Office of Security felt that some of the field offices might be going too far in developing informa-

¹⁵⁵ Memo for the Record from Security Research Staff Project Officer, 12/8/67.

¹⁵⁶ Telegram from CIA Headquarters to Office of Security Field Offices, 12/11/67.

¹⁵⁷ Memorandum from Field Office to CIA Headquarters, 5/23/68.

¹⁵⁸ Memorandum from CIA Headquarters to Field Office, 6/11/68.

¹⁵⁹ Memorandum from CIA Headquarters to Washington, D.C. Field Office, 5/11/68; Memorandum from CIA Headquarters to Washington, D.C. Field Office, 11/10/69.

¹⁶⁰ Memorandum from Security Research Staff analyst on Project RESISTANCE to Chief, Special Activities Division, 5/13/68.

tion from cooperating confidential sources.¹⁶¹ At the beginning of 1971, limiting instructions to the field offices directed restraint in the development of information:

No attempts should be made to recruit new informants or sources such as campus or police officials for the express purpose of obtaining information regarding dissident groups, individuals, or activities. No new requirements for information should be levied on existing sources.

The above limitations do not preclude acceptance of information gratuitously offered by informants or sources and field personnel should continue to be on the alert for non-solicited information which might contribute to the protection of the Agency personnel, projects or installations.¹⁶²

The Targets Analysis Branch also received FBI reports.¹⁶³

Although the initial impetus for RESISTANCE was an effort to evaluate campus activities, the Targets Analysis Branch broadened its inquiry to include analyses of protest activities in Washington and other centers of protest.

The incoming material was digested and indexed. Eventually the project developed an estimated 600-700 files and indexed an estimated 12,000 to 16,000 names.¹⁶⁴ Apart from specific spot reports and evaluations of particular groups requested by other components of the Office of Security, the main product of the operation was weekly Situation Reports, summarizing and analyzing past events and projecting a calendar of upcoming events which might involve violence or disruption directed at government facilities.¹⁶⁵

The knowledge of organizations was also made available to the Personnel Office for purposes of evaluating membership in such groups by prospective employees.¹⁶⁶

The project was terminated at the end of June 1973.¹⁶⁷

B. Project Merrimac

The second general effort by the Office of Security to protect the CIA from threats posed by domestic disorder was Project MERRIMAC. MERRIMAC involved the participation of CIA assets in dissident groups in the Washington metropolitan area in order to obtain advance warning of demonstrations which posed a threat to CIA facilities and also to collect other intelligence about the groups and their members.

There is no record of MERRIMAC having been authorized at the outset by Director Helms. The Director of the Office of Security, Howard Osborn, testified that Helms had indicated his concern about the security of the CIA facilities in the face of dissident activities in the period prior to the formal commencement of MERRIMAC in

¹⁶¹ Howard Osborn testimony, 10/3/75, pp. 10-20.

¹⁶² Memorandum from CIA Headquarters to all field offices, 1/6/71.

¹⁶³ Chief, Targets Analysis Branch OS (1970-1973), testimony, Rockefeller Commission, 3/3/75, p. 1277.

¹⁶⁴ Chief, Targets Analysis Branch OS (1970-1973), Rockefeller Commission, 3/3/75, pp. 1296, 1314.

¹⁶⁵ *Id.* at 1279.

¹⁶⁶ *Id.* at 1291-1292.

¹⁶⁷ Memorandum from CIA Headquarters to New York Field Office, 6/28/73.

early 1967.¹⁶⁸ And Helms believes that he approved the project at some point.¹⁶⁹

In February 1967, Osborn inquired whether a proprietary company used by the Office of Security could monitor the activity of certain groups in Washington in order to provide advance information about demonstrations directed against CIA properties.¹⁷⁰

Shortly thereafter, the proprietary was directed to obtain such information. At the beginning of April, it was specifically asked to have its assets collect intelligence on the April antiwar demonstrations in Washington, D.C.¹⁷¹

The Office of Security initially chose four "indicator organizations"—the Women's Strike for Peace, the Washington Peace Center, the Congress of Racial Equality, and the Student Nonviolent Coordinating Committee—deemed to be bellweathers of the likely nature of protest activity and the potential threat it might pose to the CIA.¹⁷²

The proprietary used only a few assets at first, including one regular employee and several others hired on a part-time basis. None of the assets were sophisticated agents, although they eventually received some training. They were construction workers or persons in similar trades and their relatives. Most of their work continued on a part-time basis, in addition to their regular employment, throughout the duration of MERRIMAC.¹⁷³

Initially, the assets were asked to monitor the organizations in order to report information only about planned demonstrations which might threaten the Agency. In June, however, the collection requirement was expanded to include information about the organizations' financial operations and sources of support.¹⁷⁴

In the fall of 1967, in anticipation of the peace demonstrations in Washington, MERRIMAC sought to obtain information about the leadership and plans of organizations participating in the National Mobilization Committee to End the War, as well as information about all the participant organizations.¹⁷⁵

The scope of the information requested continued to increase. The assets were asked to report any information about the plans and attitudes of groups revealed at meetings, their associations with other groups, sources of support, and an account of what was said at the meetings, in addition to information specifically relating to threatened action against the CIA.¹⁷⁶ In addition, other organizations were added

¹⁶⁸ Howard Osborn testimony, 10/3/75, p. 6.

¹⁶⁹ Richard Helms, Rockefeller Commission, 4/28/75, p. 2472.

¹⁷⁰ Memorandum from Deputy Director of Security to Howard Osborn, 2/20/67. The proprietary company was engaged in commercial security business as a cover operation. It was used by the Office of Security where no government identification was permissible or where other considerations required "deep cover" for the CIA's security work. (Osborn, Rockefeller Commission, 2/17/75, p. 837; Gen. Manager of the proprietary testimony, Rockefeller Commission, 3/3/75, pp. 1372-1379.)

¹⁷¹ Memorandum from Headquarters to Proprietary Gen. Manager, 4/17/67.

¹⁷² *Ibid.*

¹⁷³ Proprietary, General Manager, Rockefeller Commission, 3/3/75, pp. 1378-1379.

¹⁷⁴ Memorandum from Headquarters to Proprietary Gen. Manager, 6/29/67.

¹⁷⁵ Memorandum from Headquarters to Proprietary Gen. Manager, 9/14/67.

¹⁷⁶ Memorandum from Headquarters to Proprietary Gen. Manager, 8/15/68.

to the list of covered groups. By August 1968, ten groups were targeted by MERRIMAC for such coverage.¹⁷⁷ Thus, although the primary purpose remained advance warning of threats to the Agency, the program expanded into a general collection effort whose results were made available to other components in the CIA, and in many instances, to the FBI. As Osborn put it:

Now I would be less than candid and less than honest with you to say that over the course of this project we reported pretty much of everything we got. [sic] I am not going to try to kid you. But the primary purpose of the project was self-protection physical security and I think we probably exceeded that.¹⁷⁸

In some instances the agents conducted surveillance of particular dissident leaders and activists of special interest to the CIA. Photographs were taken of persons attending meetings, or license plates, and persons were trailed home in order to identify them. Some of the assets also made contributions to the organizations at a low level necessary for credible participation.¹⁷⁹

Information obtained from MERRIMAC agents was made available to CHAOS. Osborn testified that the broadening scope of MERRIMAC was due in part to the requests from the CHAOS office to the Office of Security for general information about dissident groups.

I think it started out legitimately concerned with the physical security of installations and I think it expanded as these things often do, in light of the intense interest in the requirements by Mr. Ober and by a lot of other people. I think it just kind of grew in areas that it perhaps shouldn't have.¹⁸⁰

Osborn testified that most of the requests for specific information beyond the threat of immediate situations, came from inquiries by the CHAOS office.¹⁸¹

The last reports from MERRIMAC agents found in CIA files were gathered in late 1968. However, CIA has confirmed that the program lasted until September 1970.¹⁸²

In August 1973, Director Colby issued a directive as part of the Agency's review of "questionable activities" regarding the activity which had involved MERRIMAC. The Directive stated:

It is appropriate for the Office of Security to develop private sources among CIA employees. It is not appropriate for CIA to penetrate domestic groups external to CIA, even for the purpose of locating threats to the Agency. Notice of such threats should be reported to the appropriate law enforcement bodies and CIA will cooperate with them in any action required which does not involve direct CIA participation in

¹⁷⁷ *Ibid.*

¹⁷⁸ Osborn, Rockefeller Commission, 2/17/75, p. 836.

¹⁷⁹ Examination of MERRIMAC Report files.

¹⁸⁰ Osborn, Rockefeller Commission, 2/17/75, p. 844.

¹⁸¹ Testimony of MERRIMAC Agent A, 8/14/75, pp. 10-20; Osborn, 10/3/75.

p. 16.

¹⁸² Letter from William Colby to Vice President Rockefeller with CIA comments on Rockefeller Commission Report, 8/8/76, p. 8 of attachment.

covert clandestine operations against U.S. citizens in the United States.¹⁸³

C. Special Security Investigations

Since the inception of the CIA, the Office of Security has conducted routine background investigations of prospective CIA employees and agents, as well as employees of contractors and other persons being considered as cooperative sources of information or assistance. Periodic reinvestigation of CIA employees is also performed.

In addition, the Office of Security has conducted numerous special investigations of persons affiliated with the CIA and others who were the subject of a particular security case. In some instances the investigations involved efforts to determine the source of news leaks thought to compromise the security of intelligence sources and methods, including news leaks for which there was no particular reason to suspect that CIA personnel were responsible, as opposed to other government employees with access to intelligence material.

More frequently, however, the investigations involving Americans were conducted as a result of allegations or suspicions that individuals had become the target of an effort to penetrate the CIA, or had become involved in espionage, or had developed personal difficulties which created risks that intelligence sources and methods might be compromised. The subjects of these investigations have included former and present CIA employees, employees of other government agencies, and private citizens who were in contact with the subject of an investigation.

In the course of these investigations, various covert techniques have been employed, singly and in combination, against American citizens in this country: physical surveillance, electronic surveillance, unauthorized entry, inspection of mail and of income tax records.

In January 1975, the Inspector General of the CIA initiated a survey of all special security investigations and other activity undertaken by the Office of Security since the inception of the CIA in 1947 which involved the use of any such special investigative techniques against persons in the United States.

A team of officers from the Inspector General's staff and the Office of Security conducted such an examination, with complete access to all records in the Office of Security and in other source records throughout the CIA which might reflect such use of these investigative techniques. Knowledgeable personnel were interviewed as well.¹⁸⁴

The examination resulted in a compendium of every identifiable instance in which physical surveillance, telephone tapping, electronic surveillance, mail cover and opening, access to tax information, unauthorized entry and other special investigative procedures had been employed against persons in the United States.¹⁸⁵

¹⁸³ Memorandum from William Colby to Deputy Director for Administration, Attachment, "Memorandum: MERRIMAC," 8/20/73.

¹⁸⁴ Affidavit of staff officers from Inspector General's Office and Office of Security responsible for investigation of domestic surveillance, 5/27/75.

¹⁸⁵ *Ibid.*, p. 7.

Each instance was analyzed in terms of the techniques, the target and the circumstances involved in the investigation. Specifically, the survey detailed whatever information was available concerning:

- the background of the investigation.
- the level and nature of authorization within the CIA.
- coordination with other agencies.
- the methods used to implement the surveillance.
- reporting and the results of the operation.
- and the authority and reasons for terminating the operations.¹⁸⁶

The Committee staff reviewed the methods and results of this survey of domestic surveillance compiled by the Inspector General's office. In addition, the Committee staff reviewed in their entirety the original files of selected cases involving physical surveillance, electronic surveillance and unauthorized entry which occurred within the last ten years, and has also taken testimony regarding the use of such techniques in America from present and former officials of the Office of Security and other CIA components.

The result of this review by the Committee essentially confirms the summary of the Inspector General's survey provided in the Rockefeller Commission Report.¹⁸⁷

However, the records of authorization, scope and results of these investigations are sometimes incomplete. This is particularly true for the earlier history of the CIA, at a time when the use of covert investigative techniques against Americans affiliated with the CIA or other persons in the United States was more widespread than it has been in the past decade.

Even in recent years, however, most authorizations and approvals at the highest levels within the CIA have not been accompanied by a written record.

Howard Osborn testified that during his ten year service as Director of the Office of Security he regularly sought approval from Helms for physical surveillance or any more intrusive technique, with the exception of two minor instances of brief physical surveillance of CIA personnel allegedly involved in irregular personal activities or financial difficulties. In those instances, Osborn testified, approval was obtained from the Deputy Director of CIA for Support. However, Osborn added that such authorizations from the CIA Director were handled orally with a minimum of paperwork because of the sensitivity of the allegations.¹⁸⁸

D. Issues Raised by the Office of Security Programs and Investigations

1. Protecting CIA from Potential Violence

The MERRIMAC and RESISTANCE programs represent an overly ambitious view of the CIA's authority to act on behalf of the Director of Central Intelligence to protect intelligence sources and methods.

¹⁸⁶ Ibid.

¹⁸⁷ Rockefeller Commission Report, June 1975, Chapter 13.

¹⁸⁸ Osborn, 10/3/75, pp. 45-46.

While the special security investigations raise questions about the propriety of targets and techniques in some cases, they reflected a common concern—the threat of unauthorized disclosure by CIA personnel, or in a few instances other government employees with access to intelligence material. This common denominator was present whether the particular case involved news leaks, suspected penetration by hostile intelligence services or simply personal situations making employees vulnerable, and thus security risks. The possibility of such security problems developing within the CIA's own organization was at least the basic concern expressed when the Director of Central Intelligence was charged with protection of intelligence sources and methods.

MERRIMAC and RESISTANCE, however, take the concept of such protection a step further. They were premised on the assumption that the responsibility for protecting sources and methods includes the general mission of safeguarding CIA—its personnel, facilities and operations—from domestic unrest in the larger society.

Is the protection of the CIA from disruption by domestic violence part of the intended responsibility to protect sources and methods? And if it is, how far would that authority extend?

Presumably all government agencies, but particularly those doing sensitive tasks, may undertake measures at their installations to prevent physical disruption by outsiders, for example by maintaining a guard force at entrances.

Beyond this, does the "sources and methods" mandate authorize the CIA to go out into the community and covertly investigate protest activity in order to detect potential threats, rather than relying on the FBI and local police for advance warning? Little in the legislative history suggests such an open-ended reading of that provision. But even if the mandate is presently so vague that it might be read that broadly, the programs would be questionable under the prohibition on CIA exercising law enforcement powers or performing internal security functions.

Both programs involved the CIA in examining domestic dissident activity, which, insofar as it actually threatened the government or particular agencies was a matter of internal security or law enforcement.

In RESISTANCE, the collection technique was less intrusive; even where covert sources supplied information, no CIA personnel became involved with the domestic groups. Its scope, however, was broad and the in depth analysis of political organizations and their leaders went beyond indications of specific threats to the CIA.

MERRIMAC, while more narrowly focused, took the CIA into actual penetration with the dissident groups. And to the extent the collection requirement was broadened from warning of imminent attacks on CIA to general information about the groups' finances and policies, it brought the Office of Security even closer to performing essentially internal security functions.

In addition, a common theme running through the explanation of the MERRIMAC and RESISTANCE programs is the claim that local police and federal law enforcement agencies were unwilling or

unable to provide adequate warning to permit safeguarding CIA facilities and personnel.¹³⁹ If the CIA, therefore, took on what would normally be responsibilities of law enforcement agencies, did it violate the letter, or the spirit, of the 1947 Act?

The CIA did undertake to supplement the public safety work of law enforcement agencies, whatever the CIA's parochial purpose for such activity.

Moreover, the FBI was providing the entire government with both intelligence about expected demonstrations, and information about the propensity of particular groups and individuals toward violence. The FBI did not assess the threat posed to each particular agency by every group or expected activity. But to let each agency run its own investigation of how domestic unrest might threaten its operations would be a dangerous invitation to multiply the opportunity for excessive surveillance of protest activity.

In any event, the CIA's perception, whether correct or not, that law enforcement agencies were incapable of providing adequate warning and countering any threat did not increase the CIA's authority to take action inconsistent with its own statutory limitations. To what extent should the CIA be permitted to engage in such activity in the future?

Director Colby's regulations on MERRIMAC-type activity indicated his view that the CIA should not be involved in any clandestine operations directed against domestic groups which might threaten the CIA. If the CIA is forbidden to infiltrate such groups, should it still be permitted to monitor public rallies and demonstrations, or should that, too, be reserved to law enforcement authorities? Although such monitoring is less intrusive on the participants' expectations of privacy, the general purpose of minimizing the CIA's involvement in domestic affairs suggests that the CIA should engage in no investigations beyond its own premises which are directed at domestic dissidents.

What, then, could the CIA do, short of such efforts, to help protect itself from external threats of public disorder? Anticipated violence would justify analysis of information received from the FBI or local police with direct responsibility for the jurisdiction in which CIA facilities are located. Such information and analysis would permit the CIA to take security precautions, such as notifications to employees and disposition of its own security forces, without engaging in covert operations like MERRIMAC or RESISTANCE.

Finally, if the CIA requires some information about dissident organizations in order to assess the significance of membership in them for security clearance of CIA applicants, should it rely on the FBI and the Civil Service Commission for such information? It might be argued that the CIA would undertake a more sophisticated analysis, and, in fact, hold mere membership less a disqualification than might some other government agencies. But that small benefit must be weighed against the risk of providing license for a foreign intelligence agency to scrutinize domestic political activity.

¹³⁹ Helms deposition, Rockefeller Commission, 4/12/75, pp. 315-316.

2. Sensitive Security Investigations

The power of the Director of Central Intelligence to take action to protect intelligence sources and methods in particular security cases has been viewed differently by recent directors.

Richard Helms testified that, in his view, the CIA could be asked to take any reasonable investigative steps, with no covert technique precluded, in order to protect sources and methods.¹⁰⁰

While Helms explained that the FBI had been unwilling to undertake many of the investigations which the CIA performed, he testified that, independent of the Bureau's availability, he regarded those investigations as a legitimate exercise of his responsibility as director to protect intelligence sources and methods.¹⁰¹

Helms did recommend that the charge to protect sources and methods which he termed an "albatross" around the neck of the Director, be removed from the statute and given to the FBI, at least with regard to investigation of any Americans who were not affiliated with the CIA.¹⁰²

William Colby, on the other hand, did not view the statutory mandate to be accompanied by actual extraordinary investigative authority:

It gives me the job of identifying any problem of protecting sources and methods, but in the event I identify one it gives me the responsibility to go to the appropriate authorities with that information and it does not give me any authority to act on my own. So I really see less of a gray area in that regard. I believe that there is really no authority under that act that can be used.¹⁰³

His directives in response to the CIA's review of questionable practices reflect this position. Thus, the directive addressing past instances of investigating newsmen to determine the source of intelligence leaks stated:

MEMORANDUM

SUBJECT: [Cases Involving Investigation of Newsmen]

No surveillance, telephone tap, surreptitious entry or other action will be taken by Agency personnel in the United States against United States citizens not connected with CIA, under the claimed authority of "protection of intelligence sources and methods." This provision of the law lays a charge and duty on the Director and the Agency to act so as to protect intelligence sources and methods. It does not give it authority to take action with respect to other American citizens. If a threat or exposure of intelligence sources and methods occurs, the Agency can appropriately assemble its information on the topic and conduct such steps within its organization

¹⁰⁰ Helms deposition, Rockefeller Commission, 4/24/75, pp. 333-334.

¹⁰¹ Helms, Rockefeller Commission, 1/20/75, p. 288.

¹⁰² Helms deposition, Rockefeller Commission, 4/24/75, pp. 353-354.

¹⁰³ William Colby testimony, Senate Armed Services Committee Hearings, 7/2/73, p. 28.

as may be appropriate. With respect to outsiders, the appropriate lawful authorities must be approached for assistance on the matter, e.g., the FBI or local police.¹⁹⁴

In addition, Colby's directive concerning the use of covert investigative techniques against the CIA's own employees off the Agency's own premises stated:

MEMORANDUM

SUBJECT: [Cases Involving Surveillance of CIA Employees and Ex-employees]

No surveillance, telephone tap, or surreptitious entry will be conducted against employees or ex-employees of the Agency outside Agency property. In the event that threats to intelligence sources and methods appear from Agency employees or ex-employees, the appropriate authorities will be advised, and the Agency will cooperate with the appropriate authorities in the investigation of possible violation of law.¹⁹⁵

On its face, the director's statutory charge to protect sources and methods does not authorize the use of the CIA, as opposed to other agencies, for active investigation in the United States. The legislative history is also unclear in this regard.

An additional ambiguity is the tension between this responsibility, if it is deemed to authorize implementation by the CIA, and the restriction upon the CIA's exercising law enforcement or police powers.

Not all of the special security investigations undertaken in the past involve suspected criminal violations. For example, not all news leaks may be subject to prosecution. Yet if surveillance reveals the source, then he would be subject to administrative sanction or loss of clearances. Similarly, when investigations are in response to allegations that the subject's personal situation makes him a bad security risk, there may be no suggestion that he is yet involved in any unauthorized disclosure of information. It is merely a question of whether the subject should continue to have access to sensitive information or be given assistance in regard to his problems.

On the other hand, the more intrusive investigation techniques, at least in recent years, have usually been employed by the CIA only when there was a significant possibility of illegal activity, at which point there is a law enforcement aspect to the investigation.

Moreover, some of the investigative techniques, such as electronic surveillance and unauthorized entry, are tools which normally require warrants as an exercise of the police power. And to the extent their future use in national security matters is regulated by Congress under warrant procedures, CIA participation in such activity would present an even sharper question under the charter prohibition.

Most important, whatever the propriety of these special investigations has been under the 1947 charter, the ultimate question before the

¹⁹⁴ Memorandum from William Colby to Deputy Director for Administration, Attachment "Memorandum: [News Leak Investigations]", 8/20/73.

¹⁹⁵ Ibid. Attachment "Memorandum: [Investigation of CIA Employees and Ex-employees]."

Congress is the degree to which a secret foreign intelligence agency should conduct clandestine operations in the United States directed at Americans.

Centralizing these special security investigations (as opposed to routine background investigations) as much as possible within one agency under tight controls would not only minimize the potential opportunities for misuse of the more intrusive techniques. It would also enable the CIA to reduce its own involvement in any covert activity in the United States. The CIA's security role outside of its own premises would be held to the minimum, with respect to both the permissible subjects of such investigations and the techniques employed.

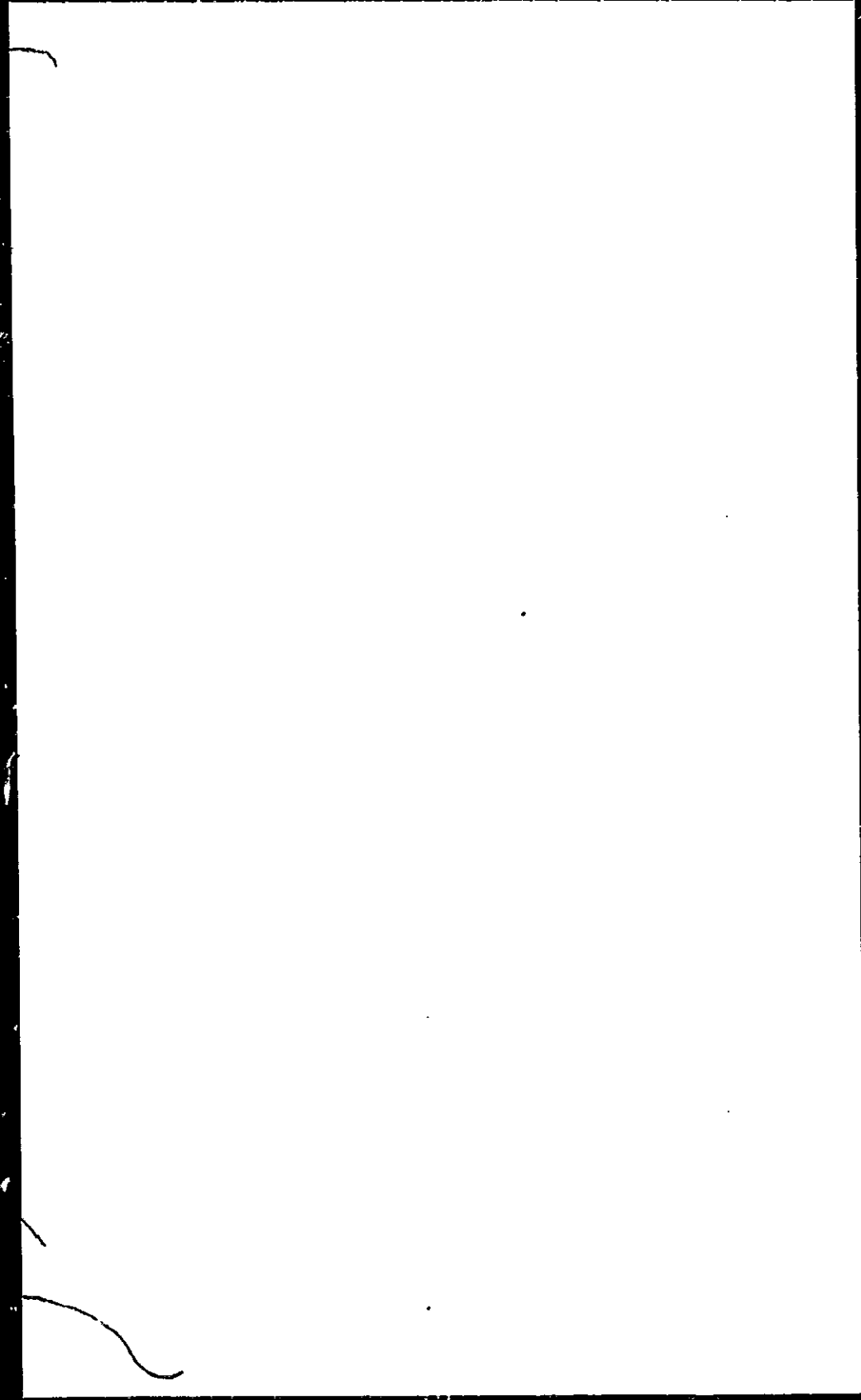
In the case of investigating newsmen to uncover intelligence leaks, Helms and Howard Osborn both agreed that the responsibility should be given to the FBI. Such a restriction on the CIA could be extended to any American not employed by the Agency. If the subject was suspected of being involved in efforts to procure improper disclosure of sources and methods, the same consideration of avoiding CIA involvement with private citizens suggests that the subject be investigated by the FBI.

What should the CIA's role be with respect to its own employees? The CIA could be permitted to conduct some preliminary investigations of its own employees outside of CIA premises, including interviews and other routine checks, before calling the FBI into every case in which a question of security risk has arisen. If some physical surveillance is also permitted as part of this preliminary investigation, it might be limited in duration and, more importantly, careful guidelines provided concerning the authority of the CIA to investigate other persons with whom the CIA employee comes in contact.

NATIONAL SECURITY AGENCY SURVEILLANCE AFFECTING AMERICANS

CONTENTS

	Page
I. Introduction and Summary.....	735
A. NSA's origins and official responsibilities.....	738
B. Summary of interception programs.....	742
C. Issues and questions.....	743
II. NSA's Monitoring of International Communications.....	743
A. Summary of watch list activity.....	744
B. History.....	749
C. Types of names on watch lists.....	750
D. Overlapping nature of intelligence community requests.....	752
E. Drug watch lists: United States-South American intercepts.....	756
F. Termination of the civil disturbance watch list activity.....	761
G. Authorization.....	764
H. Conclusions.....	765
III. A Special NSA Collection Program: SHAMROCK.....	765
A. Legal restrictions.....	766
B. The committee's investigation.....	767
C. The origins of SHAMROCK.....	770
D. The participation of the companies.....	774
E. NSA's participation.....	776
F. Termination of SHAMROCK.....	777
IV. NSA Personnel Security and Related Matters.....	777
A. Background.....	777
B. Questionable activities.....	777



NATIONAL SECURITY AGENCY SURVEILLANCE AFFECTING AMERICANS

I. INTRODUCTION AND SUMMARY

This report describes the Committee's investigation into certain questionable activities of the National Security Agency (NSA).¹ The Committee's primary focus in this phase of its investigation was on NSA's electronic surveillance practices and capabilities, especially those involving American citizens, groups, and organizations.

NSA has intercepted and disseminated international communications of American citizens whose privacy ought to be protected under our Constitution. For example, from August 1945 to May 1975, NSA obtained copies of many international telegrams sent to, from, or through the United States from three telegraph companies. In addition, from the early 1960s until 1973, NSA targeted the international communications of certain American citizens by placing their names on a "watch list." Intercepted messages were disseminated to the FBI, CIA, Secret Service, Bureau of Narcotics and Dangerous Drugs (BNDD), and the Department of Defense. In neither program were warrants obtained.²

With one exception,³ NSA contends that its interceptions of Americans' private messages were part of monitoring programs already being conducted against various international communications channels for "foreign intelligence" purposes. This contention is borne out by the record. Yet to those Americans who have had their communications—sent with the expectation that they were private—intentionally intercepted and disseminated by their Government, the knowledge that NSA did not monitor specific communications channels solely to acquire their messages is of little comfort.

In general, NSA's surveillance of Americans was in response to requests from other Government agencies. Internal NSA directives now forbid the targeting of American citizens' communications. Nonetheless, NSA may still acquire communications of American citizens as part of its foreign intelligence mission, and information derived from these intercepted messages may be used to satisfy foreign intelligence requirements.

NSA's current surveillance capabilities and past surveillance practices were both examined in our investigation. The Committee recog-

¹ See the Committee's Foreign Intelligence Report for an overview of NSA's legal authority, organization and functions, and size and capabilities.

² Since the NSA programs involving American citizens have never been challenged in court, the necessity of obtaining a warrant has not yet been determined. Although there have been court cases that involved NSA intercepts, NSA's activities have never been disclosed in open court. See pp. 705-706 of this Report and the Committee's Report on Warrantless FBI Electronic Surveillance for a discussion of warrant requirements for electronic surveillance.

³ Between 1970 and 1973, NSA intercepted telephone calls between the United States and various locations in South America to aid the BNDD (now the Drug Enforcement Administration) in executing its responsibilities. See pp. 752-756.

nizes that NSA's vast technological capability is a sensitive national asset which ought to be zealously protected for its value to our common defense. If not properly controlled, however, this same technological capability could be turned against the American people, at great cost to liberty. This concern is compounded by the knowledge that the proportion of telephone calls and telegrams being sent through the air is still increasing.

In addition to reviewing facts and issues relating to electronic surveillance, the Committee also examined certain questionable activities of the NSA's Office of Security. See pp. 777-783.

A. NSA's Origins and Official Responsibilities

NSA does not have a statutory charter; its operational responsibilities are set forth exclusively in executive directives first issued in the 1950s. One of the questions which the Senate asked the Committee to consider was the "need for specific legislative authority to govern the operations of . . . the National Security Agency."⁴

According to NSA's General Counsel, no existing statutes control, limit, or define the signals intelligence activities of NSA. Further, the General Counsel asserts that the Fourth Amendment does not apply to NSA's interception of Americans' international communications for foreign intelligence purposes.⁵

1. Origins

NSA was established in 1952 by a Top Secret directive issued by President Truman.⁶ Under this directive, NSA assumed the responsibilities of the Armed Forces Security Agency, which had been created after World War II to integrate American cryptologic efforts.⁷ These efforts had expanded rapidly after World War II as a result of the demonstrated wartime value of breaking enemy codes, particularly those of the Japanese.

2. Responsibilities

(a) *Subject Matter Responsibilities.*—The executive branch expects NSA to collect political, economic, and military information as part of its "foreign intelligence" mission.⁸ "Foreign intelligence" is an ambiguous term. Its meaning changes, depending upon the pre-

⁴ Senate Resolution 21, Section 2(8).

⁵ Roy Bauner deposition, 2/4/76, pp. 13, 16, 30.

Banner stated that signals intelligence activities are authorized by the President under Article II of the Constitution and "the Fourth Amendment does not restrict these signals intelligence activities" if the "purpose is solely to obtain foreign intelligence." (*Ibid.*, p. 30.)

⁶ Memorandum from President Harry S. Truman to Secretary of State and Secretary of Defense, "Communications Intelligence Activities," 10/24/52.

⁷ NSA exercises technical control over the three Service Cryptologic Agencies: the Army Security Agency, Naval Security Group Command, and Air Force Security Service. NSA's Director is always a military officer of at least three-star rank. He reports to the Secretary of Defense, but responds to requests from other intelligence agencies for intelligence information.

⁸ "The purpose [of forming NSA] was to maintain and improve this source of intelligence which was considered of vital importance to the national security, to our ability to wage war, and to the conduct of foreign affairs. This mission of NSA is directed to *foreign intelligence*, obtained from foreign electrical communications and also from other foreign signals such as radars." [Emphasis added.] Lew Allen, Jr. testimony, 10/26/75, hearings, Vol. 5, p. 6.

vailing needs and views of policymakers, and the current world situation. The internal politics of a nation also play a role in setting requirements for foreign intelligence; the domestic economic situation, an upcoming political campaign, and internal unrest can all affect the kind of foreign intelligence that a political leader desires. Thus, the definition constantly expands and contracts to satisfy the changing needs of American policymakers for information. This flexibility was illustrated in the late 1960s, when NSA and other intelligence agencies were asked to produce "foreign intelligence" on domestic activists in the wake of major civil disturbances and increasing anti-war activities.

NSA's authority to collect foreign intelligence is derived from a Top Secret National Security Council directive which is implemented by directives issued by the Director of Central Intelligence.⁹ These directives give NSA the responsibility for "Signals Intelligence" (SIGINT) and "Communications Security" (COMSEC). SIGINT is subdivided into "Communications Intelligence" (COMINT) and "Electronics Intelligence" (ELINT). COMINT entails the interception of foreign communications and ELINT involves the interception of electronic signals from radars, missiles, and the like. The COMSEC mission includes the protection of United States Government communications by providing the means for enciphering messages and by establishing procedures for maintaining the security of equipment used to transmit them.

NSA's interception of communications—the area on which the Committee focused—arises under the COMINT program. The controlling NSCID defines COMINT in broad terms as "technical and intelligence information derived from foreign communications by other than the intended recipients."¹⁰ The same NSC directive also states that COMINT "shall not include (a) any intercept and processing of unencrypted written communications, press and propaganda broadcasts, or censorship."¹¹

The specific exclusion of unencrypted *written* communications from NSA's mandate would appear to prohibit NSA's interception of telegrams. NSA contends that this exclusion is and always has been limited to mail and communications other than those sent electronically.¹²

⁹ These are referred to as NSCIDs (National Security Council Intelligence Directives) and DCIDs (Director of Central Intelligence Directives).

¹⁰ The effect of the "other than intended recipients" language is to make clear that the communication is intercepted by someone other than a party to the communication—in this case, the Government.

¹¹ The relevant DCID contains the same definition. The exclusion is the same, except that after "communications" the words "except written plaintext versions of communications which have been encrypted or are intended for subsequent encryption" have been added.

¹² Banner disposition, 2/4/70, p. 71.

The "written communications" exclusion was added in 1968; the CIA's New York mail opening project had been underway since the early 1950s. See the Committee's Report on CIA and FBI Mail Opening Programs. The exclusion of "press and propaganda broadcasts" may reflect the fact that CIA had been granted responsibility for intercepting, analyzing, and disseminating such foreign press broadcasts under its Foreign Broadcast Information Service (FBIS) program. In support of NSA's contention that "unencrypted written communications" refers to mail, it might be argued that the exclusion was designed to ensure that NSA would not engage in mail opening, which was under the CIA's jurisdiction.

The same NSCID which discusses foreign communications also states that NSA is to produce intelligence "in accordance with objectives, requirements, and priorities established by the Director of Central Intelligence with the advice of the United States Intelligence Board." USIB was composed of representatives from the FBI, CIA, Treasury Department, Energy Research and Development Administration, State Department, and Defense Department.¹³ Since 1966, NSA annually received general requirements from USIB for the collection of foreign intelligence. These requirements ordinarily identified broad areas of interest, such as combating international terrorism, and were supplemented by more specific "amplifying requirements" periodically submitted to NSA by other USIB members.

(b) *Geographic Responsibilities.*—Although none of the applicable executive directives explicitly prohibit NSA from intercepting communications which occur wholly within the United States, internal NSA policy has always prohibited such interceptions. In practice, NSA limits itself to communications where at least one of the terminals is in a foreign country. This means that when Americans use a telephone or other communications link between this country and overseas, their words may be intercepted by NSA.

(c) *Jurisdiction with Respect to Nationality.*—Although the controlling NSCID contains no limitation relating to the citizenship of persons whose "foreign communications" may be intercepted, the relevant DCID does exclude messages "exchanged among private organizations and nationals, acting in a private capacity, of the U.S." This restriction is designed to prevent NSA from processing communications between two Americans, regardless of their location.

In the late 1960s and early 1970s, however, NSA did intercept and disseminate some messages exchanged between two Americans where one of the terminals was foreign. NSA does not now knowingly process or disseminate messages where both the sender and recipient are American citizens, groups, or organizations.

B. Summary of Interception Programs

The Committee's hearings disclosed three NSA interception programs: the "watch lists" containing names of American citizens; "Operation SHAMROCK," whereby NSA received copies of millions of telegrams leaving or transiting the United States; and the monitoring of certain telephone links between the United States and South America at the request of the Bureau of Narcotics and Dangerous Drugs. In addition, the Committee's investigation revealed that although NSA no longer includes the names of specific citizens in its selection criteria, it still intercepts international communications of Americans as part of its foreign intelligence collection activity. Information derived from such communications is disseminated by NSA to other intelligence agencies to satisfy foreign intelligence requirements.

¹³ USIB was formally abolished by a residential directive of February 18, 1970. No comparable group was established to replace it, but the directive authorized the Director of Central Intelligence to create such a body.

1. Watch Lists Containing Names of Americans

From the early 1960s until 1973, NSA intercepted and disseminated international communications of selected American citizens and groups on the basis of lists of names supplied by other Government agencies. In 1967, as part of a general concern within the intelligence community over civil disturbances and peace demonstrations, NSA responded to Defense Department requests by expanding its watch list program. Watch lists came to include the names of individuals, groups, and organizations involved in domestic antiwar and civil rights activities in an attempt to discover if there was "foreign influence" on them.¹⁴

In 1969, NSA formalized the watch list program under the codename MINARET. The program applied not only to alleged foreign influence on domestic dissent, but also to American groups and individuals whose activities "may result in civil disturbances or otherwise subvert the national security of the U.S."¹⁵ At the same time, NSA instructed its personnel to "restrict the knowledge" that NSA was collecting such information and to keep its name off the disseminated "product."¹⁶

Prior to 1973, NSA generally relied on the agencies requesting information to determine the propriety and legality of their actions in submitting names to NSA.¹⁷ NSA's new director, General Lew Allen, Jr., indicated some concern about Project MINARET in August 1973, and suspended the dissemination of messages under the program. In September 1973, Allen wrote the agencies involved in the watch lists, requesting a rectification of their requirements, particularly as to the appropriateness of their requests.

In October 1973, Assistant Attorney General Henry Petersen and Attorney General Elliot Richardson concluded that the watch lists were of "questionable legality" and so advised NSA.¹⁸ In response, NSA took the position that although specific names had been targeted, the communications of particular Americans included on the watch lists had been collected "as an incidental and unintended act in the conduct of the interception of foreign communications." Allen concluded:

[NSA's] current practice conforms with your guidance that "relevant information acquired [by NSA] in the routine pur-

¹⁴ Although the agencies submitting names to NSA were members of the United States Intelligence Board, USIB never approved a watch list requirement on civil disturbances, or discussed the monitoring of American citizens' communications.

¹⁵ MINARET Charter, 7/1/69, Hearings, Vol. 5, Exhibit No. 3, pp. 140-150.

¹⁶ *Ibid.*

¹⁷ Allen, 10/20/75, Hearings, Vol. 5, pp. 31-32.

¹⁸ Letter from Elliot Richardson to Lew Allen, Jr., 10/1/73, Hearings, Vol. 5, Exhibit No. 7, pp. 100-101.

Petersen reported to Richardson that he had discovered the watch list program ("of which we had no previous knowledge") as a result of inquiries made to the FBI and other intelligence agencies with respect to possible electronic surveillance undertaken by such agencies in connection with a criminal prosecution. In one case in which NSA reported that it had conducted such surveillance, the Government elected to drop the prosecution. See pp. 757-758, 761. Memorandum from Henry Petersen to Elliot Richardson, 9/4/73.

suit of the collection of foreign intelligence information may continue to be furnished to appropriate government agencies.¹⁹

2. Obtaining Copies of Messages from International Telegraph Companies: Operation SHAMROCK

From August 1945 until May 1975, NSA received copies of millions of international telegrams sent to, from, or transiting the United States. Codenamed Operation SHAMROCK, this was the largest governmental interception program affecting Americans, dwarfing CIA's mail opening program by comparison. Of the messages provided to NSA by the three major international telegraph companies, it is estimated that in later years approximately 150,000 per month were reviewed by NSA analysts.

NSA states that the original purpose of the program was to obtain the enciphered telegrams of certain foreign targets. Nevertheless, NSA had access to virtually all the international telegrams of Americans carried by RCA Global and ITT World Communications.²⁰ Once obtained, these telegrams were available for analysis and dissemination according to NSA's selection criteria, which included the watch lists.

The SHAMROCK program began in August 1945, when representatives of the Army Signals Security Agency approached the commercial telegraph companies to seek post-war access to foreign governmental traffic passing over the facilities of the companies. Despite advice from their attorneys that the contemplated intercept operation would be illegal in peacetime, the companies agreed to participate, provided they received the personal assurance of the Attorney General of the United States that he would protect them from suit, and that efforts be immediately undertaken to legalize the intercept operation. Apparently these assurances were forthcoming, because the intercept program began shortly thereafter.^{20a}

In 1947, representatives of the companies met with Secretary of Defense Forrester to discuss their continued participation in SHAMROCK. Forrester told them that the program was "in the highest interests of national security" and urged them to continue.²¹ The companies were told that President Truman and Attorney General Tom C. Clark approved and that they would not suffer criminal liability, at least while the current Administration was in office. Those assurances were renewed in 1949, when it was again emphasized that future administrations could not be bound. There is no evidence that the companies ever sought such assurances again.

¹⁹ Letter from Lew Allen, Jr. to Elliot Richardson, 10/4/73, Hearings, Vol. 5, Exhibit No. 8, pp. 162-163.

²⁰ Western Union International provided NSA only with copies of the messages of the foreign targets, except for messages to one country, where it provided everything.

^{20a} A letter, dated August 24, 1945, from the Army officer responsible for making the arrangements with the companies states that ITT would begin participation in SHAMROCK the last week in August. Another letter, dated October 9, 1945, from RCA to the Army states that it would begin participation immediately. See pp. 768-769.

²¹ Testimony of Robert Andrews, Special Assistant to the General Counsel, Department of Defense, 9/28/76, p. 34.

Throughout the operation NSA never informed the companies that it was analyzing and disseminating telegrams of Americans. Yet the companies, who had feared in 1945 that their conduct might be illegal, apparently never sought assurances that NSA was limiting its use to the messages of the foreign targets once the intercept program had begun.

3. *Monitoring of South American Links for Drug Traffic Control Purposes*

From 1970 to 1973, at the request of the Bureau of Narcotics and Dangerous Drugs, NSA monitored selected telephone circuits between the United States and certain countries in South America to obtain information relating to drug trafficking.

The BNDD was initially concerned about drug deals that were being arranged in calls to a South American city from public telephone booths in New York City. The Bureau determined that it could not legally tap the public telephones and enlisted NSA's help to monitor international communications links that carried these telephone calls. Thus, instead of intercepting calls from a few telephone booths, as the BNDD would have done with a wiretap, NSA had access to international calls placed from, or received in, cities all over the United States that were switched through New York.²²

In addition, BNDD submitted the names of 450 Americans to NSA for a "drug" watch list. This list resulted in the dissemination of about 1,900 reports on drug traffickers to BNDD and CIA.

The CIA began to assist NSA's monitoring effort in late 1972, but later determined that the program served a law enforcement function and terminated its participation in February 1973.²³ NSA was affected by the CIA decision, as it had come to view this program as possibly serving a law enforcement function and thus beyond the scope of its proper mission. NSA terminated this activity in June 1973, but continued to monitor some of the same United States-South American links for foreign intelligence purposes until July 1975.

4. *"Incidental" Intercepts of Americans' Communications*

Although NSA does not now target communications of American citizens, groups, or organizations for interception by placing their names on watch lists, other selection criteria are used which result in NSA's reviewing many communications to, from, or about an American. The initial interception of a stream of communications is analogous to a vacuum cleaner: NSA picks up all communications carried over a specific link that it is monitoring. The combination of this technology and the use of words to select communications of interest results in NSA analysts reviewing the international messages of American citizens, groups, and organizations for foreign intelligence.

The interception and subsequent processing of communications are conducted in a manner that minimizes the number of unwanted mes-

²² According to the International Telephone and Telegraph Company, calls from American cities to South America are routinely switched through New York.

²³ CIA's participation in this activity violated provisions of its charter, the National Security Act of 1947, which prohibit the Agency from exercising law enforcement powers. NSA does not have a charter prohibiting such activity, but recognizes that it has no law enforcement function.

sages. Only after an analyst determines that the content of a message meets a legitimate requirement will it be disseminated to the interested intelligence agencies. In practically all cases, the name of an American citizen, group, or organization is deleted by NSA before a message is disseminated.

Internal NSA guidelines ensure that the decision to disseminate an intercepted communication is now made on the basis of the importance of the foreign intelligence it contains, not because a United States citizen, group, or organization is involved. This procedure is, of course, subject to change by internal NSA directives.

In short, NSA's pursuit of international communications does result in the incidental interception and dissemination of communications which the American sender or receiver expected to be kept private. This issue of the latitude NSA should be given in disseminating incidental intercepts must be dealt with if we are to resolve the dilemma between the need for effective foreign intelligence and the need to protect the rights of American citizens.²⁴

C. Issues and Questions

Pursuant to its mandate, the Committee has studied whether NSA's jurisdiction and operations should be governed and controlled by a legislative charter. The facts discovered by the Committee with respect to NSA's programs and capabilities suggest that the following questions should be posed for legislative resolution:

1. Should NSA, which like the CIA has vast powers intended for "foreign" purposes, be barred from using those powers domestically?
2. Should NSA, like the CIA, be prohibited from exercising "law enforcement powers" or "internal security functions"?
3. Should NSA be permitted specifically to target the international communications of Americans? If so, for what purposes and should a warrant be required?
4. Should NSA be permitted to disseminate information derived from the "incidental" interception of Americans' mes-

²⁴The establishment of guidelines relating directly to this issue poses an ongoing problem. Some may argue that NSA's current policy to divulge the identity of an American corporation in a communication is misguided. It could be held that, in the case of companies, their right to privacy does not extend as far as with individual citizens. For example, if an intercepted communication indicates that an American company executive is negotiating with a foreign government for the sale of large quantities of a crucial material, should the Federal Government be entitled to know the identity of the company? If NSA discovered that an American firm is exporting material to a foreign country that is prohibited by law, should the Government be allowed to know the name of that company? Or, does NSA violate the Fourth Amendment rights which protect Americans from unreasonable searches and seizures by disseminating such messages without deleting the names? Should special procedures be instituted—such as approval of the Attorney General or acquisition of a warrant—before messages containing U.S. names can be disseminated?

A discussion of these issues of interception and dissemination occurred in an open session of the Committee between Attorney General Edward H. Levi and Professor Philip B. Heymann. Levi supported the dissemination by NSA of incidentally intercepted foreign intelligence information involving Americans without a warrant; Heymann maintained that dissemination should require a warrant. See Edward H. Levi and Philip B. Heymann testimonies, 11/8/75, Hearings, Vol. 5, pp. 66-148.

sages obtained by monitoring an international communications link for foreign intelligence purposes? If so, to whom, for what use, and under what controls?

II. NSA'S MONITORING OF INTERNATIONAL COMMUNICATIONS

A. Summary of the Watch List Activity

Lists of words and phrases, including the names of individuals and groups, have long been used by the National Security Agency to select information of intelligence value from intercepted communications. These lists are referred to as "watch lists" by NSA and the agencies requesting intelligence information from them, such as the Federal Bureau of Investigation, Central Intelligence Agency, Bureau of Narcotics and Dangerous Drugs, Secret Service, and Department of Defense. The great majority of names on watch lists have always been foreign citizens and organizations.

The Committee examined two types of watch lists which included Americans. One focused on domestic civil disturbances, the other on drug trafficking. Messages selected on the basis of these watch lists were analyzed and forwarded to other Federal agencies, including the FBI, CIA, BNDD, and DOD. The Secret Service also received information from NSA regarding potential threats to persons under its protection.

Between 1967 and 1973, NSA received watch lists from these agencies which included the names of Americans as well as foreign citizens and organizations. These lists were used to select messages from intercepted traffic and to discover whether there was foreign influence on, or support of, domestic antiwar and civil rights activities. From 1970 until 1973, similar lists were used to gather intelligence on international drug traffic.

NSA itself added names to the watch lists to enhance the selection criteria used to support the requirements levied by other agencies.²⁵ NSA's Office of Security also added names to the lists for counterintelligence and counterespionage purposes.²⁶

Between 1969 and 1973, NSA disseminated approximately 2,000 reports (e.g., the text or summaries of intercepted messages) to the various requesting agencies as a result of the inclusion of American names on the watch lists.²⁷ No evidence was found, however, of any significant foreign support or control of domestic dissidents.

²⁵ General Lew Allen, Jr. said this process "was a matter of adding aliases . . . of adding addresses in some cases where an organization had been specified, and it would assist picking up messages of that organization, the names of officials of the organizations [were thus] added to enhance the selection process." Allen, 10/20/75, Hearings, Vol. 5, p. 27.

Another NSA official later advised the Committee that names were added by NSA in its amplification of watch lists and that this "was usually done either by adding the name of an executive officer of an organization, or by adding the organization name associated with a person who was placed on the watch list by another agency." (Letter from NSA to Senate Select Committee, 11/8/75.)

²⁶ NSA response to Senate Select Committee Interrogatories, 8/22/75, pp. 3-6. (Cited hereinafter as NSA Response, 8/22/75.) See pp. 781-782.

²⁷ The material collected between 1967 and the fall of 1969 was destroyed by NSA which only retains documents less than five years old. The approximately 2,000 reports are only for the post-1969 period.

Information generated by the watch list activity was the product of collection conducted against channels of international communications ("links") with at least one terminal in a foreign country. Nevertheless, the messages NSA intercepted and disseminated were sometimes between two American citizens, one in the United States and one abroad. With one exception, NSA intercepted messages only from "links" it was already monitoring as part of its foreign intelligence mission.

This exception occurred in 1970, when the Bureau of Narcotics and Dangerous Drugs asked NSA to provide intelligence on international drug trafficking. NSA began to monitor certain international communications links between the United States and South America to acquire intelligence on drugs entering the United States. The BNDD also supplied NSA with the names of Americans suspected of drug trafficking for inclusion on a watch list. Reports on drug-related activities of American citizens were disseminated to both the BNDD and CIA.

Both the drug and "nondrug" watch lists of United States citizens were discontinued in 1973 as a result of questions concerning their legality and propriety, raised by the Justice Department and by NSA itself.

B. History

1. Early Period: 1960-1967

The exact details of the origin of the watch list activity are unclear. Testimony from NSA employees indicates that the early 1960s marked the beginning of watch lists and the inclusion of names of American citizens. According to a senior NSA official, "the term watch list had to do with a list of names of people, places or events that a customer would ask us to have our analysts keep in mind as they scan large volumes of material."²⁸

Originally these lists were used for two purposes: (1) monitoring travel to Cuba and other communist countries; and (2) protecting the President and other high Government officials. According to NSA, neither of these tasks involved a regular program for including American names on the lists; requests from other agencies were infrequent and generally *ad hoc*.²⁹ Prior to 1962, NSA did not have an office specifically in charge of interagency dealings, which also limited the number of requests for information from other agencies.

In the early 1960s requesting agencies, usually the FBI, submitted names of United States citizens and business firms having dealings with Cuba to NSA. In turn, NSA provided the FBI with intelligence on American commercial and personal communications with Cuba. A May 18, 1962, internal FBI memorandum from Raymond Wannall, Chief of the Nationalities Intelligence Section of the Domestic Intelligence Division, to Assistant Director William Sullivan reported on a meeting with NSA officials concerning Cuba. The purpose of the meeting was to devise a way for the FBI to make better use of NSA intercepts relating to "commercial and personal communications be-

²⁸ Senior NSA official No. 1 testimony, 9/10/75, p. 47.

²⁹ *Ibid.*, pp. 47-49; senior NSA official No. 2 testimony, 9/18/75, p. 13.

tween persons in Cuba and in the United State."³⁰ The memorandum stated:

of the raw traffic now available, the material which would be most helpful to us would consist of periodic listing of firms in the U.S. which are doing business with individuals in Cuba and the Cuban government. . . . With regard to personal messages, we feel that those relating to individuals travelling between Cuba and the U.S. would be the most significant. . . .

*We will furnish NSA a list of persons in whom we have an investigative or an intelligence interest. [Emphasis added.]*³¹

The second area of concern in the early 1960s was protection of the President. According to NSA, the Secret Service submitted the names of the Presidents and others under its protection, possibly as early as 1962.³² This activity, however, was not instituted for the purpose of acquiring the communications of the protectees, but to determine possible threats to their well-being. After President Kennedy was assassinated in November 1963, interest in presidential protection naturally intensified, and NSA's joint efforts with the Secret Service were expanded.

This early activity was not directed against American citizens; no intelligence program called for the systematic inclusion of American citizens on a watch list. The evidence indicates, however, that NSA did intentionally monitor certain international activities of some American citizens as early as 1962. These objectives, which began as legitimate concerns for the life of the President, expanded when the watch list activity intensified in 1967.

2. Systematic Inclusion of American Names: 1967

The major watch list effort against American citizens began in the fall of 1967. In response to pressures from the White House, FBI, and Attorney General, the Department of the Army established a civil disturbance unit. An area of special interest was possible foreign involvement in American civil rights and antiwar groups. General William Yarborough, the Army Assistant Chief of Staff for Intelligence (ACSI), directed the operations of this unit.³³

³⁰ Memorandum from Raymond Wannall to William Sullivan, 5/18/62.

³¹ *Ibid.*

Wannall testified that names were, in fact, sent to NSA by the FBI in the early 1960s. Raymond Wannall testimony, 10/3/75, p. 18.

³² NSA Response 8/22/75, p. 12.

³³ William Yarborough testimony, 9/10/75, p. 8.

"Question: Did you ever have the feeling that these instructions were coming from the President or somebody else in the White House?"

"General YARBOROUGH: There was a lot of evidence to indicate that the President was deeply interested, as were the Attorney General and the Director of the FBI. There was a great deal of public interest. In other words, the interest was not just within the military at all.

"Question: But you don't have any evidence or knowledge of a direct order from the President to the Secretary of Defense with regard to setting up a civil disturbance unit within the Department of the Army?"

"General YARBOROUGH: I would not have a way to know about that direct relationship unless I found it out by chance. I did not know.

A complete examination of the U.S. military's participation in collecting intelligence on domestic dissidents is contained in the Committee's Report: "Improper Surveillance of Private Citizens by the Military."

On October 20, 1967, Yarborough sent a message to the Director of NSA, General Marshall Carter, requesting that NSA provide any available information concerning possible foreign influence on civil disturbances in the United States. Yarborough specifically asked for "any information on a continuing basis" 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.³¹

A senior NSA official knowledgeable in this area testified that such a request for information on civil disturbances or political activities was "unprecedented. . . . It is kind of a landmark in my memory; it stands out as a first."³² The initial request was also vague; it did not discuss the targeting of American citizens, or what specific organizations or groups were of interest. The Army was "interested in determining whether or not there is evidence of any foreign action to develop or control these anti-Vietnam and other domestic demonstrations."³³

The following day, Carter sent a cable to Yarborough, Director of Central Intelligence Richard Helms, and each member of the United States Intelligence Board, informing them that NSA was "concentrating additional and continuing effort to obtain SIGINT" in support of the Army request.³⁴ Although USIB members were notified of this new requirement, there is no record of discussion at USIB meetings of the watch list, nor did USIB ever validate a requirement for monitoring in support of the civil disturbance unit.³⁵

Watch list names were submitted directly to NSA by the FBI, Secret Service, Defense Intelligence Agency, the military services, and the CIA. These same agencies received reports of intercepted communications pertaining to their areas of interest. The State Department also received some reports on international terrorism and drug activities, but it is unclear whether they submitted any American names.³⁶

Between 1967 and 1973, a cumulative total of about 1,200 American names appeared on the civil disturbance watch list. The FBI submitted the largest proportion, approximately 950. The Secret Serv-

³¹ Cable from Yarborough to Carter, 10/20/67, Hearings, Vol. 5, Exhibit No. 1, pp. 145-146.

³² Senior official No. 1, 9/10/75, pp. 57, 54.

³³ Cable from Yarborough to Carter, 10/20/67; Hearings, Vol. 5, Exhibit No. 1, pp. 145-146.

³⁴ Cable from Carter to Yarborough, 10/21/67, Hearings, Vol. 5, Exhibit No. 2, pp. 147-148.

³⁵ Allen, 10/20/75, Hearings, Vol. 5, p. 28.

³⁶ Senior NSA official No. 1, 9/16/75, p. 76.

ice's list included about 180 American individuals and groups active in civil rights and antiwar activities. The DIA submitted the names of 20 American citizens who traveled to North Vietnam, and the CIA submitted approximately 30 names of alleged American radicals. The Air Force Office of Special Investigations, the Naval Investigative Service, and the Army Assistant Chief of Staff for Intelligence all submitted a small number of names to NSA. In addition, NSA contributed about 50-75 names to support the watch list activity.

At its height in early 1973, there were 600 American names and 6,000 foreign names on the watch lists.⁴⁰ According to NSA, these lists produced about 2,000 reports that were disseminated to other agencies between 1967 and 1973. NSA estimates 10 percent of these reports were derived from communications between two American citizens.⁴¹

3. Increasing Security and Concealment of Programs Involving American Citizens

The watch list activity was always a highly sensitive, compartmented operation.⁴² The secrecy was not due to the nature of the communications intercepted (most were personal and innocuous) but to the fact that American citizens were involved. NSA requested that some of the agencies receiving watch list product either destroy the material or return it within two weeks.⁴³ This procedure was not followed with even the most sensitive of NSA's legitimate foreign intelligence product.

When NSA intercepts, analyzes, and disseminates a foreign communication, the regular procedure is for the communication to be classified, given a serial number, and filed. From 1967-1969, much of the watch list material was treated in this manner, and given the same classification as the most sensitive NSA intercepts. As a senior NSA official testified:

During the 1967-1969 period, communications that had a U.S. citizen on one end and a foreigner on the other were given [a high level security classification] . . . and went out as serialized product, through a limited by name only distribution.⁴⁴

Other material was even more highly classified. Whenever communications between *two* Americans were intercepted, they were classified Top Secret, prepared with no mention of NSA as the source, and disseminated "For Background Use Only."⁴⁵ No serial number was assigned to them, and they were not filed with regular communications

⁴⁰ Allen, 10/20/75, Hearings, Vol. 5, p. 12.

⁴¹ *Ibid.*

⁴² In an effort to prevent disclosure of the program, NSA "compartmented" the activity by restricting the number of officials within the agencies who had access to the material. General Allen stated: "In my judgment the controls which were placed on the handling of the intelligence were so restrictive that the value was significantly diminished." Allen, 10/20/75, Hearings, Vol. 5, p. 13.

⁴³ Staff summaries of Michael Mastrovito (Secret Service) interview, 10/17/75; and of Philip Smith and Gerald Strickler (Drug Enforcement Administration) interviews, 10/7/75.

⁴⁴ Senior NSA official No. 2, 0/18/75, pp. 30-40.

⁴⁵ *Ibid.*, p. 40.

intelligence intercepts. This effectively limited access to the material and prevented its use in any official study or report. As Benson Buffham, Deputy Director of NSA, testified:

first it is true that we maintain permanent type records of all of our product. However, it is my understanding that this material was dealt with separately. It was not serialized and put out in regular distribution lists. These items were produced as display items, show-to items and thus the normal procedures that would be followed for our serialized product were not followed. So as best as I know, there would not be any record of this material held in other places within the Agency in the permanent files.⁴⁸

The project's sensitivity was due to a number of factors. The requirements—protection of the President, terrorism, civil disturbances, drug activities—involved sensitive subjects. NSA also wanted to ensure protection of the SIGINT source and of other intercept operations, which could be jeopardized by unauthorized release of the watch list material.⁴⁷ Finally, American citizens, firms, and groups were involved, and this was "different from the normal mission of the National Security Agency."⁴⁸

The fact that NSA did not serialize and file the intercepted communications between Americans indicates they did not view this activity as part of their "normal" mission. Buffham stated that he believed the interception and dissemination of communications between American citizens to be outside NSA's mission, as defined in applicable executive directives.⁴⁹

4. Project MINARET: Further Expansion and Increased Secrecy

The civil disturbance watch list program became even more compartmented in July 1969, when NSA issued a charter to establish Project MINARET.

MINARET established more stringent controls over the information collected on American citizens and groups involved in civil disturbances. To enhance security, MINARET effectively classified all of this information as "Top Secret, 'For Background Use Only,'" and stipulated that the material was *not* to be serialized or identified with the National Security Agency. Prior to 1969, only communications *between two Americans* were classified in this manner; with the adoption of MINARET, communications to, from, or mentioning United States citizens were so classified.

The MINARET charter established tighter security procedures for intercepted messages which contained:

- a. information on foreign governments, organizations, or individuals who are attempting to influence, coordinate or control U.S. organizations or individuals who may foment civil disturbance or otherwise undermine the national security of the U.S.;

⁴⁸ Benson Buffham testimony, 9/12/75, p. 34.

⁴⁷ Senior NSA official No. 1, 9/16/75, p. 69.

⁴⁸ Senior NSA official No. 2, 9/18/75, p. 38.

⁴⁹ Buffham, 9/12/75, p. 73.

b. 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. *An equally important aspect of MINARET will be to restrict the knowledge that such information is being collected and processed by the National Security Agency.* [Emphasis added.]⁵⁰

This charter was prepared within NSA and issued by an NSA Assistant Director. According to testimony given the Committee, the charter was discussed with NSA Deputy Director Louis Tordella a. d probably with the Director, but other agencies involved in the watch list activity were not informed of the new procedures until the charter had been adopted.⁵¹

In addition to regulating the distribution and format of watch list product, MINARET also initiated a more formal procedure for submission of names. No longer were names accepted over the telephone or by word of mouth.⁵² According to NSA, the watch list "was handled less systematically prior to 1969 . . . some watch lists entered NSA during that time via direct channels, including secure telephone."⁵³ NSA maintains, however, that the regular procedure was for agencies submitting names by secure telephone or in person to confirm them with written requests. A senior NSA official testified: "From 1969 on [the watch list] was handled in a very careful, reviewed and systematic way."⁵⁴

The MINARET charter was an effort both to restrict knowledge of the watch list program and to disguise NSA's participation in it. NSA maintains that its concern for the security of SIGINT sources, i.e., NSA's intercept operations, was the primary reason for initiating these measures.⁵⁵ NSA further maintains that it was concerned with the privacy of U.S. communications and, by imposing the MINARET restrictions, sought to ensure that dissemination was made exclusively to those outside NSA who had a legitimate need for the information. It is apparent that the MINARET restrictions also protected NSA's role from exposure. Dissemination of foreign communications to domestic agencies was obviously a sensitive matter. It involved considerable risk of exposure which would increase if the number of people within the intelligence community who were aware of the activity grew. Therefore, NSA placed more restrictive security controls on MINARET material than it placed on other highly classified foreign intercepts in order to conceal its involvement in activities which were beyond its regular mission.

C. Types of Names on Watch Lists

The names of Americans submitted to NSA for the watch lists ranged from members of radical political groups, to celebrities, to

⁵⁰ MINARET Charter, 7/1/69, Hearings, Vol. 5, Exhibit No. 3, pp. 140-150.

⁵¹ Buffham, 9/12/75, pp. 50, 49; Senior NSA official No. 1, 9/10/75, p. 68.

⁵² Senior NSA official No. 9/10/75, p. 78.

⁵³ NSA Response, 8/22/75, p. 12.

⁵⁴ In this written response, NSA confirmed reports the Committee had received from other agencies that prior to 1969 watch list requests were occasionally communicated to NSA by telephone or in person. See Mastrovito (staff summary), 10/17/75; Wannall, 10/3/75, p. 32; Smith and Strickler (staff summary), 10/7/75.

⁵⁵ Senior NSA official No. 2, 9/18/75, p. 10.

⁵⁶ Senior NSA official No. 1, 9/10/75, p. 69.

ordinary citizens involved in protests against their Government. Names of organizations were also included; some were communist-front groups, others were nonviolent and peaceful in nature.

The use of names, particularly those of groups and organizations, to select international communications results in NSA unnecessarily reviewing many messages. There is a multiplier effect: if an organization is targeted, all its member's communications may be intercepted; if an individual is on the watch list, all communications to, from, or mentioning that individual may be intercepted. These communications may also contain the names of other "innocent" parties. For example, a communication mentioning the wife of a U.S. Senator was intercepted by NSA, as were communications discussing a peace concert, a correspondent's report from Southeast Asia to his magazine in New York, and a pro-Vietnam war activist's invitations to speakers for a rally. According to testimony before the Committee, the material that resulted from the watch lists was not very valuable; most communications were of a private and personal nature, or involved rallies and demonstrations that were public knowledge.⁵⁶

D. Overlapping Nature of Intelligence Community Requests

As noted above, the primary purpose of the watch lists on Americans from 1967-1973 was to collect intelligence on civil disturbances. NSA also responded to a requirement from BNDD to monitor for illegal drug trafficking from 1970-1973. In addition, NSA supplied information to Federal agencies (FBI, CIA, Secret Service, and Department of Defense) on possible terrorist activity, and disseminated reports to the Secret Service which related to the protection of the President. The demarcations between these categories, however, was not always clear.

Secret Service officials, for example, have told the Committee that presidential and executive protection includes "providing a secure environment" for the White House for foreign embassies within the United States and in areas where high Government officials travel. According to the Secret Service, this requires "information regarding civil disturbances and anti-American or anti-U.S. Government demonstrations in the U.S. or overseas, as these demonstrations may affect the Secret Service's mission of protecting U.S. and foreign officials."⁵⁷ After the October 20, 1967, Yarborough cable, the Secret Service began submitting names of individuals and organizations active in the anti-war and civil rights movements to NSA. Although these individuals and groups were not considered a direct threat to protectees, it was believed they might participate in demonstrations against United States policy which would endanger the physical well-being of Government officials.⁵⁸ Intercepted communications to, from, or mentioning these individuals and groups were always disseminated by NSA to the Secret Service and the CIA, and often to the FBI.

⁵⁶ Wannall, 10/3/75, p. 13. He stated: "the feeling is that there was very little in the way of good product as a result of our having supplied names to NSA."

General Allen, however, told the Committee in public session: "we are aware that a major terrorist act in the U.S. was prevented. In addition, some large drug shipments were prevented from entering the U.S. because of our efforts on international narcotics trafficking." Allen, 10/20/75, Hearings, Vol. 5, pp. 12-13.

⁵⁷ NSA response, 8/22/75.

⁵⁸ Secret Service response to Senate Select Committee, 10/12/75.

There was considerable overlap among various agencies in submissions for watch list coverage and requests for material. For example, the CIA was interested in:

*The activities of U.S. individuals involved in either civil disorders, radical student or youth activities, racial militant activities, radical antiwar activities, draft evasion/deserter support activities, or in radical related media activities, where such individuals have some foreign connection by virtue of: foreign residence, foreign travel, attendance at international conferences or meetings and/or involvement or contact with foreign governments, organizations, political parties or individuals; or with Communist front organizations. [Emphasis added.]*⁶⁰

The FBI was interested in similar kinds of information, as illustrated by excerpts of two memoranda from J. Edgar Hoover to the Director, NSA:

This is to advise you that this Bureau has a continuing interest in receiving intelligence information obtained under MINARET regarding the targets previously furnished you. . . . Information derived from this coverage has been helpful in determining the extent of international cooperation among New Leftists and has been used for lead purposes.⁶⁰

The purpose of this communication is to advise of general areas of interest to this Bureau in connection with racial extremist matters and to request your assistance in such matters.

*There are both white and black racial extremists in the United States advocating and participating in illegal and violent activities for the purpose of destroying our present form of government. Because of this goal, such racial extremists are natural allies of foreign enemies of the United States. Both material and propaganda support is being given to United States racial extremists by foreign elements. The Bureau is most interested in all information showing ties between United States racial extremists and such foreign elements. [Emphasis added.]*⁶¹

These requests reflect an underlying similarity of interests among agencies, despite the differing needs which are expressed in their requirements. To some extent the DIA, FBI, CIA, and the Secret Service received information on Black activists and groups, and on the antiwar movement. All were concerned with how civil disturbances and antiwar demonstration were affecting the internal security of the United States. Although their general area of concern was the same, each agency used the information for its own particular purposes. The DIA was interested in travel to North Vietnam; the CIA kept files on alleged antiwar radicals for its Project CHAOS;

⁶⁰ NSA Response, 8/22/75, p. 17.

⁶¹ Memorandum from J. Edgar Hoover to Director, NSA 6/3/70.

⁶² Memorandum from J. Edgar Hoover to Director, NSA, 11/6/70.

the FBI used the information to develop "leads" on new left activists, at the same time it was conducting COINTELPRO efforts against alleged radicals;⁶² and the Secret Service was concerned with protecting the President. Despite slight variations in focus, the different agencies' requests reflected the overriding fear that the nation was being undermined internally and externally. It was this perception which produced the watch list program directed against Americans.

E. Drug Watch Lists: United States—South American Intercepts

1. Initial Monitoring: 1970

An unofficial requirement to collect and disseminate international communications concerning drug trafficking was levied on NSA by the Bureau of Narcotics and Dangerous Drugs on April 10, 1970. BNDD Director John Ingersoll sent a memorandum to NSA Director Noel Gayler requesting "any and all COMINT information which reflects illicit traffic in narcotics and dangerous drugs." NSA initiated its monitoring in June 1970, but a general requirement to obtain foreign intelligence on drug trafficking was not validated by the United States Intelligence Board until August 1971.

The Ingersoll memorandum specified that BNDD was interested in individuals and organizations involved in illegal drug activities, information on production centers, and all violations of United States laws pertaining to narcotics and dangerous drugs. In order to assist NSA in fulfilling the requirement, BNDD stated that they would provide NSA lists of individuals and organizations which had a history of involvement with illegal drug activities. According to the Ingersoll memorandum, "this watch list will be updated on a monthly basis and additions/deletions will be forwarded to NSA."⁶³

NSA implemented this request by monitoring international communications traffic. The first intercepts began in June 1970.⁶⁴ Telephone traffic carried on circuits between the United States and certain South American cities was first monitored in September 1970. Unlike other watch list monitoring, the United States—South American effort required NSA to devote additional resources to intercepting communications over this specifically targeted link.⁶⁵

This link included the telephone circuits between New York City and a South American city. BNDD was initially concerned about drug deals that were being arranged in calls from public telephone booths

⁶² For a detailed discussion of the Bureau's program against the New Left, see the Committee's report on COINTELPRO.

⁶³ Memorandum from John Ingersoll to Noel Gayler, 4/10/70, Hearings, Vol. 5, Exhibit No. 4, pp. 153, 154.

⁶⁴ NSA was covering links for international traffic prior to and during the drug watch list activity. However, the monitoring of certain United States—South American circuits for telephone traffic was initiated in September solely to cover drug traffickers. Senior NSA official No. 2, 9/18/75, pp. 107, 108.

⁶⁵ Although NSA collected intelligence from communications intercepted in other areas of the world to support the drug watch list, the Committee's investigation centered on the United States—South American monitoring due to the specific targeting of American citizens.

⁶⁶ Senior NSA official No. 2, 9/18/75, p. 99.

in New York City to South America. According to a senior NSA official:

BNDD had some information that led them to believe that arrangements were being made by telephone from New York City, a Grand Central Station telephone booth, to some individuals in [a South American city].⁶⁶

BNDD felt that it could not legally tap the public telephones and thus enlisted NSA's help to cover the international link that carried these telephone calls. At BNDD's request, NSA began to intercept telephone conversations carried over this link in September 1970. Additional United States—South American links were soon added. BNDD also supplied NSA with code names for drugs and names of individuals, including American citizens.

The telephone monitoring was conducted from one NSA site until December 1970, when that intercept station was closed. An NSA East Coast facility, operated by the military, began monitoring United States—South American links in March 1971. According to NSA, 19 United States—South American links were monitored for voice traffic at the two sites between 1970 and 1973.⁶⁷ Six South American cities were of primary interest, in addition to New York and Miami.⁶⁸

During this period, BNDD submitted 450 American names to NSA for inclusion on the drug watch list. At the high point, in early 1973, 250 Americans were on the active list.

Of the calls intercepted at the East Coast site, less than 10 percent were sent to NSA headquarters, and less than 10 percent of these were disseminated.⁶⁹ Yet it is clear that many personal and business calls of Americans were reviewed during this operation. This results from the lack of an effective method for avoiding the incidental interception of calls involving American citizens when a link with one terminal in the United States is monitored.

2. CIA/NSA Drug Activity

In October 1972, NSA requested CIA assistance in monitoring United States—South American communication links to collect intelligence on illicit drug traffic. According to Buffham, NSA made this request

because we felt that this was a sensitive matter, and that greater security would be achieved by utilizing the career intercept operators of the CIA to perform the activity, and,

⁶⁶ *Ibid.*

⁶⁷ Senior NSA official No. 2, 9/18/75, p. 106.

⁶⁸ According to ITT, many of these cities are transit points—calls are routed through them to other cities. For example, by monitoring one New York—South American city link, NSA could pick up calls originating in other South American cities to other cities in the United States. The call would simply be routed through New York and the South American city. Senior NSA official No. 2, 9/18/75, pp. 108–109.

Most telephone calls from the United States to South America are, in fact, routed through New York City.

⁶⁹ Senior NSA official No. 2, 9/18/75, p. 118; senior NSA official No. 1, 9/16/75, p. 38.

in addition, they could be more selective in providing items because *we would be able to give the CIA operators the specific names on the watch list, and we did not feel that we could or should provide those names to the [East Coast military station].* [Emphasis added.] ⁷⁰

NSA's concern about the security of American names being provided to the East Coast station stemmed from the fact that the operators were young military personnel on short tours of duty. They were not professional intelligence officers, and NSA felt that monitoring American citizens was too sensitive a task for them. The use of CIA career operators satisfied NSA that targeting of American citizens would not be disclosed.

The Rockefeller Commission also investigated this activity, but found no evidence that the CIA directly targeted American citizens. The Rockefeller Commission report stated:

For a period of approximately six months, commencing in the fall of 1973 [*sic*], the Directorate monitored telephone conversations between the United States and Latin America in an effort to identify foreign drug traffickers. . . .

A CIA intercept crew stationed at an East Coast site monitored calls to and from certain Latin American telephone numbers contained on a "watch list" provided by NSA. While the intercept was focused on foreign nationals, it is clear that American citizens were parties to many of the monitored calls. . . .

The Commission's investigation disclosed that, from the outset of the Agency's involvement in the narcotics control program, the Director and other CIA officials instructed involved personnel to collect only foreign intelligence and to make no attempt—either within the United States or abroad—to gather information on American citizens allegedly trafficking in narcotics. [Emphasis added.] ⁷¹

The evidence examined by the Select Committee directly contradicts this finding. An internal CIA memorandum of November 17, 1972, to the Director of Communications from the Chief, Special Programs Division, reveals that the CIA *was* receiving the names of U.S. citizens.

NSA had tasked [the East Coast site] with this requirement [to monitor for drug traffic] but were *unwilling to provide the site with the specific names and U.S. telephone numbers of interest on security/sensitivity grounds . . . to get around the problems mentioned above* NSA requested the Agency undertake intercept of the long lines circuits of interest. *They have provided us with all information available (including the "sensitive") and the [CIA] facility is working on the requirement.* [Emphasis added.] ⁷²

⁷⁰ Buffham, 9/12/76, p. 20.

⁷¹ Report to the President by the Commission on CIA Activities Within the United States (Rockefeller Commission Report), June 1976, pp. 222-223.

⁷² Memorandum from Chief, Special Programs Divisions (CIA) to the Director of Communications, 11/17/72.

This memorandum and subsequent testimony by NSA officials revealed that the CIA was monitoring these circuits to intercept the calls of American citizens suspected of illegal drug trafficking. During this period, NSA continued to monitor the same circuits at its East Coast site, but that site did not have the specific BNDD "sensitive" watch lists of American names which were supplied to the CIA. Thus, the conclusion reached by the Rockefeller Commission—that CIA intercepts were not undertaken for the purpose of gathering intelligence on American citizens—is not supported by the evidence.

3. Termination of Drug Activity

Three months after the CIA monitoring was initiated, CIA General Counsel Lawrence Houston issued an opinion which stated that the intercepts may violate Section 605 of the Communications Act of 1934.⁷³ This law, as amended in 1968, prohibits the unauthorized disclosure of any private communication of an American citizen to another party, unless undertaken pursuant to the President's constitutional authority to collect foreign intelligence which is crucial to the security of the United States.⁷⁴ Since intercepted messages were provided to BNDD, Houston concluded that the activity was for law enforcement purposes, which is also outside the CIA's charter. As a result of this memorandum, the CIA suspended its collection. NSA, which has no charter, continued to monitor these links for drug information.

NSA officials have testified that they were told in early 1973 that the CIA was terminating collection because it was concerned about operating an intercept station *within* the United States. This concern is completely different from the one expressed in Houston's memorandum. NSA officials have told the Committee that questions concerning the legality of the activity were either not mentioned by the CIA,⁷⁵ or else mentioned secondarily.⁷⁶

NSA Deputy Director Buffham testified that after the CIA decided to stop the United States—South American drug monitoring, NSA began to review the legality and appropriateness of its efforts in support of BNDD. Although NSA is not prohibited by statute or executive directive from disseminating information that may pertain to law enforcement, it has always viewed its sole mission as the collection and dissemination of foreign intelligence. A senior NSA official testi-

⁷³ Memorandum from Houston to Acting Chief, Division D, 1/20/73.

⁷⁴ 18 U.S.C. 2511 (Omnibus Act, 1968) states: "nothing contained in . . . Section 605 . . . shall limit the constitutional power of the President to take such measures as he deems necessary to protect the nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States. . . ."

However, the *Kelth* case (407 U.S. 207 (1972)) held that the Omnibus Act was simply a congressional recognition of the President's constitutional powers to protect the nation's security and did not grant the Executive additional powers. The Act did not further define the 1934 statute or provide the Executive with any additional authority to conduct foreign intelligence.

⁷⁵ Senior NSA official No. 2, 9/18/75, p. 117.

⁷⁶ Buffham, 9/12/75, pp. 23, 71.

See also former NSA Deputy Director Louis Tordella's testimony of 9/21/75, p. 77: "It was in their General Counsel's opinion beyond CIA's charter to monitor radio communications on U.S. soil and I was told that if they could move a group of Cubans up to Canada it would be quite all right, but they would not do it in the United States."

fied: "We do not understand our mission to be one of supporting an agency with a law enforcement responsibility."⁷⁷

Although BNDD clearly was a law enforcement agency, NSA initially held that the intelligence it was supplying BNDD was a part of a legitimate USIB-approved effort to prevent drugs from entering the United States.⁷⁸ This international aspect of the requirement was interpreted by NSA as sufficient justification for classifying the activity as part of its "foreign intelligence" mission.

After discussions with the General Counsel's office at NSA and within the Office of the Secretary of Defense, the Director of NSA terminated the activity in June 1973.⁷⁹ All of NSA's drug materials—product, internal memoranda, and administrative documents—were destroyed in late August or early September 1973. Ordinarily, NSA keeps material for five years or more. According to a senior NSA official: "it wasn't thought we would get back into the narcotics effort anytime soon. There didn't seem to be any point in keeping them."⁸⁰

4. Continuation of NSA's United States-South American Monitoring

In June 1975 the Committee received information that NSA continued to monitor United States—South American telephone calls after the June 1973 termination of the drug watch list activity. NSA officials confirmed that the same links targeted for the purpose of curbing illegal drug traffic were monitored by NSA for foreign intelligence after June 1973. Certain of these links were monitored until July 9, 1975.⁸¹

According to NSA, this activity was terminated when "it did not prove productive."⁸² While this effort was underway, NSA states that it did not collect or disseminate any information on narcotics traffic from the United States—South American links. A senior NSA official stated: "Nothing ever came. No by-product. The problem was dead."⁸³

5. Current Internal Policy Concerning Telephone Monitoring

No statute or executive directive prohibits NSA's monitoring a telephone circuit with one terminal in the United States.⁸⁴ An internal NSA instruction was issued on August 7, 1975, that requires the personal approval of the chief of a major element within the Agency before monitoring of voice communications with a terminal in the United States is initiated. According to Deputy Director Buffham, "It is obvious that no such collection will be undertaken unless it is extremely important and is properly reviewed within the Agency."⁸⁵

F. Termination of the Civil Disturbance Watch List Activity

The watch list activity involving civil disturbances was officially terminated in the fall of 1973. This was due to a combination of fac-

⁷⁷ Senior NSA official No. 1, 9/16/75, p. 10.

⁷⁸ Senior NSA official No. 1, 9/16/75, p. 10; Banner, 9/15/75, pp. 49-50.

⁷⁹ Allen, 10/20/75, Hearings, Vol. 5, pp. 14-15.

⁸⁰ Senior NSA official No. 2, 9/18/75, p. 91.

⁸¹ *Ibid.*, p. 125.

⁸² *Ibid.*; Buffham, 9/12/75, p. 26.

⁸³ Senior NSA official No. 2, 9/18/75, p. 120.

⁸⁴ *Ibid.*, pp. 127-128.

⁸⁵ Buffham, 9/12/75, p. 30.

tors: growing concern within NSA regarding the program's vulnerability and propriety; the fact that courts were beginning to require the Government to reveal electronic surveillance conducted against particular criminal defendants; and the questions, raised by the drug watch list activity, about NSA's authority to engage in monitoring for law enforcement purposes. What follows is a description of events leading to the termination of the watch lists.

The only Supreme Court case addressing the issue of electronic surveillance purportedly undertaken for national security purposes is *United States v. United States District Court*, commonly referred to as the *Keith* case.^{85a} The Supreme Court's decision was handed down on June 19, 1972, over a year before the watch list activity was terminated.

The case involved warrantless wiretaps on three U.S. citizens who were subsequently indicted for conspiracy to destroy Government property. There was no evidence of *foreign* participation in the alleged conspiracy.

After examining logs of the wiretaps *in camera*, the District Court judge had held that the surveillance on the defendants was unlawful and required that the overheard conversations be disclosed.^{85b} The Supreme Court affirmed the District Court's ruling.

While recognizing the President's constitutional duty to "protect our Government against those who would subvert or overthrow it by unlawful means,"^{85c} the Court held that the power inherent in such a duty does not extend to the authorization of warrantless electronic surveillance deemed necessary to protect the nation from subversion by *domestic* organizations. The Court declared that the Fourth Amendment warrant requirement for electronic surveillance developed in two 1967 cases⁸⁶ applied, and that the electronic surveillances employed in the instant case were found to be unlawful. The Court did not reach the issue of whether the Executive has the constitutional power to authorize electronic surveillance without a warrant in cases involving the activities of *foreign* powers or agents.

Although the *Keith* ruling involved wiretaps and did not apply specifically to NSA, it did have a bearing on NSA's activities. Operation MINARET did entail warrantless electronic surveillance against certain domestic organizations. If there was no evidence to show that these domestic organizations were acting in concert with a foreign power, the *Keith* case would seem to cast doubts upon the legality of intercepting their messages without a warrant.

The watch list activity was never disclosed in a court proceeding; thus its legality has never been judicially determined. A 1973 criminal case did result in the Government's disclosure that some of a defendant's communications had been subject to a "foreign intelligence intercept." Some of the defendants in this 1973 case were members of a group which had been included on an NSA watch list by the Secret

^{85a} 407 U.S. 207 (1972).

^{85b} 444 F. 2d 651 (1971).

^{85c} 407 U.S. at 310.

⁸⁶ *Katz v. United States*, 389 U.S. 347 (1967) and *Berger v. New York*, 388 U.S. 347 (1967). These two decisions deal with wiretaps, not with activities involving NSA. For further discussion, see the Committee's report on Warrantless Electronic Surveillance.

Service and FBI in mid-1971, and NSA had distributed some of their international communications to these agencies.⁸⁷ The propriety of these actions was never considered by the court, because the Government moved to dismiss the case rather than reveal the specifics of the watch list activity.

General Lew Allen, Jr. became the Director of NSA on August 15, 1973. In the course of familiarizing himself with his new responsibilities, he was fully briefed on the watch list activity.

According to Allen, the BNDD watch list activity had been terminated just prior to his arrival at NSA because the Agency feared "that it might not be possible to make a clear separation between requests for information submitted by BNDD as it pertained to legitimate foreign intelligence requirements and the law enforcement responsibility of BNDD." He also stated that the activity in support of the FBI, CIA, and Secret Service was suspended when NSA "stopped the distribution of information in the summer [August] of 1973."⁸⁸ Deputy Director Buffham told the Committee this dissemination was terminated due to three concerns: (1) NSA could not be certain as to what uses were being made of the information it was providing other agencies; (2) it feared that broad judicial discovery procedures might lead to the disclosure of sensitive intelligence sources and methods; and (3) NSA wanted to be "absolutely certain that we are providing information only for lawful purposes and in accordance with our foreign intelligence charter."⁸⁹

During July and August 1973, meetings were held between NSA and Justice Department representatives. According to NSA, these discussions influenced the Agency's decision to suspend the dissemination of watch list material.⁹⁰ As Buffham testified:

I believe although I am not positive, that Dr. Tordella, the Deputy Director, had discussions with people at Justice regarding the legality of our activities, and that these could have influenced then the determination in NSA to cease the activities in August, even though we had not yet received any formal statements from Justice.⁹¹

At a meeting on August 28, 1973, NSA officials informed Assistant Attorney General Henry Petersen that communications involving the defendants in the 1973 criminal case had been intercepted and that NSA opposed "any disclosure of this technique and program."⁹² Petersen apprised Attorney General Richardson of these events in a memorandum of September 4, 1973. On September 7, 1973, Petersen sent a memorandum to FBI Director Clarence Kelley, requesting to be advised by September 10 of:

the extent of the FBI's practice of requesting information intercepted by the NSA concerning domestic organizations

⁸⁷ Memorandum from Henry Petersen to Elliot Richardson, 9/4/73, p. 6.

⁸⁸ Allen, 10/29/75, Hearings, Vol. 5, p. 15.

⁸⁹ Buffham, 9/12/75, p. 67.

⁹⁰ Lew Allen, Jr., testimony, 9/15/75, p. 55.

⁹¹ Buffham, 9/12/75, p. 67.

⁹² Petersen to Richardson memorandum, 9/4/73, p. 6.

or persons for intelligence, prosecutorial, or any other purposes . . . [and] any comments which you may desire to make concerning the impact of the *Keith* case upon such interceptions. . . .⁹³

Kelley responded three days later that the FBI had requested intelligence from NSA "concerning organizations and individuals who are known to be involved in illegal and violent activities aimed at the destruction and overthrow of the United States Government."⁹⁴ He continued that the FBI did not view the materials supplied it by NSA, or the watch list activity in general, as inconsistent with the *Keith* decision: the information "cannot possibly be used for any, prosecutive purpose" and "we do not consider the NSA information as electronic surveillance information in the sense that was the heart of the *Keith* decision." The FBI's position was that the information supplied by NSA did not result from specific targeting of an individual's communications in the same sense as a wiretap; therefore, it was not "electronic surveillance." Kelley maintained:

We do not believe that the NSA actually participated in any electronic surveillance, per se of the defendants for any other agency of the government, since under the procedures used by that agency they are unaware of the identity of any group or individual which might be included in the recovery of national security intelligence information.⁹⁵ [Emphasis added.]

This position is difficult to defend since intelligence agencies, including the FBI, submitted specific American names for watch lists which resulted in the interception of Americans' international communications.

On September 17, Allen wrote FBI Director Kelley and the heads of other agencies receiving information from NSA regarding continuation of the watch list activity. Noting that "the need for proper handling of the list and related information has intensified, along with over-increasing pressures for disclosure of sources by the Congress, the courts, and the press," Allen requested, "at the earliest possible date," that Kelley and the other agency heads "review the current list your agency has filed with us in order to satisfy yourself regarding the appropriateness of its contents. . . ."⁹⁶

After receiving Kelley's September 10 memorandum, Petersen advised the Attorney General that the current number of individuals

⁹³ Memorandum from Henry Petersen to Clarence Kelley, 9/7/73, p. 1.

⁹⁴ Memorandum from Clarence Kelley to Henry Petersen, 9/10/73, p. 2.

Kelley is clearly overstating his case when he says Americans are "known" to be involved in illegal activities. Many of the individuals were protesters speaking out against the Government's policies, not urging the overthrow of the Government.

J. Edgar Hoover discusses the necessity of obtaining information "determining the extent of international cooperation among New Leftists" in a memorandum to NSA of June 5, 1970, which is much broader than targeting individuals who are attempting the violent overthrow of the Government.

⁹⁵ Kelley memorandum, 9/10/73, pp. 2-5.

⁹⁶ Letter from Lew Allen, Jr. to Clarence Kelley, 9/17/73, Hearings, Vol. 5, Exhibit No. 6, pp. 188-189.

and organizations on NSA watch lists submitted by the FBI was "in excess of 600."⁹⁷ Petersen pointed out many legal problems arising from this program and recommended that

the FBI and Secret Service be immediately advised to cease and desist requesting NSA to disseminate to them information concerning individuals and organizations obtained through NSA electronic coverage and that NSA should be informed not to disclose voluntarily such information to Secret Service or the FBI unless NSA has picked up the information on its own initiative in pursuit of its foreign intelligence mission.⁹⁸

He also recommended that the standards and procedures which applied to "cases where the FBI seeks to acquire foreign intelligence or counterespionage information by means of its own listening devices" be extended to apply to the watch list activity.⁹⁹ These procedures included obtaining prior written approval by the Attorney General.

On October 1, Richardson sent memoranda to FBI Director Kelley and the Director of the Secret Service, instructing them to cease requesting information obtained by NSA "by means of electronic surveillance."⁹⁹ The Attorney General also requested that his approval be sought prior to either agency's renewing requests to NSA for foreign intelligence or counterespionage information.

On the same day, Richardson sent a letter to Allen, stating that he found the watch list activity to be of questionable legality in view of the *Keith* decision, and requesting that NSA "immediately curtail the further dissemination" of watch list information to the FBI and Secret Service. Although Richardson specified that NSA was not to respond to "a request from another agency to monitor in connection with a matter that can only be considered one of domestic intelligence," he stated that "relevant information acquired by you in the routine pursuit of the collection of foreign intelligence information may continue to be furnished to appropriate Government agencies."¹⁰⁰

Kelley responded to Richardson's memorandum on October 3 and agreed to comply with the Attorney General's "instructions to discontinue requests to NSA for electronic surveillance information and to obtain approval prior to any future inquiries to NSA for such information."¹⁰¹ There was apparently some confusion at this point whether Richardson's instructions meant that NSA was prohibited from disseminating *any* information to FBI. After further consultations, it was determined that the caveats Richardson placed on dissemination applied only to information on American citizens and organizations, and not to foreign intelligence and counterespionage matters.

Allen replied to Richardson's letter on October 4, stating that he had "directed that no further information be disseminated to the

⁹⁷ Memorandum from Henry Petersen to Elliot Richardson, 9/21/78, p. 1.

⁹⁸ Petersen to Richardson memorandum, 9/21/78, p. 3.

⁹⁹ *Ibid.*

¹⁰⁰ Memorandum from Elliot Richardson to Clarence Kelley, 10/1/78.

¹⁰¹ Letter from Elliot Richardson to Lew Allen, Jr., 10/1/78, Hearings, Vol. 5, Exhibit No. 7, pp. 160, 161.

¹⁰² Memorandum from Clarence Kelley to Elliot Richardson, 10/3/78.

FBI and Secret Service, pending advice on legal issues."¹⁰² Although Allen had agreed to suspend dissemination, NSA's position remained that these communications had always been collected "as an incidental and unintended act in the conduct of the interception of foreign communications." Allen thus asserted that NSA's "current practice conforms with your [Richardson's] guidance that, 'relevant information acquired [by NSA] in the routine pursuit of the collection of foreign intelligence information may continue to be furnished to appropriate government agencies.'"¹⁰³

As a result of these and other exchanges between officials at NSA and Justice, the Agency officially terminated its watch list activity involving American citizens and organizations in the fall of 1973. It would no longer accept such names from other agencies for the purpose of monitoring their international communications.

To a substantial degree, this decision was prompted by the legal implications of the Keith case and by NSA's fear that criminal prosecutions of persons on the watch lists would inevitably lead to disclosure of its intelligence sources and methods. Indeed, the 1973 criminal case referred to above posed the threat that the watch list activity might have to be disclosed for the first time in a public forum.

It is important to note that the decision to terminate the watch list was ultimately the administrative decision of an executive agency. There is no statute which expressly forbids such activity, and no court case where it has been squarely at issue. Without legislative controls, NSA could resume the watch list activity at any time upon order of the Executive.

G. Authorization

Authorization of the watch list activity must be viewed in the context of how NSA operates. It is a service agency which provides foreign intelligence information at the request of consumer agencies. Specific requirements are levied on USA, although the Agency also engages in collection activities that are not responsive to specific tasking. For example, many USIB requirements—such as those aimed at terrorist activities, gathering economic intelligence, or discovering foreign links to civil disturbances—were so broad that NSA was given wide discretion for selecting not only the communications channels to be monitored, but also what information was disseminated.¹⁰⁴ While this is often appropriate because only NSA has the knowledge and expertise to make these decisions, it also allows NSA considerable flexibility in carrying out its mission.

NSA also responds to specific requests from other Federal agencies. Indeed, it is no exaggeration to state that NSA's operations are undertaken almost entirely to satisfy the intelligence needs of other agencies. The watch list activity was no exception.

¹⁰² Letter from Lew Allen, Jr. to Elliot Richardson, October 4, 1973, Hearings, Vol. 5, Exhibit No. 8, p. 103.

¹⁰³ Allen letter, October 4, 1973, Hearings, Vol. 5, Exhibit No. 8, pp. 102, 103.

¹⁰⁴ Wannall (FBI), October 8, 1975, p. 12: "I would say that by far the majority of the product that I saw would have been information that would have been disseminated to us by NSA, based upon the knowledge of that Agency of our responsibilities, as opposed to a specific request for any information that might come to NSA's attention, that we ourselves initiated."

1. Knowledge and Authorization Outside NSA

In the case of the 1967-1973 watch list activity, NSA clearly received instructions from the Army in 1967 to look for possible foreign influence on, or control of, American peace and Black power activists. NSA subsequently received the names of American and foreign citizens and groups from other intelligence agencies.

This activity was not formally approved by USIB. Although NSA notified USIB members that it was responding to the Army's request, the inclusion of American names on an NSA watch list was never discussed at subsequent USIB meetings. Although there were official USIB requirements for information concerning international drug activity, presidential protection, and terrorism, there was no approval or discussion of targeting American citizens. NSA officials contend that the submission of American names by USIB members constituted approval.¹⁰⁵

The desire for tight security over the watch list program resulted in limiting participation to those "with a need to know." Therefore, it was not in NSA's best interests to have formal USIB approval of a requirement since knowledge would have been more widely spread.

According to documents supplied to the Committee and testimony of NSA officials, Defense Secretaries Melvin Laird and James Schlesinger, as well as Attorneys General John Mitchell and Richard Kleindienst, were informed that NSA was monitoring Americans. Former NSA Director, Admiral Noel Gayler sent a Top Secret "Eyes Only" memorandum to Laird and Mitchell on January 26, 1971, which outlined ground rules for "NSA's Contribution to Domestic Intelligence." In this memorandum, Gayler refers to a discussion he had earlier that day with both men on how NSA could assist them with "intelligence bearing on domestic problems." The memorandum mentioned the monitoring for drug trafficking and foreign support of subversive activities, but did not discuss "watch lists" specifically.¹⁰⁶

NSA Deputy Director Buffham supplied the Committee with a Memorandum for Record which indicated that he had personally shown the Gayler memorandum to Mitchell and had been told by the Military Assistant to Secretary of Defense Laird that the Secretary had read and agreed to the memorandum.¹⁰⁷ In a handwritten note

¹⁰⁵ Allen, 10/26/75, Hearings, Vol. 5, p. 28.

¹⁰⁶ Memorandum from NSA Director Noel Gayler to the Secretary of Defense and the Attorney General, "NSA Contribution to Domestic Intelligence," 1/26/71, Hearings, Vol. 5, Exhibit No. 5, pp. 150-157.

This memorandum responded to the interests of the Intelligence Evaluation Committee (IEC), a Justice Department working group set up to carry out domestic intelligence-gathering activities. The IEC was an outgrowth of the Huston Plan and is detailed in the Committee's report on the Huston Plan. Suffice it to say that NSA sent a representative to that group and Gayler was providing them with a statement of NSA's capabilities and procedures for supplying intelligence.

¹⁰⁷ Memorandum for the Record, Benson K. Buffham, 2/3/71.

When questioned by the Committee, neither Mitchell, Laird, nor Kleindienst recalled the watch list activity. Mitchell does not recall NSA's involvement in monitoring the communications of American citizens or the meeting with Buffham. He stated, however, that "he may have" had such a meeting, but cannot recall. John Mitchell testimony, 10/2/75, pp. 47-48.

made available to the Committee, Gayler recalls that he personally showed the January 26, 1971, memorandum to Kleindienst on July 1, 1972.

Finally, former NSA Deputy Director Tordella testified that he accompanied General Samuel C. Phillips, Gayler's successor as Director of NSA, to brief Secretary of Defense Schlesinger on the watch list in the summer of 1973.¹⁰⁸

In summary, a number of Federal agencies were aware of NSA's watch lists and used them. It is clear that the United States Intelligence Board, which ordinarily set the intelligence requirements to which NSA responded, never gave its formal approval for the watch list activity. It also appears that at least two Attorneys General and two Secretaries of Defense were generally aware that NSA was monitoring the international communications of American citizens, but none took measures to halt the practice.

2. Knowledge and Approval Within NSA

There is a discrepancy in the testimony of knowledgeable NSA staff members and a former NSA Director with regard to his knowledge of the watch list activity. When asked whether NSA had included the names of American citizens or organizations on its watch lists, Admiral Noel Gayler (who was Director of NSA during the height of the activity) responded:

I don't know that I even knew that in that specific way. I knew that communications of one foreign terminal sometimes concerned doings of interest of people, including American citizens, yes. And when I became aware of that, I can't tell you, I guess it was a year or so after I got there.¹⁰⁹

Gayler became NSA Director in August 1969. He maintains that he first became aware of the watch list activity about the time of the June 1970 Huston plan for domestic surveillance, ten months after his arrival and eleven months after the MINARET Charter was issued.

Gayler was one of the original participants in the Huston plan deliberations and in the Intelligence Evaluation Committee (early 1971). Both of these efforts were designed to use the resources of NSA and other intelligence agencies to gather information on internal security matters. In fact, part of the Huston plan called for the expansion of the watch list activity. Buffham told the Committee that if the plan had been implemented he assumed "other intelligence agencies would then increase the numbers of names on their lists" and NSA would possibly target specific communications channels to obtain the international traffic of American citizens.¹¹⁰ NSA was par-

¹⁰⁸ Tordella, 9/21/75, p. 74.

¹⁰⁹ Noel Gayler testimony, 6/19/75, p. 64.

¹¹⁰ Buffham, 10/29/75, Hearings, Vol. 5, p. 45.

In addition, the Huston Plan report sent to the participants was classified "Top Secret, Handle Via COMINT Channels Only," the classification placed on NSA intercept information. This caveat was designed to limit the distribution of the report and prevent disclosure of the illegal activities suggested by Tom Charles Huston. For a further explanation, see the Committee's report, "National Security, Civil Liberties, and the Collection of Intelligence: A Report on the Huston Plan."

ticularly concerned that the executive branch directives would have had to be changed to permit such an expansion. The alternatives outlined in the Huston plan included the recommendation that the controlling NSCID and the relevant DCID be changed to allow NSA to target international communications links carrying the messages of American citizens.

NSA was already engaged in watch list activity which although it did not involve targeting of specific communications links, did involve targeting Americans by name. The Huston Plan states:

NSA is currently doing so on a restricted basis, and the information it has provided has been most helpful. Much of this information is particularly useful to the White House. . . .¹¹¹

As discussed earlier, the July 1, 1969, MINARET charter was designed to restrict knowledge of the watch list activity. It was released about a month before Gayler arrived at NSA and, according to a senior NSA official, Gayler "knew everything that was in it, what was going on, and endorsed it."¹¹² Gayler recalls that his first knowledge of the watch list came during the Huston Plan deliberations, almost a year later. Another senior NSA official testified that Gayler "*review every piece of MINARET product*" and maintained that "the Director kept a close eye on this activity and reviewed the requirements." [Emphasis added.]¹¹³ This employee also testified that Gayler was shown the product of the watch list activity and was kept fully informed.

H. Conclusions

NSA's monitoring of international communications comprises only a portion of its total mission, but the examination of this capability to intrude on the telephone calls and telegrams of Americans represents a major part of the Committee's work on NSA. The watch list activities and the sophisticated technological capabilities that they highlight present some of the most crucial privacy issues facing this nation. Space age technology has outpaced the law. The secrecy that has surrounded much of NSA's activities and the lack of Congressional oversight have prevented, in the past, bringing statutes in line with NSA's capabilities. Neither the courts nor Congress have dealt with the interception of communications using NSA's highly sensitive and complex technology.

The analysis presented here of the deliberate targeting of American citizens and the associated incidental interception of their communications demonstrates the need for a legislative charter that will define, limit, and control the signals intelligence activities of the National Security Agency. This should be accomplished both to preserve and protect the Government's legitimate foreign intelligence operations, and to ensure that the constitutional rights of Americans are safeguarded.

¹¹¹ Memorandum from Tom Charles Huston to H. R. Haldeman, 7/7 "Operational Restraints on Intelligence Collection," p. 1, Hearings, Vol. 2, Exhibit No. 2, p. 198.

¹¹² Senior NSA official No. 2, 9/18/75, pp. 48-44.

¹¹³ Senior NSA official No. 1, 9/10/75, pp. 68, 62.

The next section describes a recently terminated NSA collection program which also involved United States citizens—Operation SHAMROCK. This program did not require any special technology; international telegrams were simply turned over to NSA at the offices of three cable companies.

III. A SPECIAL NSA COLLECTION PROGRAM: SHAMROCK

SHAMROCK is the codename for a special program in which NSA received copies of most international telegrams leaving the United States between August 1945 and May 1975. Two of the participating international telegraph companies—RCA Global and ITT World Communications—provided virtually all their international message traffic to NSA. The third, Western Union International, only provided copies of certain foreign traffic from 1945 until 1972. SHAMROCK was probably the largest governmental interception program affecting Americans ever undertaken. Although the total number of telegrams read during its course is not available, NSA estimates that in the last two or three years of SHAMROCK's existence, about 150,000 telegrams per month were reviewed by NSA analysts.¹¹⁶

Initially, NSA received copies of international telegrams in the form of microfilm or paper tapes. These were sorted manually to obtain foreign messages. When RCA Global and ITT World Communications switched to magnetic tapes in the 1960s, NSA made copies of these tapes and subjected them to an electronic sorting process. This means that the international telegrams of American citizens on the "watch lists" could be selected out and disseminated.

A. Legal Restrictions

1. *The Fourth Amendment to the Constitution of the United States*

Obtaining the international telegrams of American citizens by NSA at the offices of the telegraph companies appears to violate the privacy of those citizens, as protected by the Fourth Amendment. That Amendment guarantees to the people the right to be "secure . . . in their papers . . . against unreasonable searches and seizures." It also provides that "no Warrants shall issue, but upon probable cause." In no case did NSA obtain a search warrant prior to obtaining a telegram.

2. *Section 605 of the Communications Act of 1934 (47 U.S.C. 605)*

As enacted in 1934, eleven years before SHAMROCK began, section 605 of the Communications Act provided:

No person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof. . . .

Section 605 was amended in 1968 by the addition of the phrase: "Except as authorized by chapter 119, Title 18, no person"

¹¹⁶ Staff summary of interview with senior NSA official No. 3, 9/17/76, p. 3.

The import of this 1968 addition, however, is not clear, and the Supreme Court has yet to rule on the point.¹¹⁶

The relevant provision in chapter 19, section 2511 (3), provides that "nothing contained in this chapter or in section 605 of the Communications Act of 1934 . . . shall limit the constitutional power of the President . . . to obtain foreign intelligence information deemed essential to the security of the United States. . . ." ¹¹⁷ Yet the Supreme Court, in the *Keith* decision (1972), held that this section "confers no power" and "merely provides that the Act shall not be interpreted to limit or disturb such power as the President may have under the Constitution." ¹¹⁸

It is thus uncertain what the phrase in the 1968 amendment to section 605—"except as authorized by chapter 119, title 18" [Emphasis added.]—means. The Supreme Court has held that the relevant section of chapter 119 does not authorize any activity. The applicability of section 605 to the interception of international telegrams for foreign intelligence purposes is therefore unclear. It would appear that where such telegrams are intercepted for other than foreign intelligence purposes (e.g., the watch list activity), section 605 would be violated.

3. *The Controlling National Security Council Intelligence Directive*

Since 1958, this executive directive has authorized NSA to conduct communications intelligence activities.¹¹⁹ These have been defined as excluding "the intercept and processing of unencrypted written communications." It would appear that if copies of international telegrams are "written communications," NSA has exceeded its authority under the executive's own internal directives.

B. *The Committee's Investigation*

The SHAMROCK operation was alluded to in documents furnished to the Committee by the Rockefeller Commission in May 1975. They indicated that CIA had provided "cover" for an NSA operation in New York where international telegrams had been copied.¹²⁰

In early June 1975, an oral inquiry regarding the operation was made to NSA officials, but no confirmation of the project was forthcoming. In July, the Committee sent written interrogatories to NSA, and was told that this subject was so sensitive that it would be disclosed only to Senators Church and Tower. No such briefing was immediately arranged, however.

In July and August, news stories were published which appeared to reveal small parts of the SHAMROCK operation.¹²¹

The Committee continued to press the matter with NSA, and in early September the agency gave the Committee its first detailed

¹¹⁶The U.S. Court of Appeals for the Third Circuit did rule, in *U.S. v. Butenko*, 404 A.2d 593 (3d Cir. 1974), cert. denied sub nom. *Ivanov v. United States*, 419 U.S. 881 (1974), that section 605 did not render unlawful electronic surveillance conducted solely for foreign intelligence purposes.

¹¹⁷ 18 U.S.C. 2511(3).

¹¹⁸ *United States v. United States District Court for the Eastern District of Michigan, et al.*, 407 U.S. 297 (1972). See pp. 787, 760-760.

¹¹⁹ See pp. 787-788.

¹²⁰ Commission on CIA Activities Within the United States, interview with senior CIA officials, 3/11/75, pp. 14-16, in Select Committee files.

¹²¹ See Frank Van Riper, "Find U.S. Agents Spy on Embassies' Cables," *New York Daily News*, 7/22/75; *idem.*, "FCC Terms Cable-Tapping Illegal, Will Investigate FBI," *New York Daily News*, 7/23/75; Nicholas Horrocks, "National Security Agency Reported Eavesdropping on Most Private Cables," *New York Times*, 8/1/75, p. 1.

information. This briefing was followed by interviews with present and former NSA employees who had been responsible for the program and by examinations of documents at NSA and the Department of Defense. NSA assured the Committee at the time that it had examined all NSA documents which pertained to SHAMROCK. On September 23, the full Committee was briefed by an NSA official in executive session. Following this briefing, the Committee interviewed officials in the telegraph companies which had participated in the SHAMROCK program.

On the basis of this investigation, the Committee prepared a report which it submitted to NSA for review. NSA had no specific comments regarding the accuracy of the report, but expressed its general objection to public disclosure of the operation on the grounds that the report was based on classified information.¹²²

On November 6, 1975, in a public session of the Committee, Chairman Frank Church read the report on SHAMROCK into the record. Due to the refusal of the executive branch of provide witnesses in public session, no other public record was made.^{122a}

At this point, the Committee's active investigation ceased. The Committee presumed that it had exhausted all sources of information about SHAMROCK.

On March 25, 1976 as the Committee was about to send this report to press, it was informed by the Department of Defense that NSA had "discovered" a file containing various documents and memoranda about SHAMROCK. An NSA official explained that the file had been held by a lower-level employee at NSA until around March 1, 1976, when he brought it to the attention of his superiors. Since this occurred several months after the Committee's public report, and, in the opinion of NSA, did not substantially alter the Committee's findings, it was not immediately reported to the Committee.

After examining the documents, the Committee decided that the final NSA report should incorporate this new information. Although it does not alter the basic findings reported in November 1975, it does change some of the details.¹²³

C. The Origins of SHAMROCK

During World War II, under the wartime censorship laws¹²⁴ all international message traffic was made available to military censors.¹²⁵ Copies of pertinent foreign traffic were turned over to military intelligence. With the cessation of the War in 1945, this practice was to end.

In August 1945, the Army sought to continue that part of the wartime arrangement which had allowed military intelligence access to certain foreign traffic.¹²⁶ At that time, most of this traffic was still conveyed via the facilities of three carriers.¹²⁷

On August 18, 1945, two representatives of the Army Signal Security Agency were sent to New York

to make the necessary contacts with the heads of the Commercial Communications Companies in New York, secure their

¹²² Letter from NSA to the Select Committee, 10/29/75, Hearings, Vol. 5, p. 51.

^{122a} Hearings, Vol. 5, pp. 57-60.

¹²³ *Ibid.*

¹²⁴ 47 U.S.C. 606.

¹²⁵ See the testimonies of: Senior NSA official No. 4, 9/23/75, pp. 45-49; Tordella, 9/21/75, pp. 6-7; senior officer, ITT World Communications, Inc., 10/15/75, p. 4.

¹²⁶ Letter from an Army intelligence officer to the Commanding General, Signals Security Agency, Army Service Forces, "Report on New York Trip," 8/24/45.

¹²⁷ See the testimony of an intelligence officer, Senior NSA official No. 2, 9/17/75, p. 8.

approval of the interception of all Governmental traffic entering the United States, leaving the United States, or transiting the United States, and make the necessary arrangements for this photographic intercept work.¹²⁸

They first approached an official at ITT, who "very definitely and finally refused" to agree to any of the Army proposals. The Army representatives then approached a vice president of Western Union Telegraph Company, who agreed to cooperate unless the Attorney General of the United States ruled that such intercepts were illegal.¹²⁹

Having succeeded with Western Union, the Army representatives returned to ITT on August 21, 1945, and suggested to an ITT vice president that "his company would not desire to be the only non-cooperative company on this project." The vice president decided to reconsider and broached the matter the same day with the president of the company. The ITT president agreed to cooperate with the Army, provided that the Attorney General decided that the program was not illegal.¹³⁰

These Army representatives also met with the president of RCA on August 21, 1945. The RCA president indicated his willingness to cooperate, but withheld final approval until he, too, had heard from the Attorney General.¹³¹

After their trip, the Army representatives reported to their superiors that the companies were worried about the illegality of their participation in the program:

Two very evident fears existed in the minds of the heads of each of these communications companies. One was the fear of the illegality of the procedure according to present FCC regulations. In spite of the fact that favorable opinions have been received from the Judge Advocate General of the Navy and the Judge Advocate General of the Army, it was feared that these opinions would not hold in civil court and, as a consequence, the companies would not be protected. If a favorable opinion is handed down by the Attorney General, this fear will be completely allayed, and cooperation may be expected for the complete intercept coverage of this material. The second fear uppermost in the minds of these executives is the fear of the ACA which is the communications union. This union has reported on many occasions minor infractions of FCC regulations and it is feared that a major infraction, such as the proposed intercept coverage, if disclosed by the Union, might cause severe repercussions.¹³²

Later memoranda by another Army representative who was present indicate that the companies had consulted their corporate attorneys during these three days of discussions, and that their attorneys uniformly advised against participation in the proposed intercept program.¹³³ The company executives were apparently willing to ignore this advice if they received assurances from the Attorney General that he would protect them from any consequences.¹³⁴

¹²⁸ Army Intelligence officer letter to Commanding General, 8/24/45.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Memorandum from Record, Armed Forces Security Agency, "SHAMROCK Operations," 8/25/50.

¹³⁵ *Ibid.*

The new documentary evidence made available to the Committee did not reveal that the Attorney General at that time, Tom C. Clark, actually made the assurances that the companies desired. It is clear, however, that the program began shortly after the August meetings: ITT and Western Union began their participation by September 1,¹³⁶ and RCA by October 9, 1945.¹³⁷

In a letter from the Army Signals Security Agency to the Army Chief of Staff on March 19, 1946, the writer indicates that SHAMROCK was well underway, but that concerns about its legality had not vanished:

It can be stated that both [Western Union and RCA] have placed themselves in precarious positions since the legality of such operations has not been established and has necessitated the utmost secrecy on their part in making these arrangements. Through their efforts, only two or three individuals in the respective companies are aware of the operation.¹³⁸

April 26, 1976, while this report was being printed, DOD informed the Committee that nine additional documents relating to SHAMROCK had been found in the National Archives. The documents revealed that the Office of Secretary of Defense James Forrestal attempted unsuccessfully in June 1948 to have Congress pass an amendment to relax the disclosure restrictions of Section 605 of the Federal Communications Act of 1934. Agencies designated by the President would have been allowed to obtain the radio and wire communications of foreign governments. If the amendment had passed, the SHAMROCK program, as it was originally conceived, would have been authorized by law.

The proposed amendment sought to allay concerns of the companies on the legality of their participation in SHAMROCK. The companies were demanding assurances in 1947 not only from the Secretary of Defense and the Attorney General, but also from the President that their participation was essential to the national interest and that they would not be subject to prosecution in the Federal Courts. Secretary Forrestal, who stated he was speaking for the President, gave ITT and RCA representatives these assurances at a December 16, 1947, meeting in Washington, D.C.¹³⁹ Forrestal warned, however, that the assurances he was making could not bind his successors in office.¹⁴⁰

Representatives of Western Union were not present at this meeting. Documents made available to the Committee indicate that the President and Operating Vice President of Western Union were briefed in January 1948 on the earlier meeting with RCA and ITT.¹⁴¹

In early June 1948, the Chairmen of the Senate and House Judiciary

¹³⁶ Army intelligence officer letter to Commanding General, 8/24/45. The armistice ending hostilities between the United States and Japan was signed in Japan on September 2, 1945 (September 1 in the United States).

¹³⁷ Letter from a senior official at RCA Global, Inc., to the Army Signal Security Agency, 10/9/45.

¹³⁸ Letter from Assistant Chief of Staff, Army Signals Security Agency, to the Army Chief of Staff, "Letters of Appreciation," 8/10/46. This letter transmitted letters of appreciation that were to be forwarded to two of the participating companies.

¹³⁹ Andrews, 9/23/75, p. 34 (referring to documents in his possession). These documents were examined by the Committee. Select Committee memorandum, 9/17/75, "Review of Documents at DoD Regarding LPMEDIAV."

¹⁴⁰ Andrews, 9/23/75, p. 40.

¹⁴¹ Select Committee memorandum, 11/5/75, "Persons at 1947 and 1948 SHAMROCK Meetings" (describing a handwritten note to this effect).

Committees were informed of the Government's need for a relaxation of Section 305 and of its position with the telegraph companies. The delicacy of the problem and the top secret nature of the information were made clear to these two Chairmen. The amendment was considered in an executive session of the Senate Judiciary Committee on June 16, 1948, and approved. Since support for the bill was not unanimous, however, the Committee voted to leave it to the Chairman's discretion whether or not to release the bill to the Senate floor. The representative of the Secretary of Defense then told the Senate Judiciary Chairman that "we did not desire an airing of the whole matter on the Floor of the Senate at this late date in the session." The bill apparently was not reported out.

A Defense Department official expressed the view that the thought a great deal had already been accomplished and that the administration had sufficient ammunition to be able to effect a continuation of the present practices with the companies. Apparently no other statutory attempts were made to authorize the companies' participation in SHAMROCK.

The companies sought renewed assurances from Forrestal's successor, Louis Johnson, in 1949. Johnson told them that the President and Attorney General had been consulted and had given their approval.¹⁴⁵ To the knowledge of those interviewed by the Committee, this was the last instance in which the companies such assurances from the Department of Defense.¹⁴⁶

Dr. Louis Tordella, who was NSA Deputy Director from 1958 until 1974 and the NSA official with chief administrative responsibility for SHAMROCK, testified that to the best of his knowledge, no President since Truman knew of the program. He "was not sure" whether any Attorney General since Tom Clark had been informed of it, or if succeeding Secretaries of Defense were aware of it. Tordella stated he briefed former Secretary of Defense Schlesinger about the SHAMROCK operation in the summer of 1973.¹⁴⁸

The Army Signals Security Agency controlled the collection program until 1949, when the Armed Forces Security Agency was formed. Responsibility for the program passed from AFSA to the National Security Agency when it was created in 1952.¹⁴⁷

D. The Participation of the Companies

None of the telegraph companies could find any record of an agreement with NSA or its predecessors wherein the companies would provide copies of telegrams to the Government,¹⁴⁹ or which reflected anything about arrangements with NSA. No one interviewed by the Committee had any recollection or knowledge that the Government had

¹⁴⁵ Andrews, 9/28/75, p. 34.

¹⁴⁶ *Ibid.*, p. 40.

¹⁴⁷ *Ibid.*, p. 34.

¹⁴⁸ Andrews, 9/28/75, p. 40; Tordella, 9/21/75, p. 19.

¹⁴⁹ Tordella, 9/21/75, pp. 32-34. Tordella did state that he thought former NSA Director Noel Gayler had informed Attorney General John Mitchell about SHAMROCK in 1970 (*Ibid.*, p. 38); Mitchell, however, did not recall being informed about the operation (Mitchell, 10/3/75, pp. 47-48). Tordella stated that he was "quite sure" former Secretary of Defense Laird had known of the SHAMROCK program (Tordella, 9/21/75, pp. 33-34).

¹⁵⁰ Tordella, 9/21/75, p. 34; senior NSA official No. 4, 9/28/75, p. 47.

¹⁵¹ Staff summaries of interviews with Counsel, RCA Global, Inc., 10/9/75, p. 3; Counsel, ITT World Communications, Inc., 10/9/75, p. 1; Counsel, Western Union International, Inc., 10/10/75, p. 1.

given the companies specific assurances to ensure their cooperation in 1945, 1947, 1949, or at any time thereafter.¹⁴⁹

Apparently only a few people in each company—apart from those who physically turned over the materials—had any knowledge of the NSA arrangement.¹⁵⁰ These were primarily mid-level executives charged with the operational aspects of the companies' business. All assumed that the arrangement was valid when it was made and thus continued it. No witness from the telegraph companies recalled that there had ever been a review of the arrangements at the executive levels of their respective companies.

Furthermore, none of the participating companies was apparently aware that information other than foreign traffic was extracted from the messages they were providing.¹⁵¹ Yet no official at any of the three companies could recall his company asking NSA what it was doing with the information it was furnished and, specifically, whether NSA was reading the telegrams of the companies' American customers.¹⁵²

Finally, both the telegraph companies and NSA deny that the companies ever received anything for their cooperation in SHAM ROCK, whether in the form of compensation or favoritism from the Government. All claim they were motivated by purely patriotic considerations.¹⁵³

If there were similarities as to their involvement in SHAM ROCK, the participation of each company varied in practice.

1. RCA Global

According to a memorandum prepared by Army representatives, RCA (the parent company of RCA Global) agreed in August 1945 to allow Army personnel, who were to be dressed in civilian clothes, to photograph foreign traffic passing over its facilities in New York, Washington, and San Francisco. The memorandum further provided that "only the desired traffic will be filmed."¹⁵⁴

The company official at RCA Global who was charged with implementing the SHAMROCK program testified that several alternatives were discussed with Army representatives. He stated that the Army had first proposed tapping into the company's overseas lines, but the official rejected this idea as unfeasible. The Army representatives then proposed that company employees sort out pertinent traffic and turn it over to them; the official rejected this because he did not want company employees involved. The RCA official finally agreed to provide paper tapes of all international message traffic. It was understood that these messages would be sorted manually by persons from the Army Signals Security Agency on the company's premises, and that only

¹⁴⁹ Testimonies of former vice president, RCA Global, 10/9/75, pp. 17-18, and senior officer, ITT World Communications, Inc., 10/15/75, p. 6; and affidavit of senior officer, Western Union International, 10/10/75, p. 1.

¹⁵⁰ Counsel, RCA Global, 10/9/75, p. 2; counsel, ITT World Communications, 10/9/75, pp. 1-2; and counsel, Western Union International, 10/10/75, p. 3 (staff summaries).

¹⁵¹ Former vice president, RCA Global, 10/17/75, p. 13; senior officer, ITT World Communications, 10/15/75, p. 12.

¹⁵² Senior officer, ITT World Communications, 10/15/75, p. 12. See also testimony of senior officer, RCA Global, Inc., 10/10/75, p. 19. RCA Global and ITT World Communications were, by the mid-1960s, providing NSA all of their outgoing telegraph traffic on magnetic tapes.

¹⁵³ Senior officer, RCA Global, 10/10/75, p. 28; senior officer, ITT World Communications, 10/15/75, p. 14; counsel, Western Union International, 10/10/75, p. 2 (staff summary).

¹⁵⁴ Army intelligence officer letter to Commanding General, 8/24/45.

certain foreign traffic would be selected. There was never a written agreement to this effect, however, according to the former official.¹⁵⁵

In New York, Army representatives were given office space in the area where the paper tapes of RCA Global's international message traffic were sorted manually for foreign traffic. Messages of interest were transmitted over teletype machines located in that office space.¹⁵⁶

In Washington and San Francisco, Army agents were permitted to pick up copies of foreign messages, which they took to another office for microfilming.¹⁵⁷ By 1960, a Recordak (microfilm) machine was placed in the New York office and was used to film messages of intelligence interest.¹⁵⁸

This arrangement continued without substantial disruption until 1963, when RCA Global began to store its message traffic on magnetic tapes. NSA made arrangements to obtain copies of these tapes from the RCA Global facilities in New York—they were taken "on loan," copied, and returned, the same day if possible. Gradually, magnetic tapes began to supersede paper tapes and microfilm as a means of storing messages. By 1966, the New York office was turning over only magnetic tapes to NSA.¹⁵⁹ The offices in Washington and San Francisco, however, continued to furnish copies of international message traffic for microfilming by NSA. RCA Global employees in Washington, D.C. were under the impression they were providing information only to the FBI.¹⁶⁰

2. ITT World Communications

In August 1945, ITT agreed to allow the Army access to all incoming, outgoing, and transiting messages passing over the facilities of its subsidiaries involved in international communications. It was agreed that "all traffic will be recorded on microfilm, that all Governmental traffic will be recorded on a second microfilm in addition to the original one, that these films will be developed by the SSA [Signals Security Agency], and the complete traffic will be returned to ITT."¹⁶¹

It is not clear whether these arrangements, agreed to at the outset, were actually implemented in the manner described. The ITT official with the earliest recollections of the program could recall only that by the early 1950s, ITT World Communications was providing NSA representatives with copies of the company's international message traffic, which NSA then sorted and microfilmed.¹⁶²

When ITT World Communications began to use paper tapes to transmit its messages, these were turned over to NSA as well.¹⁶³ It is not clear whether these tapes were transmitted from the premises of

¹⁵⁵ Former vice president, RCA Global, 10/17/76, pp. 5-7.

¹⁵⁶ *Ibid.*, pp. 7-8, 11.

¹⁵⁷ Telegram from an AFSA officer to an AFSA officer, "RCA SHAMROCK," 6/24/51.

¹⁵⁸ Senior officer, RCA Global, 10/19/76, p. 4.

¹⁵⁹ *Ibid.*

¹⁶⁰ Van Ripper, "Find U.S. Agents Spy on Embassies' Cables," *New York Daily News*, 7/22/76.

¹⁶¹ Army intelligence officer letter to Commanding General, 8/24/45.

¹⁶² Senior officer, ITT World Communications, 10/15/76, pp. 7-8.

¹⁶³ *Ibid.*, p. 8. A senior officer of ITT World Communications stated that he had no personal knowledge that paper tapes had been turned over to NSA; however, NSA confirmed that it had received paper tapes from ITT (testimony of Senior NSA official No. 4, 9/23/76, pp. 40-61). Counsel for ITT World Communications also told the Committee that his investigation had revealed that the company was providing paper tapes to NSA. (Counsel, ITT World Communications, 10/9/76, p. 1 (staff summary).)

ITT World Communications to another location (as with RCA Global) or whether they were simply transported to NSA for sorting.

When ITT World Communications began to use magnetic tapes to store its incoming and outgoing messages—the best recollection of this change places it around 1965¹⁶⁴—the magnetic tapes were turned over to NSA for duplication. They were returned to the company on the same day. By 1968, ITT World Communications was turning over only its magnetic tapes to NSA.¹⁶⁵

The Washington and San Francisco offices of ITT World Communications participated in a similar fashion. In Washington, however, company officials believed that they were providing the telegrams to the FBI, rather than NSA.¹⁶⁶ It is clear from the information made available to the Committee that the Washington messages were sent to NSA.¹⁶⁷

3. Western Union International

At the August 1945 meeting between Army representatives and the Western Union Telegraph Company (the parent company of Western Union International), the company stated that it

desired that Western Union personnel operate the [microfilm] camera and do all the actual handling of the messages. It was agreed that [the Army Signal Security Agency] would furnish the necessary cameras and film for the complete intercept coverage of Western Union traffic outlets. The film, after exposure, will be delivered [to the office of a company vice-president], at which place an officer from the Signal Security Agency, in civilian clothes, will pick it up.¹⁶⁸

The company agreed to implement this arrangement at its New York, San Francisco, Washington, and San Antonio facilities.¹⁶⁹

This arrangement was apparently implemented as originally agreed. In New York, at least, company employees segregated such messages and processed them through a microfilm machine on the transmission room floor.¹⁷⁰ At approximately 4:00 each morning, an NSA courier would come to the floor to pick up the microfilm cartridge. In San Antonio, an Army signal officer from Ft. Sam Houston was tasked with picking up the microfilm each day.¹⁷¹

It appears that Western Union turned over to NSA only its telegraph traffic to one foreign country. Approached in 1959 by persons who identified themselves as being from Ft. Holabird, Maryland (Army intelligence), Western Union agreed to allow them to duplicate the traffic going to a particular country.¹⁷² In 1970, the company also began to provide copies of messages going to a particular city within that country which were not being duplicated as part of the previous arrangement.¹⁷³ These messages were apparently sorted by

¹⁶⁴ Senior officer, ITT World Communications, 10/15/75, p. 8.

¹⁶⁵ Letter from an NSA courier to an NSA official, 1/28/68.

¹⁶⁶ Counsel, ITT World Communications, 10/9/75, p. 2 (staff summary).

¹⁶⁷ Tordella, 9/21/75, pp. 86-87.

¹⁶⁸ Army intelligence officer letter to Commanding General, 8/24/45.

¹⁶⁹ *Ibid.*

¹⁷⁰ Counsel, Western Union International, 10/10/75, p. 1 (staff summary).

¹⁷¹ Memorandum for Record, Armed Forces Security Agency, "SHAMROCK Operations," 8/25/50.

¹⁷² Counsel, Western Union International, 10/10/75, p. 2 (staff summary).

¹⁷³ *Ibid.*

NSA personnel in space provided by Western Union at its New York offices.¹⁷⁴

Western Union International (which was formed in 1963) continued to microfilm certain foreign traffic for NSA until about 1965, when a company executive discovered the existence of the microfilm machine on the transmission room floor. After ascertaining its purpose, he demanded that NSA review its request to have this information in writing. He recalled that instead of submitting such a request, NSA simply had the machine removed.¹⁷⁵ This recollection, however, was not borne out by documents furnished by NSA. The documents showed that on February 2, 1968, a company vice president (not the one referred to above) had discovered the existence of NSA's Recordak (microfilm) machine in the Western Union transmission room. The machine was reported to the company president, who directed his employees to find out to whom the machine belonged and what the basis for the arrangement was. The NSA courier, when asked these questions by a Western Union International official on February 9, 1968, replied that he was from the Department of Defense and did not know what the basis for the arrangement was or what was being done with the microfilm being furnished.¹⁷⁶ Yet the documents do not reflect whether the Recordak machine was removed, either in 1965 or in 1968.

It is clear that NSA continued to receive duplicates of all messages to the foreign country referred to above until 1972; when again as a result of "discovery" by company officials, this procedure was halted. Although the original request for this intercept procedure had been made by "Holabird people" (Army intelligence), when the company attempted to contact someone regarding its termination, it was ultimately referred to NSA.¹⁷⁷

Finally, Western Union International, unlike its competitors, never utilized magnetic tapes to store its message traffic. Accordingly, none was ever provided NSA.¹⁷⁸

In effect, Western Union International's participation in SHAM ROCK ended by 1972.¹⁷⁹

E. NSA's Participation

1. Origins and Early Development

From 1962 (when NSA first inherited the SHAMROCK sources) until 1968, microfilm and paper tapes originating with the sources were brought to NSA's headquarters at Ft. Meade, Maryland several times a week.¹⁸⁰ As noted above, some of these had undergone initial screening, either by NSA operatives or company employees. Even with this preliminary screening, however, the volume of messages which reached NSA daily was apparently quite large.¹⁸¹

¹⁷⁴ *Ibid.*

¹⁷⁵ Affidavit of senior officer, Western Union International, Inc., 10/10/75, p. 1.

¹⁷⁶ Letter from an NSA courier to an NSA official, 2/9/68.

¹⁷⁷ Counsel, Western Union International, 10/10/75, p. 2 (staff summary).

¹⁷⁸ *Ibid.*, p. 8.

¹⁷⁹ Tordella, 9/21/75, p. 53.

¹⁸⁰ Tordella, 10/21/75, p. 17.

¹⁸¹ A former NSA official testified that NSA had received "literally miles and miles and miles of punched tape." 10/28/75, p. 40.

Several witnesses have told the Committee that during this period the sheer volume of traffic would have likely prohibited the selection of messages on the basis of content.¹⁸² Messages which were selected out were passed on to NSA analysts, who screened them further.

2. *The Switch to Magnetic Tape*

The character of the SHAMROCK operation changed markedly with the use of magnetic tape. RCA Global was the first company to begin using such tape in the early 1960s.¹⁸³ NSA was notified of the changeover in early 1963 and, by 1964, was able to sort electronically the information provided by RCA Global against its selection criteria. This is significant because it meant that the telegrams of citizens whose names were on NSA's "watch list" could be selected for processing by NSA analysts.

From 1964 until 1966, magnetic tapes from RCA Global were brought to Ft. Meade daily and returned to New York the same day.¹⁸⁴ By 1965, ITT World Communications had also begun its changeover to magnetic tapes and was beginning to provide traffic in this form to NSA messengers.¹⁸⁵

3. *CIA Cover Support*

To alleviate the administrative burden entailed by these daily round-trips, NSA in 1966 sought to find a place in New York City where the tapes could be duplicated.¹⁸⁶ NSA Deputy Director Tordella requested that the CIA provide "safe" space where this operation could be conducted. The CIA agreed to rent office space in lower Manhattan, under the guise of a television tape processing company, where the tape duplication process could be carried out.¹⁸⁷ CIA designated this project "LPMEDLEY."

The cover support began in November 1966 and lasted until August 1973, when CIA terminated its part of the program.¹⁸⁸ Tordella was told that the CIA General Counsel was "concerned about any kind of operation in which the CIA was engaged in the continental United States. Regardless of whether CIA was doing anything so small as renting an office, he said 'get out of it.'" ¹⁸⁹ NSA subsequently moved its duplicating operation to new office space in Manhattan, where it remained until SHAMROCK was terminated in 1975.¹⁹⁰

4. *Control of the Program*

Numerous NSA employees were aware of SHAMROCK, but responsibility for its conduct rested only with the Director, Deputy Director, and one lower-level managerial employee.¹⁹¹ Throughout the program's existence, only two individuals occupied this lower-level

¹⁸² See Tordella, 10/21/75, p. 20; testimony of former NSA official, 10/23/76, pp. 49-50.

¹⁸³ Staff summary of interview with NSA official No. 5, 10/24/75, p. 1.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ Tordella, 10/21/75, pp. 23-24; Senate Select Committee memorandum, "Review of CIA Documents re LPMEDLEY," 9/17/75.

¹⁸⁷ *Ibid.*

¹⁸⁸ Letter from an NSA courier to an NSA official, 11/27/66.

¹⁸⁹ Tordella, 10/21/75, p. 88.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*, p. 41.

managerial position: the first between 1952-1970; the other from 1970-1975.¹⁹²

The manager was instructed to report directly to the Deputy Director of NSA regarding any problems with the companies. As a routine matter, this individual was in charge of the NSA couriers who traveled between New York and Ft. Meade; he usually received information regarding the SHAMROCK operation from these couriers rather than from the companies. The individual who held this position between 1952-1970 told the Committee that he met with company officials on only two occasions during this time, and both meetings were perfunctory.¹⁹³

Both of the NSA employees who acted as liaison with the companies confirmed to the Committee that the companies had never asked what NSA was extracting from the materials provided, and that NSA had never volunteered this information. Neither of the lower-level employees knew what NSA did with the materials; they stated that the messengers who worked under them also had no knowledge of what was sorted from the telegrams.¹⁹⁴ It seems clear, therefore, that the companies never learned that NSA sorted anything except foreign traffic from the telegrams that the companies provided NSA.

Since none of the companies (treating them as separate from their parent corporations) engage in domestic communications, they could not have provided NSA with domestic traffic. The Committee has no evidence to show that NSA has ever received domestic telegrams from any source.

5. Consideration of SHAMROCK in Connection with the Huston Plan

Former NSA Deputy Director Tordella told the Committee that in 1970, in connection with the Huston plan,¹⁹⁵ the principals involved in this project—Helms of CIA, Sullivan of the FBI, Bennett of DIA, and Gayler of NSA—discussed the feasibility of the FBI's taking over the SHAMROCK program in order to obtain more information on internal unrest. The FBI did not want the responsibility, according to Tordella, and NSA did not want to jeopardize its own working relationship with the companies.¹⁹⁶ The idea was therefore dropped.

F. Termination of SHAMROCK

Operation SHAMROCK terminated on May 15, 1975, by order of Secretary of Defense James Schlesinger.¹⁹⁷ NSA claims that the program was terminated because (1) it was no longer a valuable source of foreign intelligence, and (2) the risk of its exposure had increased.¹⁹⁸

¹⁹² Staff summaries of interviews with NSA official No. 5, 10/24/75, p. 1; and former NSA employee, 10/24/75, p. 1.

¹⁹³ Former NSA employee, 10/24/75, pp. 1-2 (staff summary).

¹⁹⁴ *Ibid.* See also NSA official No. 5, 10/24/75, p. 2 (staff summary).

¹⁹⁵ The formulation and content of the Huston Plan are described in the Committee's report: "National Security, Civil Liberties, and the Collection of Intelligence: A Report on the Huston Plan."

¹⁹⁶ Tordella, 10/21/75, pp. 34-35, 47-48.

¹⁹⁷ Staff summary of interview with senior NSA official No. 3, 9/17/75, p. 1.

The Committee also reviewed a handwritten memorandum from the Director of NSA, Lt. Gen. Lew Allen, Jr., dated May 12, 1975, which states that the Secretary of Defense had decided that SHAMROCK should be terminated, effective May 15, 1975.

¹⁹⁸ Senior NSA official No. 3, 9/17/75, p. 3.

IV. NSA PERSONNEL SECURITY AND RELATED MATTERS

The Committee investigated the NSA Office of Security to examine personnel security activities which may have been conducted in an overzealous and, possibly, unlawful manner. These activities are not part of NSA's two primary missions—the collection of signals intelligence and the protection of United States communications. Although this subject area is more narrow than others investigated by the Committee, there are similarities involving the protection of both the rights of citizens and the national security.

A. Background

The NSA Office of Security is responsible for safeguarding the security of NSA facilities, operations, and personnel, and for protecting classified materials from unauthorized disclosure. This Office also administers NSA's security clearance program and investigates suspected breaches of security by NSA employees. The CIA's Office of Security performs the same functions for that Agency.

Personnel in the NSA Office of Security are quick to point out that substantial intangible differences exist between the role of the CIA and NSA Offices of Security. In recent years, the NSA Office has not enjoyed the same high status within NSA that the CIA Office has had within its own organization. At least two factors appear to contribute to this difference. First, the work of an Office of Security investigator bears no similarity to that performed by the professionals conducting signals intelligence and communications security activities, which comprise the heart of NSA. Second, during the 1950s and 1960s, personnel security programs at NSA suffered some widely publicized failures, resulting in both prosecutions for espionage and actual defections to the Soviet Union by NSA employees.

These factors have impelled the Office in conflicting directions. On the one hand, its personnel are not expected, and ordinarily do not tend, to take actions on their own initiative that would exceed the normal bounds of keeping the Agency reasonably secure. On the other hand, failures in personnel security have occasionally generated intense public pressure (especially from the House Committee on Un-American Activities) to take extraordinary measures to protect that security.

A fair analysis of the incidents listed below, all of which are of dubious legality or propriety, requires an awareness of these dynamics. Like other Government officials, personnel in the Office of Security must be held responsible for their actions. Yet, like most people in the United States, they have been greatly sensitized by the Watergate scandal and the recent congressional investigations of the intelligence community to the need to protect civil liberties against dangerous encroachments in the name of "national security." In this section we disclose certain aberrations from that sensitivity, in the confidence that this disclosure will encourage its growth.

B. Questionable Activities

1. NSA Office of Security: Access to Files on American Citizens

From NSA's inception in 1952 until October 1974, a unit of the Agency outside the Office of Security maintained a large number of files on American citizens. At the time of the destruction of these

records, approximately 75,000 United States citizens were included. Unlike CIA's Operations CHAOS, these files were not created for the purpose of monitoring the activities of Americans, but for carrying out NSA's legitimate foreign intelligence mission.¹⁹⁹

Many circumstances could contribute to the creation of such a file, perhaps the most frequent being the mere mention of an American citizen's name in a communication intercepted by NSA. The files also included reports from other intelligence agencies, such as the CIA and military intelligence units, which mentioned the name of the citizen and were routinely forwarded to NSA. Materials from open sources, such as newspapers, were also in the files.

Until the files were destroyed, the Office of Security was often supplied with information from them when it was conducting background investigations on applicants for employment at NSA or when other persons were being considered for clearances to receive intelligence gathered by NSA. In effect, this meant that the Office of Security was a beneficiary of the vast communications intelligence apparatus of the entire Agency, a resource which is on an entirely different order of sophistication than the wiretapping capability of any police or security force in the nation.

(a) *CIA Access to NSA Files.*—The NSA files contained entries on many prominent Americans in business, the performing arts, and politics, including members of Congress. Although the Committee has no reason to believe that any person at NSA used them improperly, it has learned that for at least 13 years, one or more employees of the CIA worked full-time in these files, retrieving information for the CIA without any supervision from NSA. One of these CIA employees recalled, with varying degrees of certainty, checking in these files for the names of various well-known civil rights, antiwar, and political leaders.

It is likely, although the Committee is not in a position to so state, that some of the information obtained from NSA found its way into Operation CHAOS.²⁰⁰

NSA did not develop these files for any sinister reason. They were useful in many ways to conducting successfully NSA's legitimate communications intelligence functions. Nevertheless, the fact that CIA personnel used the files without NSA supervision to gather information on American citizens—during a period when the CIA was engaged in unlawful domestic activities aimed against many of those same citizens—illustrates the danger of maintaining such files. The massive centralization of this information creates a temptation to use it for improper purposes, threatens to "chill" the exercise of First Amendment rights, and is inimical to the privacy of citizens.

(b) *Destruction of Files.*—The Committee was informed by NSA that the files on American citizens were destroyed in 1974. At that time, a centralized information storage system for foreign names was set up in the intelligence community. This reorganization provided the impetus for a re-evaluation of the files on American citizens, and a consensus was reached that their usefulness did not justify the costs in time, money, and storage space.

¹⁹⁹ For a detailed discussion see the Committee's report on Operation CHAOS.

²⁰⁰ Testimony of a CIA employee, 7/25/76, pp. 17, 25.

2. Failure to Purge "Suitability Files"

Like other Federal agencies, NSA maintains "suitability files" concerning its employees. These files, which are held by the Office of Civilian Personnel, constitute an interface between that Office and the Office of Security. The latter provides information to these files and has access to them. These files contain highly personal information which might show the kind of unreliability or vulnerability of an employee which could lead to compromises of classified information. According to NSA, the purpose of these files is to aid the Agency in providing counseling and other forms of assistance to individuals with personal problems, not to threaten or damage such employees. The Committee has no reason to believe that the information in these files has been misused. During its investigation, the Committee reviewed 50 of these files, selected on a random basis, with the names of all individuals deleted.

Since the information stored in these files is so personal, it seems reasonable to expect that its retention would be kept to the minimum necessary for the purposes of these files. Unfortunately, this policy does not seem to have been observed in the past. Much of the information is either many years old or simply irrelevant to the suitability of an individual for employment.

If a systematic effort had been made periodically to review these files and purge them of inappropriate or dated information, such notations would probably have been eliminated long ago. The establishment of such a system has now been undertaken by NSA. Although persons in sensitive positions at agencies such as NSA may be expected to sacrifice some degree of privacy to the need to protect national security, that sacrifice must be kept within reasonable bounds.

A related question is the access of employees to their own files. NSA regulations provide: "In no instance will employees be given access to their own Suitability File."²⁰¹ Nevertheless, with the recent implementation of the Privacy Act, employees may ask for, and be granted, access to their files. Since the Committee found that these files sometimes contain unsolicited and unsubstantiated statements from neighbors, spouses, and others, the Privacy Act should result in much of this information being purged.

3. Files on Nonaffiliates of NSA Who Publish Writings Concerning the Agency

The Office of Security maintained files on two individuals who have published materials describing the work of the National Security Agency. In one case, the relevant writings were published in the late 1960s; in the other case, much more recently.

By the time of the second case, NSA had gained some experience in dealing with publicity. The file on this person consisted mainly of checks with other Federal agencies to determine what information they possessed concerning the author, and the results of various internal NSA inquiries as to where the author might have obtained information. Nevertheless, the Office of Security did submit the author's name for inclusion on the NSA watch list. There is no evidence that this submission resulted in the dissemination of any international messages sent or received by the author.

²⁰¹ NSA Personnel Management Manual (NSAPMM), Section 2-7(c) (2).

In the earlier case, the Agency appears to have overreacted. NSA had learned of the author's forthcoming publication and spent innumerable hours attempting to find a strategy to prevent its release, or at least lessen its impact. These discussions extended to the highest levels of the Agency, including the Director, and resulted in the matter being brought to the attention of the United States Intelligence Board.

In the course of these discussions, possible measures to be taken against the author were considered with varying degrees of seriousness. The Director suggested planting disparaging reviews of the author's work in the press, and such a review was actually drafted. Also discussed were: purchasing the copyright of the writing; hiring the author into the Government so that certain criminal statutes would apply if the work were published; undertaking "clandestine service applications" against the author, which apparently meant anything from physical surveillance to surreptitious entry; and more explicit consideration of conducting a surreptitious entry at the home of the author. To the credit of those involved, none of these measures were carried out.

Other steps, however, were taken. The author's name was placed on the NSA watch list and various approaches were made to his publisher. The publisher submitted a manuscript of the work to the Department of Defense, apparently without the author's permission. Despite requests from NSA to halt publication or to make extensive deletions, publication took place with only minor changes, to which the author had agreed.

The most remarkable aspect of this entire episode is that the conclusion reached as a result of NSA's review of this manuscript was that it had been written almost entirely on the basis of materials already in the public domain. It is therefore accurate to describe the measures considered by NSA and USIB as an "overreaction."

4. Other Files Maintained by the Office of Security

Although the Office of Security does not maintain files today on persons not affiliated with the Agency, it has done so in the past. The Agency describes these files in the following terms:

The maintenance of these files began in the late 1950s. In early 1974, approximately 2800 files concerning nonaffiliated organizations and personnel were destroyed in accordance with DOD Directive 5200.27. The files consisted of reports from the FBI and other intelligence, security and federal agencies as well as state and municipal agencies who maintained such records. Information was also obtained from the congressional records of the House Committee on Un-American Activities, and open source, commercial publications. These files were retained primarily as a reference source for security education purposes, as an aid to our personnel security process and to provide assessment regarding the vulnerability of this Agency to foreign intelligence activities and extremists activities which posed a threat to the NSA mission, functions and property.

Of the 2800 files which were accumulated, the great majority concerned foreign controlled and subversive organizations cited by the Attorney General of the United States.

These organizations were those advocating the overthrow of the U.S. Government, and the violent disruption of the orderly process of government, etc. The small percentage of files maintained on individuals concerned suspected espionage agents, extremists, anarchists, e'c. These persons were both U.S. and foreign citizens.²⁰²

DOD Directive 5200.27 was first issued in March 1971, and it greatly restricted the discretion of Department of Defense units to retain such files. The Directive stated, however, that it was "not applicable to the acquisition of foreign intelligence information or to activities involved in ensuring communications security."²⁰³ NSA's General Counsel interpreted this language as exempting NSA from the coverage of the Directive, and was supported in this opinion by a Deputy General Counsel in the Department of Defense.²⁰⁴ Only in 1973 was NSA informed by the Defense Investigative Review Council (DIRC) that some of its activities were subject to the Directive. Once this was established, NSA took steps to comply, which included destruction of of the 2800 files.²⁰⁵

In April 1973, the DIRC conducted an unannounced inspection of the NSA Office of Security to ascertain its compliance with DOD Directive 5200.27. Although substantial compliance was found, the DIRC did note that the Office still maintained three files with some questionable entries. These files concerned "threats" to NSA functions and property; characterizations of organizations; and unsolicited inquiries and "cranks."²⁰⁶ Since the time of the DIRC report, NSA has drastically reduced the amount of materials in these files.

The Committee did obtain from NSA copies of the files as they existed at the time of the DIRC inspection. As the DIRC report noted, the first two of these files contained some questionable entries. At the time of the inspection, the "threat" file still contained extensive information on a peaceful demonstration of less than 40 persons near NSA headquarters in 1974. Similarly, the "characterizations" file reflects the fact that in the past the Office of Security would prepare a characterization of almost any organization that an NSA employee wanted information about before joining it or otherwise becoming involved. The characterizations were prepared largely on the basis of NSA's own files and from information supplied by other agencies.

It appears that DOD Directive 5200.27 and its enforcement through the DIRC mechanism are functioning effectively at this time to prevent the excessive accumulation of files on American citizens.

5. Office of Security Participation in Watch List Activity.

In his testimony before the Committee, NSA Director, General Lew Allen, Jr., detailed the efforts made by the Agency to intercept communications to and from certain American citizens from the late 1960s until 1973.²⁰⁷ Not all of the names "watch listed" under this program

²⁰² NSA Response, 8/25/75, p. 4.

²⁰³ DOD Directive 5200.27, 3/1/71, section II.B. See the Committee's report: "Improper Surveillance of Private Citizens by the Military," for a detailed discussion of this directive.

²⁰⁴ *Ibid.*

²⁰⁵ NSA Response, 8/25/75, p. 1.

²⁰⁶ *Ibid.*, Tab 3, p. 6.

²⁰⁷ Hearings, Vol. 5, pp. 1-40.

were submitted to NSA from the outside. The Office of Security also submitted approximately 13 names for monitoring.

Of these names, 11 had some present or past affiliation with NSA. Each of these 11 individuals had either defected to the Soviet Union, been convicted of espionage, were suspected of some other connection to an unfriendly power, or had made threats against NSA or its Director. Two of the names were of American citizens not affiliated with NSA. As described earlier, these two persons had published writings in this country about the Agency's activities, causing the Office of Security concern about the possible compromise of classified information.

The Government does have a continuing legitimate interest in the communications of defectors and suspected enemy agents, and should be permitted to intercept such communications if the proper procedures (e.g., a warrant or approval of the Attorney General) are established. The danger in allowing the Office of Security to place names on a watch list is that the decision as to whether the activities of a particular individual are sufficiently suspicious to justify intrusion into the privacy of his communications is left in the hands of an interested party: the Office of Security itself. The inclusion of the names of two persons not affiliated with the Agency—neither of whom was seriously suspected of any intent to aid a foreign power and each of whom was directly exercising First Amendment freedoms—illustrates the tendency of limited infringements of privacy to be extended to an ever-widening scope. Only the involvement of a neutral third party can help safeguard against such extensions.

6. Conventional Electronic Surveillance and Surreptitious Entries

For many years, the Office of Security has scrupulously avoided the use of conventional electronic surveillance off NSA premises. It has neither tapped any telephones nor engaged in any bugging of rooms outside the Agency since 1958.

In the late 1950s, four instances of electronic surveillance without a court order did take place. Three of these incidents transpired at the residences of present or former NSA employees. The fourth occurred in a New York City hotel room occupied by one of those same persons. The subjects of surveillance ranged from persons convicted of espionage activities to persons friendly with diplomatic personnel of unfriendly foreign powers and/or homosexuals. The duration of the coverage varied from a few days to three months.

The technology of the bugging devices used by the Office of Security in the late 1950s was such that they could only be installed by trespassory means. Each of the above instances thus involved a surreptitious entry at the place being bugged. Moreover, the devices were battery operated; in the case of a surveillance lasting three months, periodic re-entries were necessary to charge the batteries powering the device.²⁰⁸

In addition, the Office of Security conducted four surreptitious entries in the early 1960s which were unrelated to electronic surveillance and which did not involve warrants. The entries involved two defectors to the Soviet Union (Martin and Mitchell), an employee suspected

²⁰⁸ Staff summary of an interview with NSA Office of Security official, 8/8/75.

of taking classified documents out of NSA, and an employee who had contact with an embassy of an unfriendly foreign power.

With the passage of many years since these relatively isolated incidents, it is difficult to ascertain the levels at which they were approved. Both past and present Directors of Security at NSA have stated that they would not have taken place without the approval of the person holding that position, and that at the time of these incidents the Director of Security enjoyed such a close working relationship with the Director of NSA that the surveillance would not likely have occurred without the Director's knowledge.²⁰⁹

7. "External Collection Program."

In 1963, after a review of the Office of Security's counterintelligence program by the Office and the Director of NSA, several steps were taken to strengthen the program. Among these was the establishment in October 1963 of an "External Collection Program."²¹⁰ It appears that this "program" was, from its beginning, highly informal. Office of Security personnel had only vague and conflicting recollections as to what it had consisted of or how long it had lasted.

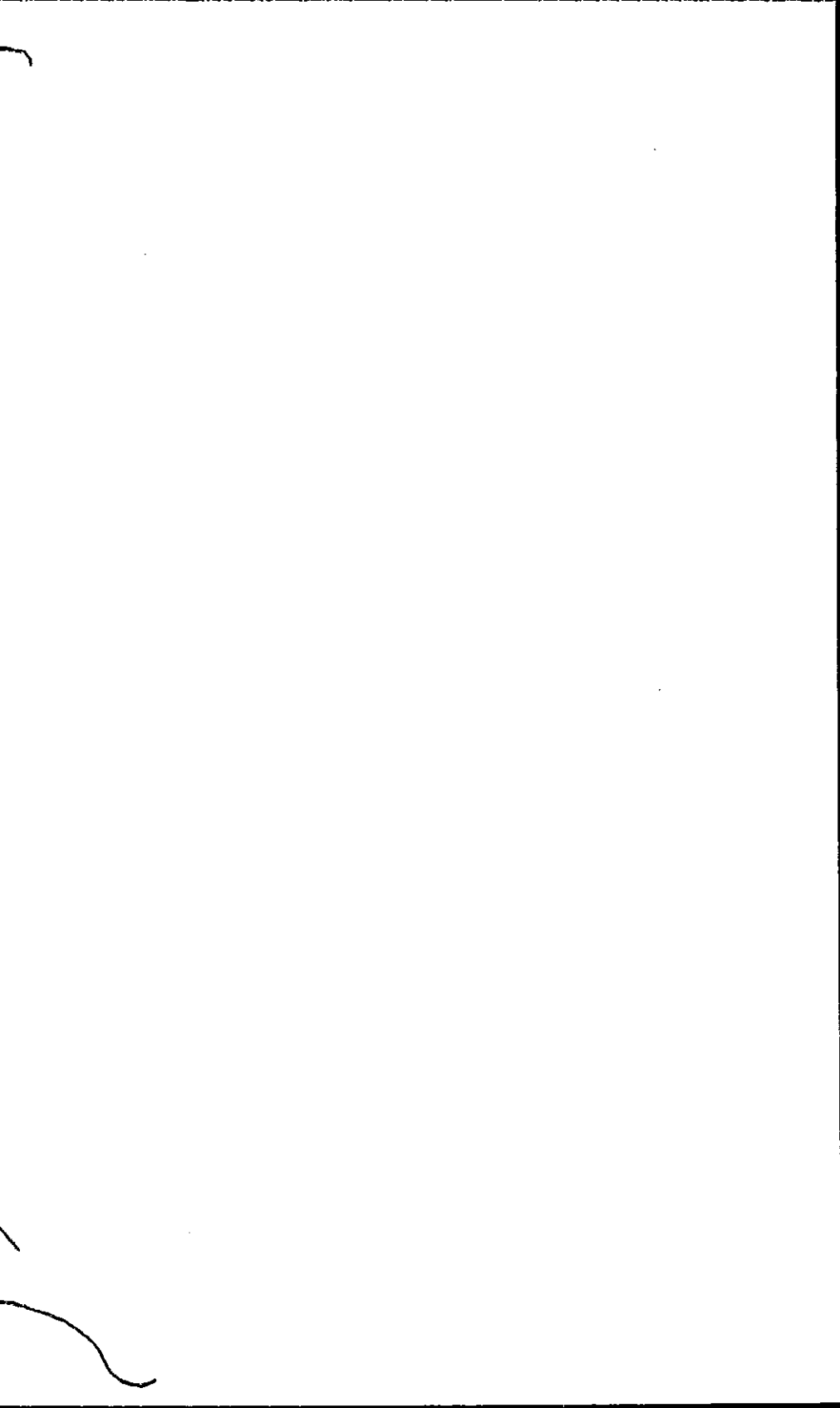
Most did recall that the program included brief periodic visits to bars, restaurants, and other establishments in the vicinity of NSA headquarters by Office of Security personnel. These visits were made to determine where NSA employees gathered after hours, whether they discussed classified information, and whether agents of hostile intelligence services also frequented these locations. The program also involved an effort to encourage persons working in these establishments to report any suspicious incident to NSA and to make the local police aware of the sensitivity of NSA's mission.

Since the revelant documents were destroyed in 1973, the Committee has been unable to establish whether the External Collection Program was used to gather information on persons other than NSA employees and foreign agents. The Office of Security, in fact, soon discovered that it lacked the personnel to carry on such a program, and it died quietly "in approximately 1966-1967."²¹¹

²⁰⁹ Staff summary of an interview with NSA Office of Security official, 8/22/75.

²¹⁰ NSA response of 9/30/75 to Senate Select Committee letter of 9/3/75.

²¹¹ *ibid.*



IMPROPER SURVEILLANCE OF PRIVATE CITIZENS BY THE MILITARY

CONTENTS

	Page
I. Introduction and Summary.....	787
A. Traditional and legal restraints.....	787
B. Summary of improper surveillance activities.....	788
1. Collecting information about the political activities of private citizens and private organizations in the late 1960s.....	789
2. Monitoring private radio transmissions in the United States.....	780
3. Investigations of private organizations considered "threats" by the military.....	790
4. Assisting law enforcement agencies in surveilling private citizens and organizations.....	791
C. Effect of 1971 departmental directive.....	791
D. Issues presented.....	791
E. Conduct and scope of investigation.....	792
F. Organization of report.....	793
II. The Collection of Information About the Political Activities of Private Citizens and Private Organizations: 1965-1970.....	793
A. Legal authorities.....	793
B. Origins and development of the Army's domestic surveillance program.....	794
1. Limited beginnings.....	794
2. The Army's involvement intensifies.....	795
C. The Army's domestic surveillance program.....	798
D. Questionable activities on the part of Army agents.....	800
1. The covert penetration of civilian groups.....	800
2. Posing as newsmen/covert photography.....	801
3. Harassment/disruptive conduct.....	802
4. Maintenance of files on private citizens and private organizations.....	803
E. Termination of the Army's civil disturbance collection program.....	804
III. Monitoring Private Radio Transmissions in the United States: 1967- 1970.....	806
A. Legal authorities and restrictions.....	807
1. Mission of the Army Security Agency.....	807
2. Section 605 of the Communications Act of 1934.....	807
B. Origins of domestic radio monitoring by ASA.....	807
C. Domestic radio monitoring by ASA: 1967-1970.....	808
1. The march on the Pentagon.....	808
2. The King assassination riots.....	809
3. The poor people's campaign in Washington, D.C.....	810
4. The national political conventions of 1968.....	811
5. The Huey Newton trial.....	812
6. Cafe Zipper.....	813
D. The termination of domestic radio intercepts.....	813

	Page
IV. Investigating Civilian Groups Considered "Threats" to the Military:	
A continuing program.....	814
A. Investigations of civilian groups within the United States.....	815
1. Investigations undertaken prior to the 1971 directive.....	815
2. Investigations of civilian groups after the 1971 directive.....	816
a. Antiwar group in San Diego, California.....	816
b. Peace group to Hanoi.....	816
c. Underground newspaper near Travis Air Force Base.....	817
d. Peace group in San Diego, California.....	817
e. Antiwar group in Charleston, South Carolina.....	817
f. White racist group in Charleston, South Carolina.....	817
g. Dissident group in Long Beach, California.....	818
h. Serviceman's Counseling Center in San Diego.....	818
i. Antimilitary group in Charleston, South Carolina.....	818
B. Investigations of civilian groups overseas.....	818
1. Army operations in West Germany and West Berlin.....	819
2. Navy operations in Japan.....	921
V. Assisting Law Enforcement Agencies in Surveillance of Private Citizens and Organizations.....	822
A. Legal authority.....	822
B. Nature of assistance.....	823
1. Collection and exchange of information.....	823
2. Transfer of money and equipment.....	824
3. Participation in law enforcement operations.....	824
4. Participation in interagency intelligence projects.....	824
VI. Current Departmental Restraints Upon Surveillance of Civilians.....	825
A. Curbing past abuses.....	826
1. Preparing for civil disturbances.....	826
2. Monitoring domestic radio transmissions.....	827
3. Investigating "threats" to the military.....	827
4. Assisting law enforcement agencies.....	828
B. Preventing surveillance in the future.....	828
1. Scope.....	828
2. Permitted exceptions.....	829
a. Covert surveillance.....	829
b. Overt surveillance.....	830
c. Electronic surveillance.....	830
d. Retention of files.....	830
3. Implementation and enforcement.....	831
4. Prospects for the future.....	832
VII. Current Statutory Restrictions Upon Military Surveillance.....	833

IMPROPER SURVEILLANCE OF PRIVATE CITIZENS BY THE MILITARY

I. INTRODUCTION AND SUMMARY

The Department of Defense maintains agents and investigators abroad and within the United States to gather foreign intelligence and to perform a variety of investigative tasks.¹ This report describes how these agents and investigators have been used in the past to gather information on the political beliefs and activities of "private citizens"² in violation of their rights or in violation of the legal and traditional restraints which separate the military and civilian realms. It does not cover the monitoring of international communications by the National Security Agency.³

A. Traditional and Legal Restraints

The authors of the American Constitution sought to establish and preserve a clear separation of the military from the civilian realms. An express provision of this effect was suggested by one of the delegates to the Constitutional Convention,⁴ but it was not included in the final version since the Founders considered separation assured by other provisions, such as those which made the Armed Forces subordinate to a popularly-elected President,⁵ and left it to a popularly-elected legislature to "raise and support" them.⁶ As James Madison later wrote: "The Union itself, which [the proposed Constitution] cements and secures, destroys every pretext for a military establishment which could be dangerous."⁷

¹ Within the United States, the Select Committee estimates that there are approximately 5000 DOD personnel involved in the conduct of security clearance, criminal, and counterintelligence investigations. For a discussion of the organization and activities of DOD foreign intelligence and investigative elements, see the Select Committee's Foreign and Military Intelligence Report, Department of Defense, pp. 355-359.

² The term "private citizen," as used in this report, refers to persons and groups of persons, who are neither military nor civilian employees of the Department of Defense, nor employees of civilian contractors of the Department of Defense. How the constitutional rights of this special group of citizens are infringed by the intelligence activities of the Department is, however, a matter deserving of congressional attention and the Select Committee, by this omission, does not intend to discourage such an inquiry in the future.

³ The use of military personnel to monitor international communications to obtain information on civilians and civilian organizations is discussed in the Select Committee's Report on National Security Agency Surveillance Affecting Americans.

⁴ Recommendation of Charles Pickney, submitted August 20, 1787, printed in *The Records of the Federal Convention of 1787*, ed. by Max Farrand (New Haven: Yale University Press, 1966), Vol. 2, p. 340.

⁵ Article II, Section 2, Constitution of the United States.

⁶ Article I, Section (12), Constitution of the United States.

⁷ James Madison, *No. 41, Federalist Papers* (New York: Mentor Books, 1961), p. 258.

The Bill of Rights to the Constitution, adopted in 1791, established additional restraints applicable to all government authority, including the military, by forbidding any exercise of governmental power which infringes upon certain rights of the people,⁹ among them, the right to privacy and the rights to freedom of speech, of the press, of religion, of association, and the right to petition the government.⁹

Despite the separation of the military and civilian realms secured by the Constitution and the guarantee of personal liberties found in the Bill of Rights, Congress has enacted no statute which expressly provides how the military may be used in the civilian community, or more specifically, whether it is prohibited from investigating private citizens and private organizations. Congress did enact the *Posse Comitatus Act* in 1878¹⁰ which forbade using the Army to "execute the law," but this was done to prevent federal marshals from commandeering military troops to help enforce the law, and not to prohibit investigations of civilians by the military.¹¹ Apart from the *Posse Comitatus Act*, only the Privacy Act of 1974¹² appears to serve as a restraint upon military investigators, but even the impact of this statute is uncertain.¹³ It prohibits all federal agencies, including the military, from maintaining records which reflect "how any individual exercises rights guaranteed by the First Amendment."¹⁴ While the Act does not prohibit investigations *per se*, its proscription against maintaining records may, as a practical matter, inhibit them.

This report describes certain past investigative activities of the military which may have exceeded these limitations. It also identifies instances in which military investigators may have violated specific statutes because of the tactics employed in investigations of civilians. It does not attempt to evaluate the foreign intelligence and other investigative activities of the Department of Defense in terms of their efficiency or usefulness.

B. Summary of Improper Surveillance Activities

After conducting an investigation of both the foreign and domestic intelligence and investigative activities of the Department of Defense, the Committee identified four types of surveillance, or investigative activity, which have involved the collection of information on the activities of private citizens and private organizations and which may have violated the traditional and legal restraints mentioned above: (1) the collection of information on the political activities of private citizens and private organizations in the late 1960s; (2) monitoring of domestic radio transmissions; (3) investigations of private organizations which the military considered "threats"; and (4) assistance to other agencies engaged in surveillance of civilian political activities. In each case, the Committee attempted to focus upon those activities which are improper in themselves, and those which are improper because it is the military which is engaging in them.

⁹ Amendments I-X, Constitution of the United States.

¹⁰ Amendment I, Constitution of the United States.

¹¹ 18 U.S.C. 1385.

¹² For a brief history of the *Posse Comitatus Act*, see Edward S. Corwin, *The President: Office and Powers 1787-1957* (New York: New York University Press, 1957), pp. 180-188. See also the discussion at pp. 822-828.

¹³ Pub. L. 93-579.

¹⁴ The application of the Privacy Act of 1974 is discussed in detail at pp. 388-384.

¹⁵ 5 U.S.C. 552a (e) (7).

1. *Collecting Information about the Political Activities of Private Citizens and Private Organizations in the Late 1960s.*—The President is authorized by statute to use the militia (the National Guard), the Armed Forces, or both, to "suppress" domestic violence.¹⁵ Prior to the 1960s, the President's exercise of this authority had been relatively infrequent.

In the early 1960s, however, the Army and National Guard were called upon with increasing frequency to control civil rights demonstrations, prompting the Army to prepare for possible future disturbances and to begin systematic collection of information concerning civilians and organizations who might be involved.

Initially the Army relied, for the most part, on obtaining information from local police authorities, the FBI, and the news media, rather than assigning its own personnel to investigate. However, as the frequency and severity of urban riots and antiwar demonstrations grew in the late 1960s, the Justice Department and the White House pressed the Army to obtain information on individuals and groups, and the Army's response was to direct its investigators to report on civilian political activities throughout the country.

Elaborate collection plans were issued, calling for the collection of information on the most trivial of political dissent within the United States.¹⁶ As part of this collection program, massive operations were undertaken by Army intelligence agents to penetrate major protest demonstrations. In addition, political dissent was routinely investigated and reported on in virtually every city within the United States. These reports were circulated, moreover, to law enforcement agencies at all levels of Government, and to other agencies with internal security responsibility. In all, an estimated 100,000 individuals were the subjects of Army surveillance. The number of organizations which were the subjects of an Army file was similarly large, encompassing "virtually every group engaged in dissent in the United States."¹⁷

Techniques employed to carry out this surveillance included the covert infiltration of private organizations by military agents at demonstrations and meetings; Army agents posing as newsmen; covert photography; and use of civilian informants.

The Department of Defense ended the nationwide collection program as a matter of policy in 1971, after the program had been exposed in the press, and on the eve of a congressional investigation.

2. *Monitoring Private Radio Transmissions in the United States.*—Section 605 of the Communications Act of 1934 prohibits anyone from intercepting and publishing the content of a private radio transmission. Despite this statutory prohibition the Army Security Agency, primarily a foreign intelligence-gathering agency, moni-

¹⁵ 10 U.S.C. 331-334.

¹⁶ One of these plans called for "the identification of all personalities involved, or expected to become involved, in protest activities." It furthermore tasked military investigators to provide "details concerning the transportation arrangements" of such individuals as well as "details concerning (their) housing facilities." United States Army Intelligence Command Collection Plan, April 28, 1969.

¹⁷ Testimony of Ralph Stein, former Army intelligence analyst, Senate Judiciary Subcommittee on Constitutional Rights Hearings, "Federal Data Banks, Computers, and the Bill of Rights," p. 204. See footnote 21, p. 792.

tored and recorded domestic radio transmissions of U.S. citizens on six occasions in the late 1960s.

Some of the radio monitoring was done during demonstrations or urban riots where Army troops had been committed. On occasion, it was undertaken in advance of, or in the absence of, any troop commitment.

After its radio monitoring activity had begun, the Army sought approval from the Federal Communications Commission. The FCC, after receiving an opinion from the Attorney General, advised the Army that such monitoring was illegal. Nevertheless, the Army continued its domestic radio monitoring without informing the FCC until 1970, when the Department of Defense ordered the Army to discontinue such monitoring.

3. *Investigations of Private Organizations Considered "Threats" by the Military.*—Although they are not expressly authorized by law, each of the military services investigates civilian groups, both within and without the United States, which it considers "threats" to its personnel, installations, and operations.

In the late 1960s all of the services were engaged in monitoring civilian antimilitary groups within the United States. This activity was conducted concurrently with the civil disturbance collection effort described above and continued after it stopped. Most of the information gathered about these antimilitary groups was collected from law enforcement agencies and the news media, but the services also quite commonly inserted their own undercover agents and informants into the groups.

Penetrations of groups which are hostile, or might be hostile, to the military continues today in the United States, although it has been greatly reduced. Overseas, military intelligence is more active, largely because it does not have civilian law enforcement agencies to rely upon.

In West Germany and West Berlin, the Army has actively conducted surveillance of activities of American citizens and groups of American citizens whom it considered "threats" since World War II. Until 1968, the authority to target such individuals and groups for surveillance rested solely with the commanders of occupying Army forces, and authorized techniques included opening mail, wiretaps, and covert penetrations. In 1968, the West German Government placed restrictions on the use of mail opening and wiretaps, and forbade the Army from employing such techniques any longer. The use of covert penetrations, however, was not affected by the new restrictions and continued to be employed. Furthermore, the new restrictions did not apply to West Berlin, where an Army commander governs the American sector of the city as part of a special tripartite agreement with the British and French. Here, mail opening and wiretaps continued to be employed after 1968 against Americans and groups of Americans considered to be "threats" to the military without the Army's having to obtain the approval of the West German Government.

In Japan, the Navy has carried out similar operations in three cities against groups of American civilians thought to pose "threats" to the Navy, employing covert penetrations and informants, but not mail opening or wiretapping.

"Threat" investigations are still conducted at present, but under internal controls of the Department of Defense.

4. *Assisting Law Enforcement Agencies in Surveilling Private Citizens and Organizations.*—The *Posse Comitatus Act* (18 U.S.C. 1385) prohibits the military from "executing the law."¹⁸ Nevertheless, military intelligence has frequently provided assistance to civilian law enforcement agencies. In Chicago during the late 1960s, military intelligence agents turned over their files on civilians and civilian organizations to the Chicago police, were invited to participate in police raids, and routinely exchanged intelligence reports with the police. In Washington, D.C. Army intelligence participated in an FBI raid in a civilian rooming house and provided funds for the police department's intelligence division.

The military was also called upon by the Justice Department to assist in analyzing intelligence information received during the 1972 national political conventions. Further, it joined other intelligence agencies in drafting the so-called Huston Plan in 1970, and later participated in the Intelligence Evaluation Committee, an interdepartmental committee established by the Justice Department to analyze domestic intelligence information.¹⁹

C. Effect of 1971 Departmental Directive

In March 1971, during congressional hearings on the Army's civil disturbance collection program, the Department of Defense announced the issuance of a new directive to govern the collection and retention of information by the military on "unaffiliated" persons and organizations.¹⁹

In general, the new directive prohibited, as a matter of policy, the collection of any information whatsoever on "unaffiliated" persons and organizations, except for limited "military" purposes. It also established the policy that any information which was collected by the military would be obtained through liaison with law enforcement agencies rather than through military operatives. Finally, it required the destruction of all current holdings of the department which were found to violate the provisions of the directive.

This directive is discussed later in this report as it bears on issues regarding possible legislative restraints upon future investigative activities of the department.²⁰ But an awareness of its existence and a general understanding of its impact is crucial to the case studies which follow.

D. Issues Presented

Each of the four types of activity summarized above involve investigations by military intelligence of the political activities of private citizens, and thus, to the extent they survive today, threaten to violate the traditional and legal restraints which govern the use of military forces in the civilian community. This situation gives rise to two major ques-

¹⁸ The *Posse Comitatus Act* originally applied only to the "Army." It was later amended to include the Air Force, and has been interpreted by the Department of Defense as applying to all the military services.

¹⁹ See the Committee Report, "National Security, Civil Liberties, and the Collection of Intelligence: A Report on the Huston Plan."

²⁰ DOD Directive 6200.27.

²⁰ See pp. 825-833.

tions: First, should these activities in the civilian community be permitted at all? If so, should they be restrained to prevent their overstepping traditional and legal bounds? Second, are the present DOD directives sufficient for the task? Should Congress enact new legislation?

Beyond these basic questions is the matter of what the restraints which govern these activities should be:

(1) Should the military be prohibited from collecting or maintaining any information regarding "private citizens?" If not, where should the line between permissible and impermissible information be drawn?

(2) Should the military be prohibited from using its own operatives to collect information in the civilian community? Are there collection techniques that might be authorized for some federal agencies (e.g., wiretaps) that should be denied to the military?

Finally, there are issues of oversight and control:

(1) Should there be a special mechanism established to control and oversee activities by the military within the civilian community?

(2) How should congressional oversight of this area be achieved?

E. Conduct and Scope of Investigation

The Committee's inquiry, as summarized above, is divided into four parts. One recognizes at the outset that the first of these—the Army's domestic surveillance program of the late 1960s—has heretofore been the subject of a congressional investigation.²¹ The Select Committee determined, however, that it could not ignore this largest of military intelligence abuses, even though its inquiry must necessarily overlap the previous investigation in some respects. The Army program of the late 1960s, besides being the worst intrusion that military intelligence has ever made into the civilian community, resulted in new departmental restrictions being drawn, and other intelligence activities against American citizens being curtailed or eliminated. Thus, current use of military intelligence agents in the civilian community can not be fully understood without some knowledge of the Army program and how it was curtailed.

The Select Committee inquiry does go well beyond the earlier inquiries. In particular, it represents the first attempt to analyze the origins and termination of the Army program. The Committee had access to former Army intelligence officers, who were not permitted to testify in the earlier investigations, and it had access to documents not previously available to Congress.

²¹ The Senate Judiciary Subcommittee on Constitutional Rights, chaired by Senator Sam J. Ervin, Jr., held two series of hearings and published two committee reports on the subject of military surveillance of civilians: 1) "Federal Data Banks, Computers and the Bill of Rights," Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess. (1971) (cited hereinafter as *1971 Hearings*); 2) "Military Surveillance," Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, 93rd Cong., 2d Sess., (1974) (cited hereinafter as *1974 Hearings*); 3) "Army Surveillance of Civilians: A Documentary Analysis," A Staff Report of the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess., (1972) (cited hereinafter as *1972 Report*); and 4) "Military Surveillance of Civilian Politics," A Report of the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 93rd Cong., 1st Sess., (1973) (cited hereinafter as *1973 Report*).

After initial briefings from pertinent elements within the Department of Defense, the Committee staff interviewed 35 past and present employees of the Department, and 13 other individuals regarding some aspect of this inquiry.

The investigation generally covered the period from 1967 through 1975, although some events of prior years are described to provide historical background.

F. Organization of Report

Parts II through V of the following Report describe in detail the activities which have been summarized above. In Parts VI and VII, the issues posed above are considered. The effect of recent Departmental restrictions and the effect of the Privacy Act of 1974 are given particular consideration.

II. THE COLLECTION OF INFORMATION ABOUT THE POLITICAL ACTIVITIES OF PRIVATE CITIZENS AND PRIVATE ORGANIZATIONS: 1963-1970

A. Legal Authorities

There is no statute which authorizes military intelligence to collect information on the political activities of private citizens and private organizations, but the Army claimed in 1971 that it needed such information in the late 1960s to enable it to prepare for situations in which it was called upon to put down civil disturbances.²²

Article IV, Section 4 of the United States Constitution provides that "the United States shall . . . protect each [State] . . . against domestic violence."

Congress first passed a statute to implement this constitutional provision in 1795,²³ and, although amended, its provisions remain virtually intact today.²⁴ In essence, the President is authorized to use the militia of any state, or the Armed Forces, or both, to "suppress insurrection."²⁵

The President has occasionally exercised this authority and called out the National Guard or the Armed Forces to put down unrest or enforce the law where such enforcement proves to be beyond the capability of civil authorities. According to a 1922 study by the War Department, the President exercised this authority thirty times between 1795 and 1922.²⁶ In recent times, while commitment of federal troops in the civilian community has been more frequent,²⁸ an extraordinary exercise of executive authority.²⁸

There is no explicit authority in sections 331-334 of title 10, United States Code, for the National Guard, or the Armed Forces, to make any "preparations" for future deployments upon order of the President. In 1971, however, the Department of Defense argued before

²² Testimony of Robert F. Froehke, Assistant Secretary of Defense (Administration), *1971 Hearings*, p. 376.

²³ 1 Stat. 424 (1795).

²⁴ 10 U.S.C. 331-334.

²⁵ 10 U.S.C. 331.

²⁶ Results of this study were quoted in the testimony of Robert F. Froehke, *1971 Hearings*, pp. 376-377.

²⁷ Froehke, *1971 Hearings*, pp. 377-378.

²⁸ DOD General Counsel J. Fred Buzhardt told Senator Ervin that only "drastic circumstances" necessitate the deployment of federal troops. See *1971 Hearings*, p. 412.

Congress that such authority could be implied, and would justify the collection of information on persons and organizations in the civilian community:

In order to carry out the President's order (under the statute) and protect the persons and property in an area of civil disturbance with the greatest effectiveness, military commanders must know all that can be learned about the area and its inhabitants. Such a task obviously cannot be performed between the time the President issues his order and the time the military is expected to be on the scene. Information gathering on persons or incidents which may give rise to a civil disturbance and thus commitment of Federal troops must necessarily be on a continuing basis. Such is required by sections 331, 332, and 333 of title 10 of the United States Code, since Congress certainly did not intend that the President utilize an ineffective Federal force.²⁹

The Senate Subcommittee on Constitutional Rights subsequently rejected this assertion, however, stating that it was "unwilling to imply the authority to conduct political surveillance of civilians from the role assigned by statute to the military in the event of civil disturbance."³⁰ It cited the traditional separation of the military and civilian realms as a reason for refusing to imply such authority,³¹ and it questioned the use of military rather than civilian authorities to gather information about pending civil disturbances.³² Finally, it observed that even if the military had implied authority to collect *some* information on areas of potential civil disturbance, this authority did not include the collection of information on how citizens exercise their First Amendment rights.³³

B. Origins and Development of the Army's Domestic Surveillance Program

Army intelligence began collecting information on private citizens and organizations in the early 1960s as part of furnishing information to military commanders whose units were dispatched to control racial situations in the South. In the late 1960s, however, as the volume of civil disturbance and protest demonstrations grew, the Army came under increasing pressure from civilian authorities to provide information on persons and organizations involved in domestic dissent. It responded by sending over 1200 of its investigators into civilian communities to report on all vestiges of political activity.

(1) *Limited Beginnings.*—Despite the lack of clear legal authority to "prepare" for deployments in civil disturbance situations, the Army in the early 1960s initiated formal efforts to plan for its troops being committed in future civil disturbances. Prompted by a rash of troop commitments to control racial situations and enforce court orders in

²⁹ Froehle, *1971 Hearings*, pp. 384-385.

³⁰ *1973 Report*, p. 100.

³¹ *Ibid.*

³² *Ibid.*, p. 108.

³³ *Ibid.*, p. 109.

the South,³⁴ the Joint Chiefs of Staff in 1963 designated the Chief of Staff of the Army as its "Executive Agent" for civil disturbance matters, and the Continental Army Command was made responsible for the selection and deployment of Army troops in such situations.³⁵ Formal contingency plans were drawn.

It was at this time that Army intelligence began collecting information on individuals and organizations, without any express authorization, as part of its overall mission to support military commanders with information regarding possible deployments in civil disturbances.³⁶ The Army's collection, however, was ordinarily confined during this period to those areas where civil disturbances were likely or had already taken place, and information on civilians was ordinarily obtained through liaison with law enforcement and use of public media.³⁷ Any covert use of military intelligence agents within the civilian community still had to have the approval of the Department of the Army.³⁸

In the following three years, the number of riots and disorders within the United States increased dramatically. In 1965, there were four major riots, including Watts, California; in 1966, there were 21 major riots and disorders; and in 1967, there were 83.³⁹ These had necessitated the deployment of National Guard forces 36 times during this period.⁴⁰

The Army, while being deployed only once during the period,⁴¹ was nevertheless affected by events. Frequently, Army troops had been alerted, and occasionally, they had been "pre-positioned" in the event they were called upon.⁴² Army intelligence stepped up its own collection efforts in support of military commanders still relied, for the most part, on their contacts with local police and the public media.⁴³ Army investigators in the United States were still spending most of their time doing security clearance investigations for Army employees.⁴⁴

(2) *The Army's Involvement Intensifies.*—In 1967, the character of the investigative program began to change. In July of that year, the Army was placed on alert for riot duty in Newark, New Jersey, and later in the month was actually deployed for eight days in Detroit, Michigan.⁴⁵ It was the most extensive use of Army troops since 1962.

³⁴ In 1957, federal forces were used in connection with the integration of Central High School in Little Rock, Arkansas. In 1962, 20,000 Army troops were sent to Oxford, Mississippi, in connection with the integration of the University of Mississippi. In 1963, federal troops were dispatched to Tuscaloosa and Huntsville, Alabama, to enforce federal court orders. See *1971 Hearings*, pp. 377, 1201.

³⁵ Froehle, *1971 Hearings*, p. 377.

³⁶ *Ibid.*, p. 381. This information was also confirmed by former Army Chief of Staff, General Harold K. Johnson. Staff summary of Gen. Harold K. Johnson interview, 11/18/75.

³⁷ Froehle, *1971 Hearings*, p. 381.

³⁸ *Ibid.*

³⁹ *Ibid.*, p. 377.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*, p. 378.

⁴² In early 1965, the Army Intelligence Command was apparently preparing a daily civil disturbance intelligence summary. The Secretary of the Army ordered it discontinued in September 1965, however. Froehle, *1971 Hearings*, p. 832.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*, p. 378.

In the post-mortems which followed the Detroit riots, the lack of adequate intelligence prior to moving into the city was a sore point. But the focus of the criticism was the lack of "physical intelligence" about the area in which troops were being committed. Cyrus Vance, sent by the President to make an after-action assessment, specifically cited the need for this type of information:

In order to overcome the initial unfamiliarity of the Federal troops with the area of operations, it would be desirable if the several continental armies were tasked with reconnoitering the major cities of the United States in which it appears possible that riots may occur. Folders could then be prepared for those cities listing bivouac areas and possible headquarters locations, and providing police data, and other information needed to make an intelligence assessment of the optimum employment of federal troops when committed.⁴⁶

The Army reacted to Vance's recommendation by appointing a special task force in the fall of 1967 to study the civil disturbance situation and make recommendations as to what its role should be.⁴⁷

In the meantime, the Army was preparing for a unique sort of civil disorder, one announced in advance and directed against the military establishment. The so-called March on the Pentagon was scheduled for late October 1967.

For the first time in its history,⁴⁸ the Army authorized a massive covert intelligence operation to be undertaken in connection with a civilian demonstration. In all, 130 Army intelligence agents were used in connection with the demonstration.⁴⁹ Some were used to penetrate protest groups coming to Washington; some were used to penetrate the groups in Washington who were planning the March; and still others were used to penetrate and report on the line of march.⁵⁰ Army agents, moreover, took still and motion pictures of the crowds, and secretly monitored amateur radio bands to learn of the demonstrators' plans.⁵¹

Even after this large covert operation, the Army apparently was still relying primarily on civilian authorities and the media for information on civilian "dissenters."⁵² In a memorandum to the Undersecretary of the Army from the Army Assistant Chief of Staff for Intelligence in late 1967, the Under Secretary was told:

Army intelligence is not engaged in any concerted investigative effort to determine the routes of domestic discontent or

⁴⁶ Final Report of Cyrus R. Vance, Special Assistant to the Secretary of Defense, Concerning the Detroit Riots, July 23 through August 2, 1967; Department of Defense Press Release No. 856-67, 9/12/67, p. 51.

⁴⁷ Froehle, *1971 Hearings*, p. 370.

⁴⁸ See Memorandum, Department of Army, "U.S. Army Intelligence Role in Civil Disturbances," *1971 Hearings*, p. 1202.

⁴⁹ Froehle, *1971 Hearings*, p. 440.

⁵⁰ *Ibid.*, p. 378.

⁵¹ *Ibid.* See pp. 808-900.

⁵² It should be noted that Army Assistant Chief of Staff for Intelligence, Major General William Yarbrough, in October 1967 requested that the National Security Agency provide the Army with any information it might have, or obtain, regarding the foreign connections of domestic political groups. See Select Committee report "National Security Agency Surveillance Affecting Americans."

the channels it will follow. The quantity and quality of third agency reports is sufficient to allow proper and timely analysis of the domestic situation so that commanders in the field will be properly informed at all times.⁵³

But if the Army had refrained from widespread use of its own operatives, it was nonetheless increasingly relied on by the White House and the Justice Department to provide information on civil unrest. In a meeting at the White House on January 10, 1968, for example, Attorney General Ramsey Clark told those present⁵⁴ that "every resource" must be used in the domestic intelligence effort and he criticized the Army for not being more selective in the reports that it was sending to the Justice Department.⁵⁵ According to former Army Chief of Staff Harold K. Johnson, this was but one of several meetings at the White House where the Army was urged to take a greater role in the civil disturbance collection effort.⁵⁶

The Army was looked to, first, because it had approximately 1200 agents scattered across the country who were young and could easily mix with dissident young groups of all races.⁵⁷ Second, the Army was virtually the only agency apart from the FBI which had an independent teletype network nationwide which could be used to transmit data on civil unrest.⁵⁸ The FBI had such a network but it was used for other purposes, and could not handle the voluminous amount of data generated by civilian political protests.

The pressure on the Army to produce information was rapidly mounting in the winter of 1967, and it began to have its effect. The Army task force, appointed to study the Army's role in civil disturbances, recommended among other things, that "continuous counterintelligence investigations are required to obtain factual information on the participation of subversive personalities, groups or organizations and their influence on urban populations to cause civil disturbances."⁵⁹ It also recommended that the Army develop new criteria to apply to the collection of domestic intelligence which would "serve to indicate potential areas of civil disturbance."⁶⁰

Chief of Staff Harold K. Johnson approved these recommendations in late November 1967, and directed that a plan be prepared

⁵³ Quoted in Memorandum for Record from Army General Counsel Robert E. Jordan III, for the Under Secretary of the Army, undated, 1974 *Hearings*, p. 288.

⁵⁴ Attending the meeting were White House aides Joseph Califano and Matthew Nimitz, Deputy Secretary of Defense Paul Nitze, Deputy Attorney General Warren Christopher, and Army General Counsel Robert Jordan.

⁵⁵ Memorandum for the Under Secretary of the Army, Subject: Civil Disturbances: Planning Meeting in Mr. Califano's Office, 1/10/68.

⁵⁶ Johnson (staff summary), 11/18/75.

⁵⁷ See staff summary of General William Blakefield interview, 7/11/75; staff summary of General William Yarborough (ret.) interview, 7/18/75; staff summary of Col. Arthur Halligan (ret.) interview, 7/15/75; staff summary of Col. Millard Daugherty interview, 11/20/75; staff summary of General Harold K. Johnson interview, 11/18/75.

⁵⁸ *Ibid.*

⁵⁹ Memorandum from Army General Counsel Robert E. Jordan III, for the Secretary of the Army, Subject: Review of Civil Disturbance Intelligence History, undated, 1974 *Hearings*, p. 289. The term "subversive" was not defined.

⁶⁰ *Ibid.*

formally directing the Army to collect civil disturbance information on a nationwide scale.⁶¹

C. The Army's Domestic Surveillance Program

The collection requirements were set out in an annex to the Department of Army Civil Disturbance Plan, promulgated on February 1, 1968.⁶² The plan identified as "dissident elements" the "civil rights movement" and the "anti-Vietnam/anti-draft movements," and stated that they were "supporting the stated objectives of foreign elements which are detrimental to the U.S.A."⁶³ It furthermore directed Army commands to provide information on the "cause of civil disturbance and names of instigators and group participants," as well as information on the "patterns, techniques, and capabilities of subversive elements in cover and deception efforts in civil disturbance situations."⁶⁴ The terms "civil disturbance," "instigators," "group participants," and "subversive elements" were not defined.

While this new collection plan was being implemented across the country, the Army was in the midst of planning its second concerted domestic operation in preparation for a civilian demonstration—the so-called Washington Spring Project. Martin Luther King, Jr. had announced his intention of bringing the nation's poor to Washington in April 1968 in a massive protest demonstration. Antiwar groups had also indicated their intent to use the occasion to protest the war.

The Washington Spring Project did not proceed as scheduled, however, because Dr. King was assassinated in Memphis on April 4th. Extensive rioting broke out in numerous cities across the country causing simultaneous commitments of Army troops in Washington, D.C., Baltimore, and Chicago. Other Army troops were placed on alert in Pittsburgh and Kansas City.⁶⁵

This had never happened before, and it had a profound effect upon the Pentagon. In a meeting with the Secretary of Defense on April 10, 1968, it was agreed that the Army would set up a permanent "task force" to plan for civil disturbances, and that it would operate upon the theory that the Army may have to deploy as many as 10,000 soldiers in 25 cities simultaneously.⁶⁶

Three days later, the Under Secretary of the Army directed the Chief of Staff to establish the Directorate of Civil Disturbance Planning and Operations (DCDPO) which he instructed to "maintain an around-the-clock civil disturbance operations center to monitor incipient and on-going disorders . . . and develop intelligence reporting procedures to provide information on civil disturbances occurring or imminent."⁶⁷

⁶¹ See Memorandum for Record from Milton B. Hyman, Office of the General Counsel, to the Army General Counsel, Subject: Army Civil Disturbance Intelligence Activities, 1/23/71, 1974 Hearings, p. 302.

⁶² 1971 Hearings, pp. 1119-1122.

⁶³ *Ibid.*, pp. 1120-1121.

⁶⁴ *Ibid.*, pp. 1121-1122.

⁶⁵ *New York Times*, 4/9/68, p. 36.

⁶⁶ Memorandum for Record from Secretary, General Staff, MG Ellis C. Townsend, Subject: Debrief of SECDEF Meeting, 1100 hrs., 4/10/68, 1971 Hearings, pp. 1281-1282.

⁶⁷ Memorandum from David E. McGiffert, Under Secretary of the Army, for the Chief of Staff, U.S. Army, Subject: Civil Disturbances, 4/13/68, 1971 Hearings, pp. 1283-1284.

Two other changes were brought on by the King assassination riots. The Secretary of the Army was formally designated Executive Agent for the DOD on civil disturbance matters,⁶⁸ and it was decided that the intelligence requirements of the Army Civil Disturbance Plan of February 1 were inadequate for the Army's purposes.

A new, more detailed, collective plan, classified CONFIDENTIAL, was thus issued on May 2, 1968.⁶⁹ The new plan expanded the criteria to be used for collecting information and directed that information on political activities be gathered in cities where there was a "potential" for civil disorder.⁷⁰ Former Assistant Secretary of Defense Froehlike told the Ervin subcommittee that demands of the collection plan for information were sweeping:

The requirements of the plan were both comprehensive and detailed, and, in the light of experience, substantially beyond the capability of military intelligence to collect. They reflected the all-encompassing and uninhibited demand for information directed at the Department of Army. . . . So comprehensive were the requirements levied in the civil disturbance information collection plan that any category of information related even remotely to people or organizations active in a community in which the potential for a riot or disorder was present, would fall within their scope. Information was sought on organizations by name or by general characterization. Requirements for information were even levied which required collection on activities and potential activities of the public media, including newspapers and television and radio stations.⁷¹

The May 2nd Collection Plan was distributed to the White House, the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense, among others.⁷² While it is not clear whether officials in any of these agencies actually read the plan, it is clear that they had begun to press the Army by this time for information on individuals and organizations involved in domestic dissent.⁷³ While the Army was routinely disseminating its intelligence reports to the FBI, it also frequently received verbal tasking from high-ranking officials on the outside for information on particular incidents or individuals.⁷⁴ Their demands were insistent, and were conveyed down the Army chain of command with a similar degree of intensity.⁷⁵

According to former Army intelligence officials, this led to a situation where restraints on collection in the civilian community were ignored.⁷⁶ Lower-ranking intelligence officers considered the fact that

⁶⁸ DOD Directive 3025.12, 6/8/68, 1971 Hearings, p. 1272.

⁶⁹ 1971 Hearings, pp. 1123-1138.

⁷⁰ 1971 Hearings, pp. 1123-1138.

⁷¹ Froehlike testimony, 1971 Hearings, p. 384.

⁷² 1971 Hearings, p. 1137.

⁷³ Froehlike testimony, 1971 Hearings, p. 388. This statement was also confirmed in the staff interviews with General Harold K. Johnson; Gen. William Blakefield; MG William Yarbrough (ret.); Robert E. Jordan III; Col. Arthur Halligan (ret.); and Col. Millard Daugherty (ret.)

⁷⁴ *Ibid.*

⁷⁵ Blakefield (staff summary), 7/11/75; Halligan (staff summary), 7/15/75; Daugherty (staff summary), 11/20/75.

⁷⁶ *Ibid.*

demands were coming from their superiors as sufficient authority to obtain it by whatever means necessary.⁷⁵ Secondly, it led Army intelligence agents in the field to collect as much information as possible so they would not be caught short when demands for timely and comprehensive information came down through channels.⁷⁶

Thus, there developed, as former Assistant Secretary of Defense Robert Froehle described it, "a practical inconsistency between the level of demand for information imposed and the methods of collection authorized."⁷⁹

Army agents were dispersed into civilian communities across the country and tasked to report on any vestige of political dissent.

D. Questionable Activities on the Part of Army Agents

About 1500 Army intelligence agents were engaged in monitoring civilian protests in 1968.⁸⁰ These agents routinely monitored civilian political activities in the communities to which they were assigned, and occasionally were used as part of concerted intelligence operations undertaken by the Army during the major political protests of the late 1960s. The following discussion thus encompasses activities undertaken both under "routine" circumstances and during major protest demonstrations.

(1) *The Covert Penetration of Civilian Groups.*—Army agents covertly penetrated the organizational structure of civilian political groups, attended their meetings, and participated in their private and public activities. They also were inserted into public demonstrations of all dimensions. A sampling of these activities follows:

—Army agents penetrated the Poor Peoples' March to Washington in April, 1968, as well as the subsequent encampment which became known as "Resurrection City."⁸¹

—Army agents were also inserted into groups coming from Seattle, Washington to the Poor Peoples' Campaign;⁸²

—Army agents infiltrated the National Mobilization Committee;⁸³

—The Army monitored protests of a welfare mothers organization in Milwaukee, Wisconsin;⁸⁴

—Army agents infiltrated a coalition of church youth groups in Colorado Springs, Colorado;⁸⁵

—Army agents were routinely used to penetrate antiwar groups in Chicago;⁸⁶

⁷⁵ *Ibid.* Retired intelligence Colonel Mil'ard F. Daugherty pointed out that the approval authority for operations in the civilian community was usually the same authority making demands for information. Daugherty (staff summary), 11/20/75.

⁷⁶ *Ibid.*

⁷⁷ Froehle, 1971 Hearings, p. 368.

⁷⁸ See 1973 Report, p. 10.

⁷⁹ Ralph M. Stein, former Army agent, testimony, 1971 Hearings, p. 253; Christopher H. Pyle testimony, 1971 Hearings, p. 185.

⁸⁰ Department of Army Memorandum, "U.S. Army Intelligence Role in Civil Disturbances," 1971 Hearings, p. 1203.

⁸¹ Pyle, 1971 Hearings, p. 201.

⁸² Stein, 1971 Hearings, p. 273.

⁸³ Oliver A. Pierce testimony, 1971 Hearings, p. 306.

⁸⁴ John O'Brien, former Army intelligence agent, testimony, 1971, Hearings, p. 101.

—Army agents attended a Halloween party for elementary school children in Washington, D.C., where they suspected a local “dissident” might be present; ⁸⁷

—Army agents posed as students to monitor classes in “Black Studies” at New York University, where James Farmer, former head of the Congress on Racial Equality, was teaching; ⁸⁸

—58 Army agents were inserted into the demonstrations which took place in Chicago during the Democratic National Convention of 1968; ⁸⁹

—Army agents attended the October 1969 and November 1969 Moratorium marches in various locations around the country; ⁹⁰

—Army agents attended a conference of priests in Washington, D.C., which had convened to discuss birth control measures; ⁹¹

—Army agents were routinely assigned to cover speeches made at the major universities in New York City from 1968 to 1970; ⁹²

—Army agents attended meetings of a sanitation workers’ union in Atlanta, Georgia, in 1968; ⁹³

—An Army agent infiltrated the Southern Christian Leadership Conference in 1968; ⁹⁴

—Army agents infiltrated a Yippie commune in Washington, D.C., prior to the 1969 Inauguration; ⁹⁵

—Army agents attended an antiwar vigil at the Chapel of Colorado State University; ⁹⁶

—Army agents monitored the weekend activities of college fraternities in White, South Dakota, which allegedly had been responsible for previous damage to town property; ⁹⁷

—An Army agent attended an antiwar meeting at St. Thomas Episcopal Church in Washington, D.C.; ⁹⁸ and

—107 Army agents monitored the protest activities surrounding the Presidential inauguration in Washington, in January 1969. ⁹⁹

(2) *Posing as Newsmen/Covert Photography.*—Army intelligence agents frequently posed as newsmen in order to photograph and interview “dissident” personalities. Photographing participants in political activities itself became a widely used intelligence technique.

During the Democratic National Convention of 1968, the Army, for the first time, sent undercover agents, disguised as television news reporters from a nonexistent television news company, to videotape interviews with leaders of the demonstrations. ¹⁰⁰ This technique was

⁸⁷ Quentin L. Burgess, former Army intelligence agent, testimony, 1971 Hearings, p. 285.

⁸⁸ Joseph J. Levin, Jr., former Army intelligence agent, testimony, 1971 Hearings, p. 290.

⁸⁹ Froehlike, 1971 Hearings, p. 440.

⁹⁰ Pyle, 1971 Hearings, pp. 204-205; Peirce, 1971 Hearings, p. 305.

⁹¹ Burgess, 1971 Hearings, p. 280.

⁹² Levin, 1971 Hearings, p. 293.

⁹³ Stein, 1971 Hearings, p. 274.

⁹⁴ *Ibid.*

⁹⁵ Pyle, 1971 Hearings, p. 201.

⁹⁶ Laurence F. Lane, former Army intelligence agent, testimony, 1971 Hearings, p. 314.

⁹⁷ Stein, 1971 Hearings, p. 257.

⁹⁸ Burgess, 1971 Hearings, p. 285.

⁹⁹ Froehlike, 1971 Hearings, p. 440.

¹⁰⁰ Froehlike, 1971 Hearings, p. 387. See also, Pyle, 1971 Hearings, p. 154.

repeated during subsequent demonstrations in Atlanta, Washington, D.C., San Francisco, and Baltimore.¹⁰¹

A representative of the Reporter's Committee on Freedom of the Press also stated in congressional testimony that Army agents, posing as newsmen, interviewed H. Rap Brown and Stokely Carmichael in New York in 1967; interviewed staff of the Southern Christian Leadership Conference in 1968; and covered the 1969 Inaugural parade.¹⁰²

The Army began using photographers to take still and motion pictures of the participants in political demonstrations in 1967 during the March on the Pentagon.¹⁰³ This rapidly became an accepted collection technique for Army agents across the country.¹⁰⁴

(3) *Harassment/Disruptive Conduct.*—Army agents generally refrained from aggressive activities against civilian protestors, but occasionally they engaged in conduct designed to harass or confuse such groups. Typically, this sort of activity was carried out at the "grass roots" level by lower-level military intelligence agents, who neither sought nor received authorization for such activity. The Committee found no evidence of any concerted program of harassment, analogous to the COINTELPRO operations of the FBI.¹⁰⁵ Nonetheless, some of the techniques employed by Army agents were similar.

A former intelligence agent stated that he had posed as a bus driver during a demonstration in Chicago, collected the bus tickets of departing demonstrators, and then sent them off to find a nonexistent bus.¹⁰⁶ This same agent also recalled having posed as a parade marshal during the 1969 Inaugural, and, as such, provided misinformation to demonstrators.¹⁰⁷

Another recalled making harassing telephone calls and sending orders of fried chicken to the offices of the Chicago 7 defense team.¹⁰⁸ Another admitted having torn notices of rallies and demonstrations from school bulletin boards,¹⁰⁹ and still another recalled agents having heckled speakers in order to cause a disruption.¹¹⁰

Another former agent stated in a newspaper account that he was given blank postcards which had been confiscated by the FBI from the headquarters of a protest group in Washington, D.C. The cards were to be sent in by Washington residents who were willing to house demonstrators during the inaugural demonstrations. The agent stated

¹⁰¹ Lane, *1971 Hearings*, p. 814.

¹⁰² Fred P. Graham, testimony, "Freedom of the Press," *Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 92nd Cong., 1st Sess.* (1971), p. 260.

¹⁰³ Memorandum, Department of Army, "U.S. Army Intelligence Role in Civil Disturbances," *1971 Hearings*, p. 1292.

¹⁰⁴ Pyle, *1971 Hearings*, p. 155 (photographing demonstrations at the University of Minnesota); O'Brien, *1971 Hearings*, p. 113 (photographing dissidents in Chicago); Steln, *1971 Hearings*, p. 273 (photographing demonstrators in Seattle); Peirce, *1971 Hearings*, p. 807 (photographing demonstrators in Colorado Springs).

¹⁰⁵ For a full description of the FBI's COINTELPRO operations, see the Select Committee report on this subject.

¹⁰⁶ Richard Norusis, former Army intelligence agent, testimony, 6/23/75.

¹⁰⁷ *Ibid.*

¹⁰⁸ O'Brien testimony, *1971 Hearings*, p. 114. Also, "Governor: Splend On Chicago 7: U.S. Attempts In '69, '70 Told," *Chicago Tribune*, 11/13/73.

¹⁰⁹ Statement of Conner Henry, former Army intelligence agent.

¹¹⁰ Statement of former Army intelligence agent, Casper, Wyoming, Field Office of the 113th Military Intelligence Group (anonymous), in files of Select Committee.

that he filled out the cards with the names of fictitious persons and sent them in.¹¹¹

The Select Committee also investigated the relationship of military intelligence with a right-wing terrorist group in Chicago known as the Legion of Justice. Former members of the terrorist group told the Committee that from 1968 until 1970 "military intelligence" had directed and helped finance their activities against left-wing groups in Chicago.¹¹² They also alleged that the Army had supplied tear gas, grenades, and bugging devices to be used against left-wing groups.¹¹³ Finally, they suggested that Army intelligence had received a film and various documents stolen by the Legion from left-wing organizations.¹¹⁴

The Committee's investigation did not substantiate any of these allegations.¹¹⁵ It did, however, show that Army intelligence agents had been in contact with the leader of the Legion on several occasions in regard to obtaining information on left-wing groups.¹¹⁶ Army agents insisted, however, that they did not realize that their source was a leader of the terrorist group, nor that the information he was offering the Army had been stolen.¹¹⁷

(4) *Maintenance of Files on Private Citizens and Private Organizations.*—All of the information collected by Army agents on civilian political activity was stored in "scores"¹¹⁸ of data banks throughout the United States, some of which the Army had computerized.¹¹⁹ The reports were routinely fed to the FBI, the Navy, and the Air Force, and were occasionally circulated to the Central Intelligence Agency and the Defense Intelligence Agency.¹²⁰

In all, the Army probably maintained files on at least 100,000 Americans from 1967 until 1970.¹²¹ Among them were: Dr. Martin Luther King, Jr., Whitney Young, Julius Hobson, Julian Bond, Arlo Guthrie, Joan Baez, Major General Edwin Walker, Jesse Jackson, Walter Fauntroy, Dr. Benjamin Spock, Rev. William Sloane Coffin, Congressman Abner Mikva, Senator Adlai Stevenson III,¹²² as well as

¹¹¹ See "Break-In by FBI Alleged Before 1969 Inauguration," *New York Times*, 5/31/73, pp. 1, 6; "FBI Was Given Key for Search in 1969," *New York Times*, 6/1/73, p. 14.

The Select Committee was unable to locate the source of this news report; however, FBI records made available to the Committee indicate that such searches were made in the Washington D.C. area in advance of the presidential inauguration.

¹¹² Staff summaries of Stephen Sedlacko and Tom Stewart interviews, 5/28/75.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ The allegations that Army intelligence furnished the Legion with bugging devices and tear gas grenades appears improbable since these items were not in the inventory of Army intelligence units. Approval of fund expenditures also had to come from intelligence group headquarters, and there were no records of such expenditures being approved. The remainder of the allegations were not supported by testimony received from Army witnesses.

¹¹⁶ Richard Norusia, 6/23/75; Thomas Filkins testimony, 10/21/75; and Robert Liesik, 6/27/75, former members of the 113th Military Intelligence Group.

¹¹⁷ Norusia, 6/23/75, and Filkins, 10/21/75.

¹¹⁸ 1973 Report, p. 4.

¹¹⁹ The Army maintained computerized files at Fort Holabird, Fort Monroe, Fort Hood, and the Pentagon. See 1973 Report, pp. 50-53.

¹²⁰ Frohlike, 1971 Hearings, p. 423.

¹²¹ 1973 Report, p. 57.

¹²² Stelt, 1971 Hearings, p. 260.

"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, business executives, and authors"¹²¹ who became subjects of Army files simply because of their participation in political protests of one sort or another.

In addition, one witness told the Ervin subcommittee that "it was no exaggeration to state that (the Army's files) covered virtually every group engaged in dissent in the United States."¹²² Cited as examples were the American Civil Liberties Union, the National Association for the Advancement of Colored People, the Ku Klux Klan, the Congress on Racial Equality, the Urban League, the Women's Strike for Peace, the American Friends Service Committee, the Citizen's Coordinating Committee for Civil Liberties, the Southern Christian Leadership Conference *Ramparts*, *The National Review*, Anti-Defamation League of B'nai B'rith, National Committee for a Sane Nuclear Policy, the John Birch Society, Young Americans for Freedom, Clergy and Laymen Concerned About the War, Business Executives Move to End the War in Vietnam, and the National Organization for Women, among others.¹²³

E. Termination of the Army's Civil Disturbance Collection Program

The Army did not decide to terminate its domestic collection program until the summer of 1970, after it had been exposed in the press and Congress had announced its intentions to investigate. There had, nevertheless, been reservations within the Army regarding the scope of its domestic effort as early as the fall of 1968.

The first indication that anyone at the Department of Defense had qualms about the Army's domestic program came in September 1968, when Deputy Secretary of Defense Paul Nitze disapproved an Army request for 187 additional spaces for Army intelligence agents citing "reservations regarding the extent of Army involvement in domestic intelligence activities."¹²⁴

Three months later Army Under Secretary David McGiffert also expressed concern that the Army's domestic collection program might not be "worth the effort," and expressed his desire that the "civil disturbance collection effort be more sharply focused on essential requirements and the mission be more precisely delineated."¹²⁵

This concern apparently led McGiffert in February 1969 to attempt to curtail the Army's program. In a memorandum to the Vice Chief of Staff, he expressed concern that the Army was, in furtherance of the civil disturbance mission, collecting detailed information on persons, organizations, and movements. Citing expediency rather than principle, he stated that "our limited assets should not be expended in developing such detailed information on these matters as part of the

¹²¹ 1973 Report, p. 87.

¹²² Stein, 1971 Hearings, p. 204.

¹²³ *Ibid.*

¹²⁴ Quoted in Memorandum from Army General Counsel Robert E. Jordan, for the Secretary of the Army. Subject: Review of Civil Disturbance Intelligence History, 1974 Hearings, p. 298. (Cited hereinafter as Jordan memo).

¹²⁵ Froehle, 1971 Hearings, p. 898.

process of assigning priorities to particular metropolitan areas."¹²⁸ He expressed the opinion that such information, to the extent it was necessary, could be gathered from civilian law enforcement agencies. The memorandum also required that he be apprised on a quarterly basis of all covert and overt collection activities.

The Under Secretary's memorandum met with stiff resistance from the Army staff and was not fully implemented.¹²⁹ The Under Secretary did not press his demands, in part because he was about to leave, and in part because the Army General Counsel had initiated negotiations with the Department of Justice to reach an agreement which would relieve the Army of its domestic intelligence-gathering role.¹³⁰ However, the agreement which eventually resulted from these discussions—the Interdepartmental Action Plan on Civil Disturbances—left the domestic role of Army intelligence as ambiguous as before.¹³¹ Nevertheless, the initiative of the General Counsel had served to forestall the implementation of McGiffert's memorandum until his successor had taken office, and could be prevailed upon to continue the Army's collection activities.

McGiffert's successor, Thaddeus R. Beal, did nonetheless retain the requirement that the Army's collection activities be reported to him on a quarterly basis. In the first of these reports, filed on April 15, 1969, the Army indicated that 35 percent of its 3219 intelligence reports were based on operations conducted by Army agents.¹³² This figure caused some alarm at the Department of Army level,¹³³ but did not engender any formal attempts to limit such operations.

It was only in January 1970, when a former Army intelligence officer, Christopher H. Pyle, wrote an article for the *Washington Monthly* exposing the extent of the Army's domestic program, that serious efforts to curb the Army's domestic activities were undertaken.¹³⁴ Pyle's article drew substantial attention in the press, and two congressional committees in the spring of 1970 announced their intentions to hold hearings on the matter.¹³⁵

In response to the growing public pressure, the Army on June 9, 1970, rescinded its May 2, 1968 collection plan and issued an order stating that:

Under no circumstances will the Army acquire, report, process, or store civil disturbance information on civilian individuals or organizations whose activities cannot, in a rea-

¹²⁸ Memorandum from David E. McGiffert, Under Secretary of the Army, for the Vice Chief of Staff, Subject: Army Intelligence Mission and Requirements Related to Civil Disturbances, 2/5/69, 1971 Hearings, p. 1189.

¹²⁹ See Memorandum from the DC'DPO to the Army General Counsel, Subject: Army Intelligence Mission and Requirements Related to Civil Disturbances, 3/4/69, 1971 Hearings, pp. 1289-1292.

¹³⁰ Jordan memo, 1974 Hearings, p. 290.

¹³¹ The final version of the plan stated that "raw intelligence data pertaining to civil disturbances will be acquired from such sources of the Government as may be available." See 1974 Hearings, pp. 346-353.

¹³² Jordan memo, 1974 Hearings, p. 298.

¹³³ *Ibid.*

¹³⁴ Christopher H. Pyle, "CONUS Intelligence: The Army Watches Civilian Politics," *Washington Monthly* (January 1970), pp. 4-16.

¹³⁵ Senate Subcommittee on Constitutional Rights and the House Armed Services Committee.

sonably direct manner, be related to a distinct threat of civil disturbance exceeding the law enforcement capabilities of local and State authorities.¹³⁶

The matter did not end there, however. Congressional hearings were still in the offing,¹³⁷ and in December, NBC News reported that the Army had had files on Illinois Senator Adlai Stevenson, III and Congressman Abner Mikva.¹³⁸

These disclosures brought on renewed criticism which led Secretary of Defense Melvin R. Laird on December 23, 1970, to direct that new regulations be proposed which would ensure that "these [intelligence activities] be conducted in a manner which recognizes and preserves individual human rights."¹³⁹

On March 1, 1971, the day the Senate was to begin hearings on the Army surveillance program, DOD formally issued the new regulation called for by Secretary Laird.¹⁴⁰ The new directive in general prohibited military personnel from collecting information on "unaffiliated" persons and organizations, except where "essential" to the military mission. It also required that all information which violated the new directive, and was currently being held by the military, must be destroyed. While as a practical matter implementation of the directive did not occur immediately,¹⁴¹ the Army's nationwide collection effort against civilians had officially come to an end.

III. MONITORING PRIVATE RADIO TRANSMISSIONS IN THE UNITED STATES: 1967-1970

During the late 1960s, when the Army was being called upon to control civil disturbances, an element of the Army, the Army Security Agency (ASA), normally used to intercept international communications for foreign intelligence purposes, was used to monitor radio transmissions in the United States. At times it was authorized not only to monitor radio transmission, but to "jam" radio broadcasts or transmit false information over the air, if such techniques were thought necessary.

At first, ASA conducted its monitoring activity in support of Army troops committed in civil disturbances. Later, however, ASA moni-

¹³⁶ Letter from Robert E. Lynch, Acting Adjutant General of the Army, to subordinate commands, Subject: Collection, Reporting, Processing, and Storage of Civil Disturbance Information, 6/9/70, *1971 Hearings*, pp. 1009-1102.

¹³⁷ Although the House committee had conducted its own investigation, it had decided against holding public hearings. The Senate subcommittee, while cancelling hearings scheduled for October 1970, announced its intention of scheduling them in early 1971.

¹³⁸ NBC News, First Tuesday, 12/1/70.

¹³⁹ *1971 Hearings*, p. 1290.

¹⁴⁰ DOD Directive 5200.27, dated March 1, 1971, Subject: The Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense. The provisions of this directive are discussed in detail at pp. 825-833.

¹⁴¹ Several penetrations of civilian groups, begun before the directive, continued after it was issued, on the grounds that exceptions would later be sought under the terms of the directive. Also, it required months for the Army and other services to dispose of old files being held in violation of the directive.

tored radio communications in situations where Army troops had not been deployed, and were not expected to be. Indeed, on two occasions, ASA ordered its units, in violation of standing instructions, 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 the Army, even when specifically asked to do so as part of the Army's preparations for the Ervin subcommittee hearings in 1971.

In this report, the domestic use of the Army Security Agency is treated separately from the Army's civil disturbance collection program for several reasons. First, ASA is an agency whose primary mission is to gather foreign intelligence. In this respect, it differs from the other Army collectors in the field in the late 1960s, who were there primarily to conduct security clearance investigations. Second, ASA has unique capabilities for surveillance that other Army investigators do not possess. The fact that these capabilities were turned inward upon private citizens is uniquely ominous. Finally, this type of surveillance activity is bound by particular legal restraints which do not apply to other types of investigative activity.

A. Legal Authorities and Restrictions

(1) *Mission of the Army Security Agency.*—ASA carries out communications intercepts for both national and tactical intelligence purposes.¹⁴² It also develops techniques of electronic warfare—"jamming" and "deceptive transmitting"—to support tactical Army operations.¹⁴³

While it does maintain operational units within the United States—in both mobile and fixed-station configurations—the domestic mission of these units is limited primarily to support of Army training exercises and to determine the vulnerability of Army tactical communications to interception by hostile intelligence agents.¹⁴⁴

(2) *Section 605 of the 1934 Communications Act Prohibits Monitoring.*—Section 605 of the 1934 Communications Act provides, in pertinent part:

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person.¹⁴⁵

The statute thus makes the interception *and* publication of radio transmissions a crime. While anyone with the appropriate radio receiver may intercept the radio communication of another, Congress has decided that the interceptor must not publish it. The law thus assures persons using radios to communicate that their transmissions will not be intercepted and divulged.

B. Origins of Domestic Radio Monitoring by ASA

Prior to 1963, there had been no explicit Army policy which had either authorized or prohibited domestic use of the ASA. In 1963, however, the Army was forced to decide the issue when it received

¹⁴² Army Regulation 10-22(C).

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ 47 U.S.C. 605.

requests for ASA support from two Army task forces assigned to deal with civil disturbances brewing in Alabama and Mississippi. The commander of one of these task forces requested on June 7, 1963, that ASA units be used to monitor police, taxi, amateur, and citizens band radio, and that ASA be authorized to "jam" transmissions emanating from a Ku Klux Klan net in Tuscaloosa, Alabama, if such action were found desirable.¹⁴⁸

But the Department of Army said "no." In a message to the task force commander, it prohibited the domestic use of ASA resources:

United States Army Security Agency organizations or elements thereof are prohibited from engaging in USASA-type operational roles (e.g., monitoring or jamming of civil and amateur telecommunications) in support of U.S. Army forces committed to maintain or enforce law and order during civil disturbances and disorders within the states and territories of the United States of America.¹⁴⁹

This policy remained in effect for the next four years, until the pressure of events caused the Army to reverse its position.

C. Domestic Radio Monitoring by ASA: 1967-1970

(1) *The March on the Pentagon.*—In October 1967, preparations were underway for the so-called March on the Pentagon, scheduled for late in the month. As part of this planning, a "high level" decision was made in the Army to allow ASA units to support Army units which would be used to control the demonstration.¹⁴⁸ Accordingly, on October 14, 1967, a message went from the Army to ASA expressly rescinding the 1963 ban, and directing that ASA participate in "Task Force Washington," the Army force created to handle the demonstration.¹⁴⁹ The Army directed not only that ASA monitor civilian communications during the March, but that it have the capability to "jam" radio transmissions and to undertake "deceptive transmitting," in the event that either became necessary.¹⁵⁰

¹⁴⁸ Message from Commanding General, Third Army, to the Commanding General, Continental Army Command, 6/7/63.

¹⁴⁹ Message from the Department of Army to subordinate commands, 6/11/67, Subject: Monitoring Civil and Amateur Telecommunications during Civil Disturbances in U.S.

¹⁵⁰ None of the documents examined by the staff identified the particular individual who approved the ASA deployment in connection with the March on the Pentagon. In a report made by the Army Inspector General to the Secretary of the Army, 1/3/72, Subject: Report of Investigation into the Failure to Provide Mr. Froehke with Full and Accurate Information Prior to his Appearance Before the Ervin Subcommittee, the Inspector General simply refers to this decision as having been made "at a high level." (p. 25.)

This investigation of the Army Inspector General was undertaken because ASA had failed to provide Assistant Secretary of Defense Robert F. Froehke, the DOD witness at the Ervin subcommittee hearings, with information regarding its orders, issued without Army approval, to conduct general searches of the radio spectrum in connection with the Republican National Convention of 1968 and the Huey Newton trial in September 1968. See pp. 812-813.

¹⁵⁰ Message from the Department of Army to the Army Security Agency, 10/14/67, Subject: Use of ASA's Resources in Civil Disturbances.

¹⁵⁰ *Ibid.*

According to an after-action report later filed by ASA after the March, this was the first time that ASA resources had ever been used in support of the Army domestically.¹⁵¹

During the weekend of the March, ASA units monitored citizens band, police band, taxi band, and amateur radio bands from a total of 36 listening posts.¹⁵² Twenty-three of these were located at the Pentagon; nine at ASA headquarters in Arlington, Virginia; and four at an ASA fixed station facility near Warrenton, Virginia.¹⁵³ The after-action report of ASA also recites the fact that while it did have the capability to "jam" and undertake "deceptive transmitting" during the March, none was actually carried out.¹⁵⁴

Despite its participation in the "March," ASA's potential usefulness in civil disorders was not widely recognized, even in the Army. The Army's Civil Disturbance Collection Plan of February 1, 1968, contained no mention of ASA's role in such activities. Moreover, the message of October 14, 1967, which had rescinded the 1963 ban, had been sent only to ASA.¹⁵⁵ Presumably, the rest of the Army was not on official notice of ASA's potential support capability.

On March 31, 1968, official notice was provided in a classified message sent to all domestic commands of the Army.¹⁵⁶ The message stated that ASA would participate in the Army's Civil Disturbance Collection Plan and could be used to monitor domestic communications and conduct jamming and deception in support of Army forces committed in civil disorders and disturbances. All such operations were required to have the approval of the Army Chief of Staff. It also provided that ASA personnel were to be "disguised" either in civilian clothes or as members of other military units. None were permitted to be used as liaison with civilian authorities. The 1963 ban was expressly rescinded.

(2) *The King Assassination Riots.*—Four days after the message was sent authorizing use of ASA units in civil disturbances, Dr. Martin Luther King, Jr. was assassinated in Memphis, and rioting erupted in Washington, D.C. On April 5, even though Army forces had not officially been brought on the scene, ASA units were directed by the Army to begin monitoring civilian radio transmissions as part of the riot control operation.¹⁵⁷ They were instructed to report directly to the Army Operations Center until an Army Task Force had been officially committed. On April 9, in anticipation of further demonstrations in Atlanta, the site of the King funeral, ASA elements were again requested to conduct radio monitoring operations, in advance of any troop commitment.¹⁵⁸

¹⁵¹ Annex A (Intelligence Summary) to USASA Task Force Washington After Action Report, Army Security Agency, 1/5/68, p. 4.

¹⁵² Letter from Col. Robert R. Brust, Chief of Staff, Army Security Agency, to Robert E. Jordan, III, Army General Counsel, Subject: Radio Monitoring Activity, 12/15/70 (cited hereinafter as Brust Letter).

¹⁵³ Memorandum from John D. Kelley, Office of the Deputy Chief of Staff, Security, to the Army Chief of Staff, Subject: ASA Radio Monitoring, 2/3/71, in Select Committee files. (Cited hereinafter as Kelley memorandum).

¹⁵⁴ 47 U.S.C. 605.

¹⁵⁵ See footnote 149.

¹⁵⁶ Department of Army message to subordinate commands, 3/31/68, Subject: Use of USASA Resources in Civil Disturbances.

¹⁵⁷ Department of Army message to ASA, 4/5/68, Subject: Use of Resources.

¹⁵⁸ Department of Army message to ASA, 4/9/68.

In all, the monitoring lasted from April 5 until April 17, 1968. ASA units at the Arlington, Virginia, headquarters, at the Treasury Building in Washington, and at a fixed station facility near Warrenton, Virginia, participated in the Washington area monitoring.¹⁵⁰ ASA units at Fort McPherson, Georgia, performed similar tasks for the Atlanta area. Citizens band, police band, taxi band, military band, and amateur bands were monitored.¹⁵⁰ On April 23, after the monitoring had ceased, ASA sent a message to the National Security Agency, informing it that ASA had participated in the domestic operations surrounding the King death. The message further advised: "Similar tasking by DA expected in future whenever Federal troops committed in civil disturbance operations."¹⁵¹ This is the only indication found by the Committee staff that NSA had ever been officially apprised of the domestic activities of ASA.

After the King funeral, on April 29, 1968, persons from the Office of the Army Assistant Chief of Staff for Intelligence met with representatives of the FCC for the purpose of obtaining the FCC's approval of future Army monitoring broadcasts during civil disturbances.¹⁵²

The FCC asked that the Army put its request in writing.¹⁵³

(3) *The Poor People's Campaign in Washington, D.C.*—Despite its failure to achieve any immediate approval from the FCC, the Army proceeded with plans to monitor civilian radio communications as part of its surveillance of the Poor People's March and Campaign in Washington, D.C. ASA began radio monitoring on May 8, 1968, although no formal authorization of these activities appears to have come from the Army until May 21, 1968.¹⁵⁴ In any case, some form of radio monitoring took place from May 8 until June 26, 1968.¹⁵⁵ Two mobile vans were located for this purpose at the 13th Police Precinct in Washington.¹⁵⁶ Other locations included ASA headquarters, the Treasury Building, and (from June 6 until June 26) the ASA fixed station facility near Warrenton, Virginia.¹⁵⁷

It was not until after the Poor People's Campaign that the Army renewed its initiative to the FCC in a June 25, 1968, letter from Acting Assistant Chief of Staff MG Wesley Franklin to Rosel Hyde, the FCC Chairman.¹⁵⁸ The letter suggested, first of all, that the FCC itself monitor civilian radio broadcasts in these situations to obtain information useful to the Army. Alternatively, it was suggested that the Army be allowed to monitor on its own.

¹⁵⁰ Kelley memorandum, 2/3/71.

¹⁵¹ Brust letter, 12/15/70.

¹⁵² Army Security Agency message to the National Security Agency, 4/23/68, Subject: Civil Disturbance Tasking.

¹⁵³ See Memorandum for Record, Army Assistant Chief of Staff for Intelligence, 6/10/68, Subject: Possible Violations of Federal Communications Act in Connection with Civil Disturbances.

¹⁵⁴ *Ibid.*

¹⁵⁵ Department of Army message to ASA, 5/21/68, Subject: USASA Support to DA OPLAN Washington Spring Project.

¹⁵⁶ Brust letter, 12/15/70.

¹⁵⁷ Kelley memorandum, 2/3/71.

¹⁵⁸ *Ibid.*

¹⁵⁹ Letter from MG Wesley C. Franklin, Acting Assistant Chief of Staff for Intelligence, Department of Army, to Rosel H. Hyde, Chairman, Federal Communications Commission, 6/25/68.

The FCC referred the Army's letter to the Department of Justice for a legal opinion.¹⁶⁹ However, by August 6, when the Republican National Convention opened in Miami Beach, the FCC had taken no formal action.

(4) *The National Political Conventions of 1968.*—Senior officers at ASA were unaware of the initiative to the FCC being taken by the Army Assistant Chief of Staff for Intelligence.¹⁷⁰ Thus, the fact that the FCC was preparing a response to the Army's query with respect to its domestic radio monitoring had no bearing on ASA deciding, on its own, to resume radio monitoring in connection with the Republican National Convention in Miami Beach.

On August 6, 1968, without the required approval of the Army Chief of Staff, ASA ordered its fixed stations in Virginia and Florida to begin general searches of the amateur radio bands to determine if there were dissident elements which were planning to disrupt the GOP Convention.¹⁷¹ It ordered the monitoring to continue through August 10.¹⁷²

ASA had no reports from its fixed stations regarding the convention, and thus cannot state with certainty that such monitoring was, in fact, carried out.¹⁷³ The incident is significant, however, because (1) it illustrates that such monitoring could be ordered, and was ordered, without the required clearance of the Department of Army;¹⁷⁴ and (2) it involved "general searches"—scanning of incoming radio signals without regard for their source or subject matter.

In any case, while the Miami Beach convention had occasioned relatively little disruption, Army intelligence predicted that the forthcoming Democratic National Convention, scheduled to begin on August 22 in Chicago, would occasion violent confrontations between protestors and civilian authorities.

Prompted by fears that Army troops might have to be committed, and that the Army Security Agency might once again be deployed, representatives of the Army Assistant Chief of Staff for Intelligence again pressed the FCC for a response to the earlier inquiry regarding domestic radio monitoring. At a meeting held on August 15, 1968, the FCC gave its reply: such monitoring would be illegal under section 605 of the Communications Act of 1934.¹⁷⁵ FCC representatives told the Army that the matter had been brought up with the Attorney General and that he had disapproved the Army request.¹⁷⁶ The FCC agreed, however, to submit a written reply to the Army stating that

¹⁶⁹ Staff summary of Hilbert Slosberg, former Deputy General Counsel, Federal Communications Commission, interview, 6/17/75.

¹⁷⁰ Staff summary of MG Charles Denholm (ret.) interview, 6/16/75; and staff summary of Col. John J. McFadden, ASA, interview 6/23/75.

¹⁷¹ Message from ASA to selected field stations, 8/6/68. Subject: Tasking In Support of DA Civil Disturbance Operations.

¹⁷² *Ibid.*

¹⁷³ See footnote 118.

¹⁷⁴ The Department of the Army did not learn of the incident until February 1971. (Kelley memorandum, 2/3/71.)

¹⁷⁵ Memorandum for Record, Army Assistant Chief of Staff for Intelligence, 8/16/68. Subject: Possible Violations of Federal Communications Act in Connection with Civil Disturbances. For provisions of section 605 see page 807.

¹⁷⁶ This was confirmed by Sol Lindenbaum, Executive Assistant to the Attorney General. Staff summary of Sol Lindenbaum interview, p. 11.

it could not "provide a positive answer" to the Army's proposal, rather than a letter which branded the proposal as "illegal."¹¹⁷

The FCC's formal reply to the Army was sent on August 19, 1968.¹¹⁸ By this time however, the pressures on the Department of Army to authorize deployments of ASA in Chicago had grown. On August 12, 1968, the ASA had itself requested Army approval to send radio monitoring teams to Chicago.¹¹⁹ This was followed by a request from the Army Commander at Fort Sheridan, on the outskirts of Chicago, asking for ASA support.¹²⁰ He anticipated his own troops being called upon.

Thus, on August 21, in obvious disregard of the FCC's opinion that civil disturbance radio monitoring by the Army would be illegal, the Army ordered ASA to send monitoring teams to Chicago from Fort Hood, Texas, and Fort Bragg, North Carolina.¹²¹ These teams were positioned at three locations in the downtown area and, while no Army troops were actually called out during the demonstrations, these teams did monitor citizens, police, and commercial bands from August 22 to August 31.¹²²

(5) *The Huey Newton Trial.*—Less than two weeks after the close of the Democratic Convention in Chicago, Black Panther leader Huey Newton was brought to trial in Alameda, California. Again ASA, without the approval of the Army Chief of Staff, ordered as required by the message of March 31, 1968 its fixed stations near Warrenton, Virginia, and Monterrey, California, to monitor domestic radio communications to determine if there were any groups around the country which might be planning demonstrations in support of Newton.¹²³ The order, in this case, called for a "general search" of all amateur radio bands from September 6 through September 10, 1968.¹²⁴ This meant that ASA elements were given free reign to listen in on radio transmissions across the country, without regard to point of origin or subject matter.

¹¹⁷ Army ACSI Memorandum for the Record, 8/16/68.

¹¹⁸ Letter from Max D. Paglin, Executive Director, FCC, to Major General Wesley C. Franklin, Deputy Chief of Staff for Intelligence, 8/10/68.

¹¹⁹ Message from ASA to Department of Army, 8/12/68, Subject: Force Generation and Closure Times.

¹²⁰ Message from Fifth Army to the Continental Army Command, 8/16/68, Subject: USASA Support.

¹²¹ Message from Department of Army to Army Security Agency, 8/21/68, Subject: USASA Support.

¹²² Brust letter, 12/15/70.

Press allegations were made two years afterward that during this period ASA agents had bugged the campaign headquarters of Democratic Presidential candidate Eugene McCarthy. (See "Military Agents Had Secret Role at 1968 Conventions," *Washington Evening Star*, 12/2/70.) An ASA after-action report of the Chicago operation made no mention of the bugging, but it did mention that the most productive of the radio nets being monitored was a radio net set up between medical aid stations serving demonstrators in the Loop area. The net control station, ASA learned, had been located in a room of the Conrad Hilton Hotel, which was assigned to a member of the McCarthy campaign staff. (See Army Security Agency Report, 7/20/69, Subject: USASA Support to DA Civil Disturbance in Chicago, Illinois.) This may have been the source of the press story.

¹²³ Message from ASA to subordinate field stations, 9/6/68, Subject: Operation Rancher III.

¹²⁴ *Ibid.*

ASA could produce no record which showed what monitoring, if any, actually took place.¹⁸⁵ The order to monitor is, nevertheless, significant since it was given without authorization, and in a situation where the use of Army troops was not contemplated.

(6) *Cafe Zipper*.—There is no record of any further domestic radio monitoring by ASA until March 1969. On March 17, 1969, during a civil disturbance exercise at Fort Hood, Texas, ASA units, who were monitoring radio transmissions of the participating forces to determine their vulnerability, intercepted transmissions of unidentified persons using citizens band radios who appeared to be monitoring the conduct of the exercise. ASA requested Army permission to continue monitoring the net—designated Cafe Zipper Net 2—and permission was given.¹⁸⁶

It was subsequently decided by ASA that the net was a nationwide net probably comprised of members of the Citizens Band Radio Operators of America. In a message from the Department of Army to the Fort Hood commander, the net was cryptically described as being "devoted to the illegal use of citizens band for hobby purposes. It is not believed to represent a threat to the United States Army."¹⁸⁷ This conclusion was reached on April 21, 1969, over a month after the monitoring had begun.

The significance of this incident is that the monitoring was not undertaken for any authorized purpose. Although there was never any indication that a civil disturbance would develop, requiring the use of Army troops, the monitoring continued for more than a month.

D. The Termination of Domestic Radio Intercepts

While there were no further domestic intercepts actually undertaken after "CAFE ZIPPER," the Army continued to debate ASA's support role in civil disturbance operations. The Army's civil disturbance office proposed in the fall of 1969 that the ASA role be formalized in regulation.¹⁸⁸ This prompted the Office of the Army Assistant Chief of Staff for Intelligence (ACSI) (which had been told a year earlier that such activity was illegal) to ask for another legal opinion from the Army Judge Advocate General.¹⁸⁹ On October 2, 1969, Army JAG responded that such activity was probably illegal.¹⁹⁰ Relying on this opinion, the ACSI "nonconcurred" in the proposal of the civil disturbance office.¹⁹¹

¹⁸⁵ The investigation of the Army Inspector General included searches of ASA files and interviews with ASA operational personnel. The investigation did not uncover any documentary evidence, however, showing the results of the "general search" which had been ordered in connection with the Newton trial.

¹⁸⁶ Message from Department of Army to ASA, 4/10/69, Subject: Cafe Zipper.

¹⁸⁷ Message from Department of Army to Continental Army Command, 4/22/69, Subject: Cafe Zipper.

¹⁸⁸ Memorandum for the Record, Army Assistant Chief of Staff for Intelligence, 10/13/69, Subject: USASA Employment of Civil Disturbance Operations.

¹⁸⁹ Disposition Form, Assistant Chief of Staff for Intelligence, to the Army Judge Advocate General, 9/15/69, Subject: USASA Employment of Civil Disturbance Operations.

¹⁹⁰ Letter from William M. Nichols, Colonel, Judge Advocate General Corps, to the Army Chief of Staff for Intelligence, 10/2/67, Subject: USASA Employment in Civil Disturbance Operations.

¹⁹¹ Disposition Form, Army Assistant Chief of Staff for Intelligence to the Directorate of Civil Disturbance Plans and Operations, 10/15/69, Subject: USASA Employment of Civil Disturbance Operations.

Shortly thereafter, Army ACSI sent a memorandum to the Army General Counsel recommending that the Army seek legislative authority to engage in future radio monitoring.¹⁰² In the same memorandum, however, it was stated that previous ASA operations had been of little value:

No compromise of any covert operation has occurred to date. However, it should be pointed out that the intelligence obtained was of marginal value. Existing laws prohibit monitoring civilian radio transmissions and for the USASA to continue covert monitoring could prove harmful to the United States Army if compromised. Continued use of the USASA in this effort does not appear justified considering the risks involved.¹⁰³

In spite of the Army ACSI's apparent decision in October 1969 that further domestic use of ASA was not justified, he took no formal action to put an end to such use. ASA itself sought guidance from ACSI regarding its domestic support role on two occasions in 1970,¹⁰⁴ but ACSI responses were ambiguous. On December 1, 1970, for example, the Army told ASA that while it would no longer have a formal support role in civil disturbances, "in the event intelligence estimates of civil disturbance threats change to indicate a requirement for ASA support in civil disturbances operations, ASA will again be asked to provide support."¹⁰⁵

In fact, as was the case with the Army's civil-disturbance collection program, ASA domestic intercepts were not formally terminated until they were exposed in the press. On December 1, 1970, NBC News reported that ASA units had been used to monitor civilian radio broadcasts during the 1968 Democratic National Convention.¹⁰⁶ This led the Army, on December 10, 1970, to rescind the March 31, 1968 message which had authorized the use of ASA resources in support of civil disturbance operations.¹⁰⁷

No subsequent authorization has been issued.

IV. INVESTIGATING CIVILIAN GROUPS CONSIDERED "THREATS" TO THE MILITARY: A CONTINUING PROGRAM

There is no express statutory authority for the military to investigate persons or groups whom the military considers as "threats." The services cite only the general authority of the National Security Act of 1947 which authorizes each service secretary to undertake those functions "necessary or appropriate for the training, operations, ad-

¹⁰² Memorandum from Army Assistant Chief of Staff for Intelligence to the Army General Counsel, Subject: United States Army Security Agency (USASA) Covert Activities in Civil Disturbance Control Operations (undated).

¹⁰³ *Ibid.*

¹⁰⁴ Message from ASA to Department of Army, 11/28/69, Subject: Status of USASA Support to DA Civil Disturbance Control Operations. Message from ASA to Department of Army, 11/30/70, Subject: USASA Support to DA Civil Disturbance Control Operations.

¹⁰⁵ Message from Department of Army to ASA, 12/1/70, Subject: USASA Support to DA Civil Disturbance Control Operations.

¹⁰⁶ NBC News, First Tuesday, 12/1/70.

¹⁰⁷ Memorandum for Record, Army Assistant Chief of Staff for Intelligence, 12/11/70, Subject: Meeting with General Counsel.

ministration, logistical support and maintenance, welfare, preparedness, and effectiveness of (their particular service)."¹⁹⁸

Each of the military departments has traditionally maintained that the services required such authority in order to defend themselves.¹⁹⁹ Their argument has been that within the United States the FBI does not provide sufficient information for this purpose, and, outside the United States, there is no law enforcement agency upon which they can rely at all for such information.²⁰⁰

The restrictions, imposed by the DOD in 1971 upon the collection of information on "unaffiliated" persons and groups, expressly excepted the collection of information on "threats" from its general prohibition.²⁰¹ But the 1971 restrictions do not define what a "threat" is, apart from listing examples such as "subversion of the loyalty, discipline, or morale of Department of Defense military or civilian personnel," which lend themselves to broad interpretations.²⁰²

A. Investigations of Civilian Groups Within the United States

(1) *Investigations Undertaken Prior to the 1971 Directive.*— In the late 1960s and early 1970s military investigators from each of the three services conducted investigations and maintained files on civilian groups whose activities were directed against the military. The Army reported to Congress that it "maintained files" on eleven such civilian groups during 1969 and 1970.²⁰³ Furthermore fourteen military groups (designated as "Resistance in the Army"—RITA) were subjects of Army investigations.²⁰⁴

Of particular interest to all the services were offpost coffeehouses, operated by these civilian groups, and "underground" newspapers, published by the same groups. Typically, both were designed to attract military personnel. The primary means of obtaining information on both the coffeehouses and the underground newspapers was to penetrate them with either a military intelligence agent or a military informant, who would report back on the group's activities. These reports were typically shared with the FBI and local law enforcement agencies.

Again, Army representatives told Congress that the Army had conducted "investigations" of 17 such coffeehouses,²⁰⁵ and "maintained

¹⁹⁸ 10 U.S.C. 3012 (authority for the Secretary of the Army).

¹⁹⁹ See 10 U.S.C. 5031 and 10 U.S.C. 8012 for comparable provisions for the Secretary of the Navy and Secretary of the Air Force, respectively.

²⁰⁰ Testimony of David O. Cooke, Deputy Assistant Secretary of Defense (Comptroller), *1974 Hearings*, p. 108.

²⁰¹ *Ibid.*, pp. 100, 122.

²⁰² DOD Directive 5200.27, paragraph IV (A).

²⁰³ That part of the DOD Directive which permits the investigation of civilian groups considered by the military as "threats" is discussed in detail at pp. 827-828.

²⁰⁴ "Department of Defense Appropriations for FY 71." Hearings before a Subcommittee of the Committee on Appropriations, House of Representatives, 91st Cong., 2nd Sess. (1970), Pt. III, p. 163.

²⁰⁵ The extent to which the Army was still maintaining files and conducting surveillance activities against civilians came in the course of testimony regarding Army expenditures for intelligence.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, p. 101. These included the Fun, Travel and Adventure Coffee House near Ft. Knox, Ky.; Sergeant Brown's Memorial Necktie near Ft. Devens, Mass.; Open Your Eyes near Ft. Eustis, Va.; Shelter Half near Ft. Lewis, Wash.; and the Oleo Strut, near Ft. Hood, Texas.

files" on 53 "underground" newspapers²⁰⁶ during 1969 and 1970; but that as of March 1970, the number of coffeehouses, as well as the number of "underground" newspapers, was "drastically declining."²⁰⁷

(2) *Investigations of Civilian Groups After the 1971 Directive.*—As mentioned above, in March 1971, an internal directive was issued which generally limited the military's collection of information about private groups and individuals. It allowed for the collection of information on "threats," however, and it permitted the military to penetrate covertly civilian groups so long as such penetrations were approved by a special DOD-level board—the Defense Investigative Review Council (DIRC).²⁰⁸ The directive set no standards, however, upon which the DIRC would base its decision.²⁰⁹

Since the date of the directive, nine requests have been made by the military services (none of which were made by the Army) for DIRC approval of covert penetrations directed against civilian groups. Summaries of these requests follow.²¹⁰

(a) *Antiwar Group in San Diego, California.*—On March 25, 1971, Navy Secretary John Warner requested DIRC approval for three ongoing penetrations of civilian groups being carried out by agents of the Naval Investigative Service (NIS). On May 24, 1971, he amended the request by asking for permission to continue only one of the three.

This entailed the penetration of an antiwar organization in San Diego whose membership was predominantly comprised of military personnel. NIS reported that it had several sources within the group, including one in the "inner circle" of the group's headquarters. DIRC was also informed that the FBI had declined to conduct its own penetration, but had been informed of the NIS operation and its plans to continue.

DIRC approved the request on May 24, 1971. In November 1971 it reevaluated the penetration at the request of the Navy.

On June 30, 1972, the Navy terminated the operation on its own initiative. It reported to DIRC that it had succeeded in identifying 189 military personnel who were members or had some contact with the group (NIS had obtained a copy of the membership list), and had obtained extensive information on its financial and political connections. NIS also indicated that it had filed a total of twenty-one reports on the group, all of which had been distributed to the FBI, DIA, the Air Force, and the Army. The operation terminated because the group had disbanded.

(b) *Peace Group to Hanoi.*—The Air Force had recruited an antiwar activist who was scheduled to go to Hanoi as part of a peace group to report on the condition of prisoners-of-war in North Vietnam. DIRC approval was sought since the operation involved the penetration of a civilian group.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*, p. 163.

²⁰⁸ DOD Directive 5200.27, para. V (E).

²⁰⁹ The deficiency in the DOD Directive is discussed in detail at pp. 828-833. It should be noted, however, that the DIRC has issued instructions to guide the individual services in submitting their requests for approval of covert penetrations. Presumably, these same standards would govern the DIRC's decision.

²¹⁰ All of the following summaries are the product of staff review of DIRC files.

DIRC gave its approval on September 24, 1971, but the Air Force source did not make the contemplated trip to North Vietnam, and no information was obtained.

(c) *Underground Newspaper Near Travis Air Force Base.*—On October 1, 1971, Air Force Secretary John McLucas requested DIRC permission to penetrate the staff of an underground newspaper which was published near Travis Air Force Base in California. He stated that the newspaper had encouraged insubordination by Air Force personnel, and that a penetration was necessary to determine whether there was any conscious effort to disrupt Air Force activities or damage Air Force property. DIRC approved the request on October 6, 1971.

The operation lasted until October 1972. DIRC was informed that the Air Force Office of Special Investigations had not succeeded in planting a source on the newspaper staff, but that it had identified fifty Air Force personnel and fifteen civilians who were active in the newspaper's operations. No evidence of any conscious effort to damage Air Force property or disrupt Air Force activities was found.

(d) *Peace Group in San Diego, California.*—On May 30, 1972, Navy Under Secretary Frank Sanders requested DIRC approval for the penetration of a second antiwar group in San Diego, California. Members of the group were thought to have been instrumental in protesting the deployment of certain ships to South Vietnam. DIRC was informed that both the FBI and local police had declined to place a source in the group.

DIRC approved the operation on June 5, 1972. A year later, NIS filed a progress report and requested revalidation of the operation. It cited the fact that the operation had succeeded in identifying military personnel who were members of the group, and had learned of "discussions" regarding plans to sabotage U.S. ships,²¹ to encourage insubordination within the Navy, and to reveal military secrets. NIS also stated that it had received warnings of public demonstrations against the war as a result of the penetration. The DIRC revalidated the penetration. It continued until May 1974, when the group no longer focused upon military problems.

(e) *Antiwar Group in Charleston, South Carolina.*—On October 20, 1972, the Navy requested DIRC approval to penetrate an antiwar group in Charleston, South Carolina. It cited FBI reports which showed the group planned to protest the departure of certain ships to South Vietnam, and was contemplating acts of sabotage against a Navy vessel. NIS reported that the FBI already had a source within the group, but that the source did not provide sufficient information regarding military personnel and military targets. DIRC approved the penetration.

The operation lasted until May 1973, when it was determined that the group no longer represented a significant threat to the Navy. NIS reported that as a result of the penetration it had learned of one incident in which Navy personnel had attempted to damage the boilers on a U.S. vessel.

(f) *White Racist Group in Charleston, South Carolina.*—On April 23, 1973, the Air Force Office of Special Investigations requested

²¹The "plans" referred to in the files apparently were never carried out.

DIRC approval of a penetration of a white racist group in Charleston, South Carolina. Members of this group had apparently been responsible for encouraging racial unrest at Charleston Air Force Base. Furthermore, the Air Force had information that the group had contacted an Air Force sergeant for the purpose of obtaining ammunition from the airbase. DIRC approved the penetration.

This penetration never took place because the military source was transferred before his application for membership in the group was approved.

(g) *Dissident Group in Long Beach, California.*—On March 15, 1973, the Navy requested DIRC approval for the penetration of a dissident group with antimilitary objectives in Long Beach, California. DIRC was informed that the FBI did not have a source within this group.

DIRC disapproved the request on the grounds that the group did not represent "a direct and palpable threat" to the Navy. It suggested, however, that the Navy might provide a source which could be placed under FBI control.

In fact, a Navy agent was "loaned" to the FBI in September 1973, with DIRC approval. It lasted until July 1974, when the FBI decided to terminate.

(h) *Servicemen's Counseling Center in San Diego.*—On June 7, 1974, the Navy requested DIRC approval for a penetration of a servicemen's counseling center in San Diego, California. It stated that it had reason to believe that the center was under communist influence and encouraged insubordination among Navy personnel.

DIRC took no action on the request, and it was formally withdrawn in August 1974.

(i) *Antimilitary Group in Charleston, South Carolina.*—On March 14, 1975, the Navy requested DIRC approval to penetrate a group that was offering advice to dissident sailors in Charleston, S.C. It cited evidence it had obtained from the FBI that the group intended to encourage a sit-down strike aboard a Navy vessel. NIS indicated that it already had someone within the group that would cooperate.

DIRC approved this penetration to last for a period of 90 days only.

On May 1, 1975, the Navy reported that the penetration had been terminated. NIS had learned of plans for a sit-down strike but it never materialized because the ringleader had been administratively discharged for drug-related reasons. Apparently, the Navy informant had provided information which formed the basis for the discharge.

B. Investigations of Civilian Groups Overseas

Overseas, in the absence of the FBI, the military services have in the past been more active in investigating civilian groups which they consider "threats." In many cases, these groups have been composed entirely or in part of American citizens living abroad.

Until August 1975, there were no departmental restrictions on investigations of U.S. citizens living abroad.²¹² DOD Directive 5200.27,

²¹² On August 20, 1975, the Defense Investigative Review Council voted to extend DOD Directive 5200.27 overseas. This change has subsequently been incorporated in the directive.

In a case currently pending before the United States District Court for the District of Columbia (*Berlin Democratic Club et al. v. Schesteger et al.*, Civil

which restricted such investigations in the United States, did not apply overseas. Hence, the only restrictions which did apply were the laws of the host country and the Status of Forces treaties which normally govern the relationship between American occupying forces and the host country. As a practical matter authority to conduct operations against civilian groups has rested largely with local military commanders.²¹³

(1) *Army Operations in West Germany and West Berlin.*—The Army has had troops stationed in West Germany and West Berlin since the conclusion of World War II. As part of the occupation agreements negotiated between the United States and West Germany, the German Government agreed to provide security for American forces stationed in West Germany.²¹⁴ In satisfaction of this obligation, the West German government has allowed the U.S. Army to conduct counterintelligence operations within its boundaries. While such operations were undertaken, for the most part, to detect the activities of hostile intelligence agents or to recruit sources for foreign intelligence purposes, they were occasionally undertaken to identify persons or groups which sought to undermine the discipline or morale of U.S. troops.

Until 1968, the decision to conduct such operations rested largely with the commanders of intelligence units scattered throughout the country.²¹⁵ They were guided for the most part by operational necessity. While no figures are available for this period, it is clear that American citizens were occasionally targeted by these operations, and that relationships between foreign groups and individuals, and American citizens were routinely scrutinized.²¹⁶

A variety of intelligence-gathering techniques were employed: wiretaps, mail opening, covert penetrations, photography, and personal surveillances. All were performed apparently with the knowledge of the West German authorities, and, in the case of mail and telephone intercepts, with their cooperation.²¹⁷

In 1968, the Federal Republic of Germany (FRG) brought the most sensitive surveillance activities—mail opening and wiretaps—under its exclusive control. It created a parliamentary commission to

Action No. 310-74, filed 2/29/74), the government does not argue that U.S. citizens who live or travel in foreign countries lose their constitutional rights vis-a-vis the United States Government agencies, i.e., the Army, which might be present in such countries. It does argue, however, that the Government has additional security needs abroad against which the exercise of constitutional rights must be balanced. The Government further argues that certain constitutional safeguards, e.g., the warrant requirement of the Fourth Amendment, are not applicable in foreign contexts. See Memorandum of Law in Support of Motion to Dismiss, or, in the Alternative, for Summary Judgment, filed 6/7/74, pp. 46-48, 66-70, 105-107.

²¹³ This authority has, of course, been subject to the direction of higher military authority.

²¹⁴ Convention on Relations Between the Three Powers and the Federal Republic of Germany, 5/26/52. As Amended by Schedule I of the Protocol on Termination of the Occupation Regime in Germany, Signed at Paris, 10/23/54, Article 5. Printed in "Documents on Germany: 1944-1970," Committee on Foreign Relations, United States Senate (1971), p. 250.

²¹⁵ Staff summary of DOD Briefing, Army Counterintelligence Operations in West Germany and West Berlin, 10/21/75.

²¹⁶ *Ibid.* Also see staff summary of Col. John J. Conkley (ret.) interview, 8/14/75.

²¹⁷ *Ibid.*

pass upon all requests for both mail and telephone intercepts, and required that all such intercepts be performed by FRG authorities.²¹⁸ The requirements of this law were incorporated in a supplemental agreement to the Status of Forces Agreement, referred to above.

Thus, the Army has been required to request mail opening and wire surveillance from the West German commission in conformity with the requirements of the new law since 1968. On one occasion, in fact, a wiretap was requested on a foreign national who was working closely with an American political group in Heidelberg.²¹⁹ It resulted in the Army's obtaining considerable information regarding the personal and political activities of American citizens who were living and traveling in the Heidelberg area.²²⁰

Insofar as other types of surveillance are concerned—penetrations, photographic or covert observation—U.S. Army intelligence officers continued to have approval authority.

In fact, Army intelligence has conducted surveillance operations against civilian groups, comprised in part of American citizens, in West Germany since 1968. In Heidelberg, for instance, the Army in 1973 attempted to penetrate the staff of an "underground" newspaper, *Fight Back*, which was directed at military personnel in the area.²²¹ It also penetrated a civilian legal counseling group in Heidelberg which was offering free counsel to servicemen.²²²

In Mainz, another West German city, the principal target of Army operations in 1973 was a meeting house jointly sponsored by the U.S. National Council of Churches, the World Council of Churches, and the German Evangelische Kirche, which attracted servicemen allegedly engaged in "dissident" activities within the military.²²³ The Army photographed persons going into the meeting house, wrote down license plate numbers, and sent their own agents inside to report back on the group's activities.²²⁴

Similar operations were carried out by the Army in West Berlin where the laws of the Federal Republic of Germany did not apply. Hence, the 1968 law, which placed strict restrictions on the Army's ability to employ unilaterally mail openings and wiretaps, had no effect there.

In West Berlin, under a special tripartite agreement with the British and the French called the Allied *Kommandatura*, the Army commander is made the governing authority for the American sector

²¹⁸ Federal Republic of Germany, Law Restricting the Privacy of Mails, Telephone and Telegraphic Communications, 8/13/68, commonly referred to as the "G-10" law.

²¹⁹ 1973 Hearings, pp. 382-380.

²²⁰ *Ibid.* The summaries of wiretapped conversations indicate, in fact, that the Army was more interested in the activities of American dissidents who were working with the subject of the wiretap than it was with the subject himself.

²²¹ See "Germany Expelling U.S. Student for Work on Anti-Army Newspaper," *New York Times*, 9/13/73.

²²² Affidavit of Carl E. Maze, Army intelligence agent, Defendants Submission to the Court *in camera*, Ex Parte Berlin Democratic Club, *et al.* v. Schlesinger Civil Action No. 310-74, United States District Court for the District of Columbia, 10/20/74.

²²³ 1973 Hearings, p. 304, and "U.S. Army Is Said To Spy on Its Critics in Germany," *New York Times*, 7/28/73, p. 1.

²²⁴ 1973 Hearings, p. 304.

of West Berlin.²²⁵ The *Kommandatura* contains no restrictions on intelligence gathering of any kind: On the contrary, it requires each of the three governments to provide information to the others regarding security in their respective sectors of the city. An active intelligence operation thus appears to have been contemplated.

In fact, such an operation has been carried out by the Army since World War II, not simply for its own purposes, but for the other Allied commands as well. The Army has engaged in wiretapping and mail opening as part of this program, as well as a variety of other surveillance techniques.²²⁷ Further, in West Berlin, as in other cities in West Germany, the Army has occasionally turned this intelligence apparatus against civilian groups (composed largely of American citizens) who were considered by the Army to be "threats."²²⁸

In August 1972, the Army focused its attention on a group called "Americans in Berlin for McGovern," an organization which reportedly had petitioned the National Democratic Party in the United States for official affiliation.²²⁹ After the election, the group changed its name to Concerned Americans in Berlin, and attempted to interest military men in joining. Members of the group were connected to an "underground" newspaper called *Forward*, which made direct appeals for support to military personnel in West Berlin.

As part of its surveillance of the group's activities, the Army opened mail addressed to the newspaper, and penetrated its staff.²³⁰ It also sent informants or agents into Concerned Americans in Berlin to report on its activities.²³¹ Surveillance of the group continued until 1974.

(2) *Navy Operations in Japan*.²³²—Beginning in 1973, the Naval Investigative Service (NIS) conducted special counterintelligence operations (covert penetrations) in three Japanese cities—Okinawa, Iwakuni, and Yokosuka—against targets similar to those investigated by the Army in West Germany. In each case, the targets were private meeting places operated by a coalition of political groups, comprised predominantly of Americans living in Japan. The groups attempted to attract military personnel—often they provided legal counseling and representation; and in some cases they published newspapers designed to appeal to the military.

Mail opening and wiretaps were not used by the Navy against these groups, as the Army had done in West Germany. The Navy's method of operation in Japan was confined to using its own personnel as informants. NIS records show that these informants made frequent—in some cases, almost daily—reports to their case officers. Usually, the reports described the activities of the members of each group, and

²²⁵ Statement of Principles Governing the Relationship Between the Allied Kommandatura and Greater Berlin, Signed by the Three Western Commandants, Berlin, 5/14/49. Also, Allied Kommandatura Letter, Subject: Declaration on Berlin, to the Governing Mayor, Berlin, 5/5/55.

²²⁶ *Ibid.*, para 2 (c).

²²⁷ DOD Briefing (staff summary), 10/24/75.

²²⁸ *Ibid.*

²²⁹ 1973 Hearings, pp. 370-379.

²³⁰ 1973 Hearings, pp. 304-305.

²³¹ *Maze Affidavit, Berlin Democratic Club et al. v. Schlesinger*, 10/29/74; and 1973 Hearings, pp. 373-379.

²³² The description of these operations is based upon an examination of NIS files by the Select Committee staff.

what had taken place in discussions and programs at the meeting places. Any military personnel who frequented the meeting places were reported, as were any "outsiders" who came as guests. NIS frequently ran FBI and DOD checks on such "outsiders," and occasionally requested copies of passport and visa applications from U.S. and foreign authorities.

Navy informants also obtained copies of letters and envelopes found at the meeting houses, and took copies of subscription lists, financial records, and "contact" lists maintained by the groups under surveillance. In most cases, they also provided copies of photographs taken of group members to NIS.

Information regarding the participation of Navy personnel was reported by NIS to local Navy commanders, and on at least two occasions, Navy personnel who became active participants in the groups were transferred to other locations.

None of the three penetrations were coordinated with the FBI, CIA, or DOD counterintelligence agencies as they would have been if the agents of a hostile intelligence service had been involved. Nonetheless, NIS did disseminate reports on the three groups to all of the agencies mentioned.

In none of the three cases did NIS have information prior to conducting the penetration that the groups were, in fact, engaged in, or planning to engage in, illegal activities. The penetrations were undertaken to determine if the groups posed any threat to the Navy, and, if so, to enable the Navy to prepare for it.

All of these operations were instituted by the Director of the Naval Investigative Service. Since they involved overseas operations, they did not, at that time, require the approval of the Defense Investigative Review Council.

V. ASSISTING LAW ENFORCEMENT AGENCIES IN SURVEILLANCE OF PRIVATE CITIZENS AND ORGANIZATIONS

Military intelligence is rather frequently called upon, or undertakes on its own initiative, to provide information or support to law enforcement agencies at all levels of government, as well as the Secret Service.

A. Legal Authority

The extent to which the military can legally be used to "assist" law enforcement agencies in the performance of their duties is not clear. On the one hand, the *Posse Comitatus Act* of 1878 prohibits the military from "executing the law . . . except in cases and under circumstances expressly authorized by the Constitution or act of Congress."²³³

One such statutory exception, which Congress recognized in its debates on the 1878 Act,²³⁴ was the power of the President to use the armed forces to enforce the laws, in times of insurrection.²³⁵ Such use, however, was conditioned upon the President's issuing a formal proclamation calling for the insurgents to disperse.²³⁶

²³³ 18 U.S.C. 1385.

²³⁴ 7 Cong. Rec. 3849 (1878).

²³⁵ 10 U.S.C. 331-333.

²³⁶ 10 U.S.C. 334.

In the years following the Civil War, federal marshals had relied on Army troops to help them enforce federal election laws in the South.²⁴⁷ By enacting the *Posse Comitatus Act* in 1878, Congress sought to end the practice, or at least ensure that federal troops could not be used without a formal proclamation from the President.²⁴⁸ This suggests, therefore, that the *Posse Comitatus Act* was intended to limit the ability of law enforcement agencies, in the absence of a presidential proclamation, to task federal troops for support.

Insofar as military intelligence is concerned, it seems clear that the Act would prevent its being tasked by civilian law enforcement to perform criminal investigations of civilians. The extent to which the military intelligence can otherwise be required to support such activity is not so clear, but the *Posse Comitatus Act* undoubtedly serves to restrain such cooperation.

B. Nature of Assistance

(1) *Collection and Exchange of Information.*—In Chicago, Army intelligence in the late 1960s received a copy of virtually all police intelligence reports.²⁴⁹ The military, in turn, provided the Chicago police with their own reports, and in some cases, with military personnel records.²⁵⁰ In addition, Army intelligence frequently responded to police and Secret Service requests for information.²⁵¹

When the DOD restrictions came into effect in 1971 calling for the destruction of all files on "unaffiliated" persons and organizations, several Army intelligence units turned over their intelligence files on dissident individuals and organizations to local police authorities rather than having them destroyed: the Chicago Police Department received the files of the 113th Military Intelligence Group;²⁵² the Pennsylvania State Police obtained the files on "personalities" of the 109th Military Group;²⁵³ the Cuyahoga County Sheriff's office received the 109th's files on dissident organizations in the Cleveland, Ohio, area;²⁵⁴ and the Washington, D.C. Police Department reviewed and retained certain files of the 116th Military Intelligence Group.²⁵⁵

In 1972, an Air Force counterintelligence unit in San Diego began maintaining files on dissident individuals and groups in the San Diego area. This activity was *in anticipation* of receiving tasking from the Secret Service to collect such information in preparation for the 1972 Republican National Convention, which was scheduled for San Diego at that time.²⁵⁶

²⁴⁷ See Edward S. Corwin, *The President: Office and Powers, 1787-1957*, (New York: New York University Press, 1957), pp. 137-138.

²⁴⁸ *Ibid.* See also, Rankin and Kallmeyer, *Freedom and Emergency Powers in the Cold War* (New York: Appleton-Century-Crofts, 1964) p. 220.

²⁴⁹ Norriss (staff summary), 6/23/75.

²⁵⁰ *Ibid.* Also, see "Lawyer Data Winds Up in Police Files," *Chicago Daily News*, 4/9/75, p. 1.

²⁵¹ O'Brien, 1971 Hearings, pp. 116-117.

²⁵² "Ex-FBI Aide Accused in Police Spy Hearings," *Chicago Tribune*, 6/21/75, p. 3.

²⁵³ 1971 Hearings, p. 1297.

²⁵⁴ *Ibid.*

²⁵⁵ Memorandum for AC81 Task Force, U.S. Army Intelligence Command, Subject: Possible Transfer of MI Files, 2/8/71.

²⁵⁶ See DIRC Inspection Report No. 4, 4/21/72, 1974 Hearings, p. 250.

(2) *Transfer of Money and Equipment.*—In 1968 after the riots following the assassination of Martin Luther King Jr., a meeting was held at the White House. At this meeting Mayor Walter Washington, of Washington, D.C., expressed concern that the Intelligence Division of the Metropolitan Police Department did not have sufficient resources to predict future riots and disorders.

Shortly thereafter, at the order of the White House, the Army arranged for a transfer of \$150,000 from its intelligence funds to the D.C. Police Department to be used for intelligence purposes.²⁴⁸ In the summer of 1968, the Army also agreed to furnish the Justice Department with tear gas grenades for distribution to local police departments, but the plan was never implemented.²⁴⁹

(3) *Participation in Law Enforcement Operations.*—On January 14, 1969, shortly before the inauguration of President Nixon, two Army intelligence agents participated in an FBI search of the evacuated premises of an underground newspaper in Washington, D.C.²⁵⁰ The FBI obtained a key from the landlord to gain entry, and subsequently removed documents which they found on the premises. These were turned over to the Army agents.²⁵¹

In Chicago, two Army intelligence agents were invited to "observe" a 1970 police raid on a meeting place of the Chicago 7 defense team.²⁵² Another Army agent in Chicago stated that he had been invited to participate in several raids by the Chicago police, including the raid on the apartment of Black Panther leader Fred Hampton in November 1969.²⁵³ He denied having participated in any of the raids, however.

During the Democratic Convention of 1968, Army intelligence agents in Chicago were also detailed to support the U.S. Secret Service. One of the agents who was involved was assigned at various times to monitor personally the activities and whereabouts of Ralph Abernathy, Lester Maddox, and Jesse Jackson.²⁵⁴

In 1974, at the request of the FBI, Army investigators were used to take down the license numbers of cars in a parking lot at West Point, New York.²⁵⁵ The lot was being used to park the cars of demonstrators in town for a protest demonstration.

Also in 1974, a special agent of the Defense Investigative Service was asked to assist with an investigation of the U.S. Customs Bureau by interviewing a friend suspected of having knowledge of the case.²⁵⁶

(4) *Participation in Interagency Intelligence Projects.*—Representatives of the military were among those involved in drafting the so-

²⁴⁸ See Testimony of Albert C. Hall, Assistant Secretary of Defense (Intelligence), Hearings before the Select Committee on Intelligence, U.S. House of Representatives, 94th Cong., 1st Sess. (1975), p. 219.

²⁴⁹ Hymna Memorandum, 1974 Hearings, p. 307.

²⁵⁰ "Break-In by FBI Alleged Before 1969 Inauguration," *New York Times*, 3/31/73, p. 1; also "FBI Was Given Key for Search in 1969," *New York Times*, 6/1/73, p. 14.

²⁵¹ *Ibid.*

²⁵² Norusia (staff summary), 6/23/75.

²⁵³ Staff summary of Jerry L. Borum interview, 6/13/75.

²⁵⁴ Statement of Richard G. Stahl, former intelligence agent, 6/18/75.

²⁵⁵ See Army Response to 2nd Select Committee Inquiry, in Select Committee Files.

²⁵⁶ *Ibid.*

called Huston plan in the summer of 1970.²⁵⁷ This plan was developed for the President and proposed numerous alternatives for the expansion of domestic intelligence capabilities. The military representatives, however, succeeded in keeping the military out of further domestic responsibilities. A White House aide Huston put it in his recommendations to the President: "The intelligence community is agreed that the risks of lifting these restraints (on military intelligence) are greater than the value of any possible intelligence which could be acquired by doing so."²⁵⁸

In December 1970, however, six months after the Huston Plan had been rescinded, the Department of Defense agreed to participate in an interagency committee on domestic intelligence. Designated the Intelligence Evaluation Committee, the group operated under the aegis of the Justice Department.²⁵⁹ Its objectives were to prepare analyses and reports on domestic unrest. The DOD furnished one representative to the Committee which lasted from January 1971 until June 1973.²⁶⁰ It also furnished a Navy ensign who was assigned to the IEC working staff.²⁶¹

In 1972, the Under Secretary of the Army approved a Justice Department request to furnish three Army intelligence analysts to the Justice Department's Information Evaluation Center in Miami Beach.²⁶² The purpose of these agents was to analyze intelligence coming into a Justice Department communications center regarding possible demonstrations during the Democratic and Republican National Conventions of 1972. These agents were on duty from July 15 to July 25, 1972; and from August 15 to August 25, 1972.²⁶³

VI. CURRENT DEPARTMENTAL RESTRAINTS UPON SURVEILLANCE OF CIVILIANS

As discussed above, after the Army's civil disturbance collection program had been exposed in the press, the Department of Defense in March 1971 issued a new directive²⁶⁴ which, in general:

--forbade the military from collecting and maintaining information on "unaffiliated" persons and organizations, except for that "essential" to the military mission;

--required that all information being held in violation of the directive be destroyed;

--permitted the military to continue investigating civilian groups which it considered as "threats";

²⁵⁷ Representatives of the Army, Navy, Air Force, DIA and NSA took part. For a detailed description of the Huston Plan and its evolution, see the Select Committee staff report, "National Security, Civil Liberties, and the Collection of Intelligence: A Report on the Huston Plan."

²⁵⁸ Memorandum from Tom Charles Huston to H.R. Haldeman, 7/17/70, Subject: Domestic Intelligence Review, p. 4.

²⁵⁹ See Letter from D. O. Cooke, Deputy Assistant Secretary of Defense, to Senator Sam J. Ervin, Jr., 1973 Hearings, p. 206.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*, p. 200.

²⁶² *Ibid.*, p. 205.

²⁶³ *Ibid.*, p. 200.

²⁶⁴ DOD Directive 5200.27.

—permitted the military to conduct both covert and overt surveillance of civilian political activities if permitted by high-level DOD officials;

—did not prevent military intelligence from continuing to supply assistance to civilian law enforcement agencies.

The discussion now turns to a more detailed account of what the directive requires and how it has worked. We begin by noting the impact the directive has had on intelligence activities undertaken for the purposes identified in Parts II-V above. The report then discusses the remaining provisions of the directive as restraints upon military surveillance in the future.

One must keep in mind throughout, however, that it is an administrative directive being considered. No matter how effective it may have been in the past, the directive can be rescinded or changed at the direction of the Secretary of Defense.

A. Curbing Past Abuses

Although the new directive places relatively strict restraints on the collection and retention of information regarding "unaffiliated" persons and organizations, it leaves military intelligence free to engage in collection activities for each of the purposes described in parts II-V.

(1) *Preparing for Civil Disturbances.*—The directive states that the Attorney General of the United States is the chief civilian officer for purposes of coordinating activities relating to civil disturbances. Furthermore, it gives the Secretary of Defense or his designee—in this case, the Secretary of the Army—the authority to order that information be acquired to meet the Department's "operational requirements," if "there is a distinct threat of a civil disturbance exceeding the law enforcement capabilities of state and local authorities."²⁰

The directive does not state from whom the Department is authorized to obtain the information relating to its "operational requirements," or whether it may use its own personnel to collect such information. Moreover, by reciting that the Attorney General is the chief official responsible for coordinating civil disturbance operations, it implies that if the Attorney General were to task the DOD for information regarding civil disturbances, the Department would have no choice but to comply. This is, of course, precisely what took place in 1967.

Thus, while the directive requires that any civil disturbance collection effort using military operatives or otherwise be "turned on" at a high level of the Department, it does not forbid the military from collecting information for this purpose.

As a matter of fact, the Secretary of the Army has exercised his authority under the directive by designating a small element at the Department of Army level—the Division of Military Support—to maintain contact with the Justice Department and acquire information from it regarding "distinct threats of civil disturbances." None of this information is currently disseminated within DOD but, presumably, it would be in the event Army troops were deployed.

It would seem that while the directive appears to authorize the collection of information on potential civil disturbances on a case-by-case

²⁰ DOD Directive 5200.27, Para. IV (c).

basis, in fact the Army has decided to authorize continuous, albeit limited, collection.

The Committee's investigation also revealed that this portion of the directive has been violated. As late as 1975, the National Security Agency, a foreign intelligence collection agency of the Department of Defense, was maintaining information on potential civil disturbances on the grounds that it was helpful to NSA recruiters who may be entering such "troublespots."²⁰⁷ DOD put an end to the practice.

(2) *Monitoring Domestic Radio Transmissions.*—The directive contains no direct reference to radio monitoring. Rather, it has a general prohibition against the use of electronic surveillance "except as authorized by law."

It is noted, in this regard, that the monitoring and publication of radio transmissions are outlawed by section 605 of the Communications Act of 1934, but that did not prevent the Army Security Agency from engaging in such intercepts from 1967 to 1970.²⁰⁸ The Army, in fact, continued such monitoring even after being told by the FCC that it was illegal.

(3) *Investigating "Threats" to the Military.*—The directive expressly provides that "information may be acquired about activities threatening defense military and civilian personnel and defense activities and installations . . ." One example of a "threatening" activity cited in the directive is the subversion of loyalty, discipline, or morale of Department of Defense military or civilian personnel by actively encouraging violation of law, disobedience of lawful orders or regulations, or disruption of military activities."

This exception for "threats" is, on its face, ambiguous. The phrase "subversion of the loyalty, discipline, or morale of DOD personnel," is not defined, nor is the phrase "encouraging . . . disobedience . . . or disruption of military activities." Conceivably, these exceptions could encompass any form of protest activity against the established order in the civilian community.

The Committee has noted in the course of its investigation that there are differing interpretations of what constitutes a "threat" among the military services. For example, the Navy considered the fact that its personnel were members of a "dissident" civilian group sufficient grounds to treat the group as a "threat," and thereby justify retaining information about the group. The Army and Air Force, however, did not consider the membership of their personnel in such a group sufficient grounds to collect information on the group. They would retain information regarding such a group only if it could otherwise be shown to be a "demonstrable threat" to their respective services.

These differences in interpretation are also reflected in the services' requests to the DIRC for approval of covert penetrations. In the one case where the DIRC turned down such a request, it did so on the basis

²⁰⁷ DIRC Inspection Report, No. 19, 4/29/75. See Select Committee Report "National Security Agency Surveillance Affecting Americans".

²⁰⁸ Neither the National Security Agency nor the service cryptologic agencies which are under its operational control (the Army Security Agency is one of these) regard section 605 of the 1934 Act or title III of the Omnibus Crime Control and Safe Streets Act as applying to them, since they collect foreign intelligence. See the Select Committee report "National Security Agency Surveillance Affecting Americans". A different question is posed, however, when the National Security Agency or one of its service components intercepts domestic communications for purposes other than foreign intelligence.

that the civilian group against which a penetration was proposed, although presumably antimilitary, did not represent a "direct and palpable" threat. The directive, of course, makes no such distinction.

We have also seen in practice that what the military views as "threats" are not always perceived as such by the FBI which, when approached by the military, declines to initiate an investigation of the civilian group in question.

(4) *Assisting Law Enforcement Agencies.*—The directive states that DOD will place "maximum reliance" upon domestic law enforcement agencies to satisfy its informational needs regarding civilians. It also provides that the directive shall not be construed to prevent the Department from reporting threats to life and property, or violations of the law, to local law enforcement.

It makes no reference, however, to DOD's being tasked by law enforcement or other Federal agencies to perform intelligence duties in the civilian community. In practice, DOD has taken the position that all operations within the civilian community must be carried out in accordance with the directive, whether they are done at the request of other agencies or not.

Nevertheless there is a discernible tendency for DOD to agree when asked by other agencies to undertake intelligence activities which it would otherwise forbid to itself. For example, DOD participation in the Intelligence Evaluation Committee and its support to the Justice Department at the 1972 political conventions are cases where DOD undertook domestic intelligence activities at the request of other agencies, which it presumably would not have undertaken on its own initiative.

In short, the activities of the Department of Defense which have led to abuses in the past are still within its jurisdiction, although the use of military personnel to collect such information has been restricted. The nature of these restrictions is the subject of the next section.

B. Preventing Surveillance in the Future

Although DOD Directive 5200.27 does seek to prohibit the "collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the Department of Defense," it allows for exceptions and its terms are so ambiguous that future surveillance activities in the civilian community might be undertaken consistent with the directive.

(1) *Scope.*—Until August 20, 1975, DOD Directive 5200.27 applied only to military personnel located in the 50 states, and the territories and possessions of the United States.²¹ Furthermore, it did not apply to the acquisition of "foreign intelligence information," even if such information involved unaffiliated persons and organizations.

As noted previously, the Army undertook operations against civilian groups in West Germany and West Berlin, and the Navy undertook operations against similar groups in Japan, without seeking exceptions to the DOD directive.

There has also been confusion over the meaning of the exclusion of foreign intelligence information. Until August 1973, two years after

²¹ On August 20, 1975, DIRC expanded the scope of the directive to include military personnel in overseas locations.

the directive had been in effect, the National Security Agency, a foreign intelligence collection agency within the Department of Defense, considered itself to be exempted by this clause from the provisions of the directive.²⁷²

Moreover, NSA was found to have been violating the restrictions of the directive. Its Office of Security was told in 1973 to destroy 40 cubic feet of files on "unaffiliated" individuals and organizations being held in violation of the directive.²⁷³

(2) *Permitted Exceptions.*—In addition to designating what information on unaffiliated individuals and groups may be collected and retained, the directive also provides *how* such information shall be collected. It begins by stating as a matter of "policy," that "maximum reliance" will be placed upon local law enforcement authorities. It, nevertheless, allows military personnel to be used to collect "essential" information if authorized by various high-level persons within the military.

(a) *Covert surveillance.*—The directive provides that "there shall be no covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense or his designee." In this case, the "designee" is the Chairman of the Defense Investigative Review Council, the special board, referred to earlier, established to monitor the implementation of the directive.²⁷⁴

It should be noted, however, that the directive provides no criteria to guide the judgment of those officials who must decide whether covert surveillance should be employed. Assistant Secretary of Defense Robert F. Froehlke, in an exchange with Senator Edward M. Kennedy during the 1971 hearings, conceded that the directive may be deficient in this respect :

KENNEDY. And you are not maintaining any information then on any individual at the present time who is involved in in protests?

FROEHLKE. Only under the policy that we have now. It does allow it under certain circumstances, but in all cases a civilian official would first have to give his approval. . . .

KENNEDY. And what criteria does he use?

FROEHLKE. Judgment, his judgment.

KENNEDY. Completely a subjective determination?

FROEHLKE. As of this moment, yes. . . .

KENNEDY. Don't you think criteria ought to be set?

FROEHLKE. Yes. Short of having criteria, you are going to be arbitrary.²⁷⁵

As noted above, this authority has been exercised nine times since 1971 by the Chairman of the DIRC, all for the purpose of conducting penetrations of civilian groups considered "threats." The Com-

²⁷² The DIRC informed NSA that the directive covered all elements of the Department of Defense, including foreign intelligence collection agencies. It only excludes from its general prohibition "foreign intelligence information." See DIRC Inspection Report, No. 19, 3/29/75; and Staff Summary of Roland Morrow, Defense Investigative Program Office, interview, 5/22/75.

²⁷³ *Ibid.*

²⁷⁴ The DIRC was established by DOD Directive 5200.20.

²⁷⁵ 1971 Hearings, p. 485.

mittee's investigation revealed only one minor "deceptive surveillance" which appears not to have been authorized by the DIRC in accordance with the directive. This occurred at Pawnee, Oklahoma, near Fort Sill, where on two occasions in the spring of 1973 the Provost Marshal of Fort Sill ordered Army personnel to conduct reconnaissance flights to determine if members of the American Indian Movement were marching on the Army post, or were building fortifications near Fort Sill.²⁷⁷

(b) *Overt Surveillance.*—The directive also provides that "no DOD personnel will be assigned to attend public or private meetings, demonstrations, or other similar activities for the purpose of acquiring information the collection of which is authorized by this Directive without specific prior approval by the Secretary of Defense or his designee." The designees in this case are the Secretaries and Under Secretaries of each military department. Local commanders may also authorize such surveillance on their own initiative to collect information on "direct and immediate threats," but this must subsequently be reported to the Secretary of Defense or his designees.

Again, the Committee investigation revealed only one probable violation of this provision. Army investigators attended a protest rally in West Point, New York, in May, 1974, without the required authorization of the Secretary or Under Secretary of the Army.

(c) *Electronic Surveillance.*—As mentioned previously, the directive provides only that the department will not conduct electronic surveillance of any unaffiliated persons or organization "except as authorized by law." This would seem to mean that insofar as non-consensual wiretaps and eavesdrops are concerned, DOD must obtain the approval of the Attorney General in accordance with section 2516 of title 18, United States Code. Consensual eavesdrops (one party consents) must also have the approval of the Attorney General;²⁷⁹ consensual wiretaps, however, may be approved within the Department of Defense, but only for the investigation of crimes.²⁸⁰

It should also be noted that since electronic surveillance would also be covert or deceptive, presumably its use would also require the approval of the Secretary of Defense or the Chairman of the Defense Investigative Review Council.

The Committee found no evidence that DOD had employed electronic surveillance against any unaffiliated person or organization in the United States since 1971.

(d) *Retention of Files.*—The directive prohibits the "storage" of information which violates its provisions. It further provides that any information gathered under its provisions shall be destroyed within 90 days, "unless its retention is specifically required by law, or unless its retention is specifically authorized under criteria established by the Secretary of Defense or his designee." The designee in this case is the Chairman of the Defense Investigative Review Council.

²⁷⁷ See DOD Response to Senate Select Committee's 2nd document request.

²⁷⁹ See Memorandum from the Attorney General to the heads of Executive Departments and Agencies: 6/10/67.

²⁸⁰ DOD Directive 5200.24.

The Chairman of the DIRC did exercise this authority soon after the directive was issued to permit the military departments to maintain "dead storage" files, so long as procedures were employed to screen any such files prior to disseminating information from them.²⁸¹ This decision was made in order that the military departments would not have to screen literally millions of files in "dead storage." It did, nonetheless, result in a technical violation of the directive since much of this information was not retainable.

A second violation of these provisions was the Army's retention of microfilm files in a counterintelligence analysis unit in Washington, D.C. Secretary of the Army Howard H. Callaway announced in January, 1975, that the microfilm files contained substantial information on the political activities of persons and organizations unaffiliated with the Department of Defense and should have been destroyed.

Subsequent investigation by DOD disclosed that the microfilm contained 160,000 documents, 24,000 of which were added since March 1, 1971, the date of the departmental directive. Of the 136,000 documents dated prior to the directive, approximately 6,960 were found to be held in violation of the directive's retention criteria. Of those 24,000 added after the date of the departmental directive, 175 were identified in a preliminarily screening as being in possible violation of the directive. Twenty-three were then determined by DOD to be in definite violation of its directive.

The Army explained that the microfilm files had, in fact, been screened in December 1970, in accordance with an Army order preceding the promulgation of the DOD directive. At that time, those who screened the files apparently considered the exception made for "threats" to the Army to be broader than the current interpretation. Due to the negligence of subsequent commanders of the Army unit which maintained the files, the annual screening required by the departmental directive did not occur.

A similar explanation was given for the accumulation of twenty-three documents, obviously in violation of the directive. After the date such directive was issued, the Army suggested that those who had placed such documents in the files had a different interpretation of the term "threat" than was currently acceptable.

The Select Committee also investigated news reports that the Army's civil disturbance files, the retention of which was not authorized by the directive, were transferred in 1972 from Fort Holabird, Maryland, to the Massachusetts Institute of Technology via a Defense Department computer network.²⁸² The Committee investigation, however, did not substantiate the news report.

(3) *Implementation and Enforcement.*—The task of implementing and enforcing the departmental restrictions is delegated primarily to the Defense Investigative Review Council (DIRC), the Chairman of which reports directly to the Secretary of Defense on such matters.²⁸⁴

The DIRC carries out its work by issuing guidance to subordinate elements of the department on how the basic directive should be imple-

²⁸¹ DIRC Study Report No. 1, 5/5/71. Subject: Retention Criteria for Investigative Information, Para VI.

²⁸² The Report was aired on the NBC Nightly News, 6/8/75.

²⁸⁴ See DOD Directive 5200.20.

mented. It also conducts unannounced inspections of DOD installations to determine whether they are in compliance with the departmental restrictions. As of May 29, 1975, the DIRC had conducted 19 such inspections, covering a total of 82 DOD installations.²⁸⁵

In general, the Committee investigation found that implementation of the departmental restrictions has been vigorous and effective. The Committee reached this judgment only after its staff inspected the files and key operational personnel of every major domestic intelligence headquarters of the Department. It found that the Department of Defense now maintains little information on private citizens and organizations in its current files. Of that which is maintained, all has been carefully segregated and is systematically screened prior to disclosure outside the particular agency which holds them.

Moreover, as indicated above, violations of the directive have been rare and relatively minor. They do not demonstrate widespread or systematic misconduct. Furthermore, exceptions permitted by the Department to the general prohibition of the directive do not appear, in the Committee's view, to represent egregious abuses of discretion on the part of authorizing officials.

(4) *Prospects for the Future.*— While the current departmental directives have succeeded in limiting military surveillance activities against private citizens and organizations, these limitations remain only in the form of an internal regulation, which can be rescinded or amended by the Secretary of Defense. Although the Department assures the Committee that it has no intention of doing either, it cannot dispute the fact that such a possibility remains. Several former Army officials told the Committee staff that if America returned to a period of perceived crisis, such as the late 1960s, the new controls may be scrapped.²⁸⁶ Assistant Secretary of Defense Robert F. Froehle conceded as much in his testimony before the Ervin committee in 1971:

The Army, in such situations (civil disturbances), is really the only unit of Government that has the resources today. Whether or not it should be that way I think is very debatable, but that is now the fact, and when you get crisis situations, you need information. Responsible officials fear cities are going to burn. Where do they look? They look to that unit of Government that has the resources available, and it is always the Army.²⁸⁷

Indeed, the current directives have such great flexibility that renewed surveillance activity could easily be undertaken if permitted by high level officials of the Department. Again, one might consider the following exchange between Senator Edward M. Kennedy and Assistant Secretary Froehle at the 1971 Ervin hearings:

KENNEDY. Are we going to assume now at the end of these hearings that the Department of Army is going to continue to involve itself (in collecting information on civilians)?

²⁸⁵ At each installation visited by the DIRC inspection team, all units which are likely to collect or maintain information on unaffiliated individuals and organizations are normally inspected.

²⁸⁶ Staff summary of Col. Arthur Halligan interview, 7/15/75; and staff summary of Gen. Millard Daugherty interview, 11/20/75.

²⁸⁷ 1971 Hearings, p. 430.

FROEHLKE. The Army is out of it. . . .
 KENNEDY. Of course, they are out of it unless your council
 [the DIRC] decides they are back in it.
 FROEHLKE. Yes, sir. . . .²⁸⁸

VII. CURRENT STATUTORY RESTRICTIONS UPON MILITARY SURVEILLANCE

There is no statute which expressly prohibits the investigation of private citizens by the military.

As noted above, the *Posse Comitatus Act* (18 U.S.C. 1385) which prohibits the military from being used to "execute the law," would probably prevent the military from conducting criminal investigations of civilians, but that this would not bear upon other types of investigations.²⁸⁹

Other than this, only the Privacy Act of 1974²⁹⁰ appears to bear indirectly upon the matter. The Privacy Act imposes general restrictions on all agencies of the Federal Government that "maintain systems of records" insofar as the maintenance and dissemination of records on individuals are concerned.

One of these general restrictions, which applies to the Department of Defense, as an agency which "maintains a system of records," is:

Each agency that maintains a system of records shall . . . maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.²⁹¹

Thus, the Act prohibits the maintenance of certain files, and not investigations *per se*. Obviously, if an agency is prohibited from maintaining records of investigations, it will ordinarily not be disposed to conduct them.

Nevertheless, the impact of the Privacy Act, insofar as preventing military investigations in the civilian community, is far from certain. The Act itself has received no authoritative judicial interpretation,²⁹² and section 552a(e) (7), cited above, is, on its face, ambiguous. It is unclear, for example, what a record "describing how any individual exercises rights guaranteed by the First Amendment" might consist of. Would attendance at a protest demonstration, for example, be an activity which could not be recorded under the Act? If the military expected to be deployed during the demonstration, would taking note of an individual's attendance be permissible under the Act? Whether an individual act represents the exercise of First Amendment rights or is conduct which justifies government investigation often depends upon the facts of the case.

Further, section 552(e) (7) allows a government agency to maintain information on an individual's exercise of First Amendment rights if (1) the agency is expressly authorized by statute to main-

²⁸⁸ *Ibid.*

²⁸⁹ See pp. 822-823.

²⁹⁰ P.L. 93-570.

²⁹¹ 5 U.S.C. 552a (e) (7).

²⁹² The Privacy Act of 1974 became effective on 9/27/75.

tain such information; (2) if the maintenance of such record is authorized by the individual concerned; or (3) if such information is pertinent to and within the scope of an authorized law enforcement activity."²⁹³

These exceptions would appear to allow the military to maintain records on private citizens and organizations for certain purposes of its own, and to permit the use of these records by other federal agencies which themselves fall within one of the excepted categories.

For example, the military is charged with enforcement of the Uniform Code of Military Justice, a law enforcement function. Thus, criminal investigators would probably be able to maintain information on the political activities of private citizens which was pertinent to their investigations. Similarly, the military conducts security clearance investigations to which subjects give their consent. Presumably, this would enable military investigators to maintain information on the political activities of such individuals.

Insofar as assisting other agencies is concerned, the reader has also seen that the military intelligence has frequently been employed by agencies with law enforcement purposes (the Justice Department and FBI), and by an agency "expressly authorized by law" to maintain such information (the Secret Service).²⁹⁴ It would appear, therefore, that the military is not foreclosed by the Privacy Act from providing intelligence assistance to other agencies.

In summary, the Privacy Act falls short of providing adequate assurance that the military will not engage in surveillance of private citizens in the future. The statute is written as applying generally to all government agencies; its particular application to the military is unclear. It is also sufficiently ambiguous and contains enough exceptions to raise doubts as to its effectiveness as a future restraint on military investigative activity against private individuals and organizations.

²⁹³ This exception, insofar as the military is concerned, would have to be considered in light of the *Powers Committed Act*.

²⁹⁴ Section 2 of Pub. C. 90-331 (Note to section 305c, title 18, *United States Code*).

THE INTERNAL REVENUE SERVICE: AN INTELLIGENCE RESOURCE AND COLLECTOR

CONTENTS

	Pa.
INTRODUCTION AND SUMMARY.....	837
INTRODUCTION AND DISCLOSURE.....	845
I. The Statutory and Regulatory Setting.....	846
II. IRS Practice.....	847
A. Before 1968.....	847
B. After 1968.....	848
III. FBI Use of Returns in COINTELPRO.....	850
A. The use of tax returns in FBI Key Activist program.....	850
1. Program purposes and tax returns.....	850
2. An example of the use of tax information in a COINTELPRO operation.....	852
B. Use of tax returns in the FBI Key Black Extremist program.....	854
C. Disclosure of identity of contributors to ideological organiza- tions.....	855
1. Dr. Martin Luther King and the Southern Christian Leadership Conference.....	855
2. The Students for a Democratic Society.....	856
IV. Disclosures to the Central Intelligence Agency.....	857
A. Means of obtaining returns.....	857
B. Effect of illegality.....	858
ANALYSIS.....	859
SELECTIVE ENFORCEMENT FOR NONTAX PURPOSES.....	863
INTRODUCTION.....	863
I. The Historical Development of IRS Intelligence Activities.....	864
A. Function and structure of IRS intelligence.....	864
1. Introductions.....	864
2. Origins of decentralization.....	865
B. IRS intelligence 1952-65: The shift toward organized crime.....	869
1. 1951-60.....	869
2. Acceleration of IRS Intelligence Activities.....	870
C. Abuses in IRS intelligence 1960-65: The Long hearings.....	872
D. Undercover agent abuses and IRS organizational weaknesses.....	873
II. Selective Enforcement Against Political Activists: Special Service Staff.....	876
A. Introduction.....	876
B. Congressional influence.....	877
C. White House influence.....	877
1. White House general criticism and encouragement.....	877
2. Evidence of early White House interest in SSS.....	878
D. Establishment of SSS.....	879
E. Administration of SSS.....	880
F. Secrecy of SSS.....	880
G. Operation of SSS.....	881
1. Special Service Staff target selection criteria.....	882
2. SSS field referrals.....	886
a. Melkeljohn Civil Liberties Library.....	887
b. Collection referrals.....	888
3. SSS pressure on field personnel.....	889
4. Tax results of SSS actions.....	890

	Page
III. The Ideological Organizations Project.....	890
A. Origins of the ideological organizations project.....	891
B. IRS initial investigative action.....	892
C. The planned expansion of project to audit of 10,000 organizations.....	894
D. Analyses of ideological organizations project.....	896
IRS INFORMATION GATHERING PROCEDURES.....	897
I. The Information Gathering and Retrieval System.....	897
A. Introductions.....	897
B. Origins of IGRS.....	898
C. IGRS in practice.....	905
1. Introduction.....	905
2. The Los Angeles example.....	906
3. Overbreadth.....	909
4. IGRS ineffectiveness.....	910
II. Operation Leprechaun.....	911
A. Background of Operation Leprechaun.....	911
B. Allegations about Operation Leprechaun.....	912
C. Operation Leprechaun improprieties.....	913
1. Improper Special Agent Supervision.....	913
2. Informant Recruitment and Development in Operation Leprechaun.....	914
D. Informant Activities During Operation Leprechaun.....	915
1. Breaking and Entering.....	915
2. Unauthorized Electronic Eavesdropping.....	916
E. Results of Operation Leprechaun.....	919
F. Causes of Leprechaun abuses.....	919

THE INTERNAL REVENUE SERVICE: AN INTELLIGENCE RESOURCE AND COLLECTOR

INTRODUCTION AND SUMMARY

The Internal Revenue Service functions as an intelligence agency in two respects. First, through its Intelligence Division, it both collects general intelligence about possible tax violators and investigates specific allegations of tax fraud to secure evidence for criminal prosecution. Second, the IRS accumulates vast amounts of information about the financial and personal affairs of American citizens from the tax returns and supporting information which Americans voluntarily submit each year. As a rich deposit of intelligence and an effective intelligence gatherer, the IRS is a powerful tool which other agencies of government, including Congress and the executive branch, have periodically sought to employ for purposes other than tax law enforcement. This report is primarily an exploration of the reasons these uses of the IRS have led to serious and illegal abuse of IRS investigative powers and to a compromise of the privacy and integrity of the tax return.

1. Intelligence Collection

The IRS Intelligence Division, with 2,800 special agents trained to gather financial data, unlimited access to tax returns, and the power to issue summonses requiring the production of financial information without probable cause to believe a crime has been committed, represents a great investigative capability. Because of this capability, Congress, the Federal Bureau of Investigation, and even the White House have sought, sometimes successfully, to direct the efforts of IRS against certain groups or individuals, many of whom would not have been investigated under normal IRS criteria. In part because of the absence of any statutes which meaningfully limit IRS authority to gather general intelligence, IRS had little basis for resisting pressure when it was applied. In any event, IRS did not always attempt to resist. In the late 1960s and early 1970s, many groups and persons were selected for investigation by the Special Service Staff essentially because of their political activism rather than because specific facts indicated tax violations were present. The evidence suggests the IRS readily acceded to the congressional and White House pressure which led to the formation of the Special Service Staff, and that the targets of the Staff's activities were, in practice, largely determined by input from the FBI for reasons unrelated to tax enforcement.

Special Service Staff is the principal instance of the use of the IRS for a fundamentally improper non-tax purpose: selective enforcement of the tax laws against dissenters. However, the use of IRS to achieve even laudable non-tax objectives has also generally resulted in serious abuse of IRS power.

The use of IRS intelligence collection capability to achieve desirable non-tax objectives has resulted in loss of control over investigative techniques, and a loss of the capacity to limit the scope and nature of information gathered to that which is related to tax enforcement. Operation Leprechaun, for example, was an effort to employ IRS investigative power to combat political corruption. The operation led to the collection of details on the personal and sexual lives of certain Florida political figures and to illegal acts on the part of IRS informants.

Abuses such as Operation Leprechaun and others discussed in this report have resulted from a combination of factors which have generally accompanied the use of the IRS for non-tax purposes. The IRS system of organization and control over investigative activities has not proved compatible with the pursuit of non-tax objectives. The IRS was decentralized in 1952 in an effort to end widespread political influence congressional investigators had discovered. Under this decentralized structure, the intelligence chief in each of the fifty-eight IRS districts largely controls and supervises investigations. The essence of decentralization is heavy reliance upon the professional, independent judgment of agents at the field level, subject to the setting of general policy by the National Office. Under these general guidelines, agents and supervisors in the field apply tax related criteria in making decisions concerning the identification of targets of investigations, and the initiation and scope of investigations. The result has generally been that investigative resources are applied to particular taxpayers or categories of taxpayers in proportion to the tax compliance problems they present, based upon the IRS experience of prior years. This system is generally known as "balanced tax enforcement."

The use of the IRS for non-tax purposes requires "unbalanced enforcement," where the target group is selected for reasons other than the significance of the tax compliance problem it presents. Unbalanced tax enforcement has given rise to a combination of elements which have produced abuse: (1) the subordination of tax criteria to achieve a concentration of enforcement resources creates an atmosphere within the IRS which encourages excessive zeal and departure from other normal criteria of IRS operation; (2) the pursuit of non-tax objectives through selective tax enforcement by the IRS Intelligence Division has historically involved the use of techniques such as paid informants, electronic surveillance, and undercover agents, all of which are prone to abuse; (3) because the IRS decentralized organizational structure is designed to achieve tax objectives and is, by design, resistant to pressure from above, in order to bring about the desired imbalance in the enforcement program, the IRS has generally found it necessary to bypass its normal organizational structure; (4) in doing so, the IRS has bypassed the normal administrative mechanisms which check excess and abuse at the lower levels.

The loss of control over investigative techniques, over the scope and nature of information gathered, and over the identification of proper targets has not proved to be a function of whether the particular non-tax objective the IRS has been called upon to pursue is right or wrong. The Committee's investigation strongly suggests that more effective oversight and new controls over IRS intelligence gathering are necessary if the IRS is to be used for any non-tax purpose.

2. IRS as an Intelligence Resource

Because the information submitted by taxpayers and gathered by the Intelligence Division is so extensive, IRS has often been viewed by other governmental intelligence and investigative agencies as a data bank on which these agencies could draw for their own purposes unrelated to enforcement of tax laws. Both the FBI and the CIA have had virtually unrestricted access to any tax information they sought for any purpose.

The dissemination of tax returns and related information ("disclosure") is governed by statutes and regulations designed to limit access to and use of the information. These restrictions, however, have often failed to protect the information, in some cases because the laws themselves were inadequate and in others because they were circumvented. Moreover, the uses to which the information was later put were often questionable. In some cases, such as the FBI's COINTELPRO, the uses were clearly illegal.

SUMMARY OF RESULTS OF INVESTIGATION

The Committee's investigation of abuses of IRS intelligence was divided into two parts: (1) a study of abuses of IRS because of the uncontrolled access which other federal intelligence agencies have had to tax returns and other tax information, and (2) a study of alleged abuses in the IRS' own intelligence gathering.

Part I. Access of Federal Intelligence Agencies to Tax Return Information

The extent to which other federal agencies should have access to tax information for non-tax purposes has been under study by several congressional committees. This Committee, however, is the only committee studying the question of disclosure which was authorized and directed to investigate all intelligence agencies and their interaction. Senate Resolution 21 specifically directed this Committee to study:

The nature and extent to which Federal agencies cooperate and exchange intelligence information and the adequacy of any regulations or statutes which govern such cooperation and exchange of intelligence information.¹

The committee staff reviewed every request by a federal intelligence agency for a tax return of which there is a record either in IRS or in the requesting agency. Most of these requests were from the Department of Justice on behalf of the FBI. In selected cases, the staff obtained the initiating documents from the requesting agency to determine the purpose for which the information was desired, compared this purpose with the reason or lack of reason given in the request, then traced the tax information back into the requesting agency to determine what use was actually made of it. As a result of its access to the records of other intelligence agencies, this Committee has had a unique opportunity to evaluate the problems of disclosure of tax returns to intelligence agencies.

The most important facts the staff found were:

(1) The IRS has not required either the CIA or the FBI to state the specific purpose for which it needed tax return information.

¹ Senate Resolution 21, section 2(3).

(2) In the absence of such a specific statement, the IRS could not judge whether the request met the regulatory criteria for release of the information. In effect, IRS had delegated the determination of the propriety of the request to the requesting agency.

(3) Further, in the absence of a statement of the specific reason the tax return is needed, there is no basis upon which to limit the subsequent use of the return to the purpose for which it was initially released.

(4) As a result of these weaknesses in the disclosure mechanism, the FBI has had free access to tax information for improper purposes. The FBI obtained tax returns, for example, in an effort to disrupt the lives of targets of its COINTELPRO operations, by causing tax audits. The FBI used as a weapon against the taxpayer the very information the taxpayer provided pursuant to his legal obligation to assist in tax collection and, in many cases, on the assumption that access to the information would be restricted to those concerned with revenue collection and used only for tax purposes.

Because of the importance of the disclosure problem and its potential impact on all United States citizens, the Committee culminated its investigation into the matter by holding a public hearing on October 2, 1975, calling the Commissioner of the Internal Revenue Service, Donald C. Alexander, as the witness.

Part II. Abuses in Intelligence Gathering

A. Areas of Inquiry.—The Committee's investigation of possible abuses of IRS' own intelligence gathering required a selective approach. First, the Committee lacked both the time and resources necessary to investigate the activities of the Intelligence Division in each of the fifty-eight districts. Second, numerous allegations of abuse appeared in the press in the early and middle portion of 1975, the very period of this Committee's active investigation into IRS. Some of these allegations were fully investigated by other congressional committees having specific oversight responsibilities over IRS, and this Committee decided not to duplicate those investigations. Others were investigated preliminarily by this Committee but determined to be unfounded, in which case they are not discussed in detail in this report.

The Committee focused most of its efforts on reviewing major projects which represented systematic rather than isolated abuses and which illustrated problems of control common to other IRS projects. The Committee therefore examined:

(1) The causes of the breakdown of controls which permitted improper electronic surveillance and other abuses of IRS intelligence gathering in the drive against organized crime (1960-1964), as documented by the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess. (1965) (the Long Committee).

(2) The origins and function of the Special Service Staff (SSS) (1960-1973) and the Ideological Organizations Audit Project of the early 1960s, whereby politically active groups were targeted for investigation.

(3) The operation of the Information Gathering and Retrieval System (IGRS) used to collect and index general intelligence (1973-1975) and, on occasion, personal information.

(4) Operation Leprechaun in the Jacksonville, Florida, district which involved improperly controlled informants who unjustifiably collected personal and sexual information on some targets (1969-1972), and committed a burglary.

(5) IRS actions, including use of undercover agents to monitor meetings, against groups known as "tax protesters" which refused to pay taxes as a form of protest against the tax system or against certain government policies.

B. Method of Investigation.—The Committee's investigation of intelligence gathering abuses included: (1) reviewing reports of IRS internal investigations; (2) corroborating the findings of those IRS investigations on which the Committee relied, through independent investigation; (3) intensively investigating intelligence operations in six IRS district offices, including reviewing thousands of documents relating to the Information Gathering and Retrieval System and the Special Service Staff, as well as other special projects; interviewing numerous special agents charged with intelligence-gathering functions, particularly those concerned with IGRS; interviewing most of the principals and reviewing IRS Inspection Division summaries of interviews as well as key documents in Operation Leprechaun; interviewing Audit and Collection personnel who handled Special Service Staff field referrals; reviewing tax protester intelligence files; and interviewing special agents in charge of tax protester projects in three districts.

Throughout its investigation, the Committee staff received full and willing cooperation from all IRS officials in both the National Office and the field. It had full access to all documents it requested and to all employees it wished to interview.²

C. Summary of Results.—As the criminal investigative arm of IRS, the Intelligence Division normally investigates tax fraud allegations. Because the scope of such an inquiry is self-defining, it has been practical for IRS to give the agent assigned to a case wide discretion in selecting investigative techniques and the kinds of information collected. The same inherent limitation upon the scope of the inquiry made local supervision of such investigations practical. But, as the following cases reveal, abuses inevitably arose when IRS intelligence powers were employed to collect general intelligence rather than to investigate specific tax fraud allegations, and to target groups for purposes other than "balanced enforcement" under programs directed from the National Office.

1. IRS Use of Electronic Eavesdropping Techniques—The Long Committee Findings

In 1965, the Long Committee³ discovered a number of cases of unlawful electronic surveillance by IRS agents, mostly in the course of investigating organized crime figures under the aegis of the Nationwide Organized Crime Drive. The Long Committee hearings indicated that the normal system of control over intelligence investigations was inadequate for those which, unlike ordinary tax fraud

² During the course of the investigation the staff did not request or did it review any individual's tax returns or tax related information.

³ The Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, 89th Cong., 1st Sess., 1965, Hon. Edward Long, Chairman.

investigations, involved the use of abuse-prone investigative techniques, such as electronic surveillance.

The IRS had established a National Office Coordinator for the Organized Crime Drive. In a number of the cases of improper electronic surveillance uncovered by the Long Committee, the testimony established that the agents performing the surveillance were operating either under the authority or general guidance of the Coordinator, with the knowledge of the Intelligence Division personnel in the district in which the operation was taking place. The effect of creating the Coordinator was to bypass normal administrative controls without introducing effective new controls.

2. Special Service Staff (SSS): 1969-1973

The Special Service Staff was formed in 1969 in response to congressional and White House criticism of inadequate IRS efforts against "activism" and "ideological" organizations and individuals. The critics believed IRS had a special responsibility to determine the sources of funds of large activist groups and their leaders and to assure their adherence to the tax laws.

The Special Service Staff was a special National Office organization designed to concentrate IRS attention on "activists" and "ideologies" in order to preclude criticism of the adequacy of IRS attention in that area. In part because of the probable resistance of the decentralized IRS structure to selective enforcement on a political basis, the National Office deemed it necessary to act through a National Office organization to achieve the desired imbalance in the enforcement program. The Special Service Staff, using lists of political activists, including lists supplied by the FBI and the Department of Justice, proceeded to "unbalance" the enforcement program against "dissidents" and "extremists." By deciding what cases to bring to the field's attention, it bypassed normal screening procedures and focused audit efforts on groups and individuals selected for their political activities and beliefs. In a few cases, SSS employed its position in the National Office to bypass the district's normal structure and influence the handling of individual cases.

The effect was that SSS reviewed the tax status of groups and individuals in the absence of specific evidence of tax violations because they exercised First Amendment rights. SSS targets included 8,000 individuals and 3,000 groups. Some of these groups historically had not engaged in illegal activity of any kind, much less tax violations. For example, targets included the Ford Foundation, the Head Start Program, and fifty branches of the National Urban League.

The Special Service Staff, which had operated in secrecy, was abolished by Commissioner Alexander when he learned of its existence shortly after taking office in 1973.

Although the purpose of SSS differed fundamentally from that of the Organized Crime Drive, both were efforts to employ tax weapons for essentially non-tax purposes. Both required the creation of a special National Office structure to achieve the desired emphasis in the enforcement program. While IRS participation in the Organized Crime Drive represented the pursuit of a laudable government objective, in both cases, the special structure resulted in the bypassing of normal administrative controls and permitted abuse to occur.

Ideological Organizations Audit Project

The Special Service Staff was not the first IRS effort directed at groups and individuals because of their political ideologies and actions. In 1961, the IRS initiated a test audit of right-wing organizations which had drawn stern criticism from the President. The test audit grew into a planned attempt by IRS to conduct intensive investigations of 10,000 tax-exempt organizations in order to determine whether or not they engaged in political activities, which are impermissible for tax-exempt organizations. The plan also called for investigation of non-exempt right-wing organizations through reviews of the contributors' returns for improper deductions.

While IRS efforts directed at these political action groups were not as extensive as the coverage given organizations by the Special Service Staff, the efforts did result in a significant departure by IRS from a balanced enforcement program, and a concentration of tax enforcement on certain individuals and groups because of their political beliefs. The efforts IRS directed at these ideological organizations established a foundation and precedent for the later Special Service Staff.

The Committee did not find abuses of the normal IRS functions beyond the abuse which inheres in concentration of audits on organizations and individuals selected for political reasons (and in part by the White House). The program illustrates responsiveness of the IRS to the subtle pressures of other government agencies, and demonstrates the need for close scrutiny of any IRS activities the primary purpose of which is to achieve non-tax objectives.

3. Information Gathering and Retrieval System (IGRS)

Partly as a result of its participation in the Organized Crime Drive, the IRS Intelligence Division perceived a need to improve its ability to gather and retrieve intelligence beyond the scope of investigations of specific allegations of tax fraud. The Information Gathering and Retrieval System, which IRS developed between 1963 and 1975, was an effort to increase the collection of such "general" intelligence and to index and store this intelligence efficiently. Ultimately, it included information about 465,442 persons or groups.

The gathering of general intelligence differs from the investigation of alleged tax violations in two fundamental respects: (1) there is no inherent standard of relevancy by which to determine what kinds of information to collect, and (2) there is no clear standard for deciding who should be investigated. In the absence of such standards, normal IRS reliance upon agent discretion presents danger. Nevertheless, the creators of IGRS failed to supply any meaningful criteria for target selection or for the relevancy of the information to be gathered. The results were tremendous overbreadth and a glut of largely useless information gathered under IGRS. For example, the system contained information not only about persons suspected of ties with organized crime, but also individuals who had routine commercial business transactions, such as selling a restaurant, with these persons. In addition, in some districts, intelligence was collected about political groups. IGRS became so encumbered by irrelevant data that it was not effective for the purposes for which it was created. It was terminated in 1975.

4. Operation Leprechaun—Collection of Personal Information: 1969–1972.

The perceived need to gather general intelligence, and thus to establish IGRS, was largely a result of IRS participation in efforts against organized crime and political corruption. Operation Leprechaun was part of a drive against political corruption and involved the worst examples of abuse of any project associated with IGRS. The evidence indicates:

(a) that the special agent in charge of Operation Leprechaun, operating through informants, collected an excessive amount of information on the sex and drinking habits of some of the targets of the operation;

(b) that he engaged in electronic surveillance contrary to IRS regulations;

(c) that two of his informants burglarized the office of a congressional candidate, apparently without the special agent's knowledge or consent, and stole a filing cabinet containing tax-related information, some of which they then delivered to the special agent; and

(d) that the special agent's string of thirty-four informants were not under effective control.

The agent's ability to gather highly personal information on the targets which was not tax related, is a reflection of the absence of meaningful written standards establishing criteria for relevancy of information gathered under IGRS. The failure was less that of the agent or of his superiors than of the creators of IGRS, who failed to recognize that reliance upon agent discretion in general intelligence gathering required more stringent, specific guidelines for relevancy than ordinary tax investigations.

Similarly, the agent's inability to control his informants represented a failure of the IRS structure within which the agent's actions took place rather than of the agent himself. IRS lacked a system under which supervisors, rather than agents, could make key decisions on recruitment and handling of informants. Instead, such decisions were left to the agents, unassisted by clear guidelines.

In 1975, after analyzing the deficiencies of IGRS and investigating the Leprechaun abuses, IRS management began to impose restrictions upon intelligence gathering designed to assure that non-tax-related information would not be gathered, that targets of information-gathering operations would not be selected by the agent's personal predilections, and that agents and management would have greater control over informants. If fully implemented, they will reduce the likelihood of recurrence of abuses such as those associated with Operation Leprechaun.

Many of the controls which are necessary to avoid a repetition of the abuses of Operation Leprechaun and IGRS might not be necessary if IRS confined its activities to a balanced tax enforcement program. Many of these necessary controls may actually impede the special agent in the performance of the normal IRS intelligence mission. The price of the continued use of the IRS for purposes such as Operation Leprechaun will either be continued abuse in the absence of stringent controls or the imposition of controls which are necessary to prevent abuse in the area of selective enforcement but may be excessive for traditional tax collection activities.

INTRODUCTION AND DISCLOSURE

The data Americans voluntarily provide the IRS every year make it the largest potential source of information about the personal lives of Americans.⁴ The raw data which IRS holds and its special capability for obtaining financially related information in addition to that which taxpayers voluntarily furnish, including the power to issue a summons for records without a showing of probable cause, constitute an intelligence resource which is of great potential usefulness to other intelligence agencies pursuing non-tax objectives.

This Committee has studied the means by which federal intelligence agencies have gained access to tax information, the stated purposes for which they have obtained the information, and the uses they have made of the information they obtained. The Committee has not attempted to develop a comprehensive set of criteria for access to tax returns, though its findings show that current regulations, as applied, have permitted access for purposes which should be excluded. The Committee has examined the current system of controls over access in light of the uses intelligence agencies have made of the information to which they have gained access under that system of controls. It has found that the mechanism through which disclosure criteria are enforced has serious weaknesses. An effective mechanism for enforcement of disclosure criteria is as crucial to protection against access for improper purposes as the criteria themselves.

Under the current system, the FBI has obtained returns for purposes for which they should not have been released even under existing, liberal standards for release of tax information.⁵ The FBI was able to do so because the IRS failed to apply existing regulations to require the requesting agency to state the reason for its request so that the IRS could determine whether the purpose of the request fell within the limits for permissible disclosure. The failure to require a specific statement of purpose in the request for tax information has also resulted in an absence of effective limitations upon the uses to which the FBI could put the information it obtained.

Proposed legislation to narrow the purposes for which investigative agencies can obtain tax information will not eliminate the potential for repetition of the kinds of abuse the Committee has uncovered unless the disclosure mechanism is also overhauled to assure that those limitations are more effectively enforced than the broader limitations have been enforced in the past. The purpose of this report is to analyze those weaknesses in the present control mechanism which are responsible for the abuses which have occurred.

⁴ Testimony of Donald C. Alexander, Commissioner of the IRS, 10/2/75, hearings, Vol. 3, pp. 25, 26.

⁵ Shortly after the Senate Select Committee's hearing at which the abuses which have arisen from weaknesses in the disclosure mechanism came to light, the IRS changed its practice under the current regulations. Beginning in the middle of October 1975, the IRS has required that all requests from United States Attorneys and attorneys of the Department of Justice for tax return information under 26 CFR 301.6103(a)-1(g) and (h) must include a sufficient explanation which will permit the IRS to determine that there is an actual need for all the requested information, and that it will be properly used by the requestor. This change in practice is, however, not a result of any change in the regulations, and is itself subject to change.

I. THE STATUTORY AND REGULATORY SETTING

Under section 6103 of the Internal Revenue Code, "returns made with respect to taxes . . ." are open to inspection "only upon order of the President and under rules and regulations prescribed by the Secretary or his delegate and approved by the President." "Returns" are not defined in the statute, but are defined by regulations [Treasury Regulation Sec. 301. 6103 (a)-1(a)(3)(i)] to include both actual returns and

Other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, or any portion thereof, relating to [returns].

The present regulations provide that the Department of Justice shall have access to "returns", stating:

. . . [a] return in respect of any tax shall be open to inspection by a United States attorney or by an attorney of the Department of Justice *where necessary in the performance of his official duties*. The application for inspection shall be in writing and shall show . . . (4) the reason why inspection is desired. 26 C.F.R. § 6103(g). [Emphasis added.]

This regulation differs from those applicable to other agencies (such as the CIA), which are covered by the blanket provisions of section 6103(f):

. . . if the head of an executive department . . . or of any other establishment of the Federal Government desires to inspect a return in respect of any tax . . . in connection with some matter officially before him, the inspection may, in the discretion of the Secretary of the Treasury or the Commissioner of Internal Revenue . . . be permitted upon written application. . . . The application shall . . . set forth . . . (4) the reason why inspection is desired. . . .⁶ [Emphasis added.]

Section 6103(a)-1(a)(3)(i), *supra*, which, by defining "tax return" broadly, has the effect of broadening the information the IRS is obliged to furnish to the Justice Department upon proper request to include the results of IRS audits and intelligence investigations. In the course of some of these audits and investigations, the IRS develops information through the use of strong powers given it to determine and collect the revenue (principally the power to obtain financial information by means of a summons without any showing of probable cause) which neither the Justice Department nor the FBI could legal-

⁶ Except where indicated, the regulations have been substantially as summarized above during all periods discussed in this report.

⁷ On their face, the regulations seem to restrict access by the Department of Justice to cases where returns are "necessary" in connection with its official duties while heads of other agencies may obtain them when they "desire" them in connection with their official duties. As a practical matter, however, IRS has not applied the criterion of "necessity" to Department of Justice requests, so the apparent distinction has had no practical consequence.

ly obtain on its own without demonstrating probable cause. The regulations contain no requirement that the Justice Department establish probable cause to obtain this information from the IRS even where it is to be used for criminal investigatory purposes unrelated to enforcement of the tax laws.

II. IRS PRACTICE

A. Before 1968

Until 1968, the FBI obtained tax returns and other tax information directly from the IRS Intelligence Division, under a procedure which the Chief of the IRS Disclosure Branch termed "illegal" upon learning of it in 1968.⁹ Under that procedure the IRS failed to exercise vigilance to determine the purposes for which the FBI obtained returns.⁹

In one case, for example, in order to develop information "discrediting or embarrassing to the United Klans of America"¹⁰ or to a Klansman who was the subject of FBI interest, the FBI field office recommended obtaining the Klansman's returns in order to attempt to determine whether he was reporting income from the Klan as income from other sources. The recommendation was approved by FBI headquarters in November 1964. The returns were obtained from the IRS through its Intelligence Division.

One of the express purposes of this operation was, in part, to "expose [the Klansman] within the Klan organization, publicly or by furnishing information to the Internal Revenue Services."¹¹ Thus, the planned operation envisaged the illegal public disclosure of tax information.

On November 20, 1964, the FBI requested the returns of the Klansman for the years 1959 through 1963 and for the Klan organization for 1961 and 1963, and received the returns from IRS in January 1965.¹² Although FBI documents do not indicate whether or not the planned disruptive action was ever carried to fruition, the returns had left IRS, to be used by the FBI for whatever purpose it deemed necessary.

Because of the lapse of time and the absence of records, the precise nature of the procedure by which the FBI obtained returns before 1968 is not determinable. A review of FBI administrative files in the Bureau's Liaison Section and the testimony of the FBI agent responsible for liaison with IRS,¹³ however, indicates that the essential steps in the process were as follows:

1. The FBI would decide to request a particular return or set of returns on the basis of a memorandum setting forth the reasons for the request in some detail;

⁹ Memorandum from D. O. Virdin for Harold E. Snyder, "Inspection of Returns by FBI," 5/2/68.

¹⁰ There is little documentary evidence of the pre-1968 procedures since, according to Ms. Margaret Simpson of IRS Disclosure Branch, all IRS records of pre-1968 disclosures to the FBI were destroyed in the Disclosure Branch in a space-saving drive in about 1972 (the records having been transferred from Intelligence to Disclosure in 1968). The only records which apparently ever existed were the incoming request, in contrast to the practice in Disclosure of forwarding material (or permission to review it) by letter to the requesting agency, signed by an authorized IRS employee.

¹¹ Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/10/65.

¹² Memorandum, Baumgardner to W. C. Sullivan, 5/10/65.

¹³ Memorandum, Midwest City Field Office, to FBI Headquarters, undated 1.

¹⁴ Bernard Rachner testimony, 9/25/75 pp. 7-18.

2. The FBI would prepare a form letter for signature by the Assistant Attorney General, Internal Security Division, Department of Justice, setting forth that the returns were necessary in connection with an official investigation, but stating no specific reason;

3. The Assistant Attorney General was not given the detailed memorandum stating the reasons for the request;

4. Liaison Section (the FBI Section responsible for liaison with other agencies and the White House) delivered the signed form letter to someone in IRS Intelligence, who obtained the requested information;¹⁴

5. IRS Intelligence Division kept no record of the transmittal of the information;¹⁵

6. IRS Intelligence did not consult anyone outside the Intelligence Division (including the Disclosure Branch—which was theoretically charged with the responsibility for disclosure of this kind of tax information) regarding action on the request.¹⁶

B. After 1968

In 1968, the Chief of the Disclosure Branch learned that the Intelligence Division had been handling FBI requests for returns, branded the practice "illegal" in a memorandum to his superior,¹⁷ and effected the transfer of all FBI requests to his jurisdiction.¹⁸

Though FBI requests for tax information were thereby regularized after 1968, there is scant indication the IRS subjected them to more meaningful scrutiny than it had while the Intelligence Division handled the requests even though the regulations arguably required such scrutiny. The regulation (26 C.F.R. § 6103(g)) requires that the return be "necessary in connection with the official duties" of the requesting attorney, and also requires that the "reason" for the request be given in writing.

After 1968, the Internal Security Division of the Department continued to obtain returns by means of a form letter which recited the conclusion that the regulatory criteria were met. It stated that the return was "necessary in connection with an official matter before this office involving the internal security . . ." *i.e.*, that it was "necessary in connection with the official duties of the requesting attorney," but contained no separate statement of a "reason" for the request.¹⁹ On the basis of these letters,²⁰ the IRS could make no independent evaluation of whether the reason for the request was in fact within the official

¹⁴ See, e.g., memorandum, Baumgardner to W. C. Sullivan, 11/18/64.

¹⁵ See Note **, p. 25.

¹⁶ Memorandum from D. O. Virdin for Harold Snyder, 5/2/68.

¹⁷ *Ibid.*

¹⁸ During this same period, the CIA was apparently 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 thought to examine that practice in light of the change being made in the practice with respect to the FBI. See testimony of Donald O. Virdin, 9/16/75, pp. 60-73.

¹⁹ Since the request could not even be properly made unless the return was necessary in connection with the requesting attorney's official duties, it is an improbable interpretation that the statement of "reason" called for by the regulations was to be simple recitation that the return was necessary in connection with those duties. Further, in the absence of a statement of the specific reason, the IRS could not meaningfully apply the regulatory criteria to the request.

²⁰ A sample letter appears at note 44, p. 852.

duties of the requesting attorney, or of whether the return was "necessary". In short, the IRS delegated to the Justice Department—and in reality to the FBI—the administration of the disclosure regulations with respect to the FBI's requests. Former Deputy Assistant Commissioner (Compliance) Leon Green advised the Committee: "I do not think we ever questioned their need for a tax return."²¹ Mr. Green, whose duties included broad supervisory responsibility over the Services disclosure activities testified as follows:

A. Any of the Assistant Attorney Generals could request access to specific tax returns by name and generally they were granted access without any questioning of the background or the need for them.

Q. You say without any questioning of the background?

A. I do not think we ever questioned their need for a tax return. If an Assistant Attorney General signed a letter saying in the course of their own operations they required access to certain returns, they were given access . . .

Q. As a general rule, what kind of a reason would the Internal Security Division give?

A. I do not think they would give any reason other than to state in connection with a matter that they had under consideration the Department of Justice required access to specific returns.

Q. So, in effect, the judgment as to whether the tax return was necessary was left to the Justice Department?

A. The Assistant Attorney General who signed the letter, right.

Q. In fact, the determination of whether the . . . need for the tax return was actually in connection with their official duties was also left to the Justice Department?

A. Yes.²²

The FBI requests and IRS responses invariably contained language to the effect that the use of the return would be limited to the purpose stated in the request. There is no specific regulation imposing such a limitation in 26 CFR 6103 (g),²³ but the limitation upon use is implicit in the requirement that the "reason why inspection is desired" be stated in the application. The release of the return is predicated upon the reason given, and therefore made only for the stated purpose. This limiting language is meaningless where the reason given is simply a recitation that the regulatory criteria are met. The absence of any meaningful limitation on use of returns has led to serious abuse.²⁴

²¹ Leon Green deposition, 9/12/75, p. 6.

²² *Ibid.*, pp. 6-8.

²³ The following subsection, 6103(h), dealing with the "use of returns in Grand Jury proceedings and in litigation," does specifically provide that any return furnished pursuant to that paragraph shall be "limited in use to the purpose for which it is furnished . . ." but 6103(g) does not so provide.

²⁴ The IRS has freely disseminated tax returns to agencies of the government with no intelligence function. In 1974, more than 20,000 tax returns of more than 8,200 individuals were requested by and disseminated to governmental agencies including the Departments of Agriculture, Commerce, and Labor, Interstate Commerce Commission, Federal Home Loan Bank Board and Federal Deposit Insurance Corporation. (Alexander, 10/2/75, Hearings, Vol. 2, pp. 81, 82.)

III. FBI USE OF RETURNS IN COINTELPRO

Between 1966 and 1974, the FBI (either directly or through the Internal Security Division of the Justice Department) made approximately 200 requests to the IRS for tax returns.²⁵ Of the 200 requests, approximately 40 (20%) involved foreign intelligence matters;²⁶ 30 (15%) involved criminal matters; and 130 (65%) were for domestic intelligence or "counterintelligence" (COINTELPRO)²⁷ purposes. Although records are not complete, Mr. Green's belief that IRS "never questioned their need for a return" indicates that virtually all requests were honored.

The major portion of the 130 domestic intelligence requests were part of two FBI "counterintelligence" programs, one directed at the "New Left" (anti-Vietnam War) movement and the other at the so-called "Black Nationalist" movement.²⁸ Each of these two programs had two components:

1. Targeting of individuals in either movement for intensive intelligence-gathering activity.

2. Targeting of the same individuals for so-called COINTELPRO operations.²⁹

FBI COINTELPROs (counterintelligence programs) were designed to:

expose, disrupt and otherwise neutralize the activities of [the target organizations and their leadership]. [Emphasis added.]

A. Use of Tax Returns in FBI Key Activist Program

1. *Program Purposes and Tax Returns.*—The "Key Activist" program was established in January of 1968 for the purpose of "intensive investigations" of the leaders of the New Left movement.³¹ Four months later, on May 9, 1968, a COINTELPRO was recommended against the New Left and the "Key Activists" of that movement on the following basis:

The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt

²⁵ A request normally sought several returns, often of several taxpayers.

²⁶ Presumably, these returns would be those of individuals identified as being agents of, or working in collaboration with, hostile foreign intelligence services.

²⁷ See COINTELPRO Report.

²⁸ FBI Requests for tax returns, 1966-1975

The following data is based on a staff review of materials in the FBI's administrative file labeled "Income Tax Returns Requested."

	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	Total
Foreign intelligence.....	4	7	4	6	3	3	9	1	1	1	39
Criminal investigation.....	0	0	1	6	4	6	10	4	0	0	31
Domestic intelligence, new left activities.....	0	0	25	3	0	7	0	0	0	0	46
Black extremists.....	0	0	24	3	0	30	10	6	1	0	74
Other.....	0	4	0	0	2	0	0	3	2	0	11
Total.....	4	11	65	18	9	46	29	14	4	1	201

³¹ Memorandum from FBI Headquarters to Field Offices, 1/30/68.

³² See e.g., Memorandum C. D. Brennan to W. C. Sullivan, 5/10/68 (New Left); memorandum F. J. Baumgardner to W. C. Sullivan 6/27/64.

to hamper our investigation of it and to drive us off the college campuses. With this in mind, it is our recommendation that a new Counterintelligence Program be designed to neutralize the New Left and the Key Activists. The Key Activists are those individuals who are the moving forces behind the New Left and on whom we have intensified our investigations.³² [Emphasis added.]

The next day the Director established the program.³⁴

Two weeks later, on May 24, 1968, the FBI requested tax returns of 16 Key Activists for the years 1966 and 1967.³⁵ These returns were requested under the new procedure initiated in 1968 following IRS Disclosure Branch's discovery that returns had previously been furnished the FBI by the Intelligence Division. On October 24, 1968, the Key Activist program was enlarged.³⁶ On December 6, 1968, the FBI requested returns on 19 additional Key Activists.³⁷ According to the authorizing memorandum:

As part of our overall intensive investigation designed to neutralize these individuals in the New Left movement, inquiry into their financial status has proved productive.³⁸

All of these returns were requested by form letters.³⁹ In no case did the IRS inquire further into why the returns were necessary or for what precise purpose. The actual purpose of the requests is reflected in a February 3, 1969, Headquarters memorandum in which the Bureau reported upon the success of the return requesting effort:

We have caused a survey to be made by Internal Revenue Service (IRS) concerning Key Activists. We have found a number where no record exists for payment of taxes in 1966, 1967. Included in this group are [names deleted], IRS has initiated appropriate investigations as a result of our inquiries. It is anticipated the IRS inquiry will cause these individuals considerable consternation, possibly jail sentences eventually. We now have sent requests on 35 Key Activists to IRS and anticipated many will have filed no returns. This action is consistent with our efforts to obtain prosecution of any kind against Key Activists to remove them from the movement.⁴⁰

The purpose of the requests was at least in part to develop ways of using tax information as a COINTELPRO weapon.⁴¹

The February 3 memorandum reflects a by-product of the disclosure mechanism which, enhanced its attractiveness to the Bureau. A simple request for information was in and of itself a means of directing IRS

³² Memorandum from FBI Headquarters to Field Offices, 1/30/68.

³³ Memorandum from FBI Headquarters to various Field Offices, 5/10/68.

³⁴ Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/68.

³⁵ Memorandum from FBI Headquarters to various Field Offices, 10/24/68.

³⁶ Memorandum from C. D. Brennan to W. C. Sullivan, 12/6/68.

³⁷ Ibid.

³⁸ The form letter is virtually identical to that set out in note at page 38.

³⁹ Memorandum from C. D. Brennan to W. C. Sullivan, 2/3/69, captioned "NEW LEFT MOVEMENT. IS—MISCELLANEOUS."

⁴⁰ In addition, the returns were requested as part of an effort to determine sources of funds. Ibid.

attention at the COINTELPRO target, resulting in an IRS investigation if no return was found for a particular year. The FBI documents suggest that the requests for Key Activists returns were not selective, and were not predicated upon any specific information suggesting the individual Key Activists were delinquent in their tax obligations. The IRS response was also all inclusive, and constituted unknowing IRS cooperation in the COINTELPRO effort.⁴²

2. *An Example of the Use of Tax Information in a COINTELPRO Operation.*—One of the Key Activists who was the subject of a May 24, 1968, FBI request to IRS for 1966-1967 tax returns was a professor at a midwestern university who the Bureau anticipated would be a leader in demonstrations at the forthcoming Democratic National Convention in Chicago.⁴³ A detailed analysis of the means by which the FBI obtained his returns and the COINTELPRO use the FBI was able to make of them demonstrates a key weakness of present disclosure statutes and regulations.

The FBI presented to J. Walter Yeagley, Assistant Attorney General in the Internal Security Division, a form letter addressed to the Commissioner of the Internal Revenue Service⁴⁴ listing six Key Activists whose returns were "necessary in connection with an official

⁴² According to a June 30, 1969, IRS memorandum, there were then in progress 21 investigations or other administrative action involving individuals connected with "ideological organizations." Virtually all of these actions had resulted from FBI-originated requests for tax returns. See June 30, 1969, memorandum from Collection Division to Assistant Commissioner (Compliance); June 27, 1969, memo from Collection Division to Assistant Commissioner (Compliance); June 25, 1969, memo from Assistant Commissioner (Compliance) to all IRS Divisions; deposition of Donald Virdin at pp. 15-16; deposition of Leon Green, pp. 16-17.

⁴³ The Committee is aware of the professor's identity but has withheld his name for privacy reasons.

⁴⁴ Commissioner of Internal Revenue,
Washington, D.C.

MAY 31, 1968.

DEAR MR. COMMISSIONER: In connection with an official matter before this office involving the internal security of the United States it is necessary to obtain the following described income tax returns and related data:

Name and address of taxpayer:

	<i>Tax year</i>
John Doe.....	1970 and 1967
John Doe.....	1968 and 1967
Professor X.....	1966 and 1967
Jane Doe.....	1966 and 1967
Jane Doe.....	1966 and 1967
John Doe.....	1966 and 1967

This request is made pursuant to section 301.6108(a), Title of CFR.

Documents furnished in response to this request will be limited in use to the purpose for which they are requested and will under no condition be made public except to the extent that publicity necessarily results if they are used in litigation.

Access to these documents, on a need-to-know basis, will be limited to those attorneys or employees who are actively engaged in the investigation or subsequent litigation. Persons having access to these documents will be cautioned as to the confidentiality of the information contained therein and of the penalty provisions of section 7213 of the Internal Revenue Code and section 1005, Title 18, U.S.C., regarding the unauthorized disclosure of such information.

Sincerely,

J. WALTER YEAGLEY,
Assistant Attorney General.

matter before this office (*i.e.*, the Internal Security Division) involving the internal security of the United States." Assistant Attorney General Yeagley signed the letter. Yeagley has stated that the FBI did not advise him that a purpose of the request was to use the tax information as a tool for taking disruptive action against the subjects, and that he was unaware that any COINTELPRO program existed.⁴⁵ The FBI does not claim the contrary.⁴⁶ Yeagley apparently did not inquire into the purpose of obtaining the return, stating that he generally assumed the purpose of such a request was to develop investigative leads.⁴⁷

This letter was forwarded to the IRS, where it was determined that the regulatory criteria were satisfied since the letter recited that the returns were "necessary in connection with the official duties" of the Assistant Attorney General. IRS inquired no further into the specific purpose for which the returns were to be used, but relied upon the Assistant Attorney General's statement that the purpose met the regulatory criteria.⁴⁸ The Assistant Attorney General, in turn, relied upon the FBI. The IRS furnished the returns.

Upon receiving the returns of Professor X, the FBI forwarded them to its local office in the city where the professor taught, for examination for COINTELPRO potential.⁴⁹ In examining the returns, the local office was acting pursuant to the memorandum establishing the Key Activist COINTELPRO program:

The purpose of this program is to expose, disrupt, and otherwise neutralize the activities of the various New Left organizations, their leadership and adherents. It is imperative that the activities of these groups be followed on a continuous basis so we may take advantage of all opportunities for counterintelligence and also inspire action in instances where circumstances warrant. . . . In every instance, consideration should be given to disrupting the organized activity of these groups and no opportunity should be missed to capitalize upon organizational and personal conflicts of their leadership.⁵⁰

The local office examined Professor X's returns and found some questionable deductions which "at the very least, provide a basis for questioning by IRS," and requested the authority of the FBI Director to call these questionable deductions to the attention of the local office of the IRS. The express purposes of doing so, according to the Airtel by which the request was made, were:

1. Due to the burden upon the taxpayer of proving deductions claimed, [Professor X] could be required to produce documentary evidence supporting his claims. This could prove to be both difficult and embarrassing particularly with respect to validating the claim for home maintenance deduc-

⁴⁵ The signed statement of Judge Yeagley is in the Committee files

⁴⁶ Robert Shackelford and Bernard Rechner testimony, 9/15/75, pp. 12-30.

⁴⁷ Statement of J. Walter Yeagley, September, 1975.

⁴⁸ Donald O. Virdin testimony, 9/16/75, pp. 88-91.

⁴⁹ Memorandum from FBI Headquarters to a Midwest City Field Office, 7/14/68.

⁵⁰ Memorandum from FBI Headquarters to various Field Offices, 5/10/68.

tions when, in fact, he doubtless has only the usual type of study found in many homes rather than actual office space. Validations of contributions to SNCC, SDS, and the [privacy deletion] Counseling Service may also be productive of embarrassing consequences.

2. If [Professor X] is unable to substantiate his claims in the face of detailed scrutiny by IRS, it could, of course, result in financial loss to him.

3. *Most importantly*, if IRS contact with [Professor X] 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 [Professor X], 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. [Emphasis added.]⁵¹

The recommendation was approved, and the local office supplied the information to the local IRS office, but did not advise the IRS contact that the information came from a tax return the FBI had previously obtained from IRS.⁵² The FBI merely stated it "had reason to believe that Professor X had claimed deductions for contributions" to certain organizations which would not normally be deductible.⁵³ As a result of the information the FBI furnished, IRS initiated an audit of Professor X's return.

Because of IRS liberality in granting delays in audits to suit taxpayers' convenience, the audit of Professor X did not achieve the desired purpose of disrupting his planning for demonstrations at the Convention. The audit did result in the imposition of an additional \$500 in tax liability for the two years in question, as a result the local FBI office deemed it a COINTELPRO success.⁵⁴ While taxpayers should pay taxes which are due, the fact that taxes are due does not justify use of the tax laws to harrass demonstrators.

B. Use of Tax Returns in the FBI Key Black Extremist Program

The Key Black Extremist (KBE) Program was established on December 23, 1970, because of the perceived success of the Key Activist Program. The documentary history of the establishment of the Key Black Extremist Program and inclusion of requests for tax returns as a standard technique are contained in the Committee files and described briefly in the report on COINTELPRO.

⁵¹ Memorandum from Midwest City Field Office to FBI Headquarters, 8/1/68.

⁵² A signed statement dated 8/18/75 of the IRS Inspector who received Bureau information is in the Committee files.

⁵³ Memorandum from FBI headquarters to Midwest City field office, 8/0/68. One apparent reason for not disclosing the source of the information was the injunction in the memorandum initiating the Key Activist COINTELPRO: "you are 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. . . ."

⁵⁴ Memorandum from Midwest City Field Office to FBI headquarters undated.

According to the Committee staff's review of FBI files, the FBI requested the returns of at least 72 of the 90 designated Key Black Extremists. As in the case of the requests for Key Activists' returns, one of the FBI's purposes in obtaining returns of Key Black Extremists was to use the returns as weapons in its campaign to "neutralize" them. All the Key Black Extremist requests were made on the same forms as the Key Activist requests. There is no evidence the IRS inquired into the specific purpose of any of the requests. All were honored.⁵⁵

C. Disclosure of Identity of Contributors to Ideological Organizations

The IRS routinely receives from tax exempt organizations lists of their contributors either on tax returns or on exemption applications. The information is given to IRS in order to enable it to enforce the tax laws with respect to those organizations. The IRS also develops contributor lists of non-exempt organizations during audits, especially if there is reason to believe the contributors may be improperly deducting the contributions. These contributor lists are available to the FBI and other federal investigative agencies by simple request to the Internal Revenue Service, even in cases where those agencies could not legally obtain the information directly.

1. *Dr. Martin Luther King and the Southern Christian Leadership Conference.*—One of the organizations the FBI designated a "Black Nationalist-Hate Type Organization" was the Southern Christian Leadership Conference.⁵⁶ As part of an earlier intensive investigation of this organization and of its leader, Dr. Martin Luther King, the FBI, in 1964, obtained from the Internal Revenue Service "all available information" concerning Dr. King and the SCLC.⁵⁷ This information included tax returns of both Dr. King and the SCLC as well as certain IRS investigative files. The FBI studied IRS audits and investigations of both Dr. King and the SCLC, and discussed with certain IRS employees future IRS action to check on Dr. King's and SCLC's compliance with the tax laws. The information received regarding Dr. King and SCLC was forwarded to the FBI Atlanta office "for further review and coordination with the investigation relating to Dr. King himself."⁵⁸ On April 14, 1964, the Atlanta office responded with a suggestion for disruptive action against SCLC.⁵⁹

After noting that SCLC was tax exempt in the sense that it was not subject to income taxation (though contributions to it were not deductible on the returns of the donors), and that its enjoyment of this status required it to file a petition disclosing the names of contributors,

⁵⁵ Donald D. Virdin testimony, 9/16/75, p. 89.

⁵⁶ Memorandum from FBI Headquarters to various Field Offices, 8/25/67.

⁵⁷ The returns and other information were obtained during the period prior to 1968 when the FBI was obtaining information directly from the IRS Intelligence Division. See memorandum from Baumgardner to W. C. Sullivan, 5/6/64.

⁵⁸ Memorandum from Baumgardner to W. C. Sullivan, 3/25/64; memorandum from FBI Headquarters to Atlanta Field Office, 4/1/64.

⁵⁹ Memorandum from Atlanta Field Office to FBI Headquarters, 4/14/64. Although the suggestion (and other suggestions contained in the same letter) was a COINTELPRO-type suggestion, it was not so denominated by the FBI.

the Atlanta office recommended that the following action be taken with respect to the contributors so disclosed:⁶⁰

It is believed that donors and creditors of SCLC present two important areas for counterintelligence activities. In regard to the donors it is suggested that official SCLC stationary bearing King's signature, copies of which are available to the Atlanta Office and will be furnished by separate communication to the Bureau Laboratory for reproduction purposes, be utilized in advising the donors that Internal Revenue Service is currently checking tax records of SCLC and that King through this phony correspondence wants to advise the donor insuring that he reported his gifts in accordance with Internal Revenue requirements so that he will not become involved in a tax investigation. It is believed such a letter of this type from SCLC may cause considerable concern and eliminate future contributions. From available information it is apparent that many of these contributors to SCLC are doing so in order to claim tax deductions and in order to be eligible for such deductions, the contribution is being made to the (privacy deletion-name of a church), which in turn is forwarded to King or the Southern Christian Leadership Conference.⁶¹

The suggestion was considered by FBI Headquarters and was categorized, along with some other suggestions

as not appearing desirable and/or feasible for direct action by the Bureau at this time. . . .⁶²

2. *The Students for a Democratic Society.*—In the course of auditing would-be exempt organizations, the IRS will often seek to identify contributors to the organization in order to determine whether the contributors are deducting contributions.⁶³ Under current disclosure regulations, the results of such audits, including the contributor lists generated in the course of the audit, are available to other federal agencies upon request. Thus, the potential use of IRS as a source of contributor lists is not limited to exempt organizations, such as SCLC. Moreover, such lists have in fact been obtained from the IRS.

In 1968, the IRS was conducting an audit of the Students for a Democratic Society. The audit was initiated in New York, and was subsequently referred to the Chicago District of IRS. An FBI letter from Director, FBI, to SAC, Chicago, dated June 10, 1968, states:

It is noted IRS is presently conducting an audit of SDS funds at the Bureau's request.

The IRS files do not reflect a specific request from the FBI for such an audit, but do reflect considerable input from the FBI in the form

⁶⁰ It is not entirely clear from the Atlanta Office's letter whether it already had the contributor list or was recommending that it be obtained. The point is clarified by an internal memorandum of FBI Headquarters (Baumgardner to W. C. Sullivan, 5/6/64) in response to the Atlanta suggestion which notes: "We have already obtained all available information from IRS concerning King and the SCLC."

⁶¹ Memorandum from Atlanta Field Office to FBI Headquarters, 4/14/64, p. 8.

⁶² Memorandum from Baumgardner to W. C. Sullivan, 5/6/64, p. 3.

⁶³ Contributions to non-exempt organizations are generally not deductible.

of reports suggesting that certain activists (including SDS members) were probable tax violators.⁶⁴ The FBI at least sought to direct IRS attention to SDS.⁶⁵

Since the SDS exemption application had been denied, it was appropriate for IRS in the course of the audit to identify contributors to the organization, and it did so. The FBI obtained the list which IRS had developed. Later, IRS passed the list on to the White House. According to an April 8, 1970, internal IRS memorandum:

Paul Wright of AOC⁶⁶ and Joe Hengemuhle of the FBI called to ask whether the FBI could furnish the White House the list of SDS contributors which was furnished to the FBI by IRS. The FBI has been requested by the White House to furnish a report on the funding of various militant organizations. . . .

I advised that from a disclosure standpoint, if the White House staff wanted this on behalf of the President, there was no disclosure problem; but in view of the sensitive nature of the matter and of other investigations and problems, I wanted to check this with Mr. Green to get his approval.⁶⁷

Permission was granted and the list was furnished to the White House.

IV. DISCLOSURES TO THE CENTRAL INTELLIGENCE AGENCY

With three possible exceptions, there is no evidence the CIA has ever obtained tax return information through official disclosure channels.⁶⁸ Between 1957 and 1972, however, the CIA obtained tax return information on at least thirteen occasions through unofficial channels.

A. Means of Obtaining Returns

The CIA obtained return information informally from IRS employees in the Compliance Branch who had other CIA liaison responsibilities.⁶⁹ It has been possible to identify taxpayers on whom the CIA obtained return information, but since there are no records of these disclosures, it has not always been possible to establish which employees released which information.⁷⁰ That responsibility has been established in at least two cases. In one case, an IRS employee stated

⁶⁴ *E.g.*, Memorandum from FBI Headquarters to Cleveland Field Office, 6/10/68; memorandum from Cleveland Field Office to FBI Headquarters, 8/1/68; memorandum from FBI Headquarters to Cleveland Field Office, 8/6/68.

⁶⁵ That the FBI sought to direct IRS attention at SDS is apparent from the statement in the June 10, 1968, memorandum to Chicago Field Office, ". . . IRS is presently conducting an audit of SDS funds at the Bureau's request." While this statement does not conclusively demonstrate that the Bureau was the cause of the audit, it does demonstrate that the Bureau sought to bring the audit about and believed it was responsible for it.

⁶⁶ AOC is the Activist Organization Committee, later known as Special Service Staff; Mr. Wright was its head.

⁶⁷ Memorandum for File by D. O. Virdin, dated 4/8/70. Mr. Virdin was then head of the IRS Disclosure Branch.

⁶⁸ The Committee staff reviewed IRS files of requests for tax returns and return information from intelligence agencies.

⁶⁹ These included liaison concerning audits of CIA proprietaries, a subject which will be discussed in the Committee's final report on the subject of CIA proprietaries.

⁷⁰ Because of the informal nature of CIA access to returns, no records of the disclosures were maintained by IRS.

he was authorized to release returns by his superior, but his superior can recall giving no such authority.⁷¹ In one other case, the IRS employee stated he had disclosed return information to a CIA agent who carried the credentials of another U.S. Government agency as a cover.⁷² There was no written authority for the informal disclosure of tax return information to the CIA, and, according to the IRS, there is no basis upon which any of the disclosures could be considered legal.

B. Effect of Illegality

Although the purposes of the requests varied, it is clear that all but one of the disclosures would have been legal had the CIA followed legal procedures. The bulk of the requests arose in connection with either CIA investigations of its own employees or other CIA investigations within its charter.⁷³ Thus, with one possible exception, the illegal practice did not result in the CIA's obtaining information it could not have obtained legally. Like the practice of the FBI prior to 1968 of obtaining returns from the Intelligence Division and bypassing official channels, the CIA's informal, illegal access to return information demonstrates not a weakness in disclosure regulations, but a failure of IRS to apply those regulations.

The atmosphere of extra-legal cooperation between intelligence agencies out of which the CIA's illegal access to returns arose did lead to at least two serious breaches of IRS responsibility for impartial, even-handed enforcement of the tax laws. In one case, the CIA obtained information from the returns of Victor Marchetti, the author of a book, publication of which the CIA sought to prevent. An unidentified IRS source, referred to in a CIA memorandum⁷⁴ as "Confidential Informant," supplied the return information on April 5, 1972, and advised the CIA that he:

was extremely interested in the fact that [Marchetti] had authored and published a book but still only reported a total income of [amount deleted] for 1970 and 1971. In this regard, our source would be ready to conduct, *at our request*, a routine audit of [Marchetti's] income tax for the past three years. [Emphasis supplied.]

Either information the IRS possessed concerning Marchetti justified an audit or it did not. Since no formal relationship existed between the two agencies, the CIA's interest in the matter should not have affected IRS action.

The second case involved Ramparts magazine. A February 2, 1967, internal CIA memorandum of a conversation between the Assistant General Counsel of the CIA, the Assistant to the Commissioner, IRS, and two other IRS executives, including the Deputy Assistant Commissioner for Compliance, indicates a basic willingness on the part of the IRS participants to tailor their treatment of Ramparts to the

⁷¹ IRS Inspection Report, OIA access to tax related information.

⁷² *Ibid.* p. 1.

⁷³ Letter from CIA General Counsel to IRS Assistant Commissioner, Inspection, 8/4/76.

⁷⁴ A copy of the memo, which was captioned "Subject: Victor Marchetti," is in the Committee's files.

desires and concerns of the Central Intelligence Agency. The memorandum¹⁵ recites that the CIA Assistant General Counsel:

Told them of the information and rumors we have heard about RAMPARTS' proposed exposes with particular reference to USNSA [U.S. National Student Association] and [an organization]. I impressed upon them the Director's concern and expressed our certainty that this is an attack on CIA in particular, and the administration in general, which is merely using USNSA and [an organization] as tools.

One of the IRS executives advised the CIA of the status of the USNSA application for tax exempt status. The CIA Assistant General Counsel then

suggested that the corporate tax returns of Ramparts, Inc. be examined and that any leads to possible financial supporters be followed up by an examination of their individual tax returns. It is unlikely that such an examination will develop much worthwhile information as to the magazine's source of financial support, but it is possible that some leads will be evident. The returns can be called in for review by the Assistant Commissioner for Compliance without causing any particular notice in the respective IRS districts. The proposed examination would be made by Mr. Green who would advise if there appeared to be any information on the returns worth following up. The political sensitivity of the case is such that if we are to go further than this, it will be necessary for the agency to make a formal request for the returns under a procedure set forth in government regulations. If such a request is made, the Commissioner will not be in a position to deny our interest if questioned later by a member of congress or other competent authority.

V. ANALYSIS

The cases described in this report reveal that more than privacy is at stake in the disclosure of tax returns and tax return information to federal agencies. It is apparently necessary to devise means to prevent disclosure for improper purposes, and to prevent the subsequent misuse of returns disclosed initially for proper purposes. The Justice Department's failure to prevent FBI abuse of access to returns suggests strongly that the control device must be in the hands of the IRS, and not only in the hands of the requesting agency or of its parent agency.

The case of Professor X, in which information supplied by IRS was used in an FBI counterintelligence program, raises a fundamental question concerning the use of IRS for non-tax purposes: whether the selection of a taxpayer for audit or investigation for essentially political criteria is justified by the subsequent discovery of some tax liability. This question is fundamental, and applies whether the non-tax use

¹⁵The 2/2/67 CIA memorandum was captioned, "IRS Briefing on Ramparts."

is through the unwitting manipulation of the IRS because of a weakness in its disclosure laws, or whether the political motivation emanates from the IRS itself. If one underpays his taxes, one argument goes, one takes his chances. One's political opponent, disgruntled neighbor, or disenchanted employee can report the underpayment for the crassest of motives, and will be rewarded¹⁶ for his efforts; therefore, motive is irrelevant as a matter of policy—all motives, however crass, enhance tax enforcement, and are therefore desirable springboards for audits or investigations. If violation of the tax laws inhibits one's freedom by increasing one's exposure to audit or prosecution, the result is a salutary incentive to comply with those laws.

There is an essential difference, however, between a government enforcement program along ideological lines and any individual effort to bring the IRS down upon an enemy: the government is constitutionally required to be neutral to politics; individuals are not. When the IRS responds to an allegation it receives, the motive underlying the transmission of the allegation is irrelevant. When the IRS selects taxpayers for a tax compliance review because of their politics, the government is employing its power for political purposes. Whether the IRS performs the selection, as in the case of Special Service Staff, or the FBI does, as in the case of Professor X, the fortuitous discovery of a tax liability does not justify the repression inherent in the practice.

Professor X was audited only because he was the target of a COINTELPRO operation in which the FBI, through the use of the disclosure regulations, sought to manipulate the IRS into "neutralizing" Professor X by means of a tax audit.¹⁷ Every IRS witness questioned regarding this case has agreed that Professor X's returns would not have been knowingly disclosed for the purpose for which they were used.¹⁸

The law and practice of disclosure of tax returns made this operation possible. The law requires the IRS to turn over returns to the Justice Department only where they are "necessary" in connection with "official duties." However, the IRS has not, in practice, administered these two requirements, but has delegated their administration to the requesting Assistant Attorney General, who in turn has delegated it to the FBI. As a result, no one outside the FBI made any determina-

¹⁶ Section 7023 of the Internal Revenue Code permits the Internal Revenue Service to pay a reward to anyone who provides it with information that leads to the detection and punishment of anyone guilty of violating the Internal Revenue laws.

¹⁷ The Assistant Chief of Audit in the IRS District at the time has stated: "My best recollection is that the return was a type which would not normally be identified by the computer as having audit potential. . . . There was no routine procedure in effect at that time for manual screening of returns for questionable deductions. Therefore, without some impetus from outside the normal, routine system, Professor X's return would in all probability not have been selected for classification and audit." (Interview, 8/13/75.)

¹⁸ See deposition of Donald Bacon former Assistant Commissioner (Compliance) with broad supervisory authority over disclosure pages 13, 14; deposition of Donald Virdin, former Chief, Disclosure Branch, pp. 78, 79.

tion of the actual reason for the request for Professor X's return, or of the compatibility of the reason with the regulatory criteria.

Even if the FBI's initial reason for requesting Professor X's return had been proper, the disclosure procedures provided no safeguard against a subsequent misuse of the return in an operation unrelated to the reason for the request. The letter requesting Professor X's return recited:

Documents furnished in response to this request will be limited in use to the purpose for which they are requested. . . .¹⁹

But the "purpose" for which they were requested was stated so generally as to permit any subsequent use. IRS failure to insist upon Justice Department compliance with the requirements that the application for the return state the reason why inspection is desired permitted the FBI to legally obtain Professor X's return to later improperly use the return as a COINTELPRO weapon.

Unrestricted FBI access to contributor lists the IRS compiles in the course of enforcing the tax laws has threatened both the integrity of the tax system and the constitutional rights of the contributors. The identity of members of organizations such as SCLC and the NAACP is privileged to protect members in their right to freedom of association by forestalling the potentially chilling effect which revelation of membership could have. The same reasons justify application of this protection to the identity of contributors to such organizations except to the extent that the act of contribution itself is properly discoverable because of potential tax consequences. It is for this latter purpose that the IRS is empowered to elicit contributors' identities. Presumably, if the FBI were investigating an allegation of criminal tax fraud to which contributors' identities were relevant, it would be entitled to the same information. There is no suggestion in any of the relevant FBI documents that the FBI sought to supplant the IRS in any investigation of the potential tax liability of SCLC contributors.²⁰ Rather, the FBI contemplated using the list as a means of disrupting SCLC and discouraging contributions, a purpose which constitutes a direct attack on the very interest which the right to anonymity protects, and a purpose for which the FBI could not have obtained a list of SCLC contributors from any court.

That the FBI did not implement the suggestion does not affect the basic point that FBI Headquarters furnished the tax information, including the list of contributors, to the local office in order to enable the local office to devise disruptive actions. COINTELPRO policy (as evidenced in other cases which are discussed in the report on COINTELPRO) makes it clear that the suggestion was not rejected because of concern for the legality of so using the contributor list.

¹⁹ Letter from Walter J. Yeagley to Commissioner, IRS, 5/31/68.

²⁰ The FBI generally does not conduct such investigations. They are the basic task of the IRS Audit Division.

In *NAACP v. Alabama*¹¹ the Supreme Court ruled that, even though the specific purpose of a law empowering the government to obtain the identities of members of a political group is legitimate, the court will weigh against that purpose the probability that a consequence of disclosure will be to interfere with the members' exercise of their right of freedom to associate. If the reason for disclosure is not "constitutionally sufficient" to outweigh the danger to freedom of association, the law is unconstitutional. Given the existence of a COINTELPRO policy of using all intelligence for disruptive purposes whenever feasible, disclosure to the FBI of contributor lists of target organizations violated the Constitution the moment the disclosure occurred even if, in the particular case, the FBI failed to devise a feasible means of making disruptive use of the information, and even if the FBI also had a legitimate purpose in obtaining the information.

Obtaining contributor lists for purposes of "counterintelligence" action to discourage contributions is unconstitutional under the *NAACP v. Alabama* rule. In *NAACP v. Alabama*, the state was denied access to contributors' lists because an incidental consequence of publication would be non-governmental harassment of the membership. In the case of SCLC, where the FBI sought the list in part for the purpose of developing schemes for government-sponsored disruption, the illegality of obtaining the list is apparent. The case demonstrates the importance of (1) requiring a statement of the purpose of requests for returns; and (2) limiting their use to the stated proper purpose.

The case of FBI access to an IRS list of contributors to SDS further demonstrates that inadequate IRS controls have led to its becoming an agent of a non-tax investigatory agency. It is not clear in this case whether the SDS audit was initiated because of FBI interest. It is clear that the FBI sought to direct the IRS intelligence gathering capability at SDS and then, through the disclosure mechanism, obtained information it could not legally have obtained on its own.

The case demonstrates how the disclosure procedures followed by the IRS makes it possible for an intelligence-gathering power the Congress has bestowed upon IRS for the purpose of tax collection—the power to obtain the identity of contributors—to become an investigative power of a non-tax agency, bent upon non-tax purposes. The SDS case also demonstrates that lax disclosure procedures provide an incentive for other agencies to attempt to interfere in IRS selection

¹¹ *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1168 (1957). The court held that whether membership lists are constitutionally available to the state depends upon whether the "reasons advanced" for the publication of the lists are "constitutionally sufficient to justify its possible deterrent effect" upon the freedom to associate. The Court found that the *NAACP* had made:

"An uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed those members to economic reprisal, loss of employment, threat of physical coercion."

and that

"... compelled disclosure . . . is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure."

of taxpayers for audit.⁸² An IRS audit is a financial vacuum cleaner. Other governmental agencies have a powerful intelligence gathering capability when they can exert influence over who the IRS selects for an audit and then have uncontrolled access to information gathered during the audit.

While it is clear that on occasion agencies performing intelligence functions will have a legitimate need for tax returns and return-related data, the need for a written record of the reasons supporting an agency's request for the information is also clearly demonstrated by the Ramparts and Marchetti cases in which the CIA informally obtained tax-related information for questionable purposes. The CIA was apparently unwilling to risk requesting tax return information with respect to Ramparts and its supporters unless, through an informal disclosure, it could first learn whether there was information on the returns that would be of interest to them in their effort to stifle Ramparts criticism of a CIA-sponsored organization.

The Ramparts and Marchetti cases demonstrate the dangers of informal exchanges of information between the IRS and other intelligence agencies. These informal exchanges both encourage illegal disclosure and provide the other intelligence agency with a lever by which to manipulate or persuade the IRS into action directed against certain taxpayers for reasons having no bearing upon compliance with the tax laws. In the Marchetti case, the unidentified IRS source offered to conduct an audit of Marchetti at the CIA's request, an offer which arose out of the atmosphere of extralegal cooperation which informal access to tax return information creates.

The existence of informal disclosure channels is dangerous even if the only tax return information that passes along those channels is information that could have been properly disclosed under IRS regulations. The existence of such channels fosters an atmosphere in which those charged with liaison are tempted to place their desire to be cooperative above their obligation to enforce the tax laws neutrally. The unofficial character of the disclosure makes it possible to insulate these acts of improper cooperation from outside scrutiny. It is far too important that taxpayers have confidence in the confidentiality of the returns they file and in the integrity of the tax system to permit individuals within the IRS to exercise unreviewable judgment regarding the propriety of disclosing tax return information to other Federal agencies.

SELECTIVE ENFORCEMENT FOR NON-TAX PURPOSES

Introduction

Because the investigation of the Internal Revenue Service encompassed several abuses of the rights of American citizens of which some

⁸² A later case specifically shows FBI awareness of the advantages of directing IRS attention at an intelligence target. In 1969, the Special Agent in Charge in a Midwest City recommended furnishing certain information to the IRS in order to effect an audit of a local Communist Party officer. (Memorandum from Midwest City Field Office to FBI Headquarters, 1/22/69.) Authority was granted in a communication from the Director which also noted:

"After audits have been effected by the Internal Revenue Service, copies of the audits can be obtained through liaison at the Bureau. Should you desire copies, submit your request at the appropriate time." (Memorandum from FBI Headquarters to Midwest City Field Office, 3/4/69.)

details had previously been studied and revealed to the public by the Congress (e.g., Special Service Staff, Ideological Organizations Project), the staff was able to devote some of its investigation to an analytical evaluation of those abuses. This analysis revealed that many abuses of the IRS intelligence functions occurred when enforcement of the tax laws became an ancillary instead of the primary factor in determining IRS actions.

The Internal Revenue Service, since it was reorganized in 1952, has had a decentralized structure, with each of the 58 districts operating autonomously and being generally responsible for its day-to-day operations while the National Office is primarily responsible for policy decisions. When the IRS participated in an activity in which targets had been chosen on the basis of criteria which included factors in addition to those involved in routine tax law enforcement, it was often necessary for the IRS to impose centralized controls on its basic decentralized structure in order to accommodate the special requirements created by the additional criteria. This has had the practical effect of creating a new structure which has in the past been incompatible with the original decentralized IRS structure and has often resulted in abuse. The investigation revealed that this result occurred regardless of the purpose of the IRS endeavor. For example, abuses attributable to structural anomalies occurred in IRS participation in the Organized Crime Drive, a valuable effort beneficial to the well-being of the country, as well as in the Special Service Staff, where IRS improperly targeted individuals because of their political beliefs.

Part Two of this report, "Selective Enforcement for Non-Tax Purposes," reports on the historical development of the intelligence operations of the Internal Revenue Service since its reorganization in 1952 and discusses the relationship between those abuses addressed and their setting: the decentralized structure of IRS.

I. THE HISTORICAL DEVELOPMENT OF IRS INTELLIGENCE ACTIVITIES

A. *Function and Structure of IRS Intelligence*

1. *Introduction.*—The Intelligence Division of the Internal Revenue Service performs those criminal investigative activities the IRS must perform in order to collect the taxes, i.e., gathering that information beyond what taxpayers normally provide IRS which is necessary to determine the truth of allegations of criminal tax violations and, if necessary, to prepare evidence for prosecution of such violations. These activities are usually lumped under the IRS rubric, the "General Enforcement Program" ("GEP").

In addition to this normal function, the IRS Intelligence Division has engaged in "Special Enforcement Programs" ("SEP"), where it targets major criminal figures for general intelligence collection.

The element of targeting makes the SEP distinct in several important ways from GEP. In the General Enforcement Program, IRS does not single out a taxpayer and seek to develop a case against him, whereas the very purpose of the SEP is to develop tax cases against persons who have been classified as participants in, for example, organized crime. The purpose is a "nontax" purpose in the sense that in most cases the motivation for selecting the investigative target is not to achieve balanced tax enforcement but to seek to develop a

tax case against the target because he is believed to be a participant in other criminal activities. The GEP target is investigated because there is reason to believe he has committed a specific act of tax fraud. The SEP target may be investigated in the hope such an allegation can be developed.

This difference in targeting leads to differences in attitudes and technique. Pursuit of SEP figures requires use of many of the techniques of general law enforcement (paid, regular informants; electronic and other forms of surveillance; raids; nationally organized and coordinated enforcement efforts) which the GEP does not require to the same degree. Further, the policy of the SEP is essentially one of consciously "unbalanced" tax enforcement.³³ Balanced tax enforcement is an effort to allocate enforcement resources to achieve the highest degree of compliance with the tax laws.³⁴ Balanced enforcement does not imply that all classes of taxpayers will be equally subject to tax investigation, but that the criteria for resource allocation will be designed to maximize tax law enforcement. In the SEP, these criteria do not control. Resources may be allocated to SEP targets because they are perceived to be dangers to society in many ways, even though the tax compliance benefits of successful prosecution would not alone have justified allocation of investigative resources. This difference may lead to a different attitude on the part of the agents tasked to "get" the SEP target from the attitude they bring to GEP investigations, and aggravate the difficulties of controlling the agent's exercise of discretion in the field.

The organization of the IRS Intelligence Division and its devices for control of agents reflect the primacy of the "classical" IRS Intelligence function: the investigation of specific allegations of tax fraud in a balanced enforcement program. Unlike any other Federal law enforcement agency, the Internal Revenue Service's Intelligence Division is a decentralized organization. Local and regional offices make virtually all operational decisions. The National Office hierarchy is designed to be a policy-setting organization which seldom interferes with field activities—and, except in the case of major projects, is unaware of specific activities. This arrangement contrasts strikingly with the organization of the FBI, for example, which has closer control over day-to-day field operations because of its centralized structure with the chain of authority emanating from the center.

The IRS was decentralized to meet certain needs of tax collection and tax law enforcement. The high degree of local autonomy and agent discretion which accompanied decentralization have made the IRS an effective tax enforcement agency. It has, however, proved to make difficult the effective control of nontax law enforcement activities. To the extent that a nontax emphasis may serve the national interest—as with the drive against organized crime—it is apparent that effective control and oversight by the necessarily different organizations is required.³⁵

2. *Origins of Decentralization.*—The organization of IRS Intelligence parallels the organization of the rest of the IRS. Both are prod-

³³ See Manual Supplement 14R-17, November 6, 1959, discussed at page 870, *infra*.

³⁴ IRS Policy Statement p 9-18.

nets of an effort in the early 1950s to correct widespread abuses which congressional investigators had uncovered in IRS operations. While the reorganization of 1952 did not arise primarily from abuses by the then functional equivalent of the Intelligence Division, the reasoning which underlay the changes applied equally to all areas of IRS activity.⁸⁵

Prior to the reorganization, the IRS collected the revenue through 64 "Collectors," who were Presidential appointees. Congressional investigators found that the Collectors had been susceptible to political influence and to other forms of improper pressure. Commissioners had found they were unable to control the independently-appointed Collectors.⁸⁶

The problem was perceived in part as one of excessive centralization, which made the IRS a powerful tool of political forces and threatened public confidence in the tax system.⁸⁷ The solution was an effort to readjust the perpetual tension between the need for central direction and the dangers of central control.

The Treasury commissioned a management consulting firm to study how to structure the IRS to insulate it from improper influence while retaining the degree of central direction it needed to perform the mushrooming task of collecting the revenue. The consulting firm's recommendations were ultimately embodied in Reorganization Plan No. 1 of 1952.⁸⁸ In broad outline, the Plan called for two changes in IRS structure which, on the surface, appear inconsistent but which were designed to work in tandem to produce greater efficiency and independence from political influence. Under the preexisting system, while the National Office in theory directed field activities, in practice, since the Collectors were Presidential appointees, the Commissioner's authority over the field was in doubt. Further, the field was susceptible to political pressure since the Collectors' job security depended upon political favor. The Reorganization Plan sought to correct both deficiencies by abolishing the Collectors' positions and creating not more than 25 district commissioners who would be civil servants, promoted according to merit, and answerable directly to the Commissioner. At the same time, however, the plan called for a decentralization of most IRS operations and a consequent reduction in National Office authority over day-to-day field operations. The introduction of professionalism into the highest levels of field organization would permit a high degree of field autonomy; the elimination of patronage appointments would create an environment in which field autonomy would not mean field politics.⁸⁹

⁸⁵ Statement of John B. Dunlop, Commissioner of IRS, "Meaning of Reorganization Plan No. 1 of 1952," 5/20/52.

⁸⁶ John W. Snyder, Secretary of Treasury, "The Reorganization of the Bureau of Internal Revenue," Public Administration Review, 1952, p. 221 et seq.

⁸⁷ The House Committee on Expenditures in the Executive Departments held hearings on the Plan during January 1952, pursuant to the Reorganization Plan of 1949, under which such reorganization plans were automatically ratified if not disapproved by the Congress within 90 days. For the text of the plan, see Reorganization Plan No. 1, Submitted to the Congress by the President, 1/14/52.

⁸⁸ John W. Snyder, "The Reorganization of the Bureau of Internal Revenue," p. 220.

⁸⁹ The Plan also called for the consolidation of field activities into administrative groupings according to the function being performed (Investigative—including Audit and Intelligence—Collection, Settlement, etc.) rather than according to the kind of tax being collected as a means of achieving clearer lines of responsi-

Under the plan, the primary function of the reduced National Office staff would be to advise the Commissioner on questions of broad policy. The Commissioner was to be the only political appointee in the IRS and, as such, he was not to have the bureaucratic muscle necessary to control field operations, but was to have the staff necessary to engage in those activities for which a political orientation was appropriate: setting broad policy. Congressman Cecil R. King of California, Chairman of the Subcommittee on Administration of the Internal Revenue Laws of the Ways and Means Committee, expressed the philosophy underlying the Plan:

Political selection for positions which are primarily policy forming has obvious justification. Where the job is primarily a technical administrative post these are almost entirely lacking.⁹⁰

The reorganization of the Intelligence Division paralleled the pattern for the Service.⁹¹ The effect of the Plan was to increase the Commissioner's ability to exercise his general authority over intelligence activities in the field by eliminating the politically independent Collectors and streamlining the field organization while, at the same time, minimizing direct National Office control over day-to-day operations by bestowing greater autonomy upon the professional field staff.

With minor differences, the organization envisioned by the 1952 Plan is that which exists today. Intelligence activities in each district (of which there are 58) are run by a Chief, Intelligence, who reports to the Regional Commissioner who reports to the Commissioner. No Intelligence Division in the National Office is not in this chain of command and, therefore, generally has no line authority over the Chief, Intelligence, in the district. It performs its function of assisting the Commissioner in setting policy for all IRS Intelligence activities by issuing rules and guidelines which are to be implemented by the Regional Commissioners and the District Directors, in whom authority to direct actual operations reposes.⁹²

bility and authority. Previously, for example, special agents engaged in intelligence work had been divided into distinct administrative groups depending upon whether they worked on excise, income, or other taxes.

⁹⁰Testimony of the Hon. Cecil R. King before the Committee on Expenditures in the Executive Departments, House of Representatives, 82d Cong., 2d Sess., Jan. 23, 1952, at p. 228.

⁹¹According to a June 23, 1961, IRS internal memorandum, at the time of the reorganization there was much discussion of whether the District Directors (local office administration) should have operational direction over intelligence operations or whether the contemplated District Commissioners (regional administrators—now called Regional Commissioners) should. The plan adopted was the former except for New York, where (presumably because of the presence of several districts in a small geographic area with cases cutting across district lines) the District Commissioner was to have operational control.

⁹²See generally Internal Revenue Manual § 9800; this discussion of IRS Organization is based in part upon interviews with many National Office and district office intelligence executives. There are some exceptions to the rule of National Office aloofness. Where problems of national scope require the application of intelligence resources, the National Office may initiate a National Office project and coordinate it out of the National Office. Also, the Commissioner has the authority, if he wishes, to seize control of any operation; however, he lacks the bureaucratic capacity to do so on a large scale, and further, for the National Office to interfere in a case could and sometimes does, provoke objection and, thus, attention from the IRS Inspection Service.

The Plan did not call for unqualified reliance upon the professionalism of the field organization to achieve independence from influence and high performance. It called for the transfer of responsibility for investigating employee malfeasance from the Intelligence organization to a newly created inspection service which would both police propriety and continuously audit field performance.⁹³ The current Inspection Service is the sole exception to the regionalized organization. It was necessary to make Inspection independent of those it would inspect. Inspection personnel in the field therefore work out of the Regional Offices and report to the Regional Inspector, who reports to the Assistant Commissioner (Inspection) in the National Office, who reports to the Commissioner. This structure makes Inspection independent of the District Directors and the Regional Commissioners.⁹⁴

The creation of Inspection amounted to the substitution of retrospective evaluation and investigation for direct supervision of field activities. One of Inspection's key tasks is to determine the origins of impropriety or inefficiency and to recommend new systems of organization or new guidelines to eliminate these causes.⁹⁵ Its function is consistent with the idea of a decentralized system in which the National Office sets guidelines for performance and evaluates the field's adherence to the guidelines, but does not control current operations.⁹⁶

In 1952 the main job of IRS Intelligence was its classical task of investigating allegations of tax fraud.⁹⁷ The organization which was created in 1952 promised effective and controlled intelligence operations as long as this classical intelligence function remained paramount.

Investigation of specific allegations of tax fraud inherently limits the scope of an agent's discretion because of the narrow scope of the inquiry. The inherent limitation makes it possible to rely to a high degree upon agent initiative and spontaneous cooperation at the field level with general guidance from the center when Special Agents investigate specific allegations of tax violations. The inherent controls of the classical IRS intelligence task permitted the architects of 1952 to minimize central control, and thus minimize the chances of influence through the center without risking wholesale local abuse by unrestrained special agents.

The story of abuse of the IRS Intelligence function since 1952 is largely the story of the strains which the attempt to divert IRS resources from its classical investigative function placed upon the organizational structure which had been designed for that classical function—the investigation of specific allegations of tax fraud. Every time the IRS has made a concerted effort to participate in tax law

⁹³ Reorganization Plan of 1952.

⁹⁴ Interview, Warren Bates, Assistant Commissioner—Inspection, 9/75.

⁹⁵ *Ibid.*

⁹⁶ During its investigation the Committee found the Inspection Division to be remarkably objective in its approach to investigation of allegations of IRS wrongdoing. While the IRS system has its limitations, mainly in the mechanism for identifying areas where investigation is necessary as contrasted with conducting an impartial investigation once it is begun, the ingredients of Inspection's objectivity appear to merit study as an example of relatively successful self-investigation.

⁹⁷ IRS Organization Study, Interim Report on Internal Revenue Service's Intelligence Organization, September 1961.

enforcement activities with nontax objectives, it has found it necessary to deviate in some way from its normal organization. The resulting hybrid organizations created to participate in other than strict tax enforcement activities have been responsible for many of the abuses of which IRS Intelligence has been guilty during the last twenty-three years.

The purpose of this report is to explore how changing objectives and practices in IRS intelligence gathering have strained the Intelligence organization the IRS established in 1952. Such an assessment is a prerequisite to answering a major question facing those charged with guiding IRS: whether the objectives which dictated the 1952 reorganization remain paramount, and, if so, whether there are means of avoiding the abuses which have accompanied past efforts to reshape the IRS tool for different purposes.⁹⁸

B. IRS Intelligence 1952-1965: The Shift Toward Organized Crime

Between 1951 and 1960, IRS intelligence stepped into and out of the fight against organized crime. In 1960, the government-wide Organized Crime Drive began. IRS was drafted into the effort. The result was the "unbalancing" of the tax enforcement effort: the key criterion for the decision whether to investigate was no longer predicated on tax-related criterion alone. In order to make certain the habits of bureaucracy would not negate this shift in emphasis, central "coordination" of the effort was superimposed on the IRS's decentralized structure. The resulting vagueness in lines of authority, the increased use of the abuse-prone intelligence gathering technique of electronic surveillance, and the accompanying atmosphere of a crusade resulted in abuses in the use of electronic surveillance between 1960 and 1965, which the Long Committee⁹⁹ exposed. These abuses appear to be a direct result of the structure created to handle the IRS activities and do not reflect on the stated desirable purpose of the IRS action: to combat the nationwide growth of organized crime.¹⁰⁰

1. *1951-1960.*—Before 1951, the classical function of IRS intelligence was: virtually its only function,¹⁰¹ but a change began at about the same time reorganization plans were stirring. In February 1951, the Kefauver Committee¹⁰² criticized IRS failure to enforce the tax

⁹⁸ For a discussion of this issue see e.g., IRS Organizational Study Supplemental Report, "A Contemporary View of the Criminal Law Enforcement Function in the IRS," 1/12/70.

⁹⁹ Hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, United States Senate, 89th Cong., 1st Sess., pt. 3, pp. 1120-27, Hon. Edward Long, Chairman.

¹⁰⁰ IRS efforts directed at organized crime have resulted in the prosecution and conviction of known criminals who successfully avoided conviction for other crimes, the most notable being Al Capone. There are, however, differing views on the question whether the concentration on organized crime figures can be justified purely from a revenue enforcement viewpoint. See e.g., testimony of Louis Oberdorfer, p. 2, and Robert Blakey, p. 25, before the Subcommittee on Administration of the Internal Revenue Code of the Senate Committee on Finance on "The Role of the Internal Revenue Service in Law Enforcement," 1/22/70.

¹⁰¹ Interim Report on Internal Revenue Service's Intelligence Organization, September 9, 1961, pp. 1-3 (hereinafter referred to as "Interim Report"). Intelligence also investigated employee malfeasance, job applicants, and similar matters.

¹⁰² Special Committee of the United States Senate to Investigate Organized Crime in Interstate Commerce, established May 3, 1950.

laws with sufficient vigor against organized crime. This and other criticism and encouragement by the Kefauver Committee led to the creation in 1951 of a racketeer program in IRS.¹⁰³

In 1951 and 1952, the IRS assigned a large proportion of its intelligence forces to racketeer work. The peak number of investigators so assigned was 2,290 in January 1952.¹⁰⁴ In that year 12,879 racketeer cases were investigated.¹⁰⁵ On November 1, 1951, a wagering tax became effective, the purpose of which was to curb a primary source of organized crime revenue. The Intelligence Division began to enforce the tax through police-type intelligence gathering techniques. While many in the IRS, including some of the accounting oriented personnel of the Intelligence Division, resisted this work as an inappropriate use of their training,¹⁰⁶ for a short time between the Kefauver hearings and the beginning of the Eisenhower administration, this police work represented an increasing part of IRS intelligence work.

The shift toward the Special (Organized Crime) Enforcement Program reversed itself during the Eisenhower administration, which consistently declined to provide special funds for racketeer work.¹⁰⁷ As a result, from 1952 on, Intelligence increasingly concentrated on its "classical" function. In contrast to 10,041 racketeer cases investigated in FY 1953, by FY 1955 total racketeer cases developed had declined to 1,039; by FY 1960, to 125.¹⁰⁸

Following the 1957 Appalachian meeting of prominent organized crime figures and the accession of Commissioner Latham in November 1958, however IRS once again began to emphasize enforcement efforts against racketeers as part of a national program mounted by the federal government against major racketeers.¹⁰⁹ A November 6, 1959, Manual Supplement 14R-17 stated:

Achievement of the goal of balanced enforcement . . . does not take precedence over the recognition of investigative requirements arising from flagrant localized situations, including racketeering or other illegal activity.¹¹⁰

2. *Acceleration of IRS Intelligence Activities.*—An April 1960 Manual Supplement established a renewed special enforcement effort against racketeers.¹¹¹ The National Office was to maintain a file of all

¹⁰³ Then called the "Bureau". Reference throughout will be the Internal Revenue Service.

¹⁰⁴ See Interim Report, p. 12.

¹⁰⁵ *Ibid.*, Table 3. During the 15-month period, April 1951 through June 1952, 480 cases were recommended for prosecution. During the same period, convictions were obtained in 183 cases involving 220 defendants. Interim Report p. 12.

¹⁰⁶ See Interim Report, pp. 13-14.

¹⁰⁷ *Ibid.*, p. 5.

¹⁰⁸ Interim Report, Table 3.

¹⁰⁹ Statement of Robert K. Lund, former Director, Intelligence Division, before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, 7/29/75.

¹¹⁰ MS 14R-17, November 6, 1959.

¹¹¹ MS 94G-4. The program partially centralized IRS intelligence activities, calling for a special review of returns of major racketeers in each district and requiring either an audit or an intelligence investigation of each major racketeer at least every two years. It created a National Office Master File of racketeer figures.

information on major racketeers, even though, in theory, the National Office did not direct investigation of such figures. The reemphasis accelerated rapidly with the start of the Organized Crime Drive (OCD) in February 1961. The Commissioner ordered that all necessary manpower:

be made available to the extent necessary to promptly and thoroughly conduct those investigations requested by the Department of Justice.¹¹²

The OCD was accompanied by a revamping of IRS intelligence organization which had not accompanied earlier racketeer programs. Attorney General Kennedy had expressed the view that the decentralized structure of the Intelligence Division with its layers of non-law-enforcement personnel was not apt for the intensive, nationwide program he envisioned against organized crime.¹¹³ In response to this view, the IRS carved out a new structure for OCD intelligence work which bypassed the District Directors and created lines of authority strictly within the law enforcement branch of IRS. The National Director of the Intelligence Division assumed responsibility for "coordinating" the OCD program. He established a "coordinator" in the National Office who would work through similar "coordinators" in each region. The system would bypass the main IRS organization. The District Directors lost effective operational authority over OCD investigations (but retained administrative control over the personnel conducting the investigations and operational control over them to the extent their work fell within the GEP).

The transformed organization carried out transformed intelligence activities. Use of general law enforcement techniques of all kinds, including paid informants and electronic surveillance, increased sharply. While no separate statistics are available for each technique, the table set forth below reflects increases in the use of intelligence gathering techniques which paralleled the increased participation of the IRS in the OCD.

Expenses of securing evidence
(In thousands)

Fiscal year:		Fiscal year:	
1960 (actual) -----	\$150	1960 -----	470
1961 -----	241	1970 (181)* -----	490
1962 -----	432	1971 (127)* -----	528
1963 -----	653	1972 (211)* -----	728
1964 -----	827	1972 -----	425
1965 -----	810	1974 -----	597
1966 -----	790	1975 -----	354
1967 -----	751	1970 (plan) -----	327
1968 -----	450		

* The majority of funds expended for intelligence gathering in the years 1970-1972 were spent by AT&F: \$300,000 (1970), \$300,000 (1971) and \$512,000 (1972). Figures through 1972 include expenses incurred by the Division of Alcohol, Tobacco and Firearms (AT&F) when it was a part of IRS. AT&F became a separate Bureau in 1972. The figures in parentheses for FYs 1970, 1971 and 1972 indicate the amounts expended by IRS in those years, exclusive of that allocated to AT&F.

¹¹² MS 14ROD-1, February 24, 1961.

¹¹³ Statement of Robert K. Lund before the Subcommittee on Commerce, Consumer and Monetary Affairs of the House Committee on Government Operations, 7/20/75.

While no further breakdown of expenses for particular techniques is available, testimony at the Long hearings supports the surmise that the sharp increase in expenditures in FY 1961-1963 reflects changes in intelligence techniques more frequently used during the period.

The reemphasis upon major crime figures also altered the personnel profile of the Intelligence Division. In 1959, in partial response to this reemphasis and the accompanying changes in the investigative skills needed to perform the work, the IRS cut in half the accounting training required of prospective special agents, reducing it from 24 to 12 semester hours.¹¹⁴ The impact of this change was multiplied by a corresponding increase in hiring of Intelligence Division personnel. According to its May 1961 Long-Range Plan, the IRS anticipated increasing its intelligence field personnel from 1,998 in 1961 to 2,560 by the end of 1964, with fifty percent of the total performing some form of organized crime or racketeering work.¹¹⁵

C. Abuses in IRS Intelligence 1960-1965: The Long Hearings

Unprecedented charges of the improper use of investigative techniques resulting in the abuse of citizens' rights were made against IRS Intelligence following the first five years of the Organized Crime Drive.¹¹⁶

Senator Edward V. Long's Subcommittee on Administrative Practice and Procedure uncovered widespread abuse of electronic surveillance by IRS Intelligence—abuses the IRS had neither prevented nor discovered on its own—in a series of hearings in July and August of 1965.¹¹⁷ In response to the Committee's allegations of IRS abuse of wiretap capabilities, Commissioner Cohen acknowledged the various forms of surveillance and explained their origin as follows:

A valid starting point is the 1957 Appalachian meeting of the crime overlords which focused national concern on the cancer of organized crime. February 1961 saw the onset of a drive on organized crime unprecedented in terms of resources, intensity, and—thankfully—results. The success of this program has been reflected in a tenfold increase of convictions secured in organized crime cases.

Briefly, we have completed 8,180 full scale investigations in the rackets area from February 1961 through March 31, 1965. Prosecution has been recommended in 2,452 of these. So far from these cases 1,214 convictions have resulted. A number of others are still pending. We presently have 664 cases under investigation. From the Internal Revenue standpoint, taxes and penalties of more than \$219 million have been recommended for assessment against OGD subjects. It is noteworthy that where criminal prosecution has been recom-

¹¹⁴ Interim Report, pp. 70-83.

¹¹⁵ Interim Report, p. 80.

¹¹⁶ Not all of the abuses the Long hearings uncovered were products of the OGD. However, the vast majority of the abuses discussed in testimony before the Long Committee occurred in the course of OGD investigations.

¹¹⁷ Long Committee hearings, pp. 120-27; Letter, Commissioner, IRS to Senator Long, 7/11/67.

mended, we have still been properly able to assess civil taxes and penalties. It seems fair to say that without the wholehearted efforts of the Internal Revenue Service there could have been no organized crime drive nearly resembling that sponsored and endorsed by the Administration and the Congress since February of 1961. Over 60 percent of the cases prosecuted in the organized crime field during this period have been developed by Internal Revenue Service investigation.

In order to effectively combat organized crime the Service recognized that the furtive, underground activities which go hand in hand with organized crime could often be uncovered only through resort to special techniques and equipment. The extraordinary nature of organized crime compelled extraordinary effort by the Service.

The Service early tooled up appropriately for its efforts. Under the impetus of the organized crime drive, the Service expended allotted funds—representing still but a minute fraction of its investigative expenditures—for the purchase of modern, miniaturized electronic transmitting and receiving equipment.

With respect to the difficulty of controlling special agents once they had been furnished the investigation tools, Commissioner Cohen testified:

Insuring adherence (to restrictions on use of the electronic devices) is not a simple matter. The Service has approximately 3,000 criminal investigators working throughout the country. They constitute an elite group. While we must temper their zeal with controlled judgment, we cannot categorically deprive them of tools and training with legitimate, exemplary uses.

For many of the abuses the Long Committee uncovered the immediate cause of the breakdown in controls may have been the confusion of lines of authority which resulted from a hybrid organizational structure, the changed structure merely reflected the underlying and unanticipated problems which accompany subordinating tax enforcement, with its inherent restraints, to a non-tax goal.

The Long hearings resulted in no change in IRS structure. The IRS did, however, issue directives expressly forbidding all wiretaps, including those considered legal. It required very high level approval of any electronic surveillance and imposed strict controls upon access to the tools of the eavesdropping trade.

D. Undercover Agent Abuses and IRS Organizational Weaknesses

The same administrative weaknesses which led to abuses of the electronic surveillance capability have also led to abuse of a second major IRS investigative tool; the undercover agent.

The Special Agent Undercover Program, which has existed in varying forms since the IRS began investigating tax fraud, intensified with the beginning of the OCD. In 1968, in a pattern which paralleled that for the entire OCD, the Undercover Agent Program.

was centralized under the direct control of the National Office Intelligence Division. This action was taken as the result of an Intelligence Division task force study that found a centralized program would be more effective and economical than the separate undercover projects that were then operated by individual regions or district offices.¹¹⁸

The result of this action paralleled the results of the centralization of other OCD efforts; neither the Districts nor the National Office exercised control over the undercover agents.

In a major study in 1975,¹¹⁹ IRS Inspection found widespread abuse in the undercover agent program, and traced the abuse to administrative anomalies remarkably similar to those which underlay the electronic surveillance abuses which the Long Committee had unearthed. An undercover agent in New York, who was to develop intelligence regarding organized crime figures, had engaged in extortion, sale of stolen property and fraudulent business schemes; an agent in Birmingham had been arrested for violations of Alabama gambling and prohibition laws; other undercover agents who had not committed any illegal acts had been largely unsupervised in their undercover careers. In the case of the New York agent, the study found that:

National Office advised that field managers were responsible to ensure that the Manhattan Strike Force's objectives were achieved by the undercover agent. However, the Manhattan Strike Force representative (i.e., a "field manager") advised that only the National Office had authority to approve and direct the undercover agent's activities.¹²⁰

In the case of the Birmingham agent, the study found:

National Office and district responsibilities for direction and control of the undercover project were not clearly defined.¹²¹

The Committee staff also discovered instances of improper and excessive use of undercover agents. In its efforts directed at organized groups which refuse to file returns and pay taxes as a means of protesting the constitutionality of the internal revenue laws, the IRS often uses local and national office-supervised undercover agents, as well as informants, to infiltrate the groups. The undercover agents, often posing as husband and wife, attend open meetings of these protesters, identifying all individuals in attendance,¹²² and in some cases become trusted members of the protest organization. One such instance was described as follows:

After several months of getting acquainted with the movement, we decided we would attempt to infiltrate one of our

¹¹⁸ IRS Internal Audit Report of the Review of the National Office Intelligence Division Special Agent Program and Investigative Imprest Funds 4/21/76, Attachment 2, p. 1.

¹¹⁹ *Ibid.* The report covered the period 1971-1975. Because the same administrative system for undercover operations had existed since 1963, however, there is every reason to believe this period is representative of the 12-year span.

A copy of the report is in the Committee files.

¹²⁰ *Ibid.*, Attachment 3, p. 4.

¹²¹ *Ibid.*, Attachment 5, p. 1.

¹²² Memorandum of telephone conversation between Richard B. Worker, IRS Special Agent, Chicago, and Brian Wellesley, IRS Group Supervisor, Intelligence Division, Los Angeles, 4/8/78.

agents into the inner circle of the [protest group]. Despite foreboding warnings from other districts that infiltration was extremely difficult, by November 1973 one of our agents had gained the trust, confidence and money of the [protest group] by being selected as treasurer. This coup also gained us the entire mailing list of the [organization].¹²³

The staff also learned of instances in which the undercover operatives, because of their positions of trust within the organizations, were privy to legal strategy sessions of tax protesters who had been indicted for violations of the tax code and had legal actions pending against them in court.

In one case, a National office undercover agent who had infiltrated a tax protest organization gained access to a draft of a legal brief of a protester which had been prepared by his attorney and was to be used in the protester's defense in his trial for willful failure to file tax returns. The agent turned the brief over to his contact in the Los Angeles office, who then gave it to the U.S. Attorneys prosecuting the case.¹²⁴

The two projects in the IRS study which were found to be the most effective and the most free of abuse were projects in which the districts simply moved into the control vacuum and assumed control of the project, directing it in the manner in which the IRS' decentralized intelligence system was designed to function. In most cases, however, the districts failed to exercise this initiative in the face of theoretical National Office responsibility for the project; loss of control and overuse resulted.

The IRS was unwilling to change its entire organization to meet the special needs of the OCD because the decentralized structure was best adapted to its classical function. A decentralized structure yielded effective audit and collection action. Since the classical intelligence function depended upon close coordination with Audit and Collection, a balanced enforcement program at the district level required that the intelligence function be similarly organized. The requirements of the intensive effort apparently necessitated a different, more centralized structure. The "coordinator" system and the centralization of the undercover program reflected these requirements. The result of these attempts to change an organizational structure designed only to control classical IRS intelligence activities into a hybrid capable of performing both classical and police-type work was loss of control.¹²⁵

¹²³ Memorandum, IRS Special Agent Neuhauser, Chicago to Assistant Regional Commissioner—Intelligence, Midwest Region, undated, p. 2.

¹²⁴ All personnel in the Los Angeles district interviewed by the staff denied turning over results of undercover work to U.S. Attorneys on any occasion. An unsigned district memorandum, however, discovered by IRS Inspection Service during its investigation of the intelligence functions of the district, praises the work of the undercover agent in gaining access to the legal brief.

¹²⁵ Senator Long also concluded there was a close connection between IRS organization and abuse. On October 5, 1960, Senator Long wrote to Commissioner Cohen:

If control could be once again centered in the National Director of Intelligence in Washington (as is the case with IRS' Inspection Service) and if the Division could return to its normal job of checking on large tax evaders rather than bookies and numbers operators, things would be greatly improved at IRS."

II. SELECTIVE ENFORCEMENT AGAINST POLITICAL ACTIVISTS: SPECIAL SERVICE STAFF

A. Introduction

The Special Service Staff was a centralized effort to gather intelligence on a category of taxpayers defined by essentially political criteria for the purpose of developing tax cases against them. While perceptions of the program's purpose varied, many in IRS and the few outside IRS who knew (e.g., FBI, White House) of the program regard it as an attempt to suppress a group which threatened the country's security. A centralized effort was deemed necessary because the balanced enforcement programs of the districts had not led to sufficient efforts against "activists" to satisfy IRS' critics, and because the threat was nationwide and involved some national organizations.

The Special Service Staff was not an Intelligence Division project,¹²⁶ but it was an information-gathering project in which some of the information gathered was transmitted to the field for appropriate action. The creators of SSS have uniformly testified that they did not intend that it would result in enforcement of the tax laws along ideological lines; that SSS was simply to gather information and disseminate it to the field where the normal decentralized controls of the tax system would assure that the information would result in no disproportionate enforcement effort.¹²⁷ Districts, it was presumed, would resist referrals which did not meet normal IRS criteria for tax investigations. In fact, focusing intelligence collection on ideologically-selected groups inevitably resulted in disproportionate enforcement efforts against them. Even had the decision whether to refer a particular case to the field been wholly objective, SSS targets would have shouldered a concentrated burden of tax enforcement because of the disproportionate increase in the gathering of information on them. Additionally, the structure created to accomplish the purposes of SSS were the controls normally present in district operations.

A detailed documentary and transactional history of the origins of SSS is contained in two prior Congressional reports¹²⁸ on the subject.

Its origins will merely be summarized here.¹²⁹

¹²⁶ Until February, 1972 SSS was under the Assistant Commissioner (Compliance), who also supervises the Intelligence and Audit Divisions.

¹²⁷ Leon Green testimony, 9/12/75, pp. 65, 66.

¹²⁸ "Investigation of the Special Service Staff of the IRS," by the Staff of the Joint Committee on Internal Revenue Taxation, June 5, 1975, hereinafter referred to as "Joint Committee Report;" "Political Intelligence in the IRS: The Special Service Staff. A Documentary Analysis Prepared by the Staff of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Ninety Third Congress, second Session, December, 1974.

¹²⁹ The Committee has relied heavily upon the work of the Joint Committee in its inquiry into SSS. The Senate Select Committee's contribution to the problem of the origins of the Special Service Staff has been limited to that new material which came to light in depositions. In general, this Committee's investigation has corroborated the Joint Committee's findings regarding SSS origins. This Committee plowed new ground in two principal areas: (1) investigation of the criteria for referral of subjects to the intelligence agents to the Special Service Staff; (2) interviews of field personnel who handled SSS cases to determine if SSS influenced action on cases after the referral. Except where indicated, all statements regarding the origins of SSS are based upon pp. 33-44 of the Joint Committee's Report.

B. Congressional Influence

During the six months prior to the formation of SSS, staff members of the permanent Subcommittee on Investigations of the Senate Committee on Government Operations (Permanent Subcommittee) had been reviewing IRS files on activist organizations, both in the field and in Washington.¹³⁰ As a result of this review, the Permanent Subcommittee became aware of the extent of IRS activity in its area of interest, and expressed criticism that the IRS had not been more active. At a hearing on June 25, 1969, the Permanent Subcommittee "raked over the coals—organizationally, not individually"¹³¹ Mr. Leon C. Green, Deputy Assistant Commissioner (Compliance) for the lack of IRS activity in the area of ideological or activist organizations. As Mr. Green interpreted the Committee's criticism, it related purely to the likelihood that the organizations and individuals associated with them were escaping tax liabilities.

C. White House Influence

There is evidence of a direct White House interest in SSS, as contrasted with the more generalized interest of the Permanent Subcommittee, in IRS policy toward activists.¹³²

1. *White House General Criticism and Encouragement.*—Tom Charles Huston in early 1969 recommended to President Nixon that the IRS examine left-wing tax exempt organizations to be sure they were complying with the tax laws.¹³³ President Nixon reportedly concurred, and Dr. Arthur Burns was asked to speak with the Commissioner of Internal Revenue about the President's concern.¹³⁴ According to Commissioner Thrower's memorandum of the subsequent (June 16, 1969) conversation with Dr. Burns, the latter expressed the President's concern.

According to Commissioner Thrower, he may have expressed the President's general concern to Assistant Commissioner (Compliance) Bacon, who had responsibility for the Audit, and Intelligence Divisions, but did not recommend or discuss the establishment of an organization such as SSS.

about enforcement in the area of exempt organizations. The President had expressed . . . great 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.¹³⁵

¹³⁰ The Subcommittee's authority to do so was by virtue of an Executive Order pursuant to 26 USC 6103(a).

¹³¹ Leon C. Green Testimony, 9/12/76, p. 26.

¹³² On the other hand, following the formation of SSS, the staff of the Permanent Subcommittee was quite directly involved in its work in contrast to the White House, which exhibited little interest for over eighteen months after its formation.

¹³³ Joint Committee Report, pp. 16, 17.

¹³⁴ For the detailed account of these transactions, including Dr. Burns' inability to recall most of what others claim occurred, see the Joint Committee Report at pp. 17-18.

¹³⁵ Memorandum [to file] from Commissioner Thrower, 6/16/69.

Four days after the meeting between Messrs. Burns and Thrower, Mr. Huston advised Roger Barth (Assistant to the Commissioner) by memorandum that the

President is anxious to see some positive action taken against those organizations which are violating existing regulations, and I have assured him that I will keep him advised of the efforts that are presently underway.¹³⁶

On July 1, 1969, Eddie D. Hughes, a special agent in the Alcohol, Tobacco and Firearms (AT&F) Division of IRS¹³⁷ and an expert in militant organizations, gave a briefing on militant organizations to the staff of the Assistant Commissioner (Compliance) Mr. Bacon. Mr. Hughes had been summoned to Washington, D.C., by the head of AT&F, who, according to Mr. Hughes, advised him he was to help prepare a report for the White House.¹³⁸ Following the briefing, Mr. Hughes helped Bernard Meehan, the Chief of Staff of the Assistant Commissioner (Compliance) prepare a report¹³⁹ on ideological organizations to Mr. Barth.¹⁴⁰ The report begins:

In furtherance of the recent high level interest shown in the activities of ideological organizations . . .

and discusses current IRS activity in the area of ideological organizations. Mr. Huston has stated he believes he saw the memorandum and that Mr. Barth had sent it to him.

2. *Evidence of Early White House Interest in SSS.*—An early meeting of the organizers of SSS occurred on July 24, 1969. Mr. Meehan of the Compliance Division attended the meeting at the direction of Mr. Bacon, the Assistant Commissioner (Compliance), and, according to Donald Virdin (who took the minutes) ran the meeting. Mr. Virdin stated that he received a call during the afternoon of July 24 from someone in the Compliance Division directing him to hasten his preparation of the minutes, and that as a result, he had no time to correct several typing errors in the draft.¹⁴¹ Mr. Virdin wrote the following memorandum regarding an early morning tele-

¹³⁶ Memorandum from T. C. Huston to Roger Barth, 6/20/69.

According to the Joint Committee Report, Mr. Barth may have shown this memo to the Commissioner and to Mr. Bacon, but Mr. Barth cannot recall doing either for certain. (Joint Committee Report, p. 20.)

¹³⁷ Alcohol, Tobacco and Firearms was a division of IRS until 1972 when it became a separate branch of the Treasury Department.

¹³⁸ Mr. Hughes' recollection is corroborated by his expense voucher, which recites: "My presence in Washington, D.C. is necessary to assist the National Office with a report on militant organizations and the financial funding thereof, as it relates to violations of the Internal Revenue Code. The report was requested by and will be submitted to the White House." (Joint Committee Report, p. 20.)

¹³⁹ Memorandum, Assistant Commissioner, Compliance, to Roger Barth, July 1, 1969.

¹⁴⁰ Career IRS people questioned unanimously named Mr. Barth as a conduit to the White House of information about the inner workings of the IRS. Mr. Hughes stated he never prepared a report addressed to the White House. See Donald O. Virdin testimony, 9/16/75, pp. 31, 32. The pressure to complete the minutes is significant in view of later events indicating the minutes went to the White House. This raises the possibility someone in the Compliance Division was aware of specific White House interest in Special Service Staff.

¹⁴¹ Joint Committee Report, p. 22, e.g. Leon Green testimony, pp. 20, 21.

phone conversation with Mr. Meehan (who had run the July 24 meeting for the Compliance Division) in which Mr. Meehan complained of being bypassed by the newly-appointed head of the SSS (initially called the Activist Organization Committee):

DISC "ON NEED-TO KNOW BASIS ONLY"

CP:C:D
July 31, 1969.
8:30 a.m.

Memorandum for file:

Subject: Activist Organizations Committee.

Mr. Meehan called. We were very upset because Mr. Wright [head of SSS] had discussed this matter with Mr. Green [deputy to Mr. Bacon] yesterday. Mr. Meehan said he wondered what was going on and why it was necessary for Mr. Wright to discuss this with Mr. Green.

Mr. Meehan said that the creation of this organization had been discussed with Mr. Bacon [Assistant Commissioner (Compliance) and Mr. Green's and Mr. Meehan's superior] that Mr. Meehan represented Mr. Bacon at the meetings creating this organization; and that the instructions given by Mr. Meehan were those of Mr. Bacon. The reason why Mr. Meehan sat in the meetings is because Mr. Green was absent.

Mr. Meehan's concern is that there may be conflicting instructions; thus, even though Mr. Green is thoroughly familiar with the matter, the original instructions were those of Mr. Bacon. *A copy of the minutes of the meeting which he had prepared were forwarded to Mr. Barth in the Commissioner's office, and Mr. Meehan says now they are over at the White House. Thus, he is most distressed that we might be taking some action contrary to our original commitments.* [Emphasis added.]

—D. O. VIRDIN.¹⁴³

Mr. Huston has stated he had no discussion with Mr. Barth regarding establishing SSS.¹⁴⁴ There is no evidence that the White House ordered or specifically suggested its establishment. The evidence does suggest, however, that because SSS was in part a response to White House interest in the IRS' acting against ideological organizations, the White House was kept advised of the specific action IRS was taking and that there was some feeling within IRS that the Service had made a "commitment" to the White House to proceed with SSS.¹⁴⁵

D. Establishment of SSS

Deputy Assistant Commissioner (Compliance) Leon C. Green recommended establishing the organization which became SSS on June

¹⁴³ Mr. Bacon, Mr. Green and Mr. Meehan have all testified they were unaware of any White House interest in the Special Service Staff as such. Mr. Virdin has testified:

By that time [July 31, 1969], Mr. Meehan had told me that the White House had the minutes, and the White House was interested. And he was upset, maybe because there was at that time, he knew, such a high level interest in it [i.e. SSS]. Virdin Deposition p. 62.

¹⁴⁴ Joint Committee Report, p. 23.

¹⁴⁵ D. O. Virdin, Memorandum for the File, "Activist Organizations Committee," July 31, 1969; D. O. Virdin, Memorandum to Mr. [Harold E.] Snyder, "Activist Organizations Committee," May 2, 1968.

25, 1969, immediately following his testimony before the Permanent Subcommittee, and apparently as a direct consequence of his "raking over the coals." Mr. Green's thought, shared by his superior, Mr. Bacon, was that the SSS would gather information on activist and ideological groups, analyze the information to determine if tax questions or violations were present and refer the information to the field for whatever action the field deemed appropriate.¹⁴⁶ The organization was to have no authority to initiate investigations or audits, but was merely to gather and disseminate information. One of the main reasons for not giving the organization line authority was the concern that the members of the organization would develop a non-tax orientation as a result of the considerable contact it was anticipated it would have with the FBI, the Internal Security Division of the Justice Department, and other intelligence organizations concerned with subversives.

E. Administration of SSS

SSS was originally a committee [the "Activist Organizations Committee"] composed of representatives of the three IRS Compliance Divisions, Audit, Collection and Intelligence, and of Alcohol, Tobacco and Firearms (AT&F).¹⁴⁷ It was directly under the Assistant Commissioner (Compliance); its work was to be supervised by the staff of the Assistant Commissioner, in particular, the Deputy Assistant Commissioner (Compliance), Mr. Leon Green. In this respect, SSS administrative position was analogous to that of the OCD National Office coordinator with the exception that the National Office Coordinator was under the Director, Intelligence Division, and was thus one step further removed from the Assistant Commissioner.

F. Secrecy of SSS

The IRS decided very early to keep the existence of SSS a secret from those inside and outside of IRS who had no "need to know" of SSS in a "talking paper" written before a meeting during the formative stages of SSS, the author commented:

In another area we must be particularly careful. At least one or more of these organizations apparently consider themselves to be political organizations. This is an extremely delicate and sensitive area and the Chief Counsel will have to provide guidance. We certainly must not open the door to widespread notoriety that would embarrass the Administration or any elected officials. This is one of the reasons why we are not publicizing this Committee except as such publicity may be necessary within the Service.¹⁴⁸

Because of the classified documents SSS handled, all its members had to have top secret clearances. While the existence of SSS was disclosed in the Internal Revenue Manual in 1972 when word regarding its operations appeared in the press,¹⁴⁹ the entry did not disclose its functions. The Joint Committee on Internal Revenue Taxation did not learn of SSS functions until sometime in 1973 following press stories regarding the activities.¹⁵⁰

¹⁴⁶ Green testimony, 9/12/75, p. 65.

¹⁴⁷ Memorandum for File by D. O. Virdin 7/29/69.

¹⁴⁸ Assigned memorandum composed by D. O. Virdin 7/24/69. See also Memorandum of meeting by D. O. Virdin 7/24/69.

¹⁴⁹ Deposition of former Commissioner Walters, p. 51, 9/10/75.

¹⁵⁰ Interview with Joint Committee staff representative, June, 1975.

G. Operation of SSS

The Special Service Staff did not function in accordance with the limited, tax-oriented purpose for which Mr. Green and Mr. Bacon established it. In practice, Special Service Staff: (1) believed its mission included saving the country from subversives, extremists, and anti-establishment organizations and individuals; (2) reviewed for audit or collection potential organizations and individuals selected by other agencies, such as the Internal Security Division of the Justice Department and the FBI, on bases having no relation to the likelihood that such organizations or individuals had violated the tax laws; (3) after reviewing information regarding such organizations and individuals, referred cases to the field for action, some of which did not meet IRS criteria for audit or collection action; (4) at times used its status as a National Office organization in a partially successful effort to pressure the field into proceeding further with audits and collection action than the field would have done in the absence of pressure from the National Office.

Both Mr. Bacon and Mr. Green testified they recognized the danger that SSS would develop a mentality similar to that of the intelligence organizations with which it dealt on a daily basis. Mr. Green testified that he perceived that Mr. Wright soon felt he was "participating in an effort to save the country from dissidents and extremists"¹⁵¹ and that Mr. Wright had a tendency to inflate the importance of the SSS function through identifying with the larger fight against extremists.¹⁵² Mr. Green usually read Mr. Wright's bi-weekly reports, several of which contained clear indications that tax considerations were not always paramount in SSS decisions to refer cases to the field. In one such report,¹⁵³ Mr. Wright complained of one of the "very few" SSS referrals the field had rejected.

The Detroit District has submitted a memorandum report stating they have reviewed the information submitted to them in our proposal for possible Audit action, but have concluded that enforcement action will not result in additional tax liability of "Material compliance consequence." This is one of the *very few declinations* we have received on [SSS] cases.

We are not questioning the District decision or its right to make the decision, as our referral letters (see copy attached) leave broad options. However, the information available indicates the individuals involved may be under-reporting their income and *they are notorious campus and anti-draft activists having arrest records under anti-riot laws. They are the principal officers in the Radical Education Project, an offshoot of the Students for Democratic Society, and have been identified as members of certain Communist front organizations.*

This matter is cited in this report only for the purpose of suggesting that while revenue potential might not be large in some cases, *there are instances where enforcement against*

¹⁵¹ Leon Green testimony, p. 68, 9/12/75.

¹⁵² *Ibid.*, p. 60. Mr. Green said one of the few serious disagreements he and Mr. Bacon ever had was over the appointment of Mr. Wright to head SSS.

¹⁵³ SSS Bi-weekly Report, 11/2/70.

flagrant law violators would have some salutary effect in this overall battle against persons bent on destruction of this government." [Emphasis added.]

Both Mr. Bacon and Mr. Green also testified that, while they made some efforts to check this tendency on the part of SSS, they relied largely upon the independence of the decentralized field organization to prevent any abuses from actually occurring.¹⁵⁴ The evidence is that this reliance was misplaced. On the basis of interviews of field personnel who handled some SSS referrals, the staff believes that, in practice, except in the "very few" cases referred to by Mr. Wright in his memorandum, the field honored the National Office referrals even where it believed the recommended action was not justified by the tax merits of the case.¹⁵⁵

The attitude reflected in the bi-weekly report quoted above resembles the attitude of the OCD. This time, however, the targets were not major criminals. The position of the SSS in the IRS structure was as anomalous as that of the OCD Coordinator and rendered ineffective existing mechanisms for checking abuse—in this case the abuse of ideologically-motivated tax enforcement. These analogies of motive and organization were apparent to the creators of SSS. A July 2, 1969, memorandum of an SSS organizational meeting alluded to the administrative resemblance:

The Chairman of the task force [SSS] will establish liaison with the Assistant Attorney General, Internal Security Division, Department of Justice, and will coordinate matters with that Division in the same fashion that the Intelligence Division now coordinates OCD matters with the Criminal Division of Justice.

A July 22, 1969 memorandum alluded to the analogy of purpose:

In effect, what we will attempt to do is to gather intelligence data on the organizations in which we are interested and to use a strike force concept whereby all Compliance Divisions and all other service functions will participate in a joint effort in our common objective.

While it is contended by those who established SSS that it was not intended that activists receive any more attention than normal tax compliance criteria would dictate, the creation of a special National Office bureaucracy to focus on activists is inconsistent with this view. SSS was created because the application of normal enforcement criteria by the field was not yielding enough results to satisfy congressional and White House critics. What began as a bureaucratic effort to still criticism by focusing special attention on the problem became, in the minds of the SSS group, a crusade against alleged threats to the national security.

1. *Special Service Staff Target Selection Criteria.*—The basic modus operandi of SSS was; 1) to establish files on individuals and organizations falling within its purview; 2) to engage in a routine examination of a variety of sources of information to determine the likelihood

¹⁵⁴ Leon Green testimony, p. 65; Donald Bacon testimony, pp. 98-102.

¹⁵⁵ See, e.g., Discussion of Melkeljohn Civil Liberties Library, pp. 887-889.

that any of the organizations or individuals were not in compliance with the tax laws.¹⁵⁶ In a very general sense, this procedure parallels "compliance" programs the IRS engaged in regularly. An IRS district will often identify an area of probable non-compliance and engage in an intensive investigation of taxpayers falling within the category. On occasion, the IRS initiates random compliance programs, such as conducting mass interviews of all employees in a certain business district to see whether employers are complying with withholding laws, or checking whether all attorneys in a particular area are filing tax returns. The element which distinguishes all these programs from the SSS program is that the criteria for selecting the targets in normal compliance programs are related to enforcement of the tax laws. Even in the cases of random checks, the taxpayers selected are generally those with high incomes where nonfiling of returns can lead to a significant revenue loss.¹⁵⁷ The Selection criteria of SSS were neither random nor directly tax related.¹⁵⁸

Most individuals and organizations that became targets of SSS did so by virtue of becoming targets of one of the agencies from which SSS obtained information.¹⁵⁹ The reason for this selection of tax enforcement targets by non-tax agencies was set forth in the following passage from the minutes of an early SSS organizational meeting.

Since the Department of Justice Internal Security Division has a primary responsibility of determining what organizations might fall in this category (ideological organizations), it will be necessary to determine from that Department additional information as needed.¹⁶⁰

It is apparent that the IRS had doubts about its competence to determine what an ideological organization was, and would largely leave that determination and thus the determination of the targets of its enforcement program to agencies with greater expertise. This feeling of inadequacy on the part of IRS is a direct reflection of the absence of a relationship between the selection criteria and tax issues.¹⁶¹

The FBI was the largest source of SSS targets. While still in its formative days, SSS was placed on the FBI's distribution list in re-

¹⁵⁶ See Joint Committee Report, p. 7.

¹⁵⁷ Leon Green testimony 9/12/75, pp. 58, 59.

¹⁵⁸ Some SSS selections were directly tax-related. To the extent SSS examined exempt organizations which were engaging in political action; or inquired into the deductibility of contributions to non-exempt organizations; or reviewed the possible unreported siphoning of funds of activist organizations by their leaders, its activities were tax-oriented and reflected the legitimate concerns the White House and the Congress had expressed. However, SSS Activities went far beyond these inquiries, as the discussion below will demonstrate.

¹⁵⁹ "Q: Was the identity of the organizations and individuals that came to the attention of the Special Service Staff for review pretty much determined by the nature of the input that they received from the FBI and the Justice Department? Mr. Green: No question. (Deposition of Leon C. Green, p. 56.)

¹⁶⁰ D. O. Virdin, Memorandum for Files, "Ideological Organizations," 7/2/69.

¹⁶¹ The IRS did not wholly rely upon other agencies, but it did so to an unprecedented degree in comparison to other IRS compliance programs in which target selection is based solely upon tax compliance criteria in which the IRS is expert. SSS reviewed the tax compliance of persons and organizations about which its critical information was simply that their names appeared on material supplied by other agencies in response to an IRS request for help on identifying "dissidents" or "extremists". See note 160.

sponse to a request from Assistant Commissioner (Compliance) Bacon for information regarding

various organizations of predominantly dissident or extremist nature and/or people prominently identified with those organizations.¹⁶²

The FBI, perceiving that SSS would "deal a blow to dissident elements"¹⁶³ decided to supply reports relating to the category of individuals and organizations identified by Mr. Bacon.

SSS felt that it had no authority to destroy FBI reports.¹⁶⁴ It had nowhere to keep them except in files, so it established files on the subjects of the FBI reports. Once a file was established routine SSS procedures swung into effect and, except for those which were not checked because of shortage of manpower, the files were reviewed; IRS master files were checked to determine if the subjects had filed returns; if they had not, investigations were initiated in the field; if they had, the returns were reviewed for audit potential.¹⁶⁵ 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 criteria Mr. Bacon 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.

Among the other lists of "extremists," "subversives" and dissidents SSS received was a list of 2,800 organizations the FBI categorized as "Old Left," "New Left," and "Right Wing". The bi-weekly report for the week of June 15, 1970, describes SSS plans for this list:

Through the cooperation of the FBI we have received a listing of 2800 organizations categorized as "Old Left," "New Left," and "Right Wing." Many of these have tax exempt status. We propose to screen the entire list against the Exempt Organization Master File and the Business Master File and establish files on these organizations where non-compliance with filing requirements is indicated.

The SSS also received the printouts of the Inter-Divisional Information Unit (IDIU) of the Department of Justice, which varied between 10,000 and 16,000 names.¹⁶⁶ In the August 29, 1969 bi-weekly report acknowledging receipt of the printout, Paul Wright stated:

As a major assist in this Committee's effort, we received on August 28, 1969, subject data sheets (hard copy computer printout) containing about ten thousand names of officers, members and affiliates of activist, extremist and revolutionary organizations.

By the time SSS was disbanded in 1973, it had reviewed more than half the lists and established files on those persons on whom it did not yet have a file. In addition to containing the names of known activists, the IDIU printouts also contained the names of many prominent

¹⁶² Memorandum from D. W. Bacon to Director, FBI 8/8/69.

¹⁶³ Memorandum from D. J. Brennan, Jr., to W. C. Sullivan 8/15/69.

¹⁶⁴ Joint Committee Report, p. 58.

¹⁶⁵ SSS Bi-weekly Reports, 6/15/70; Donald Bacon testimony, pp. 91-95, 9/16/75.

¹⁶⁶ SSS Bi-weekly Report, August 20, 1969.

citizens whom the Justice Department thought could be of assistance in quelling a civil disturbance in a particular locality should one occur.¹⁶⁷ SSS personnel were unaware that the IDIU printout contained the names of these persons and indiscriminately established files on them.

Under the above procedures, even if SSS had adhered strictly to established IRS criteria for determining whether audit or collection action was justified, SSS subjected its targets to a systematic, disproportionate degree of tax enforcement. The criteria which determined the targets of this special enforcement effort were not tax-related IRS criteria, but the criteria of the FBI and the Internal Security Division of the Department of Justice. The special enforcement effort was applied to the "dissidents" on whom Assistant Commissioner (Compliance) Bacon had requested FBI reports, on the "Old Left", "New Left" and "Right Wing" organizations the ISD chose to list, and to the subjects of the IDIU printout. The criteria the FBI applied in selecting reports for dissemination to SSS are indicated by the reason for which the FBI decided to comply with Assistant Commissioner Bacon's request: that SSS would "deal a blow to dissident elements"; the criteria were not related to probable non-compliance with tax laws. They were selected because of their political and ideological beliefs and activities. Since SSS routinely reviewed the names on the lists for tax compliance, politics became the criteria for an IRS tax review.

The routine procedures of SSS thus focused a unique enforcement effort on a category of organizations and individuals defined by political criteria. Whether the criteria were blind to the particular political stripe of the organization or individual is not as important as the concentration of tax enforcement efforts against dissidents as a group.

The result was to employ the enormous power of IRS attention to dissent on both sides of center. That SSS knew what it was doing and intended to accomplish non-tax goals through the application of the tax laws is apparent from the writings of its Chief, Mr. Wright:

There appears to be high acclaim that the charter of this committee will lead to enforcement actions needed to help control an insidious threat to the internal security of this country. Obviously, we will receive excellent field cooperation and assistance now that our mission is understood.¹⁶⁸

Review is underway on this organization [It] . . . produces and distributed motion pictures relevant to individuals engaged in movements advocating radical change in American Society. Organizations with which they do business include the Black Panther Party and the Students for Democratic Society.¹⁶⁹

We assisted Inspection (Internal Security Division) by providing information about war tax resistance organizations and Federal employee peace action groups.¹⁷⁰

¹⁶⁷ Memorandum from Attorney General Clark to Assistant Attorneys General John Doar, Fred Vinson, Roger W. Wilkins, and J. Walter Yeagley, 12/28/67.

¹⁶⁸ Biweekly report of August 22, 1969.

¹⁶⁹ Biweekly report of December 15, 1969.

¹⁷⁰ Biweekly report of April 19, 1971.

We have received from the FBI a listing of all known underground newspapers in the United States and also a list of known editors. We are currently checking these lists against (Business Master File and Individual Master File) registers for possible tax violations. The first case checked out (Free Press of Louisville) will become a field collection referral for delinquent employment taxes. We anticipate the total list will develop a substantial number of similar referrals.¹⁷¹

Last week we noticed that on an "official only" bulletin board in this building a notice appeared from the Institute for Policy Studies inviting individuals to apply for a new PhD program . . . Since IPS has been described by the media as a "Radical New-Left Think Tank" and the Baltimore District will soon propose revocation of its exempt status, we brought the matter of this notice appearing on an official IRS bulletin board to the attention of Internal Security.¹⁷²

2. *SSS Field Referrals.*—SSS activity went beyond gathering information on subjects selected for reasons not strictly related to tax enforcement. SSS referred some cases to the field for action which did not qualify for referral according to normal IRS criteria, and used its National Office position to effect field action in these cases. Messrs. Green and Bacon believed the decentralized, independent field organization would check any such tendency on the part of SSS. Mr. Green testified that some cases referred to the field "would not have qualified for a referral but for the ideological category in which they fell,"¹⁷³ that he was relying on the field to reject the file referrals which were not justified on tax merits and to use the same criteria for determining its course of action in the referred cases as it would in determining whether to investigate any other case.¹⁷⁴ Green also stated that while the field closed out many cases referred to it because of the lack of tax grounds upon which action could be initiated, the fact that cases were referred from the National Office sanctioned by the Special Service Staff probably did result in some cases being examined despite the lack of adequate grounds.¹⁷⁵

Interviews with field employees who handled SSS referrals indicate that SSS' position, as an adjunct of the Assistant Commissioner's office, sometimes effectively negated the built-in check of decentralized field operations. As in the case of the OCD, the IRS had established an extraordinary National Office entity with sufficient authority to short-circuit normal organizational controls without establishing extraordinary controls to replace the normal ones.

The case discussed below is an example of an SSS field referral which appeared to lack an adequate tax basis upon which any IRS action could be based. This judgment was confirmed by the field agent

¹⁷¹ Biweekly report of June 28, 1971.

¹⁷² Biweekly report of November 15, 1971.

¹⁷³ Leon Green testimony, p. 65.

¹⁷⁴ *Ibid.*, pp. 65, 66.

¹⁷⁵ *Ibid.*, pp. 73-75.

who was asked to handle the case. Yet the field took the action SSS sought to achieve.¹⁷⁶

a. Meikeljohn Civil Liberties Library

The Meikeljohn Civil Liberties Library was a San Francisco based organization which provided legal materials to attorneys involved in civil liberties cases. It was a tax exempt organization. SSS received FBI reports¹⁷⁷ indicating that the Library was to sponsor the "Thomas Paine Summer Law School", which in 1970 had given instruction to leftist lawyers. The FBI documents also indicated that three of the instructors at the school would be individuals formerly associated with the National Lawyers Guild and the Communist Party. On the basis of these reports, SSS referred the case to the field on March 16, 1971,¹⁷⁸ recommending that an audit be conducted:

It appears that this organization may be supporting various causes not related to tax exempt purposes. It may be advocating an action which is not allowable, or engaging in paid services to specific lawyers rather than acting as a library.¹⁷⁹

The referral also stated with respect to the instructors at the Thomas Paine Law School which MCLL was allegedly to sponsor:

[One instructor] was on May 3, 1967, a member of the National Lawyers Guild. [The SSS referral to the field was dated March 16, 1971.] The House Committee on Un-American Activities . . . cites the National Lawyers Guild as a Communist front which . . . has failed to rally to the legal defense of the CP and individual members thereof. . . .

During April 1969 the President of the NLG spoke at an NLG banquet held in New York City stating that the NLG has organized young people to work in a radical movement which is seeking to destroy a corrupt violent society and replace it with one which will benefit all. He also stated that the purpose of the NLG is to advance the "social revolution" taking place in this country. . . .

[Name deleted] is listed as President of MCLL. She was issued "Daily Worker" Press Club subscription 2325 on January 2, 1948.

Press Club subscriptions . . . were only issued to CP members at that time.

Section 501(c)(3) of the Internal Revenue Code governs the exempt status of organizations. An organization can lose its exempt status by engaging in political activity or advocating one side of an issue. It cannot lose exempt status by reason of the political leanings of its members if those leanings are not reflected in political action by the organization. In the case of MCLL, the SSS referral stated

¹⁷⁶ The Committee was unable to determine the number or percentage of all SSS referrals which resulted in investigation even though the facts referred did not establish a tax related basis for investigation.

¹⁷⁷ The FBI documents were discovered in the Meikeljohn Civil Liberties Library file in the Special Service Staff vault at IRS.

¹⁷⁸ Letter, Paul Wright, Director of SSS, to Chief, Audit Division, March 16, 1971.

¹⁷⁹ The latter statement appears to be without any basis in the file.

that certain MCLL personnel had had communist affiliations in the past: that MCLL was sponsoring a school some of whose instructors were also affiliated with the National Lawyers Guild, which engaged in political activities. None of these statements established that MCLL was involved in any political activity.

An interview with the auditor who handled the MCLL referral indicates that he conducted the audit even though he believed the information provided by SSS was not an adequate basis for an audit:

The purpose of the Meikeljohn Civil Liberties Library was to make an index of legal materials on civil liberties cases. Some but not all of the information provided by Special Service Staff in its referral was that one or more of the principals of the organization was a Communist. That allegation standing alone would not be sufficient to trigger an audit.¹²⁰

The auditor also said:

In this case, however, even if the referral had contained no allegations, an audit *might* nonetheless have been conducted because no one in the exempt organization branch had ever heard of MCLL.¹²¹

This reaction demonstrates that dissident groups which attracted the attention of SSS were subject to being audited merely because of that attention, notwithstanding the lack of tax-related criteria upon which an audit is normally based.

In this case, the field conducted the audit of MCLL despite the failure of the allegations in the referral to establish or suggest non-compliance. The result of the audit was a determination that there was no evidence MCLL had had any relationship with the Thomas Paine Summer Law School or engaged in any other activity which would jeopardize its exemption.¹²²

b. Collection Referrals

In the face of collection referrals, the field reaction was completely submissive. Collection personnel often treated SSS referrals as orders. A revenue officer in Los Angeles described his reaction to an SSS collection referral on a taxpayer who had filed no returns for several years but had earned only a small income subject to a withholding more than adequate to meet his tax obligation:¹²³

The SSS had a report from an unidentified organization that [taxpayer] had been employed in 1969 and 1970, and had earned from \$2,000 to \$3,000 in both years *subject to withholding*, and the individual master file showed no returns from him in those years. A compliance check was requested. [I] . . . found that in 1968 [taxpayer] was a student and had no income, in 1969 and 1970, he had income, but filed no re-

¹²⁰ Statement of Auditor, San Francisco District, 7/30/75, p. 1.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Statement of Revenue Agent, Collection Division, Los Angeles District, 8/75.

turns, but had he filed returns, he would have been entitled to a refund. [Emphasis added.]

There is no element of discretion on the part of the Revenue Officer on whether to conduct a compliance check once one is requested by the proper Form 2909. There is discretion in closing the file without effecting compliance under the de minimus rule.¹⁸⁴

A second case corroborates the view that Collection did not question SSS referrals. A revenue officer signed the following summary of his interview:¹⁸⁵

This was a case of mistaken identity. SSS was interested in the wife of an activist, and the lady to whom the referral related happened to have the same name. *The referral contained no information indicating the basis to believe the taxpayer was not in compliance with the tax law, but was merely a request for a "compliance check", which is an investigation of whether the individual filed tax returns and, if not, whether they are required to do so.*

... A revenue officer would not normally question the reason for a compliance check. ... In this case, it was determined there was full compliance, and, as a result of the investigation it was also determined that the taxpayer being investigated was not actually the one in which SSS was interested.

3. *SSS Pressure on Field Personnel.*—SSS file material does not tell the whole story of SSS influence over the subsequent handling of referrals.¹⁸⁶ Much of this influence was by telephone and was not reduced to writing, at least not in detail.¹⁸⁷ In a few cases the field personnel were able to recall the impact which SSS contact had on the handling of the case. In a case in St. Louis involving an organization which advocated resistance to the "war tax", the revenue agent who was the "case reviewer" (whose job is to determine whether to accept the recommendation of the field agent who actually conducted the investigation) recalled how a telephone conversation with an SSS member influenced his review of the case. The field agent had filed three reports, each recommending that the case be closed and giving reasons. Under normal procedures, according to the revenue agent, he would simply have closed out the cases in accordance with the field agent's recommendations. However, because of the "special

¹⁸⁴ The revenue officer need not actually obtain the delinquent return if the result will be a refund.

¹⁸⁵ Statement of Cardone, Collection Division, Los Angeles District, 8/8/75, p. 2. Mr. Cardone also stated: "It is true that the [person requesting a compliance check] does not have to provide reasons for the check, but this is the exception and not the rule. Generally the originator will give reasons and also supply any information and/or material which would be of assistance. . . ." (*Ibid.*, p. 2.) SSS was apparently an exception in this case, but the absence of any stated basis for the check did not lead to the field's questioning the propriety of proceeding.

¹⁸⁶ The Select Committee staff interviewed IRS representatives who handled SSS field referrals in several of the districts investigated.

¹⁸⁷ SSS bi-weekly reports refer to telephone conversations with the field on many occasions. See e.g. Bi-Weekly Report 10/6/70.

procedures" applicable in this Special Service Staff case,"¹⁸⁸ he first called the National Office, SSS, to discuss the matter. SSS criticized the field agent's recommendations, saying, *inter alia*:¹⁸⁹

Although it's the District's decision on type of closing he [SSS member] hates to see this happen since they want to get [the organization] and [individuals] on filing records (for comparisons, etc.). At any rate, they will review and return to District with suggestions if applicable. Viet Nam being over is not a valid reason for closing as the [organization] will (and is) redirecting their attention to other problems.

As a result of this conversation, the reviewing revenue agent returned the case to the field agent for further work.¹⁹⁰ Thus, the organization received more prolonged attention than the field would have accorded it on its own.

4. *Tax Results of SSS Actions.*—The perception which resulted in the establishment of Special Service Staff, that activists and dissidents posed a significant problem of noncompliance with the tax laws, was not validated by the results of SSS compliance checks. The number of cases SSS referred to the field was small in comparison to the number of files it established and reviewed.¹⁹¹ Only 225 cases were referred—after SSS had made a compliance check on about 5,000 of the 10,000 taxpayers on its list.

As of the date of publication of the Joint Committee Report, June 5, 1975, the four-year SSS project had resulted in assessment of a total of \$622,000 (\$82,000 against organizations, \$580,000 against individuals), \$501,000 of which was attributable to four cases. Thus, SSS success in focusing greater than normal IRS attention upon its target group did not have a widespread tax impact on dissidents and activists.

III. THE IDEOLOGICAL ORGANIZATION'S PROJECT

The IRS reaction to Congressional and White House pressure in establishing the Special Service Staff was not unique. In 1961, the IRS, in direct response to statements made by President Kennedy at

¹⁸⁸ In a memorandum dated March 30, 1972, the Assistant Commissioner (Compliance) directed District Directors to investigate individuals designated as "War Tax Resisters" and:

"Whatever action is taken, or deemed appropriate, in these cases should be documented sufficiently to provide a memorandum of actions taken and results obtained to the following address:

Mr. Paul H. Wright
P. O. Box 14197
Benjamin Franklin Station
Washington, D.C. 20044."

The address is that of the Special Service Staff.

¹⁸⁹ Statement of Chief, Review Staff, Audit Division, St. Louis District, 8/7/75. See also Memorandum, Chief, Review Staff, Audit Division, to Revenue Agent Ross Howard, 7/12/73.

¹⁹⁰ Memorandum, Chief Review Staff, St. Louis, 7/12/73.

¹⁹¹ According to the Joint Committee Report, SSS referred a total of 225 cases to the field for Audit, Collection, or Intelligence action out of a total of 11,458 files. Of the 11,458 files, SSS had reviewed the IRS Individual Master File for 3,658 and the Business Master File for 882, and thus had made some assessment of the taxpayer's compliance with the tax laws in a total of 4,490 cases, and in addition, checked the Exempt Organization Master Files for 487 organizations

a news conference, selected 18 organizations for concentrated tax enforcement activity. The "Ideological Organizations Project", although smaller in scope than the Special Service Staff, reflected as clearly IRS a response to pressures to enforce the tax laws against targets selected for it by others according to political criteria.

A. Origins of the Ideological Organizations Project¹⁰²

On November 16 and 18, 1961, President John F. Kennedy made two speeches critical of right-wing extremists. At a news conference on November 29, 1961, in response to a question concerning reportedly "sizable financial contributions to the sort of right-wing extremists groups you criticized last week," the President stated:

As long as they meet the requirements of the tax laws, I don't think that the Federal Government can interfere with the right of any individual to take any position it wants. The only thing we should be concerned about is that it does not represent a diversion which might be taxable—for nontaxable purposes. But that is another question and I'm sure the Internal Revenue System examines that. [Emphasis added.]

The next day, the Assistant Commissioner (Compliance), William Loeb, sent a memorandum to Dean J. Barron, Director of the Audit Division, calling his attention to the President's news conference and directing that the Audit Division secure from the Attorney Advisor to the Commissioner, Mitchell Rogovin, a list of organizations to be examined for possible tax liability by the IRS.¹⁰³ On December 20, 1961, Rogovin forwarded to Barron a list of 18 organizations partially compiled from the December 4 and 8 issues of *Newsweek* and *Time* magazines, respectively, for the sample checks.¹⁰⁴

During the next month a single left-wing organization was added to the list, bringing the total of targeted groups to 19.¹⁰⁵ Apparently, none of the organizations were chosen on the basis of any information that they were not in compliance with tax laws.

¹⁰² The history and operations of the Ideological Organization Project are detailed in the June 5, 1975, report prepared by the staff of the Joint Committee on Internal Revenue Taxation, entitled, "Investigation of the Special Service Staff of the Internal Revenue Service." Documents examined and interviews conducted by the Select Committee corroborated and expanded the findings of the Joint Committee's staff. See pp. 101-110 of the Joint Committee's report for its discussion.

¹⁰³ The November 30, 1961, memorandum from Loeb to Barron, with a copy to Rogovin, read as follows:

"The attached clipping reporting on the President's meeting with the press contains comments regarding financial contributions to so-called "right-wing extremist groups". You will note the President's reference to the fact that "As long as they meet the requirements of the laws," etc. I think it behooves us to be certain that we know whether the organizations are complying with the tax law as a matter of fact.

"I have asked Mr. Rogovin to ascertain the names of some of the organizations which we might use for a sample check. Please have someone contact him to secure the same in order that appropriate audits may be made."

¹⁰⁴ Memorandum from Mr. Rogovin, Attorney Assistant to Commissioner, to D. J. Barron, Director, Audit Division, 12/20/61.

¹⁰⁵ Memorandum from Commissioner, IRS, to Surrey, Assistant Secretary of the Treasury, 1/18/62. The left wing organization added to the list was the Fair Play for Cuba Committee.

B. IRS Initial Investigative Action

After the organizations which were to be the subject of the sample compliance checks had been designated to the Audit Division, normal IRS machinery became operational, with the sample checks being conducted as a National Office project. The Director of the Audit Division, in a March 9, 1962, memorandum to the Assistant Commissioner (Compliance), stated that the Audit Division had requested examinations of six large corporate taxpayers who were alleged to be financial backers of extremist groups in New York and San Francisco.¹⁹⁹ It had also requested examinations of the activities of three large extremist groups in New York and San Francisco and was soon to send memoranda to the Assistant Regional Commissioners (Audit) supervising audit activities in regions in which seven of the other 19 organizations were based.²⁰⁷

While the Audit Division was looking at the activities of the organizations for possible tax consequences, it is apparent that its concentrated efforts were related to the criteria that initially caused the organizations to become IRS targets: their public political activities. In the March 9, 1962, memo, the Audit Director stated:

We think it advisable to examine the organizations listed in the memorandum to the Assistant Regional Commissioner (Audit), San Francisco, since these organizations appear to be among the largest and most publicized groups.

Although the IRS was aware that the activities, and not possible tax liabilities, of the target organizations were the reasons they were selected, it attempted to place its actions within the proper scope of IRS enforcement activities, stating:

[W]e have used the term "political action organizations" rather than "right-wing organizations" throughout this discussion. This has been done to avoid giving the impression that the Service is giving special attention to returns filed by taxpayers or organizations with a particular political ideology."²⁰⁸

Indeed, on April 2, 1962, almost five months after the initial effort was begun, the Commissioner's Office forwarded to the Audit Division a list of 19 organizations considered by the Assistant to the Commissioner to be "left of center."²⁰⁹ In an interview with committee staff,²⁰⁰ Mr. Rogovin could not recall the sources he used to compile the list of left-wing organizations, but stated he may have gotten some of them from the FBI.

¹⁹⁹ Memorandum, D. J. Barron, Director, Audit Division, to Assistant Commissioner (Compliance), "Examination of Returns Filed by Certain Political Action Organizations", March 9, 1962.

²⁰⁷ The memo stated: "We intend to send similar memorandum [sic] to Assistant Regional Commissioners (Audit) requiring that examination be made of the following organizations. . . ." [Emphasis added.]

²⁰⁸ Memorandum, Director, Audit Division, to Assistant Commissioner (Compliance), March 9, 1962.

²⁰⁹ Memorandum, Attorney Assistant to the Commissioner, to Director, Audit, April 2, 1962.

²⁰⁰ Interview with Mitchell Rogovin, former Attorney Assistant to Commissioner, IRS.

Rogovin's memorandum adding the left-wing organizations, while attempting to make IRS activities balanced in that organizations on both sides of center were to be checked, did not in fact accomplish that purpose. In a memorandum from the Commissioner to the Under Secretary of the Treasury, the Commissioner acknowledged IRS' primary interest in right-wing organizations, stating: ²⁰¹

The activities of so-called extremist *right-wing political action* organizations have recently been given a great amount of publicity by magazines, newspapers and television programs. This publicity, however, has made little mention of the tax status of these organizations or their supporters. *Nevertheless, the alleged activities of these groups are such that we plan to determine the extent of their compliance with Federal tax laws.* In addition, we propose to ascertain whether contributors to these organizations are deducting their contributions from taxable income. [Emphasis added.]

The following is a list of the largest and most publicized extremist groups whose activities we have directed our field offices to examine: . . .

Inasmuch as we are not certain any of these organizations or their benefactors are failing to comply with the tax laws, we believe it prudent to avoid any possible charges that the Service is giving special attention to a group with a particular ideology. In furtherance of this goal, we are planning to examine the returns of a representative group of alleged left-wing organizations.

On the next day, the Commissioner informed Attorney General Robert Kennedy of the new program, noting that previous interest had been expressed in the tax status of right-wing groups by John Seigenthaler, Special Assistant to the Attorney General.²⁰²

On February 8, 1963, the Assistant Commissioner (Compliance) provided the Commissioner of IRS with a status report ²⁰³ of the "Test Audit Program of Political Action Organizations" in which he summed up IRS efforts directed at 12 allegedly right-wing organizations and 11 allegedly left-wing organizations. At that time,

. . . nine allegedly right-wing organizations have been audited, including four exempt organizations. Revocation of exempt status was recommended in two of these cases. . . . No changes in tax liabilities were recommended upon examination of the five taxable organizations. . . .

Only four of the allegedly left-wing groups have been examined, including two exempt organizations. No changes were recommended as a result of these examinations . . .

²⁰¹ Memorandum to the Under Secretary from Commissioner, IRS, 5/14/62.

²⁰² Letter, Commissioner of IRS to Attorney General Robert Kennedy, May 15, 1962. This letter places Seigenthaler's initial expression of concern in November of 1961, at about the same time the President made his open attacks on right-wing extremist organizations.

²⁰³ Memorandum, Assistant Commissioner (Compliance) to Commissioner, IRS, 2/8/63.

Additionally, the Assistant Commissioner stated that no evidence had been found that individual taxpayers were claiming deductions for contributions to non-exempt political action organizations. The memo also contained a summary of the results of IRS actions which had been undertaken at that point and noted that IRS would concentrate on exempt political action organizations in the future.²⁰⁴ In July of 1963, the White House was brought up-to-date on IRS activities directed at ideological organizations and expressed renewed interest in the project.²⁰⁵

C. The Planned Expansion of Project to Audit of 10,000 Organizations

A status report from the IRS Commissioner to the Deputy Special Counsel to the President detailed IRS' findings with respect to seven of the right-wing organizations, and stated that it had completed nine audits of left-wing organizations with one requiring further study.²⁰⁶ The report also announced IRS' plans for "10,000 examinations of exempt organizations of all types including the extremist groups" in 1964. White House pressure intensified upon receipt of this report. On July 23, and in response to the report, President Kennedy called the Commissioner, urging IRS to proceed with an aggressive program on both sides of center and mentioning that Congressional hearings were scheduled for January 19, 1964.²⁰⁷ Within the next month, IRS officials met twice with White House representatives and once with the Attorney General.²⁰⁸

The IRS response to the interest of the White House and Attorney General again intensified²⁰⁹ and plans to initiate the new surveys were drawn up.²¹⁰ A list of right- and left-wing organizations was to be prepared with the survey to first concentrate on the examination of right-wing groups exempt under the provisions of section 501(c)(3) of the Internal Revenue Code. All cases which had been begun as a result of President's initial remarks were to be absorbed into and completed

²⁰⁴ The Committee attempted to ascertain why non-exempt organizations were included in the initial phases of the project. The following exchange took place during the Committee's deposition of former IRS Commissioner Caplin:

Q. Do you know why non-exempt organizations were included in the test audit?

A. Well, I would think then because they went into ideological organizations, and there were all kinds of ideological organization. . . .

Q. What would [be] the purpose of doing a test on it in order to study exemptions, and selecting non-exempt organizations?

A. Well, I think that they were looking for a standard that could be applied in separating what was an educational organization from an ideological or political action organization. And the regulations were inadequate. . . .

See testimony of Commissioner Caplin, 9/22/78, pp. 40, 41.

²⁰⁶ Memorandum, Assistant Commissioner (Compliance), to Commissioner, IRS, 2/8/63.

²⁰⁷ Memorandum, Commissioner, IRS, to Myer Feldman, Deputy Special Counsel to the President, 7/11/63.

²⁰⁸ Handwritten notes on 7/11/63 memorandum from Commissioner to Feldman. Testimony of Caplin, Commissioner, IRS, 9/22/78, p. 44. The hearings were to be before the Senate Committee, chaired by Senator Yarborough.

²⁰⁹ Handwritten notes on 7/11/63 memorandum from Commissioner to Feldman.

²¹⁰ There is also evidence that Congressional interest also served as a catalyst to the IRS response. IRS documents note that two Congressional committees had held hearings on political activities of exempt organizations. Memorandum, Commissioner to Feldman, 7/11/63.

²¹¹ Conference report, Political Action Organizations, July 26, 1963.

during this second operational phase.²¹¹ Files of all target organizations were to be checked to see if prior allegations had been made against them and if they affected the exempt status of the organizations. A procedural outline for field action in examining the organizations was adopted.²¹² On August 2, 1963, the task force responsible for conducting the examinations met again and decided to begin the survey of well-known organizations already identified and adopted procedures to ensure meeting the October 1, 1963, deadline which had been established at the last meeting.²¹³

Mitchell Rogovin, Attorney Assistant to the Commissioner, continued to act as IRS liaison with the White House and Justice Department during this period of intensive IRS activity. On August 20, 1963, at the Attorney General's request, he briefed the Attorney General on the progress of the program.²¹⁴ On August 21, Rogovin was requested to and met with Myer Feldman at the White House, where he briefed Feldman on the expanded audit program and went over the names of the 24 organizations then included in the program. Feldman expressed his desire that the program be completed by the October 1 deadline and suggested that two organizations on Rogovin's list be deleted.²¹⁵ Feldman also stated he would make available to Rogovin an "extensive confidential memorandum he had prepared for the President touching on both exempt and non-exempt organizations."²¹⁶ On August 29, 1963, Rogovin, in a letter to a member of the task force, suggested the deletion from the current list of the two organizations mentioned by Feldman, suggested the addition of two organizations which were associated with an organization already on the list, and recommended the addition of three other organizations.²¹⁷

The IRS plan to audit 10,000 exempt organizations never materialized. Pursuant to the plan devised at the meeting, IRS employees began to draw up a list of target organizations. A list of 24 organizations was eventually prepared, with 19 of them being categorized as "right-wing". During this phase of the program, field personnel were responsible for compiling information in the field and transmitting it to the National Office, where the task force which had been handling the Ideological Organizations Project analyzed the information and informed the field as to what action should be taken. Procedures were later adopted which required review by the Chief Counsel of all revocation recommendations by the task force. Of the 15 cases in which the task force recommended revocation (14 right-

²¹¹ The IRS referred to the examinations of the first 22 organizations as a "test audit program" of political action organizations.

²¹² Under the contemplated procedure, a task force was set up to coordinate field response to the program. The field was to check its files for allegations concerning the organization to see if they affected the organizations exempt status, the field was to report the results of its investigation back to the National Office task force which would take appropriate action (revocation, no change, etc.) through the Assistant Regional Commissioner (Audit) for the region in which the organization was located.

²¹³ Conference Report, Political Action Organization, 8/2/63.

²¹⁴ Rogovin memorandum, Political Action Organization File, 8/21/63.

²¹⁵ Rogovin memorandum, Political Action Organization File, 8/21/63.

²¹⁶ *Ibid.*

²¹⁷ Letter, Rogovin to Chapper entitled, "Ideological Organizations Proposed for First Phase of Audit Program," 8/20/63.

wing), only 4 were approved (3 right- and one left-wing).²¹⁸ The remaining recommendations were either rejected or sent back to the field for further study.²¹⁹

IRS efforts directed at the ideological organizations apparently waned as White House interest decreased. The last status report to the White House was sent on March 23, 1964.²²⁰ Later status reports to the Treasury Under Secretary indicate that in 1966 three organizations lost their exempt status and four exemptions were revoked in 1967 (of these seven, six were right-wing).²²¹ The program was apparently completed and surveys of organizations labeled as ideological were integrated into normal IRS enforcement procedures after 1967.

D. Analysis of Ideological Organizations Project

The Ideological Organizations Project resembled the Special Service Staff in ways other than the selection of targets based on their ideological beliefs. Although IRS justified the project as an effort to strengthen its exempt organization laws, the IRS perceived the need to initiate the tax enforcement methods only after, and in direct response to, statements of the President. As in the case of the Special Service Staff, the IRS was not totally unaware of the possibility that an area of potential revenue existed in the exempt organizations area and had considered the tax exempt status of political action groups prior to the President's remarks. It had, however, based on its previous experience, decided that the area was one which bore little potential for revenue. In his July 11, 1963 memorandum to the President's Deputy Counsel, the Commissioner of IRS stated:

In the past, examinations of exempt organizations were held to a minimum since these difficult and time-consuming audits were rarely productive of revenue. Also, for every man year spent on such examinations there is a potential loss of approximately \$175,000 otherwise produced from income tax audits.

Despite this reasoning and these statistics, the IRS response to the President's expressed interest was an attempt, although never carried out, to increase the examination to 10,000 during fiscal year 1964.

Just as the Organized Crime Drive had brought about a reduction in the accounting training required of special agents, the Ideological Organization Project necessitated a similar change in the areas of concentration of audit personnel assigned these cases: the analyses of contents of literature and activities of the target organizations. The Commissioner stated:

The examination and administrative processing involved in revoking exempt status of ideological organizations is complex. An "educational" organization may advocate a particular point of view, but, under our regulations, the agent must analyze all publications, speeches, and seminars to determine

²¹⁸ Memoranda, Commissioner, IRS, to Under Secretary of Treasury, 12/4/64, 2/8/65, 3/8/65.

²¹⁹ *Ibid.*

²²⁰ Joint Committee Report, p. 112.

²²¹ Memoranda to IRS Commissioner, 4/66, 11/67.

that there has been a full and fair exposition of pertinent facts to allow formation of independent opinion by the public. The same detailed analyses is required on whether more than an insubstantial, part of a charitable organization's activities are the carrying on of propaganda to influence legislation.

IRS INFORMATION GATHERING PROCEDURES

I. THE INFORMATION GATHERING AND RETRIEVAL SYSTEM

A. Introduction

In May, 1973, the IRS established the Information Gathering and Retrieval System. The IGRS was a new approach to intelligence gathering, and to the storage and retrieval of so-called "general" intelligence, as contrasted with intelligence developed in the course of an investigation of a specific tax case. Under the system, significant intelligence resources were to be diverted from investigation of specific tax cases and allocated to gathering general intelligence. The purpose of this allocation of manpower was to develop tax cases which the existing IRS procedures missed. A crucial element in the system was computerization of the storage and retrieval of general intelligence. The computer, it was thought, would make it possible to retrieve masses of data by category—e.g., by subject name, by illegal activity category—and would thus make gathering vast quantities of general intelligence fruitful.

Within a year of the formal establishment of IGRS, the system came under fire in the press as an alleged secret IRS "hit list" and an index of dossiers on the personal lives of Americans containing data unrelated to tax law enforcement. Allegations linked the system to the so-called Nixon Enemies List. It was alleged IGRS was part of a vast Federal data bank to which other agencies, such as the FBI, had unlimited access. The Committee has investigated these allegations in the course of studying the origins, purpose and operation of IGRS.

IGRS fell short of its goals of enhanced case development and improved intelligence retrievability. In general, more "intelligence," most of it of little or no value, was input into IGRS than the computer could effectively retrieve. In a number of districts, IGRS fostered unrestrained, unfocused intelligence gathering and permitted targeting of groups for intelligence collection on bases having little relationship to enforcement of the tax laws. While there were no "dossiers" of personal information (with the possible exception of Operation Leprechaun) in the districts the Committee investigated, there were the beginnings of politically motivated intelligence collection in at least one district; and evidence that the fruits of similar investigative efforts in two districts had been destroyed. The lack of adequate control on the system resulted in the ultimate inclusion of 465,442 names on the IGRS index. IRS traditional reliance on agent discretion combined with this new, broad intelligence collection effort to produce a dangerous machine which, had it continued unchecked for a long period, could in some districts have approached the monster some newspaper accounts described.

B. Origins of IGRS

Before IRS implemented the Information Gathering and Retrieval System during the early 1970's, its devices for the storage and retrieval of general intelligence in a typical district consisted of two basic filing systems: (1) an "information item" system, and (2) investigative files.²²² The information item system was in theory a file of information the IRS received (e.g., through an agent's investigative efforts, an unsolicited informant's letter, a referral from another law enforcement agency) amounting to an allegation of tax fraud.²²³ Some information items would lead to intelligence investigations; some would result in audit or collection action; those of questionable value would simply repose in the files.²²⁴ These files were indexed according to subject and were not cross-indexed to related files and subjects.

An investigative file²²⁵ consisted of all the information collected in determining the validity of a specific allegation of tax fraud. The IRS indexed these files only by the name of the subject of the investigation. There was no formal system of cross-indexing information between agents; informal systems for information exchange were at best intra-district systems. Intelligence of potential value in several investigations would normally simply repose in the file in which it was basically developed.

A third, informal information storage system existed: the "squirrel" file.²²⁷ Since there was no designated repository for information which did not amount to an allegation of tax fraud, but was of potential future value, treatment of such information varied widely between districts and between agents.²²⁸ Some districts had local filing systems which made the information available to some extent to all agents in the district. Some districts improperly used Information Item Files. In most districts the information reposed in the agents'

²²² Internal Revenue Manual, Sec. 9300, *et seq.*

²²³ Sec. 9311.1 of the Internal Revenue Service Manual defines information item as: "... any communication or information received by Intelligence alleging or indicating a violation within the investigative jurisdiction of Intelligence..."

²²⁴ The staff obtained much of the information about the practical operation of IRS district intelligence systems through personal observation of six districts (Los Angeles, San Francisco, Baltimore, St. Louis, Chicago, and Jacksonville) and interviews of many special agents in those districts. To assure the accuracy of the staff's observations, the Committee requested that IRS intelligence specifically review the IGRS section of this report for accuracy. Footnotes to support statements herein which are based upon staff observations and upon review by IRS Intelligence will state: "Staff observations of District Intelligence operations."

²²⁵ Investigative files, or numbered case files, are generally established after the Intelligence Division has received and evaluated a referral from the Audit or Collection Division or after information items relating to a specific taxpayer have been evaluated and the evaluation support the opening of an Intelligence investigation. See IRS Manual, Sec. 932D *et seq.*

²²⁷ "Squirrel" files is not the official IRS name given to these files, but a name the files had come to be called in one district investigation. Generally, they consisted of information which was not a part of a particular investigation and which had been privately developed by the special agent in whose files they were usually kept.

²²⁸ *Ibid.*

drawers, as they were primarily considered an individual special agent's private files. In no case was the information readily available outside the district in which it was collected, and no means existed for determining its potential value to other districts.²²⁹

Before IGRS and the information item system, intelligence gathering (as contrasted with the passive receipt of unsolicited information) was generally restricted to active investigations of specific allegations. The collection of "general" intelligence—information of potential value but not needed for a specific case occurred only incidentally to specific investigations, and, because of the absence of any filing system for such information, was largely not retrievable except by the agent who ran across it.

In September, 1963, the National Office Intelligence Division expressed a need to improve the retrievability of the information the district Intelligence Division collected.²³⁰ While decentralized intelligence operations meant fragmented information, organized crime was both widespread and monolithic. The flagrant tax violator was becoming more sophisticated in his efforts to avoid payment of taxes. The Intelligence Division wanted to devise means to aggregate the information each of 58 districts had gathered on organized crime. National Office Intelligence Division planners proposed a mechanized cross-indexing system which would make the intelligence retrievable nationwide without altering the scope of intelligence gathering.

The result was the Central Index of Racketeer and Wagering Investigations (CIRWI), which would contain all intelligence on organized crime figures, cross-indexed so that information from one district would be available to other districts concerned with related investigative targets.²³¹

The CIRWI was to be a prototype system restricted to the "limited and identifiable universe" of organized crime, a pilot project to gauge the usefulness of a nationwide retrieval capacity.²³² However, although improvements in the system were under constant study, the thought of extending the system beyond the organized crime area was not pressed for several years.²³³

In March 1968, the Planning and Procedures Branch reported the interim results of a study of the CIRWI and of possible improvements in it.²³⁴ It found the system had been a "valuable and effective tool in

²²⁹ The above description of the filing systems maintained in the IRS Intelligence Division is drawn from IRS documents, as noted above, and from the actual methods used to file information observed by the Committee staff during its investigation of IRS districts.

²³⁰ Memo from Intelligence Division to Assistant Commissioner (Compliance), dated September 27, 1963.

²³¹ Manual Supplement 04G-10, April 9, 1964; Manual Supplement 04G-20, September 18, 1964.

²³² Memo from Intelligence Division to Assistant Commissioner (Compliance), September 27, 1963.

²³³ Memo for file, INFORMATION RETRIEVAL, Visit to Detroit District Intelligence Office by M. J. House, April 15, 1966.

²³⁴ Memorandum, 3/28/68, Acting Chief, Planning and Procedures Branch, to Acting Director, Intelligence Division. The report contained no hint of extension of the system beyond organized crime, but did hint at an expansion of intelligence gathering (as contrasted with mere improved retrieval) in its suggestion that the question of what sources of information to explore and the nature and volume of information to be gathered should be part of the recommended study.

identifying racketeer subjects and their interrelationships." The report recommended further study of the operation of the system and exploration of possible improvements with those districts with most experience in its use.

As the National Office reconsidered its approach to intelligence gathering and retrieval, several districts were experimenting on their own with new systems of retrieval and new approaches to collection. In 1968, the Los Angeles District created a special intelligence-gathering unit,²³⁵ denominated a "Case Development Unit", comprising two special agents who were to devote their time to systematically gathering intelligence calculated to lead to the initiation of actual "numbered" investigations.²³⁶ The unit was expected to concentrate on organized crime figures.²³⁷ This unit was the earliest forerunner of the case development units which would be created under the Information Gathering and Retrieval System. Its function was distinct from any previous IRS intelligence operation in that the gathering of general intelligence was its sole objective, whereas under prior practice the IRS gathered general intelligence only incidentally to specific investigations.

The unit was created at a time when improved data processing and information retrieval systems were becoming available, suggesting a possible combination between gathering general intelligence and storing it in a computerized retrieval system. General intelligence is by definition intelligence the relevancy of which is unclear; it is potentially relevant to as yet unconceived investigations of as yet unidentified taxpayers. For general intelligence to be of value, a system must exist which permits its to be cross-indexed to every category of potential usefulness.

At the same time the Los Angeles District created this unit whose function was to gather intelligence of potential, but undetermined, value, it evaluated and eventually implemented a mechanized microfilm retrieval system called Miracode, which, to some extent, enabled the case development unit to cross-index information to those intelligence gathering targets of potential interest, and to retrieve that information more rapidly than a manual system permitted.²³⁸ The Chicago District established a somewhat similar system with individual agents becoming responsible for case development. The indexing system in Chicago was not as advanced as that in Los Angeles.²³⁹

The remainder of the history of the development of IGRS is a story of the interaction of district experimenters and National Office policy

²³⁵ Staff interview with Chief, Los Angeles Intelligence Division, 7/24/75.

²³⁶ Section 9570-400 of the Internal Revenue Service Manual provides: "When the Chief, Intelligence Division, determines that an information item has intelligence potential, he will assign it the next case number in the District sequence."

²³⁷ The Committee staff's review of the files of this unit indicates it did generally concentrate on organized crime—with at least one important exception.

²³⁸ Staff Observations of District Intelligence Operations, Los Angeles, 7/75.

²³⁹ The St. Louis District had a case development unit whose function was in theory akin to that in the Los Angeles District. However, in St. Louis no mechanized retrieval system existed. In fact, St. Louis is one of the few districts which never adopted the IGRS. Its case development unit is, therefore, not really a precursor of IGRS. A pilot program was also initiated in the Jacksonville District.

makers. The study group which the Planning and Procedures Branch had recommended studied existing information gathering and retrieval systems and reported on June 25, 1969:²⁴⁰

We considered the various systems now in use in different districts and the Central Index in operation in the National Office. It is our opinion that the Central Index has not been effective because it has failed to provide the special agent with current useful information. The districts' systems have not been effective due to lack of uniformity, lack of a prescribed formal system and lack of sufficient resources.

We conclude, therefore, that a serious need exists for a formal uniform system, operated by the district offices, that will provide current and useful information.

As in the case of the Central Index, the need for the proposed new system was said to emanate from the threat of organized crime. The report explained:

In recent years the growing menace of organized crime, racketeering and corruption has been recognized as a critical national problem. . . . The techniques being used by syndicated crime to infiltrate legitimate businesses and to corrupt public officials have reached new heights of sophistication. Some of these same techniques are also being adopted by various major subversive and radical elements to further breakdown [sic] the basic fibres of our society.²⁴¹

The Intelligence Division has reached the point where it can no longer rely on haphazard, outdated methods to identify those of the criminal element who are evading taxes. Nor can it continue to allow files to be almost irretrievable. Instead, it must meet the demands of the President and the Service and devise a uniform effective system of information gathering, evaluation, dissemination and retrieval to allow it to fulfill this essential element of its mission.²⁴²

The success of the [proposed] program will depend almost entirely upon the full cooperation of every District Director, Chief, Intelligence Division [District Intelligence Division heads], and Special Agent to assure its full implementation and acceptance since the system is basically a district operation.

²⁴⁰ Letter, John J. Olzewski, Chairman, Task Force on Intelligence Gathering and Retrieval System, to William A. Kolar, Director, Intelligence Division, 6/25/69.

²⁴¹ Report of Task Force on Intelligence Gathering and Retrieval System, June 25, 1969, Internal Revenue Service Intelligence Division.

²⁴² The reference to "subversive and radical elements" is an early indication that these groups were regarded as suitable targets for IRS intelligence. The reference foreshadows a fundamental problem of the "general" intelligence gathering approach IGRS represented: the lack of objective criteria for target selection, and the resulting tendency to select targets on the basis of the personal predilection of the agent or someone in the National Office.

The proposed system included the following key elements: (1) case development units similar to the Los Angeles model; (2) a uniform system for encoding entries into the system for flexible retrieval; (3) a non-automated retrieval system; (4) limitation to organized crime figures.

The IRS did not establish the formal, nationwide system until May, 1973. In the meantime, the districts experimented with a variety of systems. Because of the high degree of local autonomy in IRS intelligence, the variations covered the spectrum from a continuation of the former practice of gathering general intelligence only as part of specific investigations or on a sporadic individual basis to the forward-looking Los Angeles system.²⁴³ Districts tried various methods of automated retrieval of information. Los Angeles experimented with "weighting" data for its potential tax consequences so that when data about a particular subject reached a given weight, his file would automatically be reviewed.²⁴⁴

Los Angeles also gained practical experience with the collection efforts of its "case development" unit. The district found that two special agents who devoted full time to gathering intelligence outside the scope of specific investigation gathered an enormous mass of material. By the time IGRS supplanted it, the Miracode retrieval system contained 40,000 documents.²⁴⁵ This practical lesson in volume in Los Angeles apparently strongly influenced the decision to computerize the IGRS retrieval system.

In May 1973, the National Office issued a directive creating the formal Information Gathering and Retrieval System (IGRS).²⁴⁶ The system as modified in March, 1974,²⁴⁷ had two key features not included in the June 25, 1969, recommendations of the study group: (1) the storage and retrieval system was to be computerized; (2) *the targets of general intelligence gathering were not to be limited to the organized crime figures whose "sophisticated" methods and nationwide operations had been the basis for the study group's recommendations, but were to include all subjects of the General Enforcement Program, i.e., all taxpayers who came to the attention of the case development units.*²⁴⁸

The reason for the computerization of the general intelligence input is clear. By the time IGRS was formally implemented, the Los Angeles lesson had been learned: case development units amassed tens of thousands of pieces of information. This practical experience in intelligence gathering since the issuance of the June 25, 1969, study had made it apparent that the computer was the only means of retrieving that data which turned out to be of use in a subsequent investigation, or which, when related to other information, justified opening an investigation.²⁴⁹ To establish case development units nationwide would result in the collection of so much data that the relatively

²⁴³ Staff observations of district intelligence operations, Los Angeles, 7/75.

²⁴⁴ Memorandum, Assistant Regional Commissioners—Intelligence (Western Region) to all District Intelligence Chiefs (Western Region), 4/29/71.

²⁴⁵ Staff interview with special agent in charge of pre-IGRS system, Los Angeles, 7/75.

²⁴⁶ Manual Transmittal 0800-40, May 4, 1973.

²⁴⁷ Manual Transmittal 0800-47, March 4, 1974.

²⁴⁸ *Ibid.*

²⁴⁹ Memorandum, Assistant Regional Commissioner Intelligence, Western Region, 4/20/71.

unsophisticated automated retrieval systems available to the individual districts would be insufficient. All indexing of all general intelligence would have to be performed at the IRS' national computer center in Detroit.

The origin of the decision to extend general intelligence gathering to the General Enforcement Program is less clear than the reasons for computerization, but may be related. Businesses and sophisticated taxpayers employed devices similar to those employed by organized crime to escape IRS detection of tax evasion, so the same logic which justified the new approach to general intelligence gathering for organized crime figures justified it in the General Enforcement Program. A manual system could not handle the mass of additional data that would result from extension of the program to the GEP. The Data Center's computer could handle this information. The decision to extend general intelligence gathering to the GEP, therefore, reinforced the choice to computerize general intelligence.²⁵⁰

Under the new system, the information-collection functions of a "typical" district Intelligence Division were to be divided into three categories: (1) the former Information Item system; (2) specifically assigned intelligence-investigations and projects; (3) the Information Gathering and Retrieval Unit (IGRU). The first category was the classic Intelligence Division activity: investigation of an allegation of tax fraud involving a specific taxpayer or group of taxpayers. In this classical function the allegation had to have sufficient probability of truth to justify opening an investigation and allocating manpower to corroborating or disproving the allegation. The second category was the long-standing system for handling any information which amounted to an allegation of tax fraud.

The function of the IGRU was to gather information which did not qualify as information items (*i.e.*, which did not amount to allegations of tax fraud) and which was not relevant to any pending case to evaluate this data for its potential future value,²⁵¹ and to "input" the valuable information into IGRS.

The new system called for the creation of IGRU's (case development units) in large districts, and for the allocation of manpower to the case development function in others. In general, during the existence of IGRS, approximately 10 percent of total Intelligence manpower was to be allocated to the general intelligence gathering and retrieval effort. A new Manual section spelled out the duties of the IGRU in a district:

- (a) Evaluation of newly received information.
- (b) Preparation and submission of input documents for information entering the background files to determine if any

²⁵⁰ Memorandum to Chief, Intelligence (Manhattan), Information Retrieval System in the Manhattan District, 10/20/71.

²⁵¹ For example, if a special agent in the IGRU read in the newspaper that a known organized crime figure had invested \$40,000 in a restaurant, that newspaper article would be filed and indexed in IGRS for two basic reasons: (1) so that any agent working on an investigation of that individual would have that information available, and (2) so that, at some future time, someone in the IGRU could pull all information on that individual to determine whether a basis existed for opening an investigation—a basis which, conceivably, would never have been detected but for the gathering of many pieces of information none of which alone would have triggered an investigation.

investigative action should be taken, and to ensure that subjects and documents no longer of interest to the Intelligence Division are purged from the files.

(c) *Establishment, development and coordination of liaison contacts with other law enforcement agencies and other organizations and information sources as directed by the Chief, Intelligence Division.*²⁵² [Emphasis added.]

Thus, the IGRU was not to be a passive recipient of information. Its function was to actively seek information which would lead to a tax investigation.²⁵³ This tasking encouraged cultivation of regular informants.

However, IGRS altered the informant pattern in one important way. IGRS was not restricted to organized crime figures. While the OCD was not known for clarity of targeting, IGRS had virtually no targeting criteria. The districts were instructed to cultivate sources, but were left largely free to select their own targets within the following general guidelines:²⁵⁴

9393.1 Criteria for Inclusion in District Background Files--

(1) Documents entering the district background files must relate to specific subjects or entities. They must involve financial transactions with potential tax consequences; illegal activities with tax potential; or other illegal activities which fall within our investigative jurisdiction.

The guidelines thus gave their blessing to intelligence gathering regarding illegal activities without potential tax consequences ("other illegal activities"), subject only to a limitation that the illegal activity had to fall within "our investigative jurisdiction."

The heart of IGRS was to be the retrieval system. The system contemplated using the Data Center computer to generate an index to documents physically filed in the districts.²⁵⁵ When the IGRU evaluator²⁵⁶ decided that a particular document merited inclusion in IGRS, a clerk was to fill out an input card containing all the references under which that document would be indexed for retrieval, including the persons mentioned in it in relationship to the information which had caused the document's selection, the area of business activity involved, the area of illegal activity, the source of the information, and a forty-character description of the content of the document. The computer would then turn these cards into a print-out listing alphabetically all the persons listed for each document in IGRS, and identifying every document (by number) in which that person's name appeared. The computer would also produce an index

²⁵² May 5, 1978, MT 9800-40, Section 9392 (5).

²⁵³ For example, in discussing the establishment of an Intelligence Gathering and Retrieval Unit in Birmingham, the Chief, Intelligence Division, stated, "All special agents are encouraged to develop, for the purpose of receiving useful information in relation to tax violations in all walks of life, confidential informants who can provide meaningful information in this regard." Memo from Chief, Birmingham Intelligence Division, to Special Agents, dated February 20, 1974.

²⁵⁴ Sec. 9393.1, IRS Manual, 3/4/74.

²⁵⁵ IRS manual Transmittal 9800-40, May 4, 1978.

²⁵⁶ Evaluators were part of the case development team. Their function was to evaluate material gathered by the special agents assigned to case development and to decide whether it should be included in IGRS.

by document number showing the same of each person listed in connection with that document. Both indexes would also show, as to each document, the source, the illegal activity, the business, and the 40-character document description.²⁵⁷

The computer stored and updated the index to the documents, but was not to be a repository of data about the subjects. If, for example, a 30-page report of the debriefing of an informant contained statements the informant had spontaneously made about the sex life of the subject, that information would not be "in" the computer unless the agent chose to include it in the forty-character document description. The document would be referenced in the index, as would the subject's name, business, illegal activity coding, and a code indicating the document source was an informant. But the detailed information would remain in the district's files, retrievable only by reading the report. As envisioned, the system would ultimately permit nationwide identification of every document in any district's IGRS pertaining to a particular individual, a particular illegal activity, or a particular business. Districts had available optional local codings which they could use to categorize their information by geographical area or in any other way they choose. New input was to be provided to the Data Center monthly so that the indices the Data Center returned to the districts would be current.²⁵⁸

C. IGRS in Practice

1. *Introduction.*—A principal deficiency of IGRS was the misplaced reliance upon the computer's retrieval capability. This was a natural result of the lack of controls over input. The districts' normal discretion in *selecting targets* is inherently limited by the general requirement that there exist a probability of a specific tax violation; the discretion is in selecting the most fruitful of such allegations to investigate. The agents' discretion in how to investigate is inherently limited by the narrow scope of the information which is relevant to the suspected violation.

However, the IGRS granted the districts total discretion in determining whom to investigate. It was not intended that a specific allegation would *precede* intelligence gathering; rather, it would follow. For the same reason, agents were given total discretion to collect whatever information they chose, as long as it related in some way to IRS' "investigative jurisdiction". The only control which IGRS left intact was the judgment of the agents, the chiefs, intelligence, and the district directors.²⁵⁹

²⁵⁷ See IRS Manual Transmittal 9300-40, May 4, 1973.

²⁵⁸ IRS Manual Transmittal 9300-40, May 4, 1973.

²⁵⁹ In one district, the problem of what information was to be input in the system was clearly stated in a memo from a District Director to all Division Chiefs in the division. The District Director stated:

"I request that each agent or officer under your supervision be alert to such unusual items and submit them to our Information Gathering and Retrieval Unit. While it is difficult to establish criteria concerning what to submit, each agent can at least ask himself whether a particular item would be of value to him now or in the future if he were assigned a case on an entity named in a given item of information." Memorandum, District Director, Greensboro District, to All Division Chiefs, Branch Chiefs, and Managers, March 4, 1974.

IGRS was an intelligence collection system. It did not bypass the decentralized control system for initiation of actual criminal investigations. Therefore, no actual investigation could result from the intelligence-gathering in the absence of a basis for believing a tax violation was present.

IGRU "case development" agents gathered massive quantities of information having no bearing on tax enforcement. In at least one district an agent amassed huge quantities of intelligence on militant groups without adequate tax justification; in other, militants were also targeted without good reason, but to a lesser degree.

IGRS became an information catch-all from which useful information retrieval was almost impossible even with the computer's aid. However, the abuses of IGRS were largely potential in the sense that they consisted only of the gathering of intelligence. Because of the basic requirement of probable cause to believe a tax violation had occurred before a criminal investigation could begin remained intact, IGRS did not result in criminal tax investigations of improperly selected targets. However, had the system worked more effectively, it would have resulted in selective enforcement against groups chosen for investigation by agent predilection rather than by tax enforcement criteria. Concentration of information gathering will ultimately result in concentration of enforcement since information is the key to commencing an investigation. The overbreadth of IGRS led to the glut of data which made IGRS ineffective. Overbreadth was thus the cure for the very evils it created.

2. *The Los Angeles Example.*—The uniform, nationwide IGRS the Internal Revenue Manual prescribed never came into existence. The Committee staff studied the systems in six districts: Los Angeles, San Francisco, Jacksonville, Chicago, St. Louis, and Baltimore. By January, 1975, the Los Angeles IGRS has amassed 80,000 documents; Baltimore had 39 files filling two small file drawers containing approximately 3,000 documents. These statistics reflect the two poles. They indicate that at the time of its termination on June 23, 1975, the IGRS described in the Internal Revenue Manual was not a reflection of a uniform reality.

Since Los Angeles had the longest experience with an IGRS-type intelligence gathering system, its experience epitomizes the problems the system entailed: 1) lack of controls over targeting; 2) inadequate screening of information gathered for its relationship to tax enforcement; 3) as a corollary of the first two, ineffectiveness in producing the anticipated crop of high quality cases for investigation.

The Los Angeles information gathering experiences predated the formal establishment of IGRS by four years. However, the guidelines set forth in the Manual were essentially the informal guidelines under which the Los Angeles general intelligence gathering operation had functioned since its inception: any target was an appropriate subject for general intelligence gathering as long as it was within the IRS investigative jurisdiction.²⁰⁰ The largest single category of targets

²⁰⁰ In a January 18, 1971, memorandum discussing consolidation of various features of the Los Angeles IGRS with similar systems in San Francisco and Reno, it was stated that "Los Angeles [IRS Intelligence Division] is interested in anything and everything. . . ." Memorandum, Special Agent David D. Gehrt to Chief, Intelligence Division, Reno, 1/18/71.

was organized crime,²⁶¹ a concentration which reflects the rationale for devising an improved information-gathering system. However, Los Angeles also focused its intelligence gathering on activists and militants, particularly black militants.

During July, 1975, the Committee staff searched the last IGRS print-out for Los Angeles and found many references to documents in the IGRS files relating to militants and activists. The "illegal activity" code for these groups was code 500, which has carried both the designation "subversives" and the designation "sabotage." The Staff was able to learn very little about the contents of these files, however, as the Los Angeles Intelligence Division had destroyed them (not in keeping with any routine document destruction schedule) in approximately December 1974.²⁶²

The initial decision to target militants for intelligence gathering in Los Angeles was made by the Chief, Intelligence Division, in early 1969.²⁶³ An employee in the Audit Division had a personal interest in militant groups and felt since they "violated the Constitution they were likely to be violating other laws as well, including the Internal Revenue Code."²⁶⁴ He also felt that the IRS should be checking on their tax compliance because of the large sums of money which passed through their hands. The auditor recommended to his Chief that he be permitted to transfer to Intelligence to work on this problem. Following a meeting with the Chief, Intelligence, the auditor joined the new "case development" unit in Los Angeles and began to gather intelligence on militants from public sources, other law enforcement agencies and informants.²⁶⁵ The auditor stated that the information he had gathered was strictly limited to tax-related financial information about the groups.²⁶⁶

There is no way of knowing how extensive the Los Angeles project would have been had the National Office not developed a similar interest in activists a short time after the Los Angeles project began. This National Office interest, which had its origin in criticism of IRS by congressional committees and ultimately led to the establishment of SSS, initially found expression in a request to all the districts on

²⁶¹ Staff statistical review of contents of Los Angeles IGRS files.

²⁶² The story of their destruction is set forth later in this section, as is a description of the destruction of a similar file in the St. Louis Intelligence Division in January 1975.

²⁶³ Staff interview of Robert Handley, Audit Division, Los Angeles, 8/1/75.

²⁶⁴ *Ibid.*

²⁶⁵ The informants were, according to the auditor, not members of the groups, but people in positions to learn of their activities through their own informants, including one person alleged to be an investigator in the employ of the Office of the Governor of the State of California. *Ibid.*

²⁶⁶ The destruction of the material this agent gathered was not quite complete. The few remaining documents dealing with militants the staff located in the IGRS files, were, for the most part, not related to financial transactions and of no apparent value in tax enforcement. They related to such subjects as changes in leadership in the groups, arrests for violence, meetings, and surveillance reports by other law enforcement agencies as well as minutes of meetings of law enforcement associations concerned with militants. In the absence of the complete files the auditor created, there is no means of verifying the means of information gathering employed or the kind of information gathered.

March 25, 1969 and again on July 18, 1969, for all existing file information on certain activist organizations.²⁶⁷

Los Angeles chose to read this request as a reason to redouble their efforts. The auditor spent the ensuing nine months preparing a comprehensive report for what was to be the Special Service Staff.²⁶⁸ In preparing the report, he gathered large amounts of material on various groups including militants and activists, but the material was destroyed.

The auditor amassed roughly one file drawer of documents concerning militants. When the Los Angeles District created an automated retrieval system for microfilmed intelligence documents he selected some of this material for inclusion in that system. The material was not actually microfilmed, however, but, unlike all the other intelligence documents, was merely referenced in the microfilm system, while the auditor retained personal control over the documents themselves. When he was transferred in 1972 he destroyed the documents which were not referenced in the automated system but retained the ones which were.²⁶⁹ With the establishment in 1973 of the IRS-wide intelligence retrieval system known as IGRS, the Los Angeles microfilm system was entered on the IGRS computerized index, including the references to the auditor's documents. As of that date (May 1973), under IRS document destruction rules, the documents acquired a new filing date, and destruction was not permitted for seven years thereafter.²⁷⁰

In approximately December 1974, at a time when it was common knowledge that the Congress was preparing to examine intelligence agencies, the auditor's documents were apparently destroyed. The Chief (Intelligence), Los Angeles, ordered a subordinate to retrieve the documents from the auditor and to provide them to a second subordinate whose function was to review incoming documents to determine whether they should be retained or destroyed. The latter individual does not specifically recall whether he destroyed the documents, but believes he may have done so.²⁷¹ A thorough search of the Intelligence Division, Los Angeles District, has failed to produce the documents.

The Chief (Intelligence) has stated that the retrieval of the documents was pursuant to a short-lived directive from the Western Region to clean out intelligence files. However, the Chief also stated that no general review was made of intelligence files, and that the only specific action he can recall taking pursuant to the directive was to order the retrieval of the auditor's file materials on militants and activists.²⁷²

²⁶⁷ Memorandum, Assistant Commissioner (Compliance) to All Regional Commissioners, March 25, 1969. Memorandum, Assistant Commissioner (Compliance) to Assistant Commissioners (Data Processing, Technical), Chief Counsel, and All Compliance Division Directors, July 18, 1969.

²⁶⁸ For a discussion of Special Service Staff, see p. 870.

²⁶⁹ Staff interview of Robert Handley, 8/1/75.

²⁷⁰ Internal Revenue Manual Transmittal 1(15)59-101 (8/12/69) (Records Control Schedules).

²⁷¹ Statement of Jerry Baker, Intelligence Division, Los Angeles District, 8/1/75.

²⁷² Statement of Chief, Intelligence Division, Los Angeles District, 8/1/75. That the staff detected the destruction of the Los Angeles material demonstrates a benefit which results from computerization of intelligence: a record of the material gathered exists outside the control of the gatherers. Such a record is of particular importance where control of intelligence-gathering depends upon

In St. Louis, the staff discovered a folder denominated "Militants" and a second folder denominated "Subversives" in the intelligence files. The "Militants" file had been checked out to the Chief (Intelligence) in January 22, 1975. The Chief stated that at some time during December or January he ordered the file destroyed because he believed it was inappropriate for it to be in the intelligence files as it had no bearing on tax matters.²⁷³ The "Subversives" file contained only material on the Church of Scientology. No employee of the Intelligence Division could recall that it had ever contained any other material.²⁷⁴

3. *Overbreadth.*—Reports on the IGRS have suggested that the presence on the subject index in certain districts of many names of reputable citizens indicates that the IRS was unjustifiably spying on such people and seeking to develop tax cases against them or other discrediting information about them. However, a thorough review of the IGRS files in six districts disclosed no evidence that any of the Intelligence Divisions employed their Intelligence Gathering Unit for this purpose.

Few IGR Units adequately screened the documents which they placed on the index. Virtually none of the Units screened those documents it selected to eliminate insignificant names. The result can best be demonstrated by an example. If the Special Agent screening documents selected for inclusion a newspaper article which mentioned that a known racketeer was investing money in a restaurant, alluded to the former owners, and contained interviews with several patrons, the IGRS index would contain a numbered reference to that document under the name of each of the persons mentioned in the article, including the randomly interviewed patrons and the former owners. This collection of useless data resulted from the use of clerks to prepare the input cards who were not permitted to exercise any judgment about which names in a document were important, and therefore included them all. In effect, the function of evaluators was being bypassed. The name J. Edgar Hoover appears in many IGRS indices because he often made statements on subjects dealing with organized crime. Newspaper articles reporting his statements were often filed in IGRS. The name Internal Revenue Service often appeared on the indices, as did the names of the present and most former Commissioners of Internal Revenue.

The presence of a name on the IGRS index therefore did not mean that individual had been selected by the IRS as a subject of intelligence gathering. It meant the individual was mentioned in some document which an agent had selected for filing in IGRS. Further, none of the districts investigated had complied with manual provision providing for the review and purging of unnecessary names and information from IGRS.²⁷⁵ The wholesale inclusion of names in the system, coupled with the failure to screen material adequately at the inception of IGRS and the failure to purge the files pursuant to standing instructions explains why the nationwide total of IGRS "subjects" is 465,442.

retrospective review and revision of guidelines rather than upon day-to-day direction of operations.

²⁷³ Statement of Chief, Intelligence Division, St. Louis District, 8/6/75.

²⁷⁴ Staff observations of district intelligence operations.

²⁷⁵ Staff observations of district intelligence operations.

The presence of thousands of names of prominent, reputable people, and of tens of thousands of names of less well-known but apparently reputable people on the IGRS index does not demonstrate that IGRS was targeting innocents but that it was choking on its own data.

4. *IGRS Ineffectiveness.*—Statistical evidence suggests that IGRS did not succeed in producing a large number of high quality cases for investigation. In Los Angeles, by January 1975, the system contained 85,387 subjects. Between July 1, 1973, and October 31, 1974 Los Angeles attributed the initiation of 45 intelligence investigations to IGRS. Chicago had 89,417 subjects and attributed four investigations to IGRS.²⁷⁰ Nationwide, investigations were started against only 350 of the 465,108 "subjects".

The table shows comparable results in 45 districts.

Because Operation Leprechaun is the focal point of the most serious claims of abuse connected with IGRS, the staff's conclusions regarding IGRS follow the discussion of the Leprechaun allegations.

IGRU DATA¹

District	Intelligence division investigations initiated		District	Intelligence division investigations initiated	
	Number of entities (names) Jan. 15, 1975	July 1, 1973 through Dec. 31, 1974		Number of entities (names) Jan. 15, 1975	July 1, 1973 through Dec. 31, 1974
Augusta.....	955	1	Richmond.....	460	
Portsmouth.....	961	1	Parkersburg.....	1,404	
Burlington.....	574	5	Greensboro.....	1,072	1
Boston.....	1,421	4	Columbia.....	26	
Providence.....	3,511		Atlanta.....	2,867	8
Hartford.....	298	2	Jacksonville.....	17,224	51
Brooklyn.....	8,561	26	Louisville.....	4,788	
Manhattan.....	8,918	27	Nashville.....	552	5
Albany.....	1,684		Birmingham.....	3,414	2
Buffalo.....	278	45	Little Rock.....	1,420	1
Newark.....	6,720	12	New Orleans.....	1,298	
Philadelphia.....	6,218	6	Oklahoma City.....	6,654	1
Pittsburgh.....	3,773	5	Austin.....	8,868	3
Cincinnati.....	14,996	7	Dallas.....	4,407	3
Cleveland.....	29,431		Danver.....	33,921	
Indianapolis.....	4,403	6	Albuquerque.....	3,768	5
Chicago.....	89,417	4	Phoenix.....	8,944	9
Springfield.....	5,907		Reno.....	18,118	7
Detroit.....	33,489	28	Portland.....	15,062	28
Milwaukee.....	6,626		San Francisco.....	8,997	5
Des Moines.....	2,680	3	Los Angeles.....	85,387	45
Wichita.....	4,539				
Wilmington.....	225				
Baltimore.....	872				
			Total.....	465,108	350

¹ The information in this table was furnished the Director, Intelligence Division in response to directive issued by IRS Commissioner suspending the operation of IGRS in January 1975.

²⁷⁰ The relatively large quantity of material in some districts' IGRS is the result of their having intelligence gathering systems prior to the formal establishment of IGRS. In the case of Los Angeles, the numbers are particularly high because of an apparent error by the regional data center in following the district's instructions regarding the input of the material the district had gathered under the Miracode system. The district apparently screened the material and asked to have a program written which would result in the automatic selection of that material from the Miracode data most likely to be of continuing value. Through an oversight the program was not used, and all of the Miracode data was included in IGRS. The result of this mass inclusion of the Miracode data is that the IGRS in Los Angeles gives a picture of intelligence gathering practices in the district over a period of six years, and of the results of this long experience with an IGRS-type system in relation to the amount of data accumulated.

II. OPERATION LEPRECHAUN

"Operation Leprechaun" was an intelligence gathering project directed at political corruption and participated in by both the Internal Revenue Service and the Justice Department. Because of the sensitive character of the intelligence gathering effort, it occurred outside the framework of the normal intelligence administrative structure. The staff's investigation revealed that most of the allegations which comprised Operation Leprechaun were unfounded. Those of the alleged acts of wrongdoing which actually occurred are attributable to a combination of circumvention of normal supervision over intelligence gathering and informant control, and the inadequacy of IRS guidelines for control and payment of informants.²⁷⁷

A. Background of Operation Leprechaun

In late 1971, a local investigation by the Miami Police Department and the Dade County Department of Public Safety uncovered certain information concerning political corruption and bribes of political figures in Miami-Dade County. This investigation came to be known as the "Market Connection". The attorney in charge of the Justice Department's Organized Crime Strike Force located in Miami, Mr. Dougald McMillan, cooperated with the local authorities and received information from them concerning allegations about those political figures. McMillan became interested in initiating a federal strike force investigation and in securing the aid of the IRS and other law enforcement agencies in such an effort. In several conferences with the Justice Department and IRS officials, he vigorously solicited their support.²⁷⁸ At about the same time, the IRS chose the Jacksonville District, of which Miami is a part, to be one of the pilot districts in an intelligence gathering and retrieval experiment.²⁷⁹ The Miami Intelligence Division chose Special Agent John T. Harrison as the principal IRS agent to work on the Market Connection intelligence-gathering effort, and later assigned him to feed the resulting intelligence into the new information gathering and retrieval system.

The purpose of a Justice Department Strike Force Program is to achieve a coordinated effort by all federal law enforcement agencies against organized crime in a particular locality. A Justice Department attorney headed the Strike Force effort in Miami as elsewhere. The

²⁷⁷ Two members of the Committee staff spent ten days in Miami investigating the allegations. For much of its information about the allegations, however, the Committee relied upon the work of the 91 investigators IRS Inspection Division assigned to investigate the allegations of Operation Leprechaun. The Committee's independent investigation of cases which Inspection also investigated has convinced the Committee of the thoroughness and independence of Inspection Division inquiries into alleged IRS wrongdoing. The Committee staff has also read or attended the hearings of the Oversight Subcommittee of the House Ways and Means Committee and the Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs on the subject of Operation Leprechaun. The Committee also devoted a portion of its public hearing on IRS intelligence to Operation Leprechaun.

²⁷⁸ See, e.g., Memorandum of Meeting of IRS Target Selection Committee attended by Strike Force Attorney prepared by Thomas Eaton, June 28, 1972.

²⁷⁹ See discussion of the development of the Information Gathering and Retrieval System at p. 900.

Audit and Intelligence Divisions of the Miami IRS District each assigned a representative to the Strike Force whose function was to (1) concentrate tax enforcement efforts on Strike Force targets; (2) exchange information with other agencies represented on the Strike Force to the extent disclosure regulations permitted; (3) participate in identifying new targets. These Strike Force representatives were to remain under both the operational and administrative control of the District.²⁰⁰ The Strike Force concept did not call for the bypassing of normal administrative controls.

Agent Harrison, though not the Miami Intelligence Division's Strike Force representative, was assigned to work closely with the Strike Force attorney.²⁰¹ His assignment was to seek to develop tax cases against public figures suspected of accepting bribes or otherwise participating in corruption through the use of informants and other intelligence-gathering method.²⁰² On the basis of memoranda of meetings between the Strike Force attorney and members of the Intelligence Division in Miami, it appears that the Strike Force attorney contributed names of individuals and other information to IRS, some of which was subsequently used by the Target Selection Committee, an IRS group charged with final approval of targets for information gathering.²⁰³ In any event Harrison generally did not select his own targets. The Chief, Intelligence Division, ordered that Harrison be removed from the normal chain of command.²⁰⁴ Harrison's nominal superior, his Group Manager, was to be advised of Harrison's activities only on a "need-to-know" basis.²⁰⁵ As a result, Harrison's IRS superior lost effective control of his activities.

Agent Harrison chose the name "Operation Leprechaun" to describe his efforts. He picked that name because he used green ink for his informant files and green ink caused him to think of leprechauns.

. . . I looked up the definition of a leprechaun and found, in essence, the meaning to refer to the "wee mysterious people" who could reveal many secrets.²⁰⁶

B. Allegations About Operation Leprechaun

Allegations of improprieties within the IRS Intelligence Division in Miami first appeared in a series of articles in the Miami News

²⁰⁰ Memorandum of IRS Inspection Interview with Dougald D. McMillan, 4/5/75, p. 22.

²⁰¹ Affidavit of John McRae to IRS Inspection, 3/10/75, p. 3. McRae, in a later affidavit, modified some of the statements contained in the affidavit of 3/10/75. His later statements indicate that there was some misunderstanding within IRS concerning the exact status of Special Agent Harrison.

²⁰² *Ibid.*, pp. 3-5.

²⁰³ See memorandum dated June 28, 1973, summarizing a meeting with the Strike Force attorney; memorandum dated September 6, 1972; minutes of Target Selection Committee meeting, dated May 15, 1973.

²⁰⁴ McRae affidavit, 3/10/75. McRae, in his affidavit, states, "At a subsequent meeting a short time later Chief Register directed that Special Agent John T. Harrison be relieved of his present assignment and given the task of perfecting the case development files on the individuals identified on Dougald McMillan's list. It was Chief Register's further direction that S/A Harrison would consult directly and closely with Dougald McMillan about the corruption in Dade County. Chief Register advised me that I would learn of S/A Harrison's activities on a need-to-know basis. Mr. Register asked me if I could work with S/A Harrison under such an arrangement and I told him I saw no problem." See also, Transcript of IRS Miami meeting, 3/25/75. Register, in subsequent statements, has denied ever removing Harrison from the effective control of his supervisors. The staff concluded that his later statements, as was McRae's statement, are indicative of the misunderstanding within IRS as to Harrison's exact status.

²⁰⁵ McRae affidavit to IRS Inspector, 3/10/75, p. 3.

²⁰⁶ Affidavit, John T. Harrison, 3/18/75, p. 2.

beginning in March 1975 alleging serious abuses by IRS intelligence in Operation Leprechaun. The source of most of the allegations was an informant used by Harrison, Elsa Gutierrez.²⁹⁷ Among the principal allegations concerning Operation Leprechaun were the following:

- that the IRS recruited Gutierrez and other informants for the purpose of gathering information on the sex lives and drinking habits of thirty public officials in the Miami area;
- that two IRS operatives burglarized the Miami campaign office of a congressional candidate;
- that the IRS made improper use of electronic listening devices;
- that Special Agent Harrison threatened Gutierrez with fatal accidents and imprisonment if she revealed her IRS activities;
- that personal information gathered in the course of Operation Leprechaun about enemies of the White House was funneled to the White House by the IRS;
- that following publication of the newspaper articles on Operation Leprechaun, IRS audited the tax returns for each of eleven years of a reporter who was the principal author of the Leprechaun stories; and
- that IRS agents promised Gutierrez \$20,000 per year for life and eventually a home outside the country in return for her spying on public officials.

C. Operation Leprechaun Improprieties

While evidence gathered by IRS Inspection and corroborated by the staff indicates that many of the allegations of Elsa Gutierrez about Operation Leprechaun were unfounded, several improprieties were discovered.²⁹⁸ Of these, some apparently are directly related to the environment in which special agent Harrison conducted the project and these further illustrate the increased potential for abuse of individual rights when the normal IRS structure and its inherent controls on IRS activities are circumscribed to meet the needs of a special program which has, as its objective, a set goal in addition to enforcement of the tax laws. The principal improprieties occurring in Operation Leprechaun include improper special agent supervision, improper informant usage, including unauthorized electronic surveillance, and useless and improper material being gathered and stored by the IRS. These areas are discussed below.

1. *Improper Special Agent Supervision.*—From its inception, the project which became Operation Leprechaun placed Special Agent Harrison in a position inconsistent with normal IRS operating procedures. The then Chief of the Jacksonville District Intelligence Division has stated that in response to the request of the Miami Strike Force Chief, Dougald McMillan information gathered concerning political corruption in the Miami area was sensitive and should be disseminated on a "need-to-know" basis only.²⁹⁹

John McRae, Harrison's Intelligence Division Group Manager, has stated that he, upon receiving a listing of targets from the Intelligence Chief, instructed Harrison to first develop initial files on the targets. McRae further stated that Harrison was to consult directly and closely with Mr. McMillan regarding this investigation and that

²⁹⁷ The staff, in its investigation by Operation Leprechaun, did not attempt to determine Gutierrez' motives for exposing Operation Leprechaun. As previously noted, many of her allegations appear now to have been unfounded.

²⁹⁸ Operation Leprechaun always had as its goal the enforcement of the tax laws.

²⁹⁹ IRS Report on Relationship between Miami Strike Force and IRS Miami Strike Force Personnel, p. 4; Affidavit, McRae to IRS Inspection, 8/10/75.

he (McRae) was to learn of Harrison's intelligence gathering activities on a "need-to-know" basis only.²⁰⁰

McMillan, in an affidavit to IRS Inspection, stated that Harrison was at no time the official IRS representative to the Miami Strike Force, and at no time did he in any way supervise Harrison.²⁰¹ McMillan stated, however, that in response to a request by Harrison, and because Harrison was always in a hurry, he (McMillan) told Harrison that he could stop dealing with the IRS Intelligence Division Representatives to the Miami Strike Force and deal directly with McMillan on Strike Force related matters.²⁰²

While the evidence cited above does not conclusively define the exact nature of the relationship between the IRS and the Strike Force during Operation Leprechaun, it does indicate lines of communication were unclear and that the normal IRS organizational structure had been changed to meet the needs of the specialized, sensitive project. This hybrid structure necessarily diminished the effectiveness of built-in controls over special agent investigation activity and apparently was a primary contributing factor to other improprieties in Operation Leprechaun.

2. *Informant Recruitment and Development In Operation Leprechaun.*—Special Agent Harrison had for several years advocated the need for a network of confidential informants to obtain information on organized crime, corruption and racketeering.²⁰³ This view apparently was a major factor in the decision to place him in charge of the Operation Leprechaun intelligence gathering activities, which were targeted at political corruption.

Harrison began to recruit informants to develop intelligence for the project. Since Harrison would have to purchase the information, the Chief, Intelligence, applied to the National Office to establish an "imprest fund" of \$30,000 to finance the project. In his application, he stated it was understood that:

Expenditures from these funds will not be made unless the information received warrants compensation. The informants who will be utilized as the opportunity arises will be guaranteed no compensation or operating expenses but will be paid for value received only.²⁰⁴

The Director, National Office Intelligence Division, approved the fund.²⁰⁵

Harrison²⁰⁶ developed his informants through fellow agents, other law enforcement agencies, state agencies, and through his own per-

²⁰⁰ Affidavit of John McRae to IRS Inspection, 3/19/75, p. 3.

²⁰¹ McMillan, statement to IRS Inspection, 4/5/75, p. 3.

²⁰² Ibid.

²⁰³ Harrison affidavit, 3/18/75.

²⁰⁴ Letter from G. T. Register, Jr., to Assistant Regional Commissioner, Intelligence, 3/30/72. This limitation on informant payments is set forth in Internal Revenue Manual section 9372.1(3), as follows: "When practicable, direct payments to informants should be made only after the information or evidence has been obtained, evaluated, and determined to be worthy of compensation." Other regulations govern accountability for imprest funds, including the requirement that advances from the funds be made only by "class A cashiers". As administered, Operation Leprechaun violated all these regulations.

²⁰⁵ He later (April 22, 1973) approved a \$17,000 addition to the fund.

²⁰⁶ Harrison affidavit, 3/15/75, p. 1.

sonal contacts.²⁹⁷ He also instructed some informants to develop other confidential sources.²⁹⁸ According to Harrison's statement, a total of 42 confidential informants were involved in some aspect of Operation Leprechaun.²⁹⁹

Of twenty informants used by Harrison during the project and interviewed by IRS Inspection during its investigation, five advised that they had been requested to gather sexual information, two advised they had been requested to research public records or develop background files; five advised they had been requested to gather political information, one advised she had been instructed to gather drinking habit information and 4 advised they had been involved in electronic surveillance.³⁰⁰

D. Informant Activities During Operation Leprechaun

1. *Breaking and Entering.*—The conduct of informants during the course of Operation Leprechaun ranged from the performance of activities which were clearly illegal to those which were at least questionable. Although they do not necessarily reflect on the wisdom or integrity of Special Agent Harrison, they do indicate an inadequacy in the system of informant control utilized during Operation Leprechaun.

Two Leprechaun informants, Nelson Vega and Roberto Novoa, according to Vega's admission, burglarized the office of Evelio Estrella, a candidate for Congress on November 14, 1972.³⁰¹ Vega (Novoa is deceased) stated in an affidavit to IRS Inspector that he was hired to work on "Operation Leprechaun" for \$100 per week and was given the assignment of getting information on people who were running for office to determine where they were getting their money for parties and other activities.³⁰² Vega stated that he and Novoa burglarized the office of Estrella and took from it a filing cabinet which they thought contained certain information which would be useful to the Internal Revenue Service.³⁰³ Vega emphasized that Harrison was unaware of the burglary at the time it was committed, and that, although he and Novoa later turned over some of the stolen material to Harrison, they advised him someone had given them the material.³⁰⁴

Harrison stated he was unaware of the burglary at the time it was committed and became aware of it only when he read Vega's newspaper statement.³⁰⁵ Harrison also stated that he emphatically told

²⁹⁷ Harrison affidavit, 3/15/75, p. 1.

²⁹⁸ *Ibid.*, p. 2.

²⁹⁹ *Ibid.* The IRS Inspection Report on Operation Leprechaun states that "... during the time Harrison was identifying his expenditures to informants with the code name "Operation Leprechaun," Harrison was obtaining information from 41 informants: 20 of whom were paid and 12 unpaid." See IRS Inspection Report Sec. 2.

³⁰⁰ IRS Inspection Report, Operation Leprechaun, Sec. 2.

³⁰¹ The police report on the Estrella burglary indicates that a "heavy instrument was used to smash and completely remove glass from front door;" that an employee of Estrella's campaign office discovered the break-in on the morning of November 13, 1972, and found that a beige filing cabinet about 48" high containing all their campaign records had been stolen.

³⁰² Affidavit, Nelson Vega to IRS Inspector, 4/10/75.

³⁰³ *Ibid.*

³⁰⁴ Vega affidavit, 4/10/75.

³⁰⁵ Harrison affidavit, 4/8/75.

each informant that they were not IRS employees and that their relationship with him was not a license to violate the law.³⁰⁶

Harrison's informants' files contained a manila envelope with the name Evelio S. Estrella written on the outside containing originals and copies of State Campaign Treasury Pre-Election Reports, including itemized receipts and expenditures, invoices and similar items relating to Estrella. Roberto Novoa's wife, who confirmed that her husband and Vega had brought the filing cabinet to the Novoa home, stated that about three days following the theft Harrison asked Novoa and Vega if they knew who had broken into Estrella's office and, upon being advised Novoa and Vega did not know, told them that whoever had done it would go to jail regardless of the motive for the burglary.³⁰⁷

2. *Unauthorized Electronic Eavesdropping.*—Although consensual non-telephone electronic surveillance (i.e., where one party to the conversation consents to eavesdropping) is not illegal, the IRS has established regulations to safeguard against abuse of the technique. Internal Revenue Manual section 9339.3, entitled *Consensual Monitoring of Non-Telephone Conversations*, requires prior Justice Department approval of all such monitoring providing that:

Consensual monitoring is to be approved in writing by the Attorney General of the United States or any designated Assistant Attorney General as follows: a) all requests for approval must be submitted through channels and may only be signed by the Director, Intelligence Division or Acting Director; when time is a factor a telephone request may be made to the Director. If an emergency exists approval may be granted by the Director, or Assistant Director, Intelligence Division. Additionally, as soon as practicable, after monitoring the non-telephone conversation, a report will be filed with the Chief showing how the equipment was used and summarizing the intelligence or evidence obtained by such use; this report should complement the information set forth in the original request.

Elsa Gutierrez stated³⁰⁸ that on August 23, 1972, she was present when a Leprechaun informant (9th-28) outfitted with a radio transmitter, entered the home of a former judge, Harrison, Novoa and another special agent sat in Harrison's car which was equipped with receiving equipment, and listened to the ensuing conversation. Harrison, in an affidavit,³⁰⁹ has stated that Elsa Gutierrez was present when another agency, either the Miami Police Department or the Dade County Sheriffs' Department, placed a concealed transmitter on one of Harrison's confidential informants, but that the investigation was not an IRS investigation. Harrison stated that the Miami Strike Force Attorney had become interested in a possible state charge against the judge and had solicited the aid of the Miami Police Department and Dade County Public Safety Department, and arranged

³⁰⁶ *Ibid.*

³⁰⁷ Affidavit, Marina Novoa to IRS Inspection.

³⁰⁸ E. Gutierrez Affidavit to IRS Inspection.

³⁰⁹ Harrison Affidavit, 4/10/76.

for the Miami Police to use the equipment. He further stated that he was asked only to supply an informant to be wired for the surveillance, that he had provided the other agency with the confidential informant, and that Elsa Gutierrez was there because she had recruited the informant and might have been able to lend moral support.³¹⁰

Harrison's confidential informant files contain two documents signed by 9th-28 authorizing police officers to place electronic eavesdropping devices on his person; both forms are signed by Harrison as a witness. The files also contained an affidavit by 9th-28, regarding a conversation he had with the judge in question while wearing the transmitter, in which 9th-28 stated that he had permitted an associate of Harrison to wire him for sound and that he had obtained bad checks from the judge which the judge wished him to collect for him and that 9th-28 had given the checks to Harrison.³¹¹

Major Herbert Breslow of the Miami Police Department has furnished an affidavit³¹² stating that on August 9, 1972, the Chief Attorney for the Miami Strike Force requested that he furnish technical assistance to Harrison and that a state case could result from the investigation in which the technical assistance was needed. Breslow stated that he accompanied Harrison to a location near the judge's home where Breslow equipped 9th-28 with a transmitter and that 9th-28 then entered the judge's home. While 9th-28 was in the judge's home, Harrison, Breslow and certain other persons unknown to Breslow, listened to the conversation in Harrison's car at a distance of 300 yards from the judge's house. In addition, Breslow's affidavit states that the monitoring had nothing to do with any Miami Police Department investigation. Breslow recalled that he either kept the tape of the conversation or received it from Harrison shortly after the event and kept it until Harrison advised him it was no longer needed and that Harrison supervised and coordinated the activity. Finally, Breslow stated that he assumed that the eavesdropping was in aid of an IRS investigation. Other affidavits of members of the Dade County Department of Public Safety indicate that similar requests for technical assistance from Harrison were honored on two other occasions.³¹³

³¹⁰ 9th-28 Affidavit to IRS Inspection.

³¹¹ 9th-28 Affidavit to IRS Inspection. The files also contained memoranda to the file from Harrison dated August 22, 1974, and August 24, 1974, respectively, in which Harrison states that 9th-28 had given him information regarding the judge; and that Harrison (or 9th-28?) had paid informants Novoa and Vega for the information they had supplied concerning the judge. Neither memorandum alludes to any electronic surveillance.

³¹² Affidavit, Major Breslow to IRS Inspection.

³¹³ The Miami Intelligence Division files contained handwritten and typewritten versions of memoranda regarding informants which differed in significant respects. The typewritten version of one memorandum did not contain a section from the handwritten version of the same memorandum describing a meeting between 9th-28 and the judge during which a "microphone was taped to 9th-28's body." A second handwritten memorandum described a second recorded meeting between 9th-28 and the judge and indicated the informant and 9th-28 dealt with a "voice recording technical." The typed version of this memorandum omitted the references to these events. In his affidavit, Harrison stated the first omission was a typing error. As to the second, he said, "It appears from checking back the dates that had erroneously included that material on August 22, 1972, which could have been on Tuesday, whereas the written material assuming it to be correct should have been referred to on Wednesday which was

(Continued)

Both Harrison and the police assign a key role in the initiation of the surveillance on the former judge to the Miami Strike Force Attorney, who has stated in substance that although he could not recall his exact conversations with Major Breslow and Captain Bertucelli, he felt sure they were aware that the sole purpose of wiring the informant was to determine if state law was being violated since obviously there was no tax violation.³¹⁴ He advised that Major Breslow and Captain Bertucelli may have assumed the incident was part of a Federal investigation. He emphasized, however, the whole purpose was a possible state charge.

Whether Harrison was assisting state or local police or vice versa, his participation in the electronic surveillance appears to have violated the IRS regulations requiring Attorney General authorization for consensual electronic surveillance, since the regulation does not require that the surveillance have a Federal purpose before Attorney General permission is required.

E. Results of Operation Leprechaun

The intelligence gathering efforts of Operation Leprechaun, by tax enforcement standards, were successful. Full-fledged Intelligence Division investigations, which can be initiated only upon the probability that criminal tax fraud has occurred, as well as IRS Audit Division investigations, which indicate the probability that a substantial delinquent tax liability exists, were opened as a result of the project. Out of 42 joint Intelligence and Audit Division investigations of taxpayers who were the subject of Leprechaun documents, 22 were opened directly as a result of allegations furnished by either the Strike Force or information gathered during Operation Leprechaun, or both. Further, five of eight separate Audit Division investigations of Leprechaun subjects were opened as a result of information obtained from the Strike Force, Leprechaun informants, or both. Much of the information gathered, however, bore little or no relationship to tax law enforcement and some of the information was concerned with the sex and drinking habits of Operation Leprechaun targets.

Examination of 594 debriefing documents of Harrison's confidential informants indicate 135 (23%) contained references to the sexual

(Continued)

August 23, 1972." A four page memorandum in the Miami Intelligence office files, dated August 15, 1972, prepared by Harrison, contained the following statement:

"On August 9, I met with (Informants) together with Capt. Herb Breslow . . . (Informant) consented for an electronic transmitter to be placed on his person. He had made an appointment to see (Judge) at his home . . . At approximately 5:35 p.m., (informant) commenced his conversation with (Judge) inside (Judge's) home. The conversation was monitored and taped by use of a KEL KIT supplied and operated by Capt. Breslow in my presence. Upon completion of the conversation . . . Capt. Breslow presented me with the tape. A transcript of the tape will be forwarded once it has been typed."

The same memorandum appeared in 9th-28's file, but it lacked the above paragraph. Harrison, in his April 10, 1975, affidavit, stated that he could only speculate that he received instructions to omit the paragraph from the second memorandum and that such instruction could only come from the Chief, Intelligence. The apparent reason for the omission, according to Harrison, was to prevent a casual reader from being misled into thinking that the IRS had engaged in electronic surveillance. The Chief, Intelligence, has no recollection of giving such instructions. (Affidavit, Chief, Intelligence, Jacksonville District.)

³¹⁴ IRS Inspection Interview with Dougald McMillan, 7/20/75.

and/or derogatory drinking activities of the subjects. Of these 135 documents, 70 also contained tax related information, but 65 did not.³¹⁵ By comparison, out of 3,719 confidential informant debriefing documents prepared by all other Special Agents in the Jacksonville District, only 255 (7%) contained references to sexual or derogatory drinking activities of the subjects.³¹⁶

The above evidence, in addition to statements of some of his informants, suggests that Harrison encouraged his informants to collect personal, non-tax-related information about the subjects of Operation Leprechaun, either through specific instruction to the informants or through displaying particular interest in the information upon debriefing the informants. Since the informants' continued employment depended upon their providing information which interested Harrison, they would naturally be alert for information which interested him, despite the lack of specific instructions to gather it.

It does not appear, however, that the targets of Operation Leprechaun were selected because of any interest Harrison may have had in their personal lives. The responsibility for target selection lay with the Target Selection Committee. Harrison's influence was primarily over the nature of the information gathered about the targets, rather than the selection of the targets. And, as indicated by the positive tax enforcement results of Operation cited above, Harrison's apparent interest in personal information did not cause the collection of such information to become the main focus of the intelligence gathering operation. The statistics cited indicate that a substantial amount of the information gathered was tax-related, and that collection of personal information, while excessive in relation to other tax investigations, remained subsidiary to the main purpose of the operation, the effort to develop tax cases against the targets.

F. Causes of Leprechaun Abuses

The system of controls over intelligence gathering activities failed in the case of Operation Leprechaun. Special Agent Harrison's collection of personal information was not detected and arrested. He recruited some informants of extreme unreliability and poor judgment without his superiors' realizing it. He allowed informants to recruit and to pay other informants whom, in some cases, Harrison never met.³¹⁷ Harrison engaged in unauthorized electronic surveillance without its being detected by his superiors. Harrison paid many of his informants on a regular salary-like basis instead of paying them according to the value of the information received. Even though his superiors knew of the practice none prevented it.³¹⁸

³¹⁵ *Ibid.*, p. 18. Copies of some of these documents are in the Committee files.

³¹⁶ *Ibid.* It is possible to quibble with the criteria applied to determine whether a given document contains sex or drinking related information. A subsequent re-evaluation of the documents by IRS using different criteria resulted in a smaller percentage classified as being related to the sex and drinking habits of the targets. However, since the criteria applied to Harrison's debriefing documents and those applied to those of other agents were uniform, the comparison is valid. The Committee files contain some of Harrison's debriefing documents. They clearly contain sex and drinking related information with no relevance to tax enforcement.

³¹⁷ In his March 18, 1975, statement, Harrison said he had one informant who "did recruit one individual from the Cuban community who, in turn, recruited three or four other confidential informants."

³¹⁸ Memorandum, Harrison to Chief, Intelligence Division, Jacksonville, 9/13/72.

Each of the abuses of Operation Leprechaun can be traced to failure of Harrison or his superiors to meet responsibilities. The evidence suggests that Harrison conducted the unauthorized electronic surveillance, without his superiors' approval, and was able to do so because, as in the case of the electronic surveillance abuses the Long Committee studied, he was outside the normal chain of command. Harrison's superiors had an opportunity, however, to curb potential abuse in Harrison's employment of informants. In a September 13, 1972, memorandum from Harrison to the Chief, Intelligence Division, Harrison advised that he had 34 paid informants, many of whom he had never met; that these unknown informants had been developed by other informants; and that some of his informants were paying others. Harrison expressly acknowledged in this memorandum that the arrangement was unusual and risky. The memorandum also advised the Chief that Harrison had learned that Elsa Gutierrez was a "double agent" and had plans to expose his activities and dispose of him.

While the Leprechaun abuses can, therefore, be explained as individual failures to detect potential abuse, there is a pattern to the failures which indicates that the abuses have a general cause. The IRS failed to prevent, or to curtail, the serious misdeeds of Operation Leprechaun for three principal reasons:

1. IRS guidelines for the recruitment and use of informants were not sufficiently stringent;
2. IRS reliance upon retrospective detection of abuse followed by corrective action is inadequate to achieve control of intelligence gathering of the type necessitated by projects such as Operation Leprechaun activities;
3. Agent Harrison's anomalous position outside the normal administrative structure seriously aggravated the existing deficiencies in the system of controls. In particular, the limited controls the IRS had over the use of informants were largely deactivated by the decision to place Harrison out of the effective reach of the IRS chain of command.

NATIONAL SECURITY, CIVIL LIBERTIES, AND THE COLLECTION OF INTELLIGENCE: A REPORT ON THE HUSTON PLAN

CONTENTS

	Page
I. Introduction	923
A. The Scope of the Investigation.....	924
B. A Precise.....	927
C. Issues.....	
II. Background: A Time of Turbulence	928
A. Frustrations in the White House.....	929
B. The Huston-Sullivan Alliance.....	930
C. The "New" Hoover.....	933
D. The Pressure of Events.....	
III. The Meetings: The Writing of the Special Report	934
A. Who, What, When and Where.....	
B. At the White House, June 5th: The President Requests an Intelligence Report.....	936
C. In Hoover's Office, June 8th: A Premonitory Disagreement.....	938
D. The Langley Meetings:	
Drafting the Intelligence Report.....	939
The First Langley Meeting:	
Setting the Agenda.....	939
The Second Langley Meeting:	
Early Discussions.....	940
The Third Langley Meeting:	
Reviewing the First Draft.....	941
The Fourth Langley Meeting:	
The Final Draft.....	942
E. The Signing Ceremony.....	945
IV. An Intelligence Report for the President	
The options:	
A. Category One: Communications Intelligence.....	945
B. Category Two: Electronics Surveillance and Penetrations..	946
C. Category Three: Mail Coverage.....	947
D. Category Four: Surreptitious Entry.....	948
E. Category Five: Development of Campus Sources.....	948
F. Category Six: Use of Military Undercover Agents.....	949
G. Category Seven: Budget and Manpower.....	950
H. Category Eight: Permanent and Interagency Committee...	950
I. Category Nine (Removed): Surreptitious Optical Surveillance.	951
J. Category Ten (Removed): Investigations of Diplomatic Personnel.	951
V. The Huston Plan:	
A. Huston Plan, Phase One: Advice for the President.....	951
B. Huston Plan, Phase Two: The President's policy.....	955
VI. Rejection of the Huston Plan: A Time for Reconsideration:	
A. The President Takes a Second Look.....	957
B. Huston Leaves the White House.....	961
VII. The Hidden Dimensions of the Huston Plan:	
A. Duplicity.....	962
B. Lawlessness.....	967
C. Mixed motives.....	971
D. "Credit Card Revolutionaries".....	973

	Page
VIII. Aftermath: The End—or the Beginning	
A. The Intelligence Evaluation Committee	974
B. Secret Meeting with Hoover	977
IX. Summary and Conclusions:	
A. Accountability, Authority, and the Law	980
B. The Quality and Coordination of Intelligence	981
C. Public Policy Implications	981
Table: Summary of the Meetings for the Preparation of an Intelligence Report for the President, June 1970	935
Appendix: "Chronology of Huston Plan and Intelligence Evaluation Committee" prepared by Senate Select Committee staff.	983

NATIONAL SECURITY, CIVIL LIBERTIES, AND THE COLLECTION OF INTELLIGENCE: A REPORT ON THE HUSTON PLAN

I. INTRODUCTION

A. The Scope of the Investigation

On January 27, 1975, the United States Senate, meeting early in the 1st Session of the 94th Congress, established through Senate Resolution 21 a Select Committee to Study Governmental Operations with Respect to Intelligence Activities. The Select Committee on Intelligence was given a broad mandate to investigate the extent, if any, to which "illegal, improper, or unethical" activities were engaged in by the intelligence agencies of the Federal Government.

Falling within this mandate was the specific charge in Section 2(3) of the Resolution to reveal "the full facts" with respect to "the origin and disposition of the so called Huston Plan to apply United States intelligence agency capabilities against individuals or organizations within the United States."¹ This report presents the results of the Select Committee inquiry into this controversial intelligence plan.

In June 1970 President Nixon requested a review of those intelligence collection practices which might lead to better information on domestic dissenters. In response, the intelligence community produced a 42 page Special Report on the subject. The Huston Plan, written soon thereafter by presidential assistant Tom Charles Huston, was a set of recommendations-for-action derived from the options presented in this Special Report.

The following commentary on the Special Report and the Huston Plan is organized, first, to reveal the background events which led to the presidential request for an intelligence review. It then explores in detail the views and activities of the men who wrote the Special Report, as well as the reaction of the President to its controversial spin-off, the Huston Plan. The effect of this episode upon the ongoing activities of the intelligence agencies is examined next. Pursuant to Senate Resolution 21, special attention was devoted throughout the inquiry to the question of whether illegal, improper, or unethical acts had been carried out by the President or those preparing the intelligence report for him.

The Committee investigation into the Huston Plan began in April 1975. During the course of the inquiry over 40 interviews were conducted. These included all major—and most minor—participants in the intelligence agencies who helped draft the intelligence report for

¹ Senate Resolution 21, January 27, 1975, Sec. 2(3).

the President. The documents relevant to an understanding of the case were obtained by the Committee, including those from the papers of President Nixon.

Plans were made early in the investigation to interview the former President regarding his views on the Huston Plan episode; but, after lengthy negotiations, the conditions set for the interview by his lawyer proved to be unacceptable to the Committee Members, who favored an examination before the full Committee and on the record. The Select Committee did decide, however, to send the former President a set of written interrogatories on the Huston Plan. His responses are included in this report.

Supplemented by this presidential retrospect, the extensive documentation now available—as well as the existence of views from virtually every other major participant still living—provides a reasonably full understanding of the events which transpired in the summer of 1970, now encapsulated in the phrase, "The Huston Plan." These events are summarized briefly in the following précis.²

B. A Précis

Richard M. Nixon won his first Presidential election in 1968 by less than one percent of the total popular vote. The Presidential campaign that year had been accompanied by some of the most violent street demonstrations in the history of American elections.

His first year in office provided the President with ample further evidence of the mood of revolt in the country. In March and April 1969, student riots erupted in San Francisco, Cambridge, and Ithaca; and in Chicago, ghetto blacks battled the police in the streets. By October and November, the anti-war movement was sufficiently well organized to bring to the nation's capital the largest mass demonstrations ever witnessed in the United States. The magnitude of the unrest was immense and, just as the nation was obsessed by Vietnam, so, too, the White House grew increasingly preoccupied with the wave of domestic protest sweeping the countryside.

Presidential assistant Tom Huston and others in the White House believed that better intelligence on the plans of domestic protesters would enable the President to take more decisive action against violence-prone dissenters. In their view, serious deficiencies in intelligence collection had resulted from the decision in the mid-1960s by J. Edgar Hoover, the Director of the Federal Bureau of Investigation, to curtail certain collection techniques (particularly surreptitious entry and electronic surveillance). This view was shared widely by intelligence officers throughout the Government. Hoover went so far as to sever formal liaison ties between the FBI and the CIA in March 1970 and later with the other intelligence agencies, adding further to the widespread disenchantment with his leadership in the intelligence area.

Tom Huston grew more frustrated by the inability of the White House to anticipate the plans of domestic dissenters. He was also encouraged by William C. Sullivan, Assistant Director for Domestic

² See the main text for documentation of facts presented in the précis.

Intelligence, FBI, to help remove Hoover's restraints on intelligence collection. By the spring of 1970, Huston decided to urge senior White House personnel to have the President request a thorough review of intelligence collection methods. The President, himself greatly concerned about domestic unrest, agreed to the proposal.

On June 5, 1970, President Nixon held a meeting in the White House with the leaders of the intelligence community. The purpose of the meeting was to establish a special committee which would review methods for improving the quality of intelligence particularly on the New Left and its foreign connections. Specifically this Interagency Committee on Intelligence (Ad Hoc) was charged with the preparation of a report for the President on existing intelligence gaps, how to close them, and how to enhance coordination among the intelligence agencies.

Assigned a tight deadline, the Ad Hoc Committee staff prepared the study in a fortnight. The final report was entitled "Special Report Interagency Committee on Intelligence (Ad Hoc)" and, on June 25, 1970, it received the signatures of the four top intelligence directors: Hoover (FBI), Helms (CIA), Bennett (DIA) and Gayler (NSA).²

The enterprise was unique. It pooled the resources of the foreign-oriented CIA, DIA, and NSA with those of the domestic-oriented FBI. Many of the participants endorsed the enterprise enthusiastically, not because of an interest in better data on the New Left but because they sensed an opportunity to remove various restrictions on the collection of strictly foreign intelligence. Others participated only hesitantly and briefly, fearful of breaking through the membranes of law and propriety.

Drawing upon the Special Report, Tom Huston prepared a memorandum in early July for Presidential advisor H. R. (Bob) Haldeman under the heading "Operational Restraints on Intelligence Collection." In this memorandum Huston, who had been the White House representative at the Ad Hoc Committee meetings, recommended that the President select for implementation those options in the Special Report which would have relaxed dramatically the current restrictions on intelligence collection. The set of options recommended by Huston is defined in this particular report known as the Huston Plan, although the phrase has been generally applied to the Special Report from which Huston selected his options.^{3a}

² J. Edgar Hoover, Director, Federal Bureau of Investigation (FBI) and Chairman of the Ad Hoc Committee; Richard Helms, Director, Central Intelligence Agency (CIA); Lt. General Donald V. Bennett, USA, Director, Defense Intelligence Agency (DIA); Vice Admiral Noel Gayler (pronounced GUY-ler), USN, Director, National Security Agency (NSA).

^{3a} Since the Senate Watergate Committee revealed Nixon White House relations with the intelligence community, the term "Huston Plan" has been generally used in reference to recommendations and options described in both the Special Report of the Interagency Committee on Intelligence (Ad Hoc), June 1970, and in the memorandum from Tom Charles Huston to H. R. Haldeman, July 1970. In this report, "Special Report" refers only to the Special Report of the Interagency Committee on Intelligence (Ad Hoc), and "Huston Plan" refers to the recommendations outlined in the memorandum from Huston to Haldeman, July 1970.

Presidential approval of the options recommended by Huston would have given intelligence and counterintelligence specialists within the intelligence community authority to:

- (1) monitor the international communications of U.S. citizens;
- (2) intensify the electronic surveillance of domestic dissenters and selected establishments;
- (3) read the international mail of American citizens;
- (4) break into specified establishments and into homes of domestic dissenters; and,
- (5) intensify the surveillance of American college students.

Thus, in the summer of 1970, Tom Charles Huston believed the law had to be set aside in order to combat forces which seemed to be threatening the fabric of society. Apparently the President agreed, for on July 14, 1970, Haldeman wrote a memorandum back to Huston to inform him the President had approved his options to relax collection restraints. This decision later formed the core of Article II in the Impeachment Articles framed by the Judiciary Committee of the House of Representatives in 1974.

To implement the presidential decision, Huston next wrote a memorandum to each of the intelligence agency directors, dated July 23rd, informing them that certain restraints on intelligence collection were being removed. Writing under the heading "Domestic Intelligence," Huston invoked the authority of the President and outlined exactly which restrictions were to be lifted. This document is the second version of the Huston Plan and is similar to the first sent to the President for his approval via Haldeman in early July.

Four days later on July 27th, the Huston Plan sent to the intelligence directors was recalled by the White House "for reconsideration."

Most of these bare facts have been in the public domain since 1973, when the Senate Watergate investigation first brought to light the history of the Huston Plan. What is new as a result of this inquiry conducted by the Senate Select Committee on Intelligence is the discovery of a much more extensive degree of impropriety in the intelligence community than was initially revealed in 1973. Moreover, the Committee found instances of duplicity between the intelligence agencies and the President, and among agencies themselves.

Despite the request of the President for a complete report on intelligence problems, the Special Report of June 1970 failed to mention an ongoing CIA program that involved opening the international mail of American citizens or an on-going NSA program to select from intercepted international communications of American citizens contained on "watch lists" submitted by other agencies. The CIA mail program was clearly illegal, and the NSA program was of questionable lawfulness. Not only were laws violated, but the President was asked to consider approving the CIA mail-opening program apparently without ever being told of its existence.

Furthermore, despite the ultimate decision by the President to revoke the Huston Plan, several of its provisions were implemented anyway. The intelligence agencies contributed an increasing number of names of American citizens to the NSA "watch list" so that NSA

would provide the contents of any intercepted international communications of those citizens to the other intelligence agencies.

The number of Americans on this watch list expanded to a high point in 1973. The CIA continued its illegal program of mail opening. After the Huston Plan, the FBI lowered the age of campus informants, thereby expanding surveillance of American college students as sought through the Plan. In 1971, the FBI reinstated its use of mail covers²⁰ and continued to submit names to the CIA mail program. In December 1970, the intelligence community established—at the request of the White House—a permanent interagency committee for intelligence evaluation called the Intelligence Evaluation Committee (IEC), an entity highly comparable to one outlined in the Special Report. Finally, several of the principals involved in the Huston Plan episode continued to seek the full implementation of its provisions. Admiral Gayler and Richard Helms, for instance, urged Attorney General Mitchell on March 22, 1971, to relax the restrictions on key intelligence collection operations previously barred by the President in his ultimate rejection of the Huston Plan.

Placed in perspective, the Huston Plan must be viewed as but a single example of a continuous effort by counterintelligence specialists to expand collection capabilities at home and abroad often without the knowledge or approval of the President or the Attorney General, and certainly without the knowledge of Congress or the people. As a commentary on accountability, the lesson of the Huston Plan is obvious: often there was no accountability at all, beyond the intelligence agencies themselves. The result was a neglect of civil liberties by the intelligence collectors.

C. Issues

The case of the Huston Plan has been of particular significance because it raises a host of central issues about the American intelligence community that reappear throughout the broad range of the Committee investigation. Among these are the issues of accountability, authority, lawlessness, the quality of intelligence, and the problem of intelligence coordination.

Accountability and Authority.—Did the intelligence agencies conceal operations from the President in June 1970? From the representative of the President, Tom Huston? From the Attorney General? From the Congress? From each other? What review procedures existed to evaluate and approve the various collection techniques discussed in the Special Report? Were these procedures used?

Lawlessness.—Has the White House or the intelligence service acted in disregard for the law? Why did the intelligence community list for the President in the Special Report options which were illegal? Why did the President approve for implementation in the Huston Plan recommendations which were, in some cases, plainly illegal and, in other cases, of dubious legality? Did the intelligence professionals or Tom Huston seek legal consultation with the Justice Department, Congress, the courts, or their own legal counsel in drafting the intelligence plan?

²⁰ A "mail cover" involves a request to the Postal Service to examine the exterior of mail addressed to or from a particular individual or organization.

Quality and Coordination of Intelligence.—How justified was the dissatisfaction expressed by the Nixon Administration with the quality and coordination of intelligence on domestic dissenters in 1969 and 1970? Did the raising of barriers to intelligence collection by Hoover in the mid-1960's significantly reduce the quality of counterintelligence information? How badly were intelligence functions impaired by the severance of formal liaison ties between the FBI and the other intelligence entities in 1970?

An inquiry into the Huston Plan permits an analysis of answers to such issues found in the writings of the intelligence specialists who prepared the Special Report for the President in June 1970. Their views, reflected in the Report and subsequent memoranda, are provocative stimuli for thought, debate, and reform on the scope and method of intelligence activities within the United States.

II. BACKGROUND: A TIME OF TURBULENCE

A. Frustrations in the White House

The antiwar protests and the incidents of violence and civil disobedience which occurred throughout the country in 1969 and 1970 greatly concerned the Nixon Administration, much as it had the Johnson Administration before it. Among the responses of both administrations was the belief that hostile foreign powers must somehow be responsible for, or at least influencing, the domestic unrest. President Johnson often asked the intelligence agencies to probe the possibility of linkages between the antiwar movement and foreign influence.⁴ Not long after entering the White House, President Nixon took up the refrain.

In April 1969 the President asked his aide, John Ehrlichman, to have the intelligence community help him prepare a report on foreign Communist support of campus disorders. Evidence of a foreign connection was insubstantial; but the President and Ehrlichman were dissatisfied with the intelligence provided by the agencies, believing it to be inconclusive.⁵

Two months later, Ehrlichman assigned a young White House Counsel on Pat Buchanan's Research and Speech-Writing staff to prepare a second and more thorough report on foreign support of campus disturbances. Tom Charles Huston, lawyer and recently discharged Army intelligence officer, drew the assignment chiefly because he was interested in the subject and seemed to know more about New Left politics than anyone else on the White House staff.⁶

On June 19, 1969, Huston paid his first visit to William C. Sullivan of the FBI.⁷ Sullivan had served as the FBI's Assistant Director for Domestic Intelligence since 1961. In this position, he was responsible for counterintelligence, that aspect of intelligence activity designed to discover and destroy the effectiveness of hostile foreign intelligence services. Huston related to Sullivan the substance of a recent meeting

⁴ C. D. Brennan testimony, 9/25/75, Hearings, Vol. 2, pp. 104, 107, 135.

⁵ Tom Charles Huston deposition, 5/23/75, p. 4.

⁶ Huston deposition, 5/23/75, p. 4.

⁷ Memorandum from William C. Sullivan to Cartha DeLoach, 6/20/69. (Hearings, Vol. 2, Exhibit 5)

he had with the President. Concerned about revolutionary activities by the New Left, the President wanted to know the details on the radical movement—"especially," Sullivan remembers Huston emphasizing, "all information possible relating to foreign influences and the financing of the New Left."⁸ (To at least one intelligence official the line seemed extremely thin between the interest of President Nixon in this kind of information for the purposes of national security, on the one hand, and his interest for strictly political purposes, on the other hand.)⁹

Sullivan, replying to the White House inquiry for assistance from the FBI, told Huston that his request would have to be put in writing to Mr. Hoover, the FBI Director.¹⁰ On the next day, June 20, 1969, Huston prepared the request to be sent to Hoover. With the earlier report which the FBI had prepared for Ehrlichman in mind, Huston told the Director that the available intelligence data on Communist influence over radicals was "inadequate."¹¹ On behalf of the President, Huston wanted to know what gaps existed in intelligence on radicals and what steps could be taken to provide maximum possible coverage of their activities. Unwilling to accept earlier intelligence results which did not fit their preconceptions, the White House policymakers began to apply increased pressure on the FBI to try additional collection techniques.

Huston also gave this same assignment to the CIA, NSA, and DIA. Each of the agencies submitted its report to Huston on a June 30th deadline, with the NSA feeding its contribution through the DIA presentation. The FBI report showed a "strong reliance upon the use of electronic coverage", according to C. D. Brennan, an assistant to William Sullivan who helped prepare the response to the White House request.¹² Brennan concluded that increased coverage would be necessary "as it appears there will be increasingly closer links between [the New Left and black extremist movements] and foreign communists in the future."

The quality of the intelligence supporting these reports apparently failed to satisfy Ehrlichman and others in the White House, especially the FBI data, and the disenchantment with the intelligence agencies continued.¹³

B. The Huston-Sullivan Alliance

Throughout the rest of 1969, Huston was assigned to receive and disseminate FBI intelligence estimates sent to the White House. Contempt for these estimates was voiced by Ehrlichman, Haldeman, and Huston's colleague, Egil Krogh.¹⁴ Huston himself adopted more moderate views on the quality of Bureau intelligence reports, especially after he became more acquainted with Sullivan. Listening to the

⁸ Sullivan memorandum, 6/20/69.

⁹ Staff summary of [CIA intelligence officer] interview, 6/27/75.

¹⁰ Sullivan memorandum, 6/20/69.

¹¹ Memorandum from Tom Charles Huston to J. Edgar Hoover, 6/20/69. (Hearings, Vol. 2, Exhibit 6).

¹² Memorandum from C. D. Brennan to William C. Sullivan, 6/30/69. (Hearings, Vol. 2, Exhibit 7).

¹³ Huston deposition, 5/23/75, p. 19.

¹⁴ Huston deposition, 5/23/75, pp. 19, 21.

counterintelligence specialists made Huston sympathetic to the difficulties of intelligence collection under the restraints imposed upon the FBI by its Director. Sullivan often complained to Huston about the "question of coordination, the lack of manpower, the inability to get the necessary resources, the problems of the various restraints that were existing."¹⁵

From June 1969 to June 1970, the important relationship between Huston and Sullivan deepened into a working alliance devoted to the lowering of intelligence collection barriers. As a Central Intelligence Agency officer wrote in a memorandum for the record, "By way of background, it should be noted that Mr. Sullivan and Mr. Huston had been in frequent contact on these matters before [June 1970], because Mr. Sullivan was extremely displeased by the number of restrictions which had been placed on the FBI by Mr. Hoover."¹⁶ The two had numerous meetings and telephone conversations during this period, beginning with dialogues on the report prepared for the President in June 1969 and followed by preparations to deal with protest activity in the Washington, D.C., area.

As Huston recalls, it was during this period that he became close to Sullivan and his assistant, Brennan. "I think I had their confidence, in that I think they thought I understood a little bit about who the players were and what was going on in the country in internal security matters," Huston has testified. "And they certainly had my confidence. In fact, I do not think there was anyone in the government who I respected more than Mr. Sullivan."¹⁷

Though far different in temperament, age, and experience, Huston and Sullivan found themselves in agreement on several points. Both viewed the spiraling unrest in the country with alarm; both believed in the need for greater interagency coordination among the intelligence agencies; both thought the quality of data on domestic radicals could be vastly improved; and both agreed that most of the intelligence deficiencies could be remedied if the intelligence agencies—and particularly the FBI—would reinstate collection methods common "in the good old days," such as the use of electronic surveillance to obtain intelligence data.¹⁸

C. The "New" Hoover

Counterintelligence specialists throughout the government were dismayed when undercover FBI operations important to them, and carried out for several years, were suddenly suspended by Hoover in the 1960s.¹⁹ The new emphasis in the Kennedy Administration on investi-

¹⁵ Huston deposition, 5/23/75, p. 28; see also Tom Charles Huston testimony, 9/23/75, Hearings, Vol. 2, pp. 10-18.

¹⁶ Memorandum for the Record, James Angleton, 5/18/73, p. 2. (Hearings, Vol. 2, Exhibit 61); see also Huston deposition, 5/23/75, p. 28 and staff summary of William Sullivan interview, 6/10/75.

¹⁷ Huston, 9/23/75, Hearings, p. 16.

¹⁸ Huston deposition, 5/23/75, p. 33; Sullivan (staff summary), 6/10/75. See Sullivan's endorsement in March 1970 of a proposal advanced by Richard Helms, the CIA Director, that the FBI consider installing electronic surveillance upon CIA request, with the prior approval of the Attorney General and "on a highly relative basis." In a handwritten note, Hoover vetoed the idea. (Memorandum from William C. Sullivan to Cartha DeLoach, 3/30/70.)

¹⁹ Sullivan (staff summary), 6/10/75.

gations into organized crime and civil rights had already drained manpower from security and intelligence operations, according to an experienced FBI counterintelligence specialist.²⁰

Then by the mid-1960s, Hoover began to terminate specific security programs. In July 1966, for example, Hoover wrote on a memorandum that henceforth all FBI break-ins—or “black-bag” jobs—were to be cut off.²¹ By its refusal to use rigorously a full array of intelligence collection methods, Huston strongly believed the FBI was failing to do its job. This belief was shared widely among intelligence professionals. Helms, Bennett, and Gayler all expressed this view, as did—privately—key intelligence officers within the FBI itself.²²

Intelligence professionals were dismayed by Hoover's reluctance now to order what he had allowed before on a regular basis. Some suggested that the wiretap hearings held by Senator Edward V. Long in 1965 had turned public opinion against the use of certain intelligence-gathering techniques,²³ and that the Director was merely reading the writing on the wall. One seasoned CIA intelligence officer recalls:

Mr. Hoover's real concern was that during the Johnson Administration, where the Congress was delving into matters pertaining to FBI activities, Mr. Hoover looked to the President to give him support in terms of conducting those operations. And when that support was lacking, Mr. Hoover had no recourse but to gradually eliminate activities which were unfavorable to the Bureau and which in turn risked public confidence in the number one law enforcement agency.²⁴

Others pointed to the increased risks involved in break-ins because of new and sophisticated security precautions taken by various Bureau targets. Hoover, according to this theory, was unwilling to engage in past practices when faced with the new dangers of being caught.²⁵

The fact that Hoover reached age 70 in 1965 was also significant in the view of still others, since he then came within the law which required mandatory retirement. Henceforth, he served each year in a somewhat vulnerable position, as his Directorship was now reviewed for renewal on an annual basis. So he became, according to an FBI official, “very conscious of the fact that any incident which, within his

²⁰ Brennan, 9/25/75, Hearings, p. 101.

²¹ See also J. Edgar Hoover's handwritten notes on memorandum from William C. Sullivan to Cartha DeLoach, 7/19/66, p. 3. As early as 1963, Hoover began to oppose the broad use of domestic wiretaps. (Memorandum from William C. Sullivan to Cartha DeLoach, 3/7/70.)

²² Richard Helms deposition, 9/10/76, p. 3; General Donald V. Bennett deposition, 8/5/75, p. 12; Admiral Noel Gayler deposition, 6/19/75, pp. 6-7; Sullivan (staff summary), 6/10/75; Huston deposition, 5/23/76, p. 38. In the latter part of 1969, Hoover was advising the CIA to see the Attorney General—not him—if it wanted to expand its intelligence collection on foreigners within the United States. (Sullivan memorandum, 3/30/70.)

²³ Staff summary of (FBI intelligence officer), 8/20/76.

²⁴ James Angleton testimony, 9/24/75, Hearings, Vol. 2, pp. 60-70. In April 1970, Sullivan noted that “we have had to retrench in recent years largely as a result of the lack of support [from ‘responsible quarters’]. . . .” [Memorandum from William C. Sullivan to Cartha DeLoach, 4/14/70. (Hearings, Vol. 2, Exhibit 52).]

²⁵ Sullivan (staff summary), 6/10/76.

understanding might prove an embarrassment to the Bureau, could reflect questionably on his leadership of the Bureau."²⁶

Several highly-placed observers in the intelligence community also believed the Director was simply growing old and more wary about preserving his established reputation—a wariness nurtured by the protective instincts of his close friend and professional colleague, Clyde Tordella, who held the second highest position in the FBI. Dr. Louis Tordella, the long-time top civilian at NSA, speculated in conversations with William C. Sullivan in 1969 that Tolson probably had told Hoover something to the effect: "If these techniques ever backfire, your image and the reputation of the Bureau will be badly damaged."²⁷

Tordella, Sullivan, and others in the intelligence world grew increasingly impatient with the "new" Hoover and with what they considered to be his obstinance on the question of intelligence collection. If they were to expand their collection capabilities, as they and the White House wished, the new restrictions would have to be eased. Yet no one was willing to challenge Hoover's policy directly.

Tordella and General Marshall Carter, when he was Director of NSA, tried in 1967 and failed.²⁸ Their 15-minute appointment with Mr. Hoover in the spring of that year stretched into two-and-a-half hours. The communications experts first heard more than they wanted to about John Dillinger, "Ma" Barker, and the "Communist Threat." Finally, they were able to explain to Hoover their arguments for reinstating certain collection practices valuable to the National Security Agency. Hoover seemed to yield, telling the NSA spokesmen their reasoning was persuasive and he would consider reestablishing the earlier policies.

The news came a few days later that Hoover would allow FBI agents to resume the collection methods desired by NSA. Tordella and Carter were surprised, and gratified. Then three more days passed and the FBI liaison to NSA brought the word that Hoover had changed his mind; his new stringency would be maintained after all. William Sullivan called to tell Tordella that "someone got to the old man. It's dead." That someone, Sullivan surmised, was Tolson.

Hoover added a note to his message for Carter and Tordella, indicating that he would assist the National Security Agency in its collection requirements only if so ordered by the President or the Attorney General. Tordella, however, was reluctant to approach either. "I couldn't go to the chief law enforcement figure in the country and ask him to approve something that was illegal," he recently explained (despite the fact that he and General Carter had already asked the Director of the FBI to approve an identical policy). As for the President, this was "not a topic with which he should soil his hands." For the time being, Tordella would let the NSA case rest.

Nor was Richard Helms going to be the man to urge Hoover to relax the newly imposed restrictions. He and Hoover had little patience for one another for several years. Hoover distrusted the

²⁶ Brennan, 9/25/75. Hearings, p. 97.

²⁷ Staff summary of Louis Tordella interview, 6/16/75.

²⁸ Tordella (staff summary), 6/16/75.

"Ivy League" style of CIA personnel in general; according to Sullivan, "Ph.D. intelligence" was a term of derision Hoover liked to use against the Agency.²⁹ Gayler and Bennett, newcomers to the intelligence community, were warned immediately by their assistants not to challenge the Director of the Bureau directly on matters relating to domestic intelligence.³⁰

It would take the pressure of events, skillful maneuvering by a group of FBI counterintelligence specialists, and Huston's strategic position on the White House staff to focus the attention of the President on the problem of intelligence collection.

D. The Pressure of Events

Events encouraged action. Riots and bombings escalated throughout the country in the spring of 1970. In his official statement on the Huston Plan, issued while he was still in the White House, President Nixon recalled that "in March a wave of bombings and explosions struck college campuses and cities. There were 400 bomb threats in one 24-hour period in New York City."³¹ The explosion of a Weatherman "bomb factory" in a Greenwich Village townhouse in March particularly shocked Tom Huston and other White House staffers.³² The response of the President was to send anti-bombing legislation to the Congress.

Moreover, in the spring of 1970 the FBI severed its formal liaison to the CIA in reaction to a CIA-FBI dispute over confidential sources in Colorado.³³ Though hostility between the two agencies had surfaced before with some frequency over matters such as disagreement regarding the *bona fides* of communist defectors, this particular dispute was "the one straw that broke the camel's back."³⁴ The incident in Colorado, now known as the Riha Case, involved a CIA officer who received information concerning the disappearance of a foreign national on the faculty of the University of Colorado, a Czechoslovak by the name of Thomas Riha.

The information apparently came from an unnamed FBI officer stationed in Denver. Hoover demanded to know the identity of the FBI agent; but, as a matter of personal integrity, the CIA officer refused to divulge the name of his source. Hoover was furious with Helms for not providing the FBI with this information and, "in a fit of pique,"³⁵ he broke formal Bureau ties with the Agency.³⁶ To

²⁹ Sullivan (staff summary), 6/10/75.

³⁰ Gayler deposition, 6/10/75, p. 28; staff summary of General Donald Bennett interview, 6/5/75.

³¹ President Nixon statement, 5/22/73, *Presidential Documents*, Vol. 9, No. 21, May 28, 1973, p. 694.

³² Huston deposition, 5/28/75, p. 21.

³³ Hoover issued an order that "direct liaison" with CIA Headquarters "be terminated" and that "any contact with CIA in the future" be "by letter only." Henceforth, the position of FBI "liaison agent" to the CIA was eliminated. See also Hoover's handwritten notes on a letter from Richard Helms to J. Edgar Hoover, 2/26/70 and Sam Papich deposition, 9/22/75, p. 3.

³⁴ Angleton, 9/24/75, Hearings, pp. 83-84.

³⁵ Staff summary of [CIA intelligence officer], 2/9/76.

³⁶ By midsummer, formal Bureau liaison ties with all other intelligence agencies had been terminated as well, leaving only a staff linkage between Sullivan in the Bureau and Huston in the White House.

many observers, including Huston and Sullivan, the severance of these ties contributed to the perceived inability of the Bureau's intelligence division to perform their task adequately.

In this context, a special meeting was called on April 22, 1970, in Haldeman's office. In attendance were Haldeman, Krogh, Huston, Alexander Butterfield (who had responsibility for White House liaison with the Secret Service), and Ehrlichman. The purpose of this gathering was to improve coordination among the White House staff for contact with intelligence agencies in the government and, more importantly, as Huston remembers, to decide "whether—because of the escalating level of the violence—something within the government further needed to be done."²⁷

A decision was made. The President would be asked to meet with the directors of the four intelligence agencies to take some action that might curb the growing violence. The intelligence agencies would be asked by the President to write a report on what could be done. The meeting was planned for May. In addition, Tom Huston was given a high staff position in the White House; henceforth, he would have responsibilities for internal security affairs.²⁸ He was now in a strategic position to help Sullivan reverse existing Bureau policies.

The meeting between President Nixon and the intelligence directors was not held in May, because plans for, and the reaction to, the April 29 invasion of Cambodia in Southeast Asia disrupted the entire White House schedule. In the aftermath of this event, the meeting "became even more important," recalls Huston.²⁹ The expansion of the Indochina war into Cambodia and the shootings at Kent State and Jackson State had focused the actions on antiwar movement and civil rights activists.

As soon as the reaction to the Cambodian incursion had stabilized somewhat, the meeting between President Nixon and the intelligence directors was rescheduled for June 5th. It was to start a chain of events that would culminate in the Huston Plan.

III. THE MEETINGS: THE WRITING OF THE SPECIAL REPORT

A. *Who, What, When and Where*

Throughout June 1970 a series of seven important meetings on intelligence were held in Washington. They began on June 5th in the Oval Office with a conference between the Chief Executive and the intelligence directors, at which President Nixon requested the preparation of an intelligence report; and they ended twenty days later in Hoover's office where the directors gathered to officially sign the report for the President. In between these two meetings came a preliminary planning session in Hoover's office on June 8, and four subsequent staff meetings held at CIA Headquarters in Langley, Virginia. It was at these staff meetings that the intelligence report was formulated. (See Table I.)

²⁷ Huston deposition, 5/23/75, p. 22. H. R. Haldeman's appointment calendar for April 22, 1970, includes a list of participants at this meeting.

²⁸ Memorandum from John R. Brown III to H. R. Haldeman, 4/30/70.

²⁹ Huston deposition, 5/23/75, p. 20.

TABLE 1.—SUMMARY OF THE MEETINGS FOR THE PREPARATION OF AN INTELLIGENCE REPORT FOR THE PRESIDENT, JUNE 1970

	Meeting No.						
	1	2	3	4	5	6	7
Date of meeting.....	June 5 ¹	June 8	June 9 ²	June 12 ³	June 17 ⁴	June 23 ⁵	June 25
Location.....	W. H. Rouse President Nixon, Hoover (FBI), Holtz (CIA), Alexander Saylor (NSA), Stewart (DIA), Holloman (WH), Huston (HW), Request for Intelligence figures (JN)	FBI Hoover, Helms, Saylor, Brent, Sullivan (NSA), Sullivan (FBI), G. Moore (FBI)	CIA Helms, Angleton (CI) Bullfinch	JN Cregar (FBI), Lien- bosent Colonel Downs (Army), Hutton	CIA Colonel Keller (AF), D. Moore (FBI), Captain Ribenburgh (Navy)	CIA Sullivan (DIA), Sullivan, G. Moore (FBI)	CIA Hoover, Helms, Saylor, Brent, Sullivan (NSA), Sullivan (FBI), Brennan
Principal participants.....							
Purpose of meeting.....		Planning session.....	Agenda setting.....	Review of working papers.....	1st draft.....	2d draft.....	Signing ceremony.....

¹ Robert French, an advisor to the President, also attended this meeting, but just as a holdover from a previous meeting invited to stay on by the President.

² Each of these participants listed attended 1 or more of the 4 staff meetings held at the Central Intelligence Agency.

Note: Helms, D. Moore, and Keller attended only the 1st CIA meeting. A few other "observers" not listed above attended 1 or more of the last 3 sessions at the CIA, including C. D. Brennan and Fred J. Cassidy of the FBI.

B. At the White House, June 5th: The President Requests an Intelligence Report

Huston was responsible for arranging the conference between President Nixon and the intelligence leaders, and had briefed the President in advance. The briefing was based on a two-page working paper that Huston prepared, relying on his conversations with the considerably more experienced Sullivan. As Sullivan's assistant, C. D. Brennan, recalls: "Mr. Huston did not have that sufficient in-depth background concerning intelligence matters to be able to give that strong direction and guidance," and therefore Sullivan was the "principal figure" behind the preparations leading to the Huston Plan.⁴⁰ Sullivan's role seemed to be to tell Huston what were *desirable* changes in the intelligence services, Huston was to try to make what was desirable *possible*, through his position as the White House man charged with responsibility for domestic intelligence.

The two-page working paper outlined for the President items he might discuss with the intelligence directors: the increase in domestic violence; the need for better intelligence collection; a report to be prepared for the President on radical threats to the national security and gaps in current intelligence on radicals; and the use of an interagency staff to write the report.⁴¹

Before the meeting, the President telephoned Huston to say he wanted Hoover to be the chairman of the committee responsible for the intelligence report. (The President had met privately with the FBI Director the day before.⁴²) Huston took the opportunity to urge the President to appoint Sullivan as the chairman of the staff subcommittee.⁴³

The June 5th meeting in the Oval Office lasted less than an hour. Reading from a talking-paper prepared for the session by Huston, the President first emphasized the magnitude of the internal security problem facing the United States. The paper read:

We are now confronted with a new and grave crisis in our country—one which we know too little about. Certainly hundreds, perhaps thousands, of Americans—mostly under 30—are determined to destroy our society. They find in many of the legitimate grievances of our citizenry opportunities for exploitation which never escape the attention of demagogues. They are reaching out for the support—ideological and otherwise—of foreign powers and they are developing their own brand of indigenous revolutionary activism which is as dangerous as anything which they could import from Cuba, China, or the Soviet Union.⁴⁴

⁴⁰ Brennan, 9/25/75, Hearings, pp. 105-106.

Huston stated that the paper for the President "clearly reflected Bill's [Sullivan's] views." (Huston deposition, 5/23/75, p. 32.)

⁴¹ Huston deposition, 5/28/75, p. 32.

⁴² Attachment to memorandum from J. Bruce Whelhan to Ron Ziegler, 1/29/74, p. 2, from the Nixon Papers.

⁴³ Huston deposition, 5/28/75, p. 38.

⁴⁴ Talking Paper prepared for President Nixon, 6/5/70.

Among the chief factors complicating the internal security problem, according to the paper, were the people of the United States: "Our people—perhaps as a reaction to the excesses of the McCarthy era—are unwilling to admit the possibility that 'their children' could wish to destroy their country. . . . This is particularly true of the media and the academic community." The solution to the problem of domestic instability could be found in better intelligence: "The Government must know more about the activities of these groups, and we must develop a plan which will enable us to curtail the illegal activities of those who are determined to destroy our society."

The President then expressed his dissatisfaction with the quality of intelligence he had been receiving on the protest movement.⁴⁵ "Based on my review of the information which we have been receiving at the White House," read his prepared notes, "I am convinced that we are not currently allocating sufficient resources within the intelligence community to the collection of intelligence data on the activities of these revolutionary groups." "To obtain the 'hard information' he wanted, the President told the directors they were to serve on a special committee to review the collection efforts of the intelligence agencies in the internal security area. Based on this review, they were expected to recommend steps which would strengthen the capabilities of the government to collect intelligence on radicals."⁴⁷

Departing from his prepared notes, the President next mentioned a meeting he had had with President Calder of Venezuela earlier that morning.⁴⁸ President Calder had complained to him about the high degree of violence and unrest in the Caribbean, noting that some Latin American nation believes U.S. nationals—specifically black radicals—were fomenting this unrest. President Nixon asked Helms if he had any information on the relationship between black militancy in the United States and unrest in the Caribbean. Helms said he did not, but that he would investigate the matter for the President. (The CIA gave the President a report on this subject, via Huston, on July 6, 1970.⁴⁹)

The President paused at this point in the meeting to ask Hoover and Helms if there were any problems in coordination between their respective agencies. Both assured him there were not.⁵⁰ Neither, apparently, wished to discuss the Riha Case with other disagreements.

⁴⁵ General Bennett recalls that "the President chewed our butts." [Bennett (staff summary), 6/5/75.] The Director of DIA took notes on "the meeting, and thought he remembered President Nixon turning on a tape recorder sitting on his desk at the beginning of the session. No other participant recalls this taping, and no such tape was found in the search through the papers of President Nixon by his lawyers, at the request of the Select Committee.

⁴⁶ Talking Paper prepared for President Nixon, 6/5/70. In fact, however, this matter had received considerable attention from the intelligence agencies. See, for instance, the testimony of FBI intelligence officer Brennan, 9/25/75. Hearings, Vol. 2, pp. 104, 107, 185; and the Select Committee Report on CIA Project CHAOS.

⁴⁷ Talking Paper prepared for President Nixon, 6/5/70.

⁴⁸ Huston deposition, 5/23/75, pp. 35-36.

⁴⁹ Report to the President by the Commission on CIA Activities within the United States, June 1975, p. 122, note.

⁵⁰ Huston deposition, 5/23/75, p. 36.

President Nixon concluded the meeting by directing the intelligence directors to work with Tom Huston on the report they were to prepare. Huston would "provide the subcommittee with detailed information on the scope of the review which I have in mind," said the President.⁵¹ He also asked Hoover to serve as chairman of the committee, which was to be known as the Interagency Committee on Intelligence (Ad Hoc). Finally, he recommended that Hoover name his Assistant Director for Domestic Intelligence, William Sullivan, to be responsible for the staff workgroup for the actual drafting of the Special Report. Hoover agreed to be chairman and to place Sullivan in charge of the inter-agency committee staff.⁵²

The meeting in the Oval Office took place on a Friday. Sullivan's first assignment from Hoover was to set up a preliminary planning session to be held in Hoover's office the following Monday.

C. In Hoover's Office, June 8th: A Preliminary Disagreement

At the Monday meeting, Hoover reminded the other intelligence directors that the President was dissatisfied with the current state of intelligence on domestic radicals, and stressed his own alarm at links between protestors in this country and Cuba, China, and the Iron Curtain countries.⁵³ He said that President Nixon wanted an historical summary of unrest in the country up to the present, and he spoke of the establishment of an interagency staff committee to meet the President's objectives. Sullivan would be chairman of the staff group, and its first meeting would occur the next afternoon, Tuesday, June 9th, at the Central Intelligence Agency.

Hoover asked Richard Helms first, and then the others, if they had anything to add; none of the intelligence directors did. Then came Tom Huston's turn to respond. The Director had misunderstood the intent of the President, said the White House aide. The report was not to be an historical summary at all. It was to be a current and future threat assessment, a review of intelligence gaps, and a summary of options for operational changes.⁵⁴

Admiral Gayler of NSA then spoke up: it was his understanding, too, that the committee was to concentrate on the shortcomings of current intelligence collection. General Bennett, Gaylor, Helms, and Huston proceeded to discuss their impressions of what the President really meant.⁵⁵ President Nixon wanted the pros and cons of various collection methods spelled out clearly in the form of an options paper, emphasized the young White House staffer. The President preferred reports presented in this form to assure that decisions were not made at a lower level, with the President merely the recipient of a *fait accompli*. All the intelligence directors, except Hoover, supported the objectives articulated by Huston.

Hoover—who was apparently irritated by this turn of events⁵⁶ finally agreed and the meeting ended abruptly. He asked the other directors to give this matter the highest priority and to assign their top experts to the project. After the meeting, Hoover confided to Wil-

⁵¹ Talking Paper prepared for President Nixon, 6/5/70.

⁵² Huston deposition, 5/23/75, p. 34.

⁵³ Sullivan (staff summary), 6/10/75.

⁵⁴ Huston, 9/23/75, Hearings, p. 4.

⁵⁵ Sullivan (staff summary), 6/10/75.

⁵⁶ William C. Sullivan deposition, 11/1/75, p. 121.

liam Sullivan that he believed Huston was a "hippie intellectual."⁵⁷ Sullivan's own views on the importance of this undertaking were reflected in a statement which he prepared for Hoover as background information for this meeting. "Individually, those of us in the intelligence community are relatively small and limited," he wrote. "Unified our own combined potential is magnified and limitless. It is through unity of action that we can tremendously increase our intelligence gathering potential, and, I am certain, obtain the answers the President wants."⁵⁸

D. The Langley Meetings: Drafting the Intelligence Report

The Ad Hoc Committee staff met the next day at CIA Headquarters in Langley, Virginia, for the first of four drafting discussions.⁵⁹

The First Langley Meeting: Setting the Agenda

At the first staff meeting Huston summed up for the participants the objectives of the President, using a "Top Secret" outline he had prepared.⁶⁰ Under "Purposes," the outline noted that the Committee was to prepare an analysis on the internal security threat; identify gaps in the present collection efforts; recommend steps to close these gaps; and review the status of interagency coordination. Under "Procedures," Huston had written: "Operational details will be the responsibility of the chairman. However, the scope and direction of the review will be determined by the White House member." In other words, Sullivan would provide the guiding expertise to lay out what collection barriers the counterintelligence experts wanted removed; Huston would make sure the Committee did not stray from the goal of suggesting options to remove these barriers. The "Objectives" of the Committee included "maximum use of all special investigative techniques. . . ."

After the staff members had read the outline, Huston stressed to the group the President's deep concern about New Left anarchism and whether the intelligence agencies were doing all they could to cope with the problem. He said, as he had in Hoover's office the day before, the President wanted to see the pros and cons of any restraints so that he could decide what action to take.

Following the presentation by Huston on the President's requirements for the Committee, Sullivan asked for comments regarding the level of classification for papers or reports prepared by the Committee. The classification "Top Secret" was adopted. Heims also recommended the maintenance of a "Bigot List" reflecting the names of all persons who would have knowledge of the work of the Committee.

⁵⁷ Sullivan (staff summary), 9/23/76.

⁵⁸ Attachment to William Sullivan memorandum to Cartha DeLoach, 6/6/70. (Hearings, Vol. 2, Exhibit 9.)

⁵⁹ The FBI served as secretariat for these meetings, with William Creegar keeping the minutes. Summaries of the sessions are found in a series of FBI memoranda: Memorandum from William Sullivan to Cartha DeLoach, 6/10/70 (Hearings, Vol. 2, Exhibit 11); Memorandum from William Sullivan to Cartha DeLoach, 6/15/70 (Hearings, Vol. 2, Exhibit 13); Memorandum from William Sullivan to Charles Tolson, 6/29/70 (Hearings, Vol. 2, Exhibit 17); Memorandum from William Sullivan to Charles Tolson, 6/29/70 (Hearings, Vol. 2, Exhibit 18); and Interagency Committee on Intelligence (ICI) minutes, 6/19/70 (Hearings, Vol. 2, Exhibit 14).

⁶⁰ Memorandum, "USIB Subcommittee on Domestic Intelligence," undated. A summary of the first session is found in Sullivan memorandum, 6/10/70.

The Committee turned next to the heart of the matter: the methodology of intelligence collection. Going around the table, the various representatives discussed restraints upon the ability of their agencies to develop the intelligence necessary to satisfy the concern of the President over "New Left" dissent and its possible foreign support. It was agreed that members would bring to the next session a list of those restrictions which hampered their intelligence-collection activities. Again Huston urged them to remember the President's interest in the pros and cons of each restriction.

Buffham of NSA called attention to the outline circulated by Huston. In its first paragraph the outline called upon the Committee "to define and assess the existing internal security threat." The NSA representative said that such a study would require immediate attention from the counterintelligence specialists from each member organization. Huston suggested the FBI prepare a threat assessment from the domestic point of view and CIA from the foreign point of view. All members concurred, and Sullivan asked the FBI and CIA to have the papers ready for distribution at the next meeting to allow consideration by the full committee as soon as possible.

Thus, the agenda was set. The work group would begin by examining restraints on intelligence collection and preparing a threat assessment. Members were cautioned to maintain tight security, to conceal the existence and activities of the Committee. To assist this objective, the group agreed to continue meeting at CIA Headquarters. The Committee adjourned until the following Thursday, June 12th. (See the Chronology in the Appendix.)

The Second Langley Meeting: Early Discussions

At the next gathering of the work-group at CIA Headquarters on Friday of the same week, agreement was reached to follow an outline prepared by Huston and the FBI to guide the writing of the report for the President.⁶¹ The report would cover three specific areas: (1) an assessment of the current internal security threat and the likelihood of future violence; (2) a listing of the current restraints on intelligence collection; and (3) an evaluation of interagency coordination within the intelligence community.

Just as he had reminded Hoover that Monday in the Director's office, Huston again made the point that the threat assessment was not to be merely an exercise in history writing. The President wanted an up-to-date analysis of the "New Left" threat and an estimate on future problems posed by the radicals.

For the meeting each agency had prepared a paper on intelligence collection restraints. Huston found the preliminary drafts "totally unacceptable," according to CIA representative James Angleton, and said that the group "was not being responsive to the President's needs."⁶² As exemplified by the FBI submission, Huston wanted the restraints clearly identified, the pros and cons listed, and a format provided whereby the President could indicate whether he wished the restraints to be maintained, relaxed, or that he required more information to make a decision. The entire range of collection options were to be listed, whether the Committee thought they were preposterous or

⁶¹ The second Langley meeting is summarized in Sullivan memorandum, 0/15/70.

⁶² Angleton, 0/24/70, Hearings, p. 57.

desirable. The representatives were asked by Huston to follow the FBI model for their subsequent drafts.

As for the third portion of the report, opinion among the participants was generally in favor of the establishment of a permanent interagency committee on intelligence. It would evaluate intelligence, coordinate operations, prepare ongoing threat assessments on domestic protest, and develop new policies.

The idea of a permanent committee was strongly endorsed by Huston, who said the President would probably favor its creation. Privately, Huston thought this was "the most important recommendation."⁶³ Among the participating agencies only the CIA questioned the need for a permanent committee, recommending instead the establishment of a temporary group first to see if it would work.⁶⁴ The Agency's hesitancy may have reflected a reluctance to confront Hoover with such a blatant entry into the domestic intelligence area, largely the private preserve of the FBI in the past.

The FBI threat-assessment paper, entitled "Defining and Assessing the Existing Internal Security Threat—Domestic," was circulated at this second meeting and, at Huston's suggestion, was tabled to allow each member time to review its contents carefully for discussion at the third session. The CIA paper, captioned exactly like the Bureau's except for the substitution of "Foreign" for "Domestic," was not yet ready; but Richard Ober, the primary CIA drafter, said it would be circulated in time for review by everyone before the third meeting.⁶⁵

The Committee agreed to have the FBI prepare a first draft of the entire report to be circulated on June 16th. T. J. Smith and Richard Cotter of the Bureau Research Division were assigned by Sullivan to write the drafts: "everyone was to provide the Bureau with inputs on or before June 15th. The third meeting of the Committee was set for Wednesday, June 17th.

The Third Langley Meeting: Reviewing the First Draft

This third session of the Ad Hoc Committee staff was the most important. From it emerged the specific options which the group would lay before the President. The first two sessions had been preparatory; now the Committee was ready to examine thoroughly a first draft of the report.⁶⁷ The members dissected the draft in minute detail, spending all afternoon and part of the evening going over it. The FBI and CIA reports on "Defining and Assessing the Existing Internal Security Threat" had been incorporated into the draft, as had the pros and cons of various restraints inhibiting intelligence collection.

Starting at the beginning of the draft, the Committee first went step-by-step through the section on the internal security threat facing the United States. The military representatives criticized the CIA and FBI data and interpretations on militant "New Left" groups, black

⁶³ Huston (staff summary), 9/22/75.

⁶⁴ Huston, 9/23/75, Hearings, pp. 18-19; staff summary of James Angleton interview, 9/12/75.

⁶⁵ Ober was also in charge of the controversial CIA "Operation CHAOS" to investigate foreign contacts with American dissidents. See the Select Committee Report on Operation Chaos.

⁶⁷ Staff summary of Richard Cotter interview, 9/15/75; Sullivan (staff summary), 8/10/75.

⁶⁸ For a review of the third ICI meeting, see the Interagency Committee on Intelligence minutes, 8/19/70.

extremists, the intelligence services of Communist countries, and other revolutionary groups (like the Puerto Rican nationalist extremists). Eventually, however, virtually unanimous agreement was reached on this threat assessment section.

The next section of the report on restraints was much more complex and open to controversy. Huston made it clear early in the review of this "Restraints" section that no individual agency would be allowed to make a separate recommendation, conclusion, opinion, or observation. The report had to be a joint effort, and only options were to be listed for the President. The sole exception would be the possibility of recommending to the President the establishment of a permanent interagency group or committee to evaluate intelligence problems related to internal security. While the discussion on the options was lengthy and punctuated by disagreements, the end result was a first draft of the intelligence report which had the support of all the participating agencies.

The Fourth Langley Meeting: The Final Draft

The fourth and final meeting of the ICI staff was held on June 23rd and was devoted to improving the first draft and polishing it into a final report.⁶⁸ Between the third and fourth sessions, Sullivan and the other representatives from the various agencies showed the first draft to their superiors. While the other directors saw no significant problems with the draft, Hoover balked. He would not sign the report, he informed Sullivan. It would have to be completely rewritten to eliminate the extreme options in the "Restraints" section and the recommendation for the permanent interagency committee would have to be removed also.⁶⁹

Hoover explained his objections, as Sullivan recalls, in this way:

For years and years and years I have approved opening mail and other similar operations, but no. It is becoming more and more dangerous and we are apt to get caught. I am not opposed to doing this. I'm not opposed to continuing the burglaries and the opening of mail and other similar activities, providing somebody higher than myself approves of it. . . . I no longer want to accept the sole responsibility—the Attorney General or some high ranking person in the White House—then I will carry out their decision. But I'm not going to accept the responsibility myself anymore, even though I've done it for many years.

Number two, I cannot look to the Attorney General to approve these because the Attorney General was not asked to be a member of the ad hoc committee. I cannot turn to the ad hoc committee to approve of these burglaries and opening mail as recommended here. The ad hoc committee, by its very nature, will go out of business when this report has been approved.

That leaves me alone as the man who made the decision. I am not going to do that any more . . . I want you to prepare a detailed memorandum and set forth these views. . . .⁷⁰

⁶⁸ The last meeting of the ICI staff is summarized in the Sullivan memorandum, 6/24/70.

⁶⁹ Sullivan (staff summary), 6/10/70.

⁷⁰ Sullivan deposition, 11/1/76, pp. 122-24.

Sullivan pointed out to Hoover that it would not be entirely fair or reasonable to rewrite completely a report which had been approved already by everyone else. Instead the Director might wish to note his objections in the form of footnotes to the report, if he felt he needed to as was commonly done on interagency intelligence papers. Hoover finally agreed. Sullivan personally added the footnotes to the draft, as requested by Hoover, and had his secretary type up the new version to be presented at the fourth Langley meeting.⁷¹

Sullivan distributed this second draft of the report at the final Langley meeting. It bore Hoover's footnotes conspicuously, and the participants realized that Hoover had intervened.⁷² (The first draft had been written in the Bureau Research Section and brought to the third Langley meeting without being shown to Hoover.⁷³) Col. Downie, the Army representative, remembers smiling as he read the second draft; he found it amusing that Sullivan had "caten humble pie." Hoover had "put the brakes on," Downie figured, and now the Committee was "back to square one."⁷⁴

Only one day separated the last meeting at Langley from the official signing of the Special Report, which was to take place in Hoover's office on June 25th. It left little time for the directors of CIA, DIA, and NSA to react to the footnotes.⁷⁵ Certainly, Hoover did not call to

⁷¹ Sullivan deposition, 11/1/75, pp. 124-125.

⁷² Sullivan (staff summary), 6/10/75. Sullivan also remembers the presence of an Intelligence Review Board in the draft, which was designed to monitor problems within the intelligence side of government. He remembers Hoover demanding its removal at this stage, and Sullivan complied. No one else remembered this Review Board concept.

⁷³ Cotter (staff summary), 9/15/75.

⁷⁴ Staff summary of Col. John Downie interview, 5/18/75.

⁷⁵ The footnote aspect of the Special Report remains a mystery. A Sullivan memorandum dated June 24, 1970, discussing the results of the final ICI staff meeting, notes that the Hoover footnotes were included in the final draft distributed on June 23rd to all the participants. (Sullivan memorandum, 6/24/70.) Yet, Adm. Gayler now denies knowing about these notes until the actual signing ceremony in Hoover's office on June 25th. [Gayler (staff summary) 6/19/75.] Gen. Bennett goes so far as to claim the footnotes were added after the signing ceremony. [Bennett (staff summary) 6/6/75.] Going still further, Col. Downie, the Army representative, believes the directors signed an innocuous report, then the signature page was attached later—without the knowledge of the other directors—to a report which included all the extreme options appearing in the Special Report as we know it today. [Downie (staff summary) 5/18/75.] This extreme version was then sent to the President via Tom Huston.

What seems most likely to have happened regarding the footnotes is as follows: Sullivan had told Huston early in the sessions at CIA Headquarters that it would be a major error to show Hoover the final draft of the report at the same time the other directors saw it. He would just "whack it away, and will have no chance," Sullivan said. (Huston deposition, 5/23/75, p. 85.)

Instead, Sullivan decided to have the Ad Hoc staff first approve a draft (which they did at their third meeting). The members were then to get their respective agency hierarchies to approve it, also. This was accomplished directly after the third meeting. Helms, Bennett, and Gayler reviewed this first draft and found it generally acceptable. Bennett had it approved by his and Gayler's superiors at the Defense Department. Finally, once the representatives of the various agencies had reported back that their directors had given their approvals (around June 20th) Sullivan approached Hoover, saying: "Here is the report that has been approved by all the other agencies, and we need your approval." [Sullivan (staff summary), 6/10/75.]

Sullivan hoped that, faced with this united front, Hoover would go along. [Sullivan (staff summary), 6/10/75; Huston deposition, 5/23/75.]

forewarn them of his action. When their representatives brought news of what the FBI Director had done, Gayler and Bennett were furious. Both called Huston immediately.⁵⁶

They were "mad as the dickens," Huston recalls. The White House aide tried to calm them and urged them to "live with" Director Hoover's additions to the Report.

The military intelligence director persisted. Hoover had no right to add his own personal observations; and if he could do it, so could they. Bennett and Gayler were particularly annoyed that Hoover had objected to specific operations, when what was listed were *options* for the President, not recommendations. Hoover's critical footnotes made the options appear to be recommendations which the other directors automatically supported. "They either wanted another meeting among the Directors [to] demand that the footnotes be withdrawn, or else they wanted to insert their own footnotes saying they favored certain things," recalls Huston.⁵⁷ The White House staffer was:

. . . very much interested in not creating any difficulties with Mr. Hoover that could, at all, be avoided, and I told both General Bennett and Admiral Gayler that I thought it was unnecessary for them to take such action; that in my cover memorandum to the President, I would set forth their views as they had expressed them to me, and that I would appreciate it if they would not raise the question with the Director.⁵⁸

Helms has testified that he does recall the episode.⁵⁹

At the time, Huston appeared unconcerned about Hoover's notations. One participant at the final session thought Huston would achieve his ends anyway. "He seemed to exude the attitude that 'What the White House wanted, the White House would get,'" recalls a Navy observer. "If Hoover didn't want to play, it would be played some other way."⁶⁰

Tordella of NSA, too, remembers that Sullivan was not particularly upset by Hoover's move. With Helms, Bennett, and Gayler still in support of the Special Report, Sullivan believed President Nixon would accept the options on relaxing restraints anyway.⁶¹

The final meeting at Langley was thus spent in the review of this second draft. In addition to the footnotes, some changes were made. Diction which Hoover had found perjorative was removed ("procedures" replaced "restrictions" in one segment, for instance); and references to CIA-FBI liaison difficulties was excised, as was the concept of a full-time working staff for the recommended permanent interagency committee. The essential alteration, however, was the addition of Hoover's footnotes.⁶² The next step was to have the intelligence directors sign the report.

⁵⁶ Huston deposition, 5/23/75, p. 67.

⁵⁷ Huston, 9/23/75, Hearings, p. 7.

⁵⁸ Huston, 9/23/75, Hearings, p. 7.

⁵⁹ Helms deposition, 9/10/75, p. 40.

⁶⁰ Staff summary of B. Willard interview, 5/16/75.

⁶¹ Tordella (staff summary), 6/10/75.

⁶² Sullivan memorandum, 6/24/70.

E. The Signing Ceremony

The meeting to review and sign the Special Report began at 3:00 promptly on the afternoon of June 25th.⁵³ The Director of the FBI opened the meeting by commending the members for their outstanding effort and cooperative spirit displayed in preparing the Special Report. Hoover went through his normal routine on such occasions. He started with page one of the Report and said "Does anyone have any comment on Page 1?" He then proceeded to go through the 43-page document, page by page, in this fashion.

For each page, Hoover addressed his question to each Director and to Tom Huston. Hoover displayed his contempt for Huston by addressing him with different names: "Any comments, Mr. Hoffman? Any comments, Mr. Hutchinson?" and so on, getting the name wrong six or seven different ways.⁵⁴

Huston hoped the meeting would end before Gayler or Bennett raised the subject of the footnotes. "We got down to about 'X' number of pages and, finally, it was just too much for Admiral Gayler," Huston recalls, "and so, sure enough, there he goes. He started in about a footnote, I think."⁵⁵ Bennett joined Gayler in querying the Director about the footnotes.⁵⁶

Hoover was surprised. It was not customary to respond critically during the FBI Director's pro forma readings. Huston looked toward Helms, who spoke up and managed to smooth the waters to some degree.⁵⁷ However, Hoover was clearly upset,⁵⁸ and hurried through the rest of the Report. The four directors then signed the document. Hoover reminded them to have all working copies of the Report destroyed, thanked them for their participation, and dismissed the Committee. The Interagency Committee on Intelligence (Ad Hoc) had completed its assignment.

IV. AN INTELLIGENCE REPORT FOR THE PRESIDENT: THE OPTIONS

The next day, June 26th, the Special Report was delivered to Huston at the White House for the President. For each of the intelligence collection methods, the President was presented the option of (1) continuing the present restrictions, (2) asking for more information, or (3) accepting one of the relaxations listed below.⁵⁹ Hoover's notes were typed in beneath the options for each collection technique.

The first category of options written into the report dealt with communications intelligence.

A. Category One: Communications Intelligence⁶⁰

—Present interpretation should be broadened to permit and program for coverage by NSA of the communications of U.S. citizens using international facilities.

⁵³ Sullivan memorandum, 6/24/70.

⁵⁴ Sullivan (staff summary), 6/10/75.

⁵⁵ Huston deposition, 5/28/75, p. 70.

⁵⁶ Bennett (staff summary), 6/5/75.

⁵⁷ Huston deposition, 5/28/75, p. 70.

⁵⁸ Sullivan (staff summary), 6/10/75.

⁵⁹ Special Report, Interagency Committee on Intelligence (Ad Hoc), 6/70 cited in this report as Special Report. (Hearings, Vol. 2, Exhibit 1). See note 3a.

⁶⁰ The "and" in the following two paragraphs is probably an original error and should read "a".

—Present interpretation should be broadened to permit and program for coverage by NSA *at the request of the FBI* of the communications of U.S. citizens using international facilities. [Original emphasis. No footnotes were added to this section.]

The National Security Agency pressed for the inclusion of these options in an effort to obtain a clarification of their role in targeting against communications traffic involving U.S. revolutionary leaders and organizations.⁹¹ At the time, NSA believed that its authority precluded production and dissemination of intelligence from international communications between U.S. citizens and barred specific targeting against the communications of U.S. nationals.⁹²

At the heart of this option lay the NSA "Watch List." In 1967, the NSA began to receive from the FBI, the CIA, and the Secret Service the names of individuals whom these agencies viewed as threats to American security. The NSA was supposed to select, from international communications, messages which were sent to or from these individuals—approximately 1,650 of whom were U.S. citizens.⁹³ (The present director of the NSA does not know whether or not the President knew about the NSA Watch List.⁹⁴) Unsure about the legality of the practice, the June meetings were viewed by NSA as a chance to obtain more explicit approval to do what, in fact, they were already doing; that is, selecting the international messages of specified U.S. nationals for transcription and dissemination to other intelligence agencies. Explicit approval from the President for this practice would have permitted an expansion of the American names on the Watch List.

B. Category Two: Electronic Surveillances and Penetrations

—Present procedures should be changed to permit intensification of coverage of individuals and groups in the United States who pose a major threat to the internal security.

—Present procedures should be changed to permit intensification of coverage of foreign nationals [classified] of interest to the intelligence community.

Note: The FBI does not wish to change its present procedure of selective coverage on major internal security threats as it believes this coverage is adequate at this time. The FBI would not oppose other agencies seeking authority of the Attorney General for coverage required by them and thereafter instituting such coverage themselves.

As the Special Report stated: "NSA has been particularly hard-hit by this limitation."⁹⁵

The CIA had a strong interest in this option, too. In the mid-1960s, Helms had approached Hoover to increase the number of telephone

⁹¹ Special Report, p. 23.

⁹² Special Report, p. 23.

⁹³ General Lew Allen testimony, 10/28/75, Hearings, Vol. 5, p. 12. See also NSA Report, Sec. II: "NSA's Monitoring of International Communications."

⁹⁴ Allen, 10/28/75, hearings, p. 28.

⁹⁵ Special Report, p. 20.

taps to assist the CIA in its missions.⁹⁶ For similar reasons, the CIA now joined the NSA in its quest for increased electronic coverage. As a former high-level CIA counterintelligence officer has noted, "Thousands of man-hours would have been saved if the Bureau had been willing to place taps on [selected] telephones."⁹⁷

Among the arguments presented in the Special Report in favor of the increased use of this technique was that "every major intelligence service in the world, including those of the Communist bloc, use such techniques as an essential part of their operations; and it is believed the general public would support their use by the United States for the same purpose."⁹⁸ Yet, five years earlier, Hoover had cut back on these forms of surveillance in large part for the very reason that he believed the American public would no longer tolerate their broad use.⁹⁹

C. Category Three: Mail Coverage

—Restrictions on legal coverage should be removed.

—Present restrictions on covert coverage should be relaxed on selected targets of priority foreign intelligence and internal security interest.

Note: The FBI is opposed to implementing any covert mail coverage because it is clearly illegal and it is likely that, if done, information would leak out of the Post Office to the press and serious damage would be done to the intelligence community. The FBI has no objection to legal mail coverage providing it is done on a carefully controlled and selective basis in both criminal and security matters.¹⁰⁰

As the draft explained, two types of mail coverage exist: routine coverage, which involves recording information from the face of envelopes, and covert (or "sophisticated") coverage which entails the examination of contents within a sealed envelope. The former is legal, the latter is not. "*Covert coverage has been discontinued,*" the President was told in the Report, and one option placed before him read: "Present restrictions on covert coverage should be relaxed on selected targets of priority foreign intelligence and internal security interest." [Emphasis added.]¹⁰¹

In fact, "covert coverage" had *not* been discontinued. The CIA had used covert mail programs to examine mail sent between the United States and Communist countries since 1953. It was the judgment of some Agency officials that, although warrantless mail opening was illegal, the good that flowed from them in terms of anticipating threats to the United States made it worthwhile.¹⁰² The objective was "to try to uncover foreign involvement in this country,"¹⁰³ but, in the retro-

⁹⁶ Sullivan (staff summary), 6/10/75.

⁹⁷ Staff summary of James Angleton interview, 7/10/75.

⁹⁸ Special Report, p. 27.

⁹⁹ Sullivan (staff summary), 6/10/75.

¹⁰⁰ This represented a change in Hoover's position, though the Bureau would not actually engage in this legal coverage again until 1971. Earlier in the history of the Bureau (prior to 1964), it had been a common technique.

¹⁰¹ Special Report, p. 31.

¹⁰² See, for example, Angleton, 9/24/75, Hearings, p. 61. See also Mail Report.

¹⁰³ Angleton, 9/24/75, Hearings, p. 70.

spective view of the CIA officer in charge of the program, the covert mail programs were "very much an error."¹⁰⁴ Since 1958, the FBI had also known of these programs and, in fact, had contributed names to the CIA's "Watch List".¹⁰⁵

D. Category Four: Surreptitious Entry

—Present restrictions should be modified to permit procurement of vitally needed foreign [classified] material.

—Present restrictions should also be modified to permit selective use of this technique against other urgent and high priority internal security targets.

Note: The FBI is opposed to surreptitious entry . . . [classified].

This option reflected the use of breaking and entering, and burglary, by Government agents. Of all the agencies involved in these meetings, NSA was the most interested in removing the restraints on surreptitious entries.¹⁰⁷ Millions of dollars could be saved by such operations, Buffham argued at the Langley meetings.¹⁰⁸

One option for the President proposed that "present restrictions should also be modified to permit selective use of this technique against other urgent and high-priority internal security targets."¹⁰⁹ In short, entries were to be made against the "New Left" subversives discussed in the Special Report—if the President gave his approval to this option.

E. Category Five: Development of Campus Sources

—Present restrictions should be relaxed to permit expanded coverage of violence-prone campus and student-related groups.

—CIA coverage of American students (and others) traveling abroad or living abroad should be increased.

Note: The FBI is opposed to removing any present controls and restrictions relating to the development of campus sources. To do so would severely jeopardize its investigations and could result in charges that investigative agencies are interfering with academic freedom.¹¹⁰

The intelligence professionals complained at the drafting sessions that it was difficult to gather data on student subversives when no secondary school students and no one below the legal age in colleges and universities were allowed to work for the intelligence agencies as sources.¹¹¹ Among other reasons for relaxing these restraints was the argument that campus violence occurs quickly and with little planning. To anticipate this kind of disorder, the intelligence community had to have youthful informants. Hoover had taken the position, however,

¹⁰⁴ Angleton, 9/24/75, Hearings, p. 64.

¹⁰⁵ Angleton, 9/24/75, pp. 77-78; Mall Report.

¹⁰⁶ Sullivan (staff summary), 6/10/75; see also memorandum from William Sullivan to Cartha DeLoach, 6/19/70. (Hearings, Vol. 2, Exhibit 15).

¹⁰⁷ Staff summary of Bevison Buffham interview, 5/10/75.

¹⁰⁸ Special Report, p. 38.

¹⁰⁹ In the fall of 1970, the FBI reduced the age limits on campus informants from 21 to 18.

¹¹¹ Sullivan (staff summary), 6/10/75.

that using informants below age twenty-one was too risky; they were less reliable, and legal complications could arise with their parents and the school administration.¹¹²

According to Huston, the FBI members of the ICI ad hoc staff hoped to reduce the age level of informants to eighteen through the Special Report; but, if they said so directly and explicitly, "it would make Mr. Hoover mad." Therefore, they "couched this recommendations in terms that 'campus informant coverage shall be expanded'"¹¹³ The Special Report noted that, in this area, "the military services have capabilities which could be of value to the FBI."¹¹⁴

F. Category Six: Use of Military Undercover Agents

—The counterintelligence mission of the military services should be expanded to include the active collection of intelligence concerning student-related dissident activities, with provisions for a close coordination with the FBI.

—No change should be made in the current mission of the military counterintelligence services; however, present restrictions should be relaxed to permit the use of trusted military personnel as FBI assets in the collection of intelligence regarding student-related activities.

Note: The FBI is opposed to the use of any military undercover agents to develop domestic intelligence information because this would be in violation of the Delimitations Agreement. The military services, joined by the FBI, oppose any modification of the Delimitations Agreement which would extend their jurisdiction beyond matters of interest to the Department of Defense.

The only specific views on intelligence operations which Huston's superiors at the White House discussed with him before the June meetings had to do with the military. Haldeman expressed to Huston the President's belief that "we should use the military services in collection of domestic intelligence."¹¹⁵ The vast resources of the military, it was felt, could effectively supplement the intelligence gathering capabilities of the other agencies.

At the third Langley meeting, Huston therefore told the group that the President wanted a list of options on the use of the military for domestic intelligence collection. The military voiced its opposition to the idea, however, and the FBI was also against it.¹¹⁶ The Committee wanted to eliminate the option from the report. Huston himself thought the proposal was inappropriate, but he insisted the option be included, since Haldeman and the President had explicitly requested it.¹¹⁷

The response of the Committee, in Huston's opinion, was to write a set of options in favor of using the military which were "very flimsy

¹¹² Sullivan (staff summary), 0/10/75.

¹¹³ Huston, 0/23/75, Hearings, p. 23-24.

¹¹⁴ Special Report, p. 35.

¹¹⁵ Tom Charles Huston deposition, 5/22/75, pp. 30-40; see also Huston, 0/23/75, Hearings, pp. 17, 35.

¹¹⁶ Huston, 0/23/75, Hearings, p. 35.

¹¹⁷ Huston, 0/23/75, Hearings, p. 35.

and they would not convince anyone." In the Report, six "Advantages of Maintaining Restrictions" were listed, compared to just three "Advantages of Relaxing Restrictions."¹¹⁸ The military representatives stressed, in their discussion of these options, that disclosure of military involvement in this kind of counterintelligence work "would certainly result in considerable adverse publicity."¹¹⁹

In fact, at that time Army officials were preparing for their appearance before the Senate Subcommittee on Constitutional Rights,¹²⁰ which was then investigating the question of military surveillance of civilians in the United States. This investigation serves as an important backdrop for understanding the marked caution of the military intelligence representatives during the sessions at Langley.

The Special Report included two more sets of options for the President's consideration:

G. Category Seven: Budget and Manpower

—Each agency should submit a detailed estimate as to projected manpower needs and other costs in the event the various investigative restraints herein are lifted.

—Each agency must operate within its current budgetary or manpower limitations, irrespective of action required as result of this report.

H. Category Eight: Permanent Interagency Committee

—An ad hoc group consisting of the FBI, CIA, NSA, DIA, and the military counterintelligence agencies should be appointed and should serve as long as the President deems necessary, to provide evaluations of domestic intelligence, prepare periodic domestic intelligence estimates, and carry out the other objectives indicated above.

—A permanent committee consisting of the FBI, CIA, NSA, DIA, and the military counterintelligence agencies should be appointed to provide evaluations of domestic intelligence, prepare periodic domestic intelligence estimates, and carry out the other objectives indicated above.

Note: The FBI is opposed to the creation of a permanent committee for the purpose of providing evaluations of domestic intelligence, however the FBI would approve of preparing periodic domestic intelligence estimates.

In the first draft of the Report, the following options were also included, though both were removed in the writing of the final draft:¹²¹

¹¹⁸ Special Report, pp. 87-88.

¹¹⁹ Special Report, p. 88.

¹²⁰ "Federal Data Banks, Computers, and the Bill of Rights," Part II, *Hearings before the Subcommittee on Constitutional Rights*, 2/81/71 through 3/17/71.

¹²¹ Sullivan memorandum, 6/24/70. Another option—to permit the use of truth serum—went into an early rough draft in the Bureau. It was devised by Bureau staffers in hopes that Hoover would remove it from the final report but, as a compromise, keep in all the other options. Sullivan, however, decided to remove this option before the first draft ever left the Bureau to be read by the ICI staff at Langley. [Cotter (staff summary), 6/15/75.]

I. Category Nine (Removed): Surreptitious Optical Surveillance

According to intelligence specialists, this phrase simply refers to taking photographs of people without their knowledge. The discussion of options under this heading was finally discarded from the report, evidently because the members knew it was already being done and saw no point in asking the President for his views on the subject.¹²²

J. Category Ten (Removed): Investigations of Diplomatic Personnel

When conducting "investigations" of foreign diplomats (often a euphemism for recruiting an agent) within the United States, the FBI traditionally clears the probe with the State Department before proceeding. This is done to make sure the Bureau is not entering into a case that, for some reason, might be peculiarly sensitive, and disclosure could have international repercussions detrimental to U.S. interests.

On occasion, some members of the Bureau have had investigations blocked or delayed by the State Department for reasons which they viewed as unsatisfactory. The question was consequently raised at the Langley meetings as to whether these clearances from State were really useful, or merely represented a further obstacle to intelligence work. This was a subject of great interest to many of the counterintelligence specialists who viewed the State Department skeptically. As one remarked candidly, "Our roles are often conflictual; they're always trying to 'build bridges'—detente and all that stuff—while we're trying to catch spies."¹²³ On balance, though, opinion within the group favored keeping the clearance procedure and avoiding a dispute with State.

These first eight categories of options, then, constituted the vital core of the special intelligence report for the President, from which the Huston Plan would be extracted. Behind them lay a variety of forces and pressures which had preceded and shaped the Report, but which were nowhere revealed in its formal language. (These hidden dimensions are explored in Section VII below.)

In the weeks that followed the official signing of the Special Report, Tom Charles Huston recommended to the President those options from the Report which promised to eliminate most thoroughly the existing restrictions on intelligence collection. These recommendations became known as the Huston Plan.

V. THE HUSTON PLAN

A. Huston Plan, Phase One: Advice for the President

For several weeks after the signing of the Special Report on June 25th, it appeared to the intelligence agencies that their efforts had come to nothing. No response had come from the White House, and Sullivan began to believe the whole idea had "died aborning."¹²⁴

Yet, in the White House, Huston was working toward the next step. He had succeeded in obtaining the four signatures from the chiefs of the intelligence community, even Hoover's. Now he wanted to get the

¹²² Staff summary of [FBI counterintelligence expert], 8/20/75.

¹²³ [FBI counterintelligence expert] (staff summary), 8/20/75.

¹²⁴ Sullivan (staff summary), 6/10/75.

President to approve the strongest options in the Special Report designed to remove the existing restrictions on intelligence collection. If he were successful here, the intelligence collectors would then have all the authority they desired.

Soon after the June 26th delivery of the Special Report to the White House, Huston began to prepare carefully a memorandum addressed to Haldeman on what the President ought to do with the Report. The memo, dated simply "July 1970" but written in the early days of July, was entitled "Domestic Intelligence Review." It was a synopsis of the Ad Hoc meetings held during the month of June. Huston began with a sharp diatribe against Hoover, the "only stumbling block" in the proceedings (in contrast Helms had been "most cooperative and helpful").¹²⁵ The FBI Director "refused to go along with a single conclusion drawn or support a single recommendation made," until Huston successfully opposed Hoover's attempt to rewrite the Report. (In this description of the confrontation with Hoover, Sullivan was never mentioned.)

Hoover then "entered his objections as footnotes to the report," Huston wrote further. These objections were "generally inconsistent and frivolous."¹²⁶ To avoid "a nasty scene" between the military directors and Hoover over the footnotes, Huston assured Admiral Gayler and General Bennett that their objections "would be brought to the attention of the President." Turning to the substantive work of the Ad Hoc group, Huston emphasized to Haldeman that everyone who participated was dissatisfied with current intelligence collection procedures—except Hoover. Even the FBI participants, according to Huston, "believe that it is imperative that changes in operating procedures be initiated at once." Furthermore, all members felt it "imperative" to establish a permanent interagency committee for intelligence evaluation—again with the exception of the FBI Director.

Should the President decide to lift the current restrictions, Huston recommended a face-to-face "stroking session" with Hoover in which the President explained his decision and indicated "he is counting on Edgar's cooperation. . . ." In this way, Huston continued, "We can get what we want without putting Edgar's nose out of joint." Though the Director was "bullheaded as hell" and "getting old and worried about his legend," he would "not hesitate to accede to any decision the President makes," predicted Huston. Attached to this optimistic appraisal were Huston's specific recommendations on the decisions Nixon should make concerning the lifting of operational restraints.

The Recommendations

The recommendations in this first version of the so-called Huston Plan were written under the heading "Operational Restraints on Intelligence Collection."¹²⁷ Huston offered advice on each operational section of the Report, and each recommendation was buttressed by a one-to-several paragraph rationale. The recommendations comprising

¹²⁵ Memorandum from Tom Charles Huston to H. R. Haldeman, 7/70. (Hearings, Vol. 2, Exhibit 2). See footnote 8a.

¹²⁶ By "inconsistent," Huston is apparently referring to Hoover's willingness to permit the exercise of collection techniques in the past which he would not permit in 1970.

¹²⁷ Attachment to Huston memorandum, 7/70.

Huston's plan, as presented to the President, are outlined below with the exception of the rationales which concluded chiefly that (1) coverage was inadequate, and (2) all the methods had been used before with great productivity.

*Communications Intelligence. Recommendation:*¹²⁸

Present interpretation should be broadened to permit and program for coverage by NSA of the communications of U.S. citizens using international facilities.

Electronic Surveillances and Penetrations. Recommendation:

Present procedures should be changed to permit intensification of coverage of individuals and groups in the United States who pose a major threat to the internal security.

ALSO, present procedures should be changed to permit intensification of coverage of foreign nationals [classified].

Mail Coverage. Recommendation:

Restrictions on legal coverage should be removed.

ALSO, present restrictions on covert coverage should be relaxed on selected targets of priority foreign intelligence and internal security interest.

Surreptitious Entry. Recommendation:

Present restrictions should be modified to permit procurement of vitally needed foreign [classified] material.

ALSO, present restrictions should be modified to permit selective use of this technique against other urgent and high priority internal security targets.

Development of Campus Sources. Recommendation:

Present restrictions should be relaxed to permit expanded coverage of violence-prone campus and student-related groups.

ALSO, CIA coverage of American students (and others) traveling or living abroad should be increased.

Use of Military Undercover Agents. Recommendation:

Present restrictions should be retained.

Beyond the lowering of specific operational restraints, Huston made two further recommendations.

Manpower and Budget. Recommendation:

Each agency should submit a detailed estimate as to projected manpower needs and other costs in the event the various investigative restraints herein are lifted.

Measures to Improve Domestic Intelligence Operations.

Recommendation:

A permanent committee consisting of the FBI, CIA, NSA, DIA, and the military counterintelligence agencies should be appointed to provide evaluations of domestic intelligence.

¹²⁸The "and" instead of "a" error from the Special Report is repeated in Huston's recommendation.

prepare periodic domestic intelligence estimates, and carry out the other objectives specified in the report.

In his discussion of these methods, Huston raised—and quickly dismissed—questions about the legality of two collection techniques in particular: covert mail cover and surreptitious entry. “Covert [mail] coverage is illegal, and there are serious risks involved,” he wrote. “However, the advantages to be derived from its use outweigh the risks.”¹²⁹

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,” he concluded, “it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion.”¹³⁰

In brief, the President’s aid was asking the highest political figure in the nation to sanction lawlessness within the intelligence community. This attitude toward the law was not his alone; it was shared by certain representatives of the intelligence community as well. The recommendations made to the President, says Huston, “reflected what I understood to be the consensus of the working group.”¹³¹ Huston agreed with this consensus.

Sullivan has explained his view—not necessarily shared by others—that he and the rest of the intelligence officers attending the Langley meetings “had grown up ‘topsy-turvy’ during the War—a time when legal aspects were far less important than getting a job done against the enemy.” Moreover, they shared the belief that intelligence work is “something different,” somehow falling outside the normal realm of the law. The business required one to engage sometimes in activities that would not always be acceptable to others. That many of the men had served in the agencies operating overseas, unfettered by the legal system of the United States, may have contributed to a disregard for the “niceties of the law” in discussions of intelligence collection against alleged subversives. Besides, the KGB did not play by a legal rule-book.¹³²

For Huston, the only Ad Hoc Committee member too young to have grown up “topsy-turvy” during the War, the reasons for government lawlessness were different. Viewed as a conservative intellectual of sorts among his colleagues in the White House, he had spun a theory on the New Left which led him inexorably toward helping to unbridle the intelligence collectors. Huston believed that the real threat to internal security was repression. The New Left was capable of producing a climate of fear that would bring forth every repressive demagogue in the United States. These demagogues were not in the government, but out in the country; the intelligence professionals, if given

¹²⁹ Attachment to Huston memorandum, 7/70, p. 2.

¹³⁰ Attachment to Huston memorandum, 7/70, p. 8. In using the word “burglary,” Huston 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. 60.)

¹³¹ Huston deposition, 5/22/75, p. 8.

¹³² Sullivan (staff summary), 6/10/75.

the chance, could protect the American people from these latent forces of repression by monitoring the New Left and providing information to stop the violence before it began. The Huston Plan would halt repression on the Right by stopping violence on the Left.

Huston saw his own role as the Administration's coordinator of all internal security matters. After writing his recommendations for the President, he sent a memorandum to Richard Helms, dated July 9. All future matters relating to domestic intelligence or internal security were to be sent to the "exclusive attention" of Tom Huston, since "the President is anxious to centralize the coordination at the White House of all information of this type. . . ." Huston ended: "Dr. Kissinger is aware of this new procedure."¹³⁴

Huston then waited expectantly for the decision of the President. It came via Haldeman on July 14: The President had approved the recommendations.¹³⁵ Former President Nixon has since stated, "My 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."¹³⁶

Huston was pleased. There was only one problem: President Nixon had told Haldeman he was too busy to meet again with Hoover and the other intelligence directors on this subject, as Huston had recommended. He preferred "that the thing simply be put into motion on the basis of this approval." Huston felt a certain uneasiness. He particularly wanted the President to invite Hoover in to give him the decision directly, "because it seemed to me it would be easier maybe to get him to accept it."¹³⁷ Nevertheless, Huston proceeded to draw up the official memorandum which would carry the news to the intelligence directors. The "Huston Plan" was now presidential policy.

B. Huston Plan, Phase Two: The President's Policy

Just over a week later, on July 23, 1970, Huston finished the official version of this presidentially-ratified plan and sent it on its way via courier to Hoover, Helms, Bennett and Gayler.¹³⁸ With only minor changes, this official intelligence plan repeated the recommendations made by Huston to the President earlier in the month. Now it began with the preface: "The President has carefully studied the special report of the Interagency Committee on Intelligence . . . and made the following decisions." Huston had selected the most extreme options posed by the counterintelligence experts and the President of the United States had agreed with those recommendations.

Henceforth, *with presidential authority*, the intelligence community could at will intercept and transcribe the communications of Americans using international communications facilities; eavesdrop

¹³⁴ Memorandum from Tom Charles Huston to Richard Helms, 7/9/70. (Hearings, Vol. 2, Exhibit 10).

¹³⁵ Memorandum from H. R. Haldeman to Tom Charles Huston, 7/14/70. (Hearings Vol. 2, Exhibit 3.) See also H. R. Haldeman testimony, Senate Select Committee on Presidential Campaign Activities, Hearings, 7/31/73, Vol. 8, p. 3080.

¹³⁶ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 10, 3/19/76, p. 13.

¹³⁷ Huston, 9/28/76, pp. 23-24.

¹³⁸ Memorandum from Tom Charles Huston to Intelligence Directors, 7/23/70.

from near or afar on anyone deemed to be a "threat to the internal security;" read the mail of American citizens; break into the homes of anyone tagged as a security threat; and monitor in various ways the activities of suspicious student groups. Only the restraints on military intelligence collection were preserved, no doubt because the military was dead set against further involvement in the face of pending Congressional hearings on military surveillance of civilians.

The official memorandum to the intelligence directors further noted that on August 1, 1970, the permanent inter-agency committee on intelligence evaluation would be established, with the FBI Director as chairman (a palliative, according to Huston, to the defeated Hoover, meaning little, since he could easily be outvoted in the Committee). Huston would be the "personal representative to the President," with complete White House staff responsibility for domestic intelligence and internal security affairs. By September 1, 1970, just before the reconvening of students on campuses across the country, the agencies were expected to report on the steps they had taken to implement these decisions.

Reaction to the Huston Plan was mixed among the intelligence directors, ranging from surprise to shock and rage. Admiral Gayler was "surprised" that the President had selected the most extreme options.¹³⁹ General Bennett was pleased to hear about approval of a permanent committee for intelligence evaluation (he thought the FBI needed help in this area), but thought everything else in the memorandum was largely irrelevant to the mission of the Defense Intelligence Agency.¹⁴⁰ According to his assistant, James Stilwell, the two joked about Huston's signature on the plan. "They passed that one down about as low as it could go," they agreed, concluding that President Nixon and Haldeman "didn't have the guts" to sign it themselves. To them, the use of Huston as a possible scapegoat indicated "what a hot potato it was."¹⁴¹

The Director of the FBI "went through the ceiling," Sullivan recalls.¹⁴² Hoover and his assistant, Cartha DeLoach, walked immediately to Attorney General Mitchell's office nearby. Mitchell was totally surprised. It was the first time he had heard of the Ad Hoc Committee, let alone the Special Report or Huston's memorandum. His immediate reaction was to agree with Hoover: the illegalities spelled out in the memorandum could not be presidential policy. As Mitchell noted in Select Committee public hearings, individual items in the Huston Plan had been suggested to him before July 1970, and had been turned down. With the Huston Plan, "the aggregate was worse than the individual parts that had been suggested."¹⁴³ Moreover, he was "very much opposed to the thought of surreptitious entry, the mail covers, and all of the other aspects of it that were involved at the particular time."¹⁴⁴ Hoover later told Sullivan that the Attorney

¹³⁹ Gayler deposition, 6/19/75, p. 42.

¹⁴⁰ Bennett (staff summary), 6/5/75.

¹⁴¹ Staff summary of James Stilwell interview, 5/21/75.

¹⁴² Sullivan (staff summary), 6/10/75.

¹⁴³ John Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 123.

¹⁴⁴ John Mitchell testimony, Senate Select Committee on Presidential Campaign Activities, Hearings, 7/10/73, Vol. 4, pp. 1603-1604.

General was angry he had been by-passed by Huston and others in the White House on this whole affair.¹⁴⁵

Mitchell told the Director to "sit tight" until President Nixon returned from San Clemente; the Attorney General would then discuss the whole affair with the President.¹⁴⁶ Hoover returned to his office and wrote a memorandum to Mitchell, re-emphasizing his strong opposition to the recommendations in this Huston Plan. In the memo, the FBI Director said he would implement the Plan but only with the explicit approval of the Attorney General or the President.

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.¹⁴⁷

Richard Helms eventually went to see the Attorney General about the matter on July 27, 1970. The Director of Central Intelligence was greatly surprised to discover the Attorney General had heard of the Special Report and the Huston Plan only in the last couple of days from Hoover. "We had put our backs into this exercise," Helms told Mitchell, "because we had thought [the Attorney General] knew all about it and was behind it."¹⁴⁸ As Mitchell had advised Hoover, so too he told Helms to sit tight.¹⁴⁹

VI. REVISION OF THE HUSTON PLAN: A TIME FOR RECONSIDERATION

A. *The President Takes a Second Look*

When President Nixon returned from the Western White House, one of his first conversations on July 27 was with the Attorney General. The message Mitchell delivered was, according to his testimony, that "the proposals contained in the [Huston] Plan, in toto, 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."¹⁵⁰

As former President Nixon now recalls, "Mr. Mitchell informed me that Mr. Hoover, Director of the FBI and Chairman of the Interagency Committee on Intelligence, disagreed with my approval of the Committee's special report."¹⁵¹ President Nixon was surprised by Hoover's objections because he had not voiced any reservations to

¹⁴⁵ Sullivan (staff summary), 6/10/76.

¹⁴⁶ Memorandum for the record from Richard Helms, 7/28/70. (Hearings, Vol. 2, Exhibit 20.) See also Mitchell, 10/24/75, Hearings, p. 128, where he testified that he "made known to the President any disagreement with the concept of the plan and recommended that it be turned down."

¹⁴⁷ Memorandum from J. Edgar Hoover to John Mitchell, 7/26/70.

¹⁴⁸ Helms memorandum, 7/28/70.

¹⁴⁹ Richard Helms testimony, 10/22/75, Hearings, Vol. 4, p. 89.

¹⁵⁰ Mitchell, 10/24/75, Hearings, p. 128.

¹⁵¹ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 17, 8/9/76, p. 11.

the President when the Committee met "a few days earlier."¹⁵² The Attorney General told the President that Hoover believed "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," former President Nixon recalls. "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."¹⁵³

Mitchell also indicated, according to the former President, 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."¹⁵⁴ Based on his conversation with Mitchell, President Nixon decided to revoke his approval originally extended to the Committee's recommendations.

Warned by Sullivan of the chain of events between Hoover and Mitchell and the impending visit to the President by the Attorney General, Huston was expecting a call from Haldeman, which came later that day.¹⁵⁵ The Attorney General had come to the White House to talk about Huston's decision memorandum, Haldeman said. The President had decided to revoke the memorandum immediately, so that he, Haldeman, Mitchell, and Hoover could "reconsider" the recommendations.

The Attorney General did not take it upon himself to investigate the past illegalities referred to in the Huston Plan memorandum brought to his attention by Hoover. The following exchange ensued on this point during public hearings:

Q. You do agree, do you not, that looking at the document, dated June 1970, it does reveal that in the past, at least, mail had been opened, does it not?

Mr. Mitchell. I believe that is the implication, yes.

Q. And it does state in the document that the opening of mail is illegal, does it not?

Mr. Mitchell. I believe that with reference to a number of subjects were illegal and I think opening of mail was one of them.

Q. All right. Then based upon your knowledge from an examination of the document, that in the past at least illegal actions involving the opening of mail that had taken place, did

¹⁵² Apparently the former President is referring to the June 5, 1970 meeting with the intelligence directors in the White House; if so, his statement is puzzling, since the recommendation had not been drafted at the time. If he is referring to another meeting with Hoover, no other record of such a meeting after June 5 has been found. Most likely the former President had the June 5 meeting in mind where Hoover indeed made no objections, for there were no recommendations to object to at that time.

¹⁵³ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 17, 3/9/76, p. 11.

¹⁵⁴ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 17, 3/9/76, p. 12.

¹⁵⁵ Huston, 9/28/75, Hearings, p. 24.

you convene a grand jury to look into the admitted acts of illegality on behalf of some intelligence services?

Mr. Mitchell. I did not.

Q. And why not?

Mr. Mitchell. I had no consideration of that subject matter at the time. I did not focus on it and I was very happy that the plan was thrown out the window, without pursuing any of its provisions further.

Q. Are you now of the opinion that if you had had time to focus on the matter then it would have been wise to convene some investigation within the Department to determine what had happened in the past?

Mr. Mitchell. I believe that that would be one of the normal processes where you would give it special consideration and see where it led to, what the statute of limitations might have been and all of the other factors you consider before you jump into a grand jury investigation.

Q. Excepting those point, do you agree that you should have at least considered the matter?

Mr. Mitchell. I think if I had focused on it I might have considered it more than I did.¹⁵⁵

Upset, angered, and embarrassed about having to recall his memorandum, Tom Huston walked to the White House Situation Room.¹⁵⁷ The Sit Room, "mailbox" of the White House, was the location where, among other things, couriers came and went. Huston went directly to the Chief of the White House Situation Room with the presidential order to rescind the decision memorandum of July 23, which had gone through there on its way to the intelligence directors. Huston was intense and agitated, the manager of the Sit Room recalls, and mentioned something about Hoover having "pulled the rug out" from under him.¹⁵⁸ The Sit Room Chief contacted the CIA, NSA, DIA, and the FBI to have the memoranda returned. By the close of business on the next day, July 28, each agency had complied. From markings on the memoranda, it was clear the agencies had removed the staples and photocopied the document for their records.¹⁵⁹

Though Huston had suffered a major setback, he was not going to yield easily. On August 3, he went to Haldeman's office and tried to persuade him to convince the President that the objections raised by Hoover had to be overridden. He urged a meeting between Haldeman, Mitchell, and Hoover.¹⁶⁰ Two days later in anticipation of this meeting, Huston put his views down on paper for Haldeman.

The memorandum, written under the title "Domestic Intelligence," ran five pages and was extremely critical of the FBI Director.¹⁶¹ Huston first reminded Haldeman that all the agencies and all of Hoover's own staff on the ICI (Ad Hoc) supported the options

¹⁵⁵ Mitchell, 10/24/75, Hearings, p. 146.

¹⁵⁷ Huston deposition, 5/23/75, p. 56.

¹⁵⁸ Staff summary of interview with the 1970 Chief of the White House Situation Room, 7/1/75.

¹⁵⁹ 1970 Chief of Situation Room (staff summary), 7/1/75.

¹⁶⁰ Huston deposition, 5/23/75, p. 62.

¹⁶¹ Memorandum from Tom Charles Huston to H. R. Haldeman, 8/5/70.

selected by the President. Only Hoover dissented. "At some point, Hoover has to be told who is President," Huston wrote. "He has become totally unreasonable and his conduct is detrimental to our domestic intelligence operations. . . . If he gets his way it is going to look like he is more powerful than the President."

Huston further warned that "all of us are going to look damn silly in the eyes of Helms, Gayler, Bennett, and the military chiefs if Hoover can unilaterally reverse a presidential decision based on a report that many people worked their asses off to prepare and which, on its merits, was a first-rate, objective job." Tom Charles Huston was "fighting mad," for "what Hoover is doing here is putting himself above the President."

Two more days elapsed and, on August 7, 1970, Huston sent a second, terser note to Haldeman.¹⁶² The FBI Director had left for the West Coast on vacation just as the new school year was about to open; across the country student violence loomed as a real possibility. Huston again urged Haldeman to act: "I recommend that you meet with the Attorney General and secure his support for the President's decision that the Director be informed that the decisions will stand, and that all intelligence agencies are to proceed to implement them at once." However, by this time, Huston recalls, "I was, for all intents and purposes, writing memos to myself."¹⁶³ Haldeman took no action. Hoover had won the battle.

The reasons for Hoover's victory were many but, Huston believes, having the support of the Attorney General was a large plus.¹⁶⁴ The President had a high regard for John Mitchell. When both Mitchell and Hoover agreed in their strong objections to the Plan, Nixon no doubt saw little point in continuing the effort.

Looking back, Sullivan sees other factors which worked in Hoover's favor as well. He believes the Chief Executive buckled under the pressure of the FBI Director partly because President Nixon and Hoover went back a long way, considered themselves old friends, and still socialized together frequently; and partly because the President owed his 1950s reputation as a staunch anti-Communist to Hoover. "Of course," Sullivan adds, "Hoover had his files, too."¹⁶⁵ The Director had another ace in the hole: he could always have had the Huston recommendations leaked, bringing the enterprise to a sudden halt.

Moreover, Huston notes that the opinions of Helms, Gayler, and Bennett were far less weighty than Hoover's.¹⁶⁶ Neither President Nixon nor Haldeman were well acquainted with Gayler or Bennett; and Helm's relationship with the White House tended to be precarious, Huston believes, "in view of the problems that he had with Mr. Kissinger on foreign intelligence estimates." Finally, Huston recalls, "neither the President nor Mr. Haldeman had, in my judgment, any sensitivity to the operational aspects of intelligence collection."¹⁶⁷

¹⁶² Huston memorandum, 8/5/70.

¹⁶³ Huston (staff summary), 5/22/75.

¹⁶⁴ Huston (staff summary), 5/22/75.

¹⁶⁵ Sullivan (staff summary), 6/10/75.

¹⁶⁶ Huston deposition, 5/23/75, p. 78.

¹⁶⁷ Huston deposition, 5/23/75, p. 77.

B. Huston Leaves the White House

The memoranda written by Huston went unanswered throughout the month of August. Shortly after writing his August 7th memorandum, Huston was informed by Haldeman that John Dean was taking over his responsibilities at the White House for domestic intelligence. Huston would be on Dean's staff. As Dean recalls, "Huston was livid."¹⁶⁵

John Dean had come to the White House on July 27th from the Justice Department, where he had worked with and impressed Mitchell for his skillful handling of negotiations with demonstrators for parade permits and other matters. He had no intelligence experience.

Dean realized that Huston was in an awkward situation. He asked Huston on August 10, 1970, what he wished to do while on Dean's staff. "Well, I'm a speechwriter," Huston replied.¹⁶⁶ In the following months, Huston would do practically whatever he felt like doing: "sending an occasional memo to the President or Haldeman on intelligence matters;¹⁶⁷ writing speeches for Pat Buchanan; continuing to circulate the daily FBI intelligence reports in the White House; reviewing conflict-of-interest clearances; prodding the Internal Revenue Service to investigate New Left organizations and their supporters;¹⁷² and writing a lengthy history of Vietnam bombing negotiations.

Huston often spoke to his counterintelligence associates on a special scrambler phone which he kept hidden in his office in a safe.¹⁷³ Not until February 2, 1971, did Dean inform the CIA that, henceforth, he would be the White House contact on domestic intelligence matters, rather than Huston.¹⁷⁴

Huston occasionally sent further memoranda to Haldeman, again urging him to encourage the President to relax intelligence collection restraints. On August 17, 1970, for example, Huston complained that Hoover "has made no effort to remove the restrictions on development of informant coverage which currently exist," despite the President's oral request to Hoover on August 16¹⁷⁵ to intensify the investigation of extremist organizations. "We need changes at the operating level, not merely at the FBI," concluded Huston, "but throughout the intelligence community."¹⁷⁶ Finally, Huston found time to relate briefly to his new supervisor the saga of the Huston Plan. Dean had the distinct impression that Huston wanted to become the domestic equivalent of Henry Kissinger.¹⁷⁷

Growing ever more disenchanted with his position and with Nixon's policies, Huston resigned from the White House staff on June 13, 1971,

¹⁶⁵ Staff summary of John Dean interview, 8/7/75.

¹⁶⁶ Dean (staff summary), 8/7/75.

¹⁶⁷ On Huston's activities during this period, see Huston deposition, 5/23/75.

¹⁶⁸ For example, on Arab terrorism, see memorandum from Tom Charles Huston to President Richard Nixon, 8/12/70.

¹⁶⁹ Memorandum from Tom Charles Huston to H. R. Haldeman, 9/21/70. (Hearings, vol. 2, Exhibit 62).

¹⁷⁰ Dean (staff summary), 8/7/75. See also John Dean testimony, Senate Watergate Hearings, June 28, 1978, Vol. 4, pp. 1446-1456.

¹⁷¹ Richard Ober handwritten notes on Huston memorandum, 7/9/70.

¹⁷² Memorandum from J. Edgar Hoover to President Richard Nixon, 8/17/70.

¹⁷³ Memorandum from Tom Charles Huston to H. R. Haldeman, 8/17/70.

¹⁷⁴ Dean (staff summary), 8/7/75.

and returned to Indiana to practice law.¹⁷⁸ He continued to serve as a consultant to the White House, finishing his study of Vietnam negotiations. On October 7, 1972, he was named a member of a Census Bureau Advisory Committee on privacy and confidentiality.

Huston's original ally, William Sullivan, managed to remain on good terms with J. Edgar Hoover, at least for a few months—he was reprimanded by the Director for letting the Ad Hoc staff get out of hand,¹⁷⁹ but nonetheless was promoted to Number 3 man in the FBI.

Sullivan's fall from power began several months after the Huston Plan, with his October 12, 1970 speech at Williamsburg, Virginia, where his answers to questions were critical of Hoover's ability to understand the changing nature of the U.S. internal security threat. Sullivan told his audience that the race riots and student upheaval had nothing to do with the Communist Party. Rather, they were attributable to problems within the American social order and to the Vietnam War. When he returned to Washington, Sullivan remembers, "all hell broke loose."¹⁸⁰ Hoover told him he had given "the wrong answers. . . . How do you expect me to get my appropriations," said the Director of the FBI, "if you keep downgrading the [Communist] Party." The breach widened, and finally, a year later on October 1, 1971, Hoover had Sullivan literally locked out of his office for good.

VII. THE HIDDEN DIMENSIONS OF THE HUSTON PLAN

A. Duplicity

Looking back on the summer of 1970, Tom Huston observes that the atmosphere of duplicity was the most astonishing aspect of the meetings at Langley. On June 5, the President had sat across the table from the directors of the major intelligence agencies and asked them for a comprehensive report on intelligence collection methods against domestic radicals. Instead, President Nixon and his representative were victims of deception. "I didn't know about the CIA mail openings, I didn't know about the COINTELPRO Program [an FBI internal security operation]," Huston says. "These people were conducting all of these things on their own that the President of the United States didn't know about. . . . In retrospect, we look like damned fools."¹⁸¹ In interrogatory answers, the former President stated that he had no knowledge the CIA mail-opening program was already in existence before June 1970; he was aware, however, that the intelligence community read the outside of envelopes of selected mail.¹⁸²

Huston believes that part of the problem was bureaucratic game-playing: ". . . the Bureau had its own game going over there. They didn't want us to know; they didn't want the [Justice] Department to know; they didn't want the CIA to know." And, across the Potomac, "the CIA had its own game going. They didn't want the Bureau to know."¹⁸³

¹⁷⁸ Huston deposition, 5/28/75, pp. 88-84.

¹⁷⁹ Sullivan (staff summary), 6/10/75.

¹⁸⁰ Sullivan deposition, 11/1/75, pp. 85-80.

¹⁸¹ Huston deposition 5/22/75, p. 50.

¹⁸² Answers of Richard M. Nixon to Senate Select Committee Interrogatories, 8/9/75, pp. 1, 4, 5 and 1^d.

¹⁸³ Huston deposition, 6/22/75, pp. 50-51.

Agencies concealed programs from one another partly out of "inter-agency jealousies and rivalries," Huston speculated.¹⁸⁴ They did not want to have revealed the fact that they were working on each other's "turf." For example, "Mr. Hoover would have had an absolute stroke if he had known that the CIA had an Operations CHAOS going on."¹⁸⁵ Huston has suggested another possible motivation for concealment:

I think the second thing is that if you have got a program going and you are perfectly happy with its results, why take the risks that it might be turned off if the President of the United States decides he does not want to do it; because they had no way of knowing in advance what decision the President might make. So, why should the CIA . . . the President may say hell no, I don't want you guys opening any mail. Then if they had admitted it, they would have had to close the thing down.¹⁸⁶

The unfortunate end result of these concealments between agencies was the fact that the President did not know what his intelligence services were doing either.

The language in the Special Report concerning the CIA covert mail project is a clear example of the concealment of an illegal intelligence collection operation from the President. The section of the report dealing with mail plainly stated that "covert coverage has been discontinued."¹⁸⁷ In truth, however, the CIA program to read the international mail of selected American citizens and foreigners was continuing to operate at the time of the Langley meetings.

Director Helms thinks he told Attorney General Mitchell about the CIA mail program; and he is uncertain whether President Nixon knew about it—he personally never informed the President.¹⁸⁸ Mitchell has denied that Helms told him of a CIA mail-opening program,¹⁸⁹ and has testified further that the President had no knowledge of the program either, "at least not as of the time we discussed the Huston plan."¹⁹⁰

Helms' suggested that Huston may not have been told about the mail-opening program at any of the working group meetings because he was the White House contact man for "domestic intelligence. We thought we were in the foreign intelligence field." Whatever the explanation, however, it is clear that the President was given a misleading document.

James Angleton, who served as Chief of the CIA Counterintelligence Staff from 1954 to 1974 and was in charge of the CIA covert mail program from 1955 to its termination in 1973, had other explanations for the misleading language on the mail program in the Special Report.

Angleton testified: "It is still my impression . . . that this activity that is referred to as having been discontinued refers to the Bureau's activities in this field . . . it is certainly my impression that this was

¹⁸⁴ Huston 9/28/75, Hearings, p. 33.

¹⁸⁵ Huston, 9/28/75, Hearings, p. 33.

¹⁸⁶ Huston, 9/28/75, Hearings p. 33-34.

¹⁸⁷ Special Report, p. 29.

¹⁸⁸ Helms, 10/22/75, Hearings, pp. 89, 93.

¹⁸⁹ Mitchell, 10/24/75, Hearings, p. 187. See also pp. 120, 122.

¹⁹⁰ Mitchell, 10/24/75, Hearings, p. 188.

the gap which the Bureau was seeking to cure." ¹⁹³ The language of the Report itself, however, does not reflect such a distinction.

Angleton also stated that the CIA would never discuss such a sensitive topic as their mail program in large meetings like the ICI Ad Hoc sessions at Langley, "The possibilities for leaks were too great for one thing," he observes. ¹⁹⁴ One of Angleton's assistants has referred to the Langley meetings as "a fish bowl." ¹⁹⁵ Delicate matters, if they required Presidential approval, "would have been raised either by the Director of the FBI or the Director of Central Intelligence," Angleton stressed. ¹⁹⁶ Yet, insofar as the record indicates, neither of the Directors did raise this topic with the President.

During public hearings, Angleton stated that the concealment from the President was not deliberate:

Mr. Angleton: Mr. Chairman, I don't think anyone would have hesitated to inform the President if he had at any moment asked for a review of intelligence operations.

Senator Church: That is what he did do. That is the very thing he asked Huston to do. That is the very reason that these agencies got together to make recommendations to him, and when they made their recommendations, they misrepresented the facts.

Mr. Angleton: I was referring, sir, to a much more restricted forum.

Senator Church: I am referring to the mail, and what I have said is solidly based upon the evidence. The President wanted to be informed. He wanted recommendations. He wanted to decide what should be done, and he was misinformed.

Not only was he misinformed, but when he reconsidered authorizing the opening of the mail five days later and revoked it, the CIA did not pay the slightest bit of attention to him, did it, the Commander-in-Chief, as you say?

Mr. Angleton: I have no satisfactory answer for that.

Senator Church: You have no satisfactory answer?

Mr. Angleton: No, I do not.

Senator Church: I do not think there is a satisfactory answer because having revoked the authority the CIA went ahead with the program. So that the Commander-in-Chief is not the Commander-in-Chief at all. He is just a problem. You do not want to inform him in the first place because he might say no. That is the truth of it. And when he did say no you disregard it, and then you call him the Commander-in-Chief. ¹⁹⁷

Questioning Tom Huston on the subject of mail openings, the Chairman of the Select Committee summarized the Huston Plan exercise as follows:

¹⁹³ Angleton, 9/24/76, Hearings, p. 54.

¹⁹⁴ Angleton, 9/24/76, Hearings, p. 50.

¹⁹⁵ Staff summary of [CIA counterintelligence specialist], 2/8/70.

¹⁹⁶ Angleton, 9/24/76, Hearings, p. 50.

¹⁹⁷ Angleton, 9/24/76, Hearings, p. 37.

Senator Church: So we have a case where the President is asked to authorize mail openings, even though they are illegal. And quite apart from whether he should have done it, and quite apart from whether or not the advice of the Attorney General should have been asked, he acceded to that request, thinking that he was authorizing these openings—not knowing that his authority was an idle gesture, since these practices had been going on for a long time prior to the request for his authority. And after he revoked that authority, the practices continued, even though he had revoked it. That is the state of the record, based on your testimony? Mr. Huston: Yes, I think it is.¹⁹⁸

In retrospect, Huston reasons that if he and others in the White House had known these intelligence options were being exercised already and had not produced results significant enough to curb domestic unrest, "it conceivably would have changed our entire attitude toward the confidence we were willing to place in the hands of the intelligence community in dealing with this problem."¹⁹⁹

Huston now points to the irony in the fact that intelligence is supposed to provide policymakers with information upon which to make decisions, but in June 1970 the top policymaker in the government was kept unaware that certain sources of information were even available.²⁰⁰ Part of the problem seemed to be excessive compartmentation in the intelligence agencies.

The failure of the CIA participants to tell Tom Huston of their mail-opening program was not the only example of dissimulation during this episode. Sullivan attempted to give Hoover the impression that he was not a part of the efforts to relax the restraints on intelligence collection. He wrote in a memorandum to Cartha DeLoach—his immediate supervisor and the Number 3 man in the FBI in June 1970—that Benson Buffham (the NSA representative at the Langley meetings) was taking a particularly active role in the review of the "restraints" section of the draft. "Admiral Noel Gaylor (sic) of the National Security Agency," wrote Sullivan, "may have been a moving force behind the creation of this committee." [Emphasis added.]²⁰¹ Sullivan was indeed in a good position to know. He and Tordella of NSA (Gaylor's deputy) had viewed these meetings since the beginning as, in Tordella's words, "nothing less than a heaven-sent opportunity for NSA. . . ." ²⁰² Yet, Sullivan ended his memo for the FBI leadership with the admonition: "Contingent upon what the President decides, it is clear that there could be problems involved for the Bureau."²⁰³

This was the first written example of Sullivan's apparent strategy to impress upon Hoover, Tolsen, and DeLoach his disassociation with attempts to relax restraints which Hoover wanted maintained. Two

¹⁹⁸ Huston, 9/23/75, Hearings, p. 10.

¹⁹⁹ Huston, 9/23/75, Hearings, p. 17.

²⁰⁰ Huston, 9/23/75, Hearings, p. 34.

²⁰¹ Sullivan memorandum, 6/19/70.

²⁰² Tordella (staff summary), 6/16/75.

²⁰³ Sullivan memorandum, 6/19/70.

days later on June 20, Sullivan took a definitely pro-Hoover position in a memorandum for the Director. He recommended that the FBI oppose "the relaxation of investigative restraints which affect the Bureau"²⁰⁵ Everything he had been working for with Huston, Tordella, and the others was denied. For the Director's consumption, he portrayed himself as the arch-defender of the Bureau's image, protecting Hoover and the FBI against the excesses of Huston's committee. The memorandum was written on the same day Sullivan's rival, Cartha DeLoach, made a decision to leave the FBI to become a business executive, thereby clearing the pathway to higher office in the Bureau for Sullivan.

As for the proposed interagency committee—an idea for which both he and Huston had expressed strong commitment and lively interest²⁰⁶—Sullivan concluded on the eve of his promotion to the Number 3 spot in the FBI: "I do not agree with the scope of this proposed committee nor do I feel that an effort should be made at this time to engage in any combined preparations of intelligence estimates."²⁰⁷

Huston suspected that the opposition of the FBI's representatives was ambivalent. "I am sure that, tactically, the people in the Bureau probably were telling Hoover that 'the other fellows are pushing this stuff,'" Huston has testified. "If I had to gamble, that would be my bet. Probably 'Huston over there with a black snake whip,' or Helms or somebody else—which didn't bother me. I mean tactically, if that is the way the people figured that they had to push the Director to get done what they wanted to do."²⁰⁸

There is little doubt, however, that Huston and the Sullivan group of the FBI set the agenda and shaped the format of the Special Report. Huston, Sullivan, and Brennan had discussed the direction the Committee ought to take many times over.²⁰⁹ They worked closely together during the June meetings; and before formal meetings, Huston, Sullivan and the Bureau representatives were in frequent contact over the telephone or talking together directly. Members of the FBI contingent would pick up Huston at the White House on the way to Langley and bring him back after the ICI meetings. Often they lunched together.

Huston saw himself acting, in part, in the capacity of a sympathetic White House staffer passing on to the President what the professionals wanted. "And I agreed with them," he emphasizes. "I say 'agreed.' After you work with somebody and you are convinced that what they want to do is right, you agree with them."²¹⁰ There was no doubt in Huston's mind that FBI, CIA, and NSA professionals were pushing hard for expanded intelligence collection operations. They "clearly wanted me to recommend to the President that these operations be adopted," he remembers.²¹¹ To conclude that Huston dominated and

²⁰⁵ Memorandum from William Sullivan to Clyde Tolson, 6/20/70. (Hearings, Vol. 2, Exhibit 16).

²⁰⁶ Huston deposition, 5/28/76; Sullivan (staff summary), 6/10/76.

²⁰⁷ Sullivan memorandum, 6/20/70.

²⁰⁸ Huston deposition, 5/28/76, pp. 64-65.

²⁰⁹ Huston deposition, 5/28/76, pp. 62-68; Sullivan (staff summary), 6/20/70; FBI counterintelligence specialist (staff summary), 8/20/76.

²¹⁰ Huston deposition, 5/28/76, p. 68.

²¹¹ Huston deposition, 5/28/76, p. 68.

manipulated the intelligence community is an error. The relationship was symbiotic. As Huston has explained,

... the entire intelligence community, in the summer of 1970, thought we had a serious crisis in this country. I though we had a serious crisis in this country. My attitude was that we have got to do something about it. Who knows what to do about it. The professional intelligence community? The professional intelligence community tells me, "you give us these tools; we can solve the problem." I recommended those tools.²¹²

The duplicity went beyond the CIA mail program and Sullivan's dissembling. A subsequent section of this commentary reveals that the intelligence agencies greatly expanded their collection programs after President Nixon revoked his authority for the Huston plan, without obtaining presidential approval for their actions.

B. Lawlessness

Several of the techniques discussed in the drafting of the Special Report were of questionable legality. For example, covert mail cover and surreptitious entry were, in Huston's words, "clearly illegal."²¹³ And, the legitimacy of other intelligence collection methods, such as placement of American names on the NSA watch list, was highly questionable.²¹⁴ Yet, former President Nixon does not recall "any discussion concerning the possible illegality of any of the intelligence gathering techniques described in the report during my meeting with the [ICI] Committee [on June 5, 1970]."²¹⁵

During public hearings, Senator Walter Mondale asked Huston whether any one of the ICI staff members had objected "during the course of making up these options to these recommendations which involved illegal acts":

Mr. Huston: At the working group level, I do not recall any objection.

Senator Mondale: Do you recall any of them ever saying we cannot do this because it is illegal?

Mr. Huston: No.

Senator Mondale: Can you recall any discussion whatsoever concerning the illegality of these recommendations?

Mr. Huston: No.

Senator Mondale: Does that strike you as peculiar that top public officers in the most high level and sensitive positions of government would discuss recommending to the President actions which are clearly illegal and possibly unconstitutional without ever asking themselves whether that was a proper thing for them to be doing?

Mr. Huston: Yes, I think it is, except for the fact that I think that for many of those people we were talking about

²¹² Huston, 9/28/75, Hearings, p. 17.

²¹³ Attachment to Huston memorandum, 7/70, pp. 2, 3.

²¹⁴ See NSA Report, Sec. II B 2.

²¹⁵ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 28, 3/9/70, p. 18.

something that they had been aware of, had been undertaking for a long period of time.

Senator Mondale: Is that an adequate justification?

Mr. Huston: Sir, I am not trying to justify. I am just trying to tell you what my impression is of what happened at the time.

Senator Mondale: Because if criminals could be excused on the grounds that someone had done it before, there would not be much of a population in any of the prisons today, would there?

Mr. Huston: No.²¹⁶

Legal advice was not sought, several important legal matters were involved in preparing the report for the President. The CIA General Counsel was not included or consulted, since, as Angleton had testified, "the custom and usage was not to deal with General Counsel, as a rule, until there were some troubles. He was not a part of the process of project approval."²¹⁷

Avoidance of legal and constitutional matters was, apparently, not uncommon throughout the intelligence community. William Sullivan has testified:

During the ten years that I was on the U.S. Intelligence Board, a Board that receives the cream of intelligence for this country from all over the world and inside the United States, never once did I hear any body, 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 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?²¹⁸

Sullivan attributes much of this attitude concerning the law to the molding influence of World War II upon young FBI agents who have since risen to high position. In a deposition, Sullivan noted that during the 1940s there was "a war psychology. Legality was not questioned. Lawfulness was not a question; it was not an issue."

Senator Mondale: That carried on, unfortunately, after the war.

Mr. Sullivan: Senator, you are right. We could not seem to free ourselves either at the top or bottom, could not free ourselves from that psychology with which we had been imbued as young men, in particular, most all young men when we went into the Bureau.

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

²¹⁶ Huston, 9/28/75, Hearings, p. 21.

²¹⁷ Angleton, 9/24/75, Hearings, p. 77.

²¹⁸ Sullivan deposition, 11/1/75, pp. 02-03.

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 a part of our thinking, a part of our personality.²¹⁹

Neither the Attorney General nor anyone in his office was invited to the sessions at Langley, or consulted during the proceedings. During public hearings on the Huston Plan, Huston was asked about the absence of consultations with the Attorney General.

Senator Church: And it never occurred to you, as the President's representative, in making recommendations to him that violated the law, that you or the White House should confer with the Attorney General before making those recommendations?

Mr. Huston: No, it didn't. I should have, but it didn't.²²⁰

The Attorney General knew nothing of the preparation of an intelligence report for the President until so informed by Hoover on July 27, 1970, several weeks after Hoover had signed the June "Special Report."²²¹ One reason for the absence of Attorney General John Mitchell, Huston explains, is that this was an intelligence matter to be handled by the intelligence agency directors.²²² Mitchell, the head of Justice, was not included, just as Laird, the head of Defense, was not included. Huston now claims, though, that he naturally thought Hoover would check with Mitchell or his Deputy before signing the Special Report, just as General Bennett cleared with his superior, Deputy Secretary of Defense David Packard, and informed the Secretary of Defense, Melvin Laird.²²³

Another reason for the exclusion of Mitchell might have been the institutional animosity which existed between the professional intelligence establishment and the Office of the Attorney General. The former was primarily interested in the collection of intelligence and the protection of sources; the latter suffered, in Huston's view, from "prosecutor's mentality"—an interest in the collection of evidence for its use in securing prosecution. Huston states that there are "two approaches" to handling the problem of violence-prone demonstrators:

One is the intelligence-collection approach where you try to keep tabs on what is going on and stop it before it happens. The other approach, which is perhaps the only tolerable one in a free society, from a perfectly legitimate point of view, is you have to pay the price of letting a thing happen, and then follow the law and hope you can apprehend the person responsible and prosecute him according to the law.²²⁴

²¹⁹ Sullivan deposition, 11/1/76, pp. 95-96.

²²⁰ Huston, 9/28/76, Hearings, p. 15. In the summer of 1970, Huston held the belief that "the Fourth Amendment did not apply to the President in the exercise of matters relating to internal security or national security." (Huston, 9/28/76, Hearings, p. 20.) See also Huston, 9/28/76, Hearings, p. 14.

²²¹ Helms memorandum for the record, 7/28/70; Sullivan (staff summary), 6/10/76; Mitchell testimony, Senate Watergate Hearings, July 10, 1976, Vol. 4, pp. 1603-04.

²²² Huston deposition, 5/22/76, p. 85.

²²³ Huston, 9/28/76, Hearings, p. 15; Bennett (staff summary), 6/5/76.

²²⁴ Huston deposition, 5/22/76, p. 167.

Considerable tension existed between these two approaches in 1970.

The enmity between some members of the White House staff (notably Huston) and the Justice Department stretched back to preparations for the antiwar demonstrations in Washington in 1969. The Justice Department, Huston believes, saw the violence which occurred as premeditated and leaned toward seeking indictments under the Federal Anti-riot Act. In contrast, Huston and Sullivan saw the problem from the perspective of an intelligence officer. The answer rested in mobilizing the intelligence agencies, not the law enforcement community.²²⁵ As Huston has testified: "I frankly did not have a whole lot of confidence in the Justice Department sensitivity with respect to distinguishing between types of protest activity."²²⁶ So the Justice Department continued to seek more stringent criminal sanctions to deal with the problem of subversives, and the intelligence collectors pursued the expansion of their methodology as a better solution.

In his March 1976 interrogatory answers, former President Nixon took the position that "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."²²⁷ As an example, the former President drew upon the example of mail opening. "The opening of mail sent to related priority targets of foreign intelligence, although impinging upon the individual," said the former President, "may nevertheless serve a salutary purpose when—as it has in the past—it results in preventing the disclosure of sensitive military and state secrets to the enemies of this country."²²⁸

The White House staffer who recommended the use of illegal and highly questionable intelligence gathering techniques in 1970 had decided five years later that, in the end, the growth and preservation of a free society depended upon a reliance on the law.²²⁹ For Huston, the sanctions of criminal law had replaced his earlier faith in unrestricted intelligence collection as the more appropriate response to the threat of violence in our society.²³⁰ The risk inherent in the latter approach was too great. In Huston's words:

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.²³¹

²²⁵ Huston deposition, 5/28/75, p. 24, Sullivan (staff summary), 6/10/75.

²²⁶ Huston, 9/23/75, Hearings, p. 15.

²²⁷ Answer of Richard M. Nixon to Senate Select Committee Interrogatory 84, 3/9/76, p. 17.

²²⁸ *Ibid.*

²²⁹ Huston, 9/23/75, Hearings, p. 45.

²³⁰ Huston, 9/23/75, Hearings, p. 47.

²³¹ Huston, 9/23/75, Hearings, p. 45.

7. *Mixed Motives*

Also hidden behind the events of June 1970 were the reasons for ardent participation—or lack thereof—in the writing of the intelligence report. Reaction to the first gathering of the ICI (Ad Hoc) work-group was mixed. Some participants were delighted by the turn of events. For years, a group of counterintelligence specialists within the FBI had favored reinstatement of collection procedures taken away from them by the Director and viewed the request from the White House for a Special Report as a unique opportunity. The CIA, NSA, and most of the FBI representatives shared an enthusiasm for the project, with varying degrees of optimism that the planning would actually be approved by Hoover.

Not everyone, however, was sanguine about the proceedings. "What a bucket of worms!" observed Richard Ober, Angleton's backup man from the CIA, to Col. Koller of the Air Force after the meeting.²³⁴ Koller thought it was worse than that. "I wouldn't have touched what they were talking about with a 10-foot pole," he noted recently. "The things they were talking about were illegal, and certainly beyond our interest and capability."²³⁵ Koller dropped out after the first meeting, warning his boss, General Triantafeller, not to get the Air Force involved. The Air Force kept a representative at the meeting, Col. Demelt "Gene" Walker, but only as an observer who had been cautioned to keep a safe distance from the planning and to protect the Air Force.²³⁶

This reaction was typical of all the military representatives. The Army member, Col. John Downie, was the most outspoken. At the first gathering he made it clear that "the Army would keep the hell out" of domestic intelligence collection, since it was already in deep trouble over the recent exposure of Army surveillance of civilians.²³⁷ Downie and others were at that moment preparing for hearings before the Senate's Constitutional Rights Subcommittee on that very subject. Downie now states that the Army would have been far less resistant to Sullivan's efforts to draw them in had they not been on the "hot seat" at the time.²³⁸

Stilwell of DIA was also told by Gen. Bennett to proceed with extreme caution; he was supposed to help out where he could, but Bennett felt the DIA had little to contribute to the effort. Huston recalls the DIA role as being minimal.²³⁹ "B." Willard, the Navy civilian observer, remembers that the dominant feeling of the military representatives was: "Don't try to draw us into this."²⁴⁰ The attitude

²³⁴ Staff summary of Col. Rudolph Koller interview, 8/11/75.

²³⁵ Koller (staff summary), 8/11/75. Col. Koller's protestations about "illegalities" to the contrary notwithstanding, no witness recalls anyone—including Koller—who discussed the legal aspects of intelligence collections during the lengthy meetings.

²³⁶ Staff summary of Col. Demelt Walker interview, 7/23/75; Koller (staff summary), 8/11/75.

²³⁷ Downie (staff summary), 5/13/75.

²³⁸ Downie (staff summary), 5/13/75.

²³⁹ Stilwell (staff summary), 5/21/75; Bennett (staff summary), 6/5/75; Huston deposition, 5/28/75, p. 40.

²⁴⁰ Willard (staff summary), 5/16/75.

of the Air Force and the Navy, was, in Stilwell's opinion: "We haven't been involved in domestic intelligence collection, and we're not going to start now." And for the Army the attitude seemed to be: "We may have been stupid enough to stick our nose in once, but we're not going to get burned twice."²⁴¹

Among the FBI participants at Langley, Donald E. Moore was an exception. After Sullivan, he was the senior Bureau representative on the ICI staff. He had been involved in intelligence work for the Bureau since 1956, and in June 1970 was the Inspector-in-Charge, Espionage Research Branch. He was greatly troubled by the opening meeting at Langley. "I felt very uneasy about the direction the work group was taking," he remembers. "Their views were contrary to what Mr. Hoover would have liked. I wanted out."²⁴²

A Hoover "loyalist," Moore went to Sullivan after the meeting and asked to be excused from subsequent sessions. "Suit yourself," Sullivan replied, and Donald Moore faded from the scene, except for desultory comments made on the threat portions of a draft Sullivan asked him to review a week later.²⁴³

Even among the ICI enthusiasts, not all were pursuing the same goal. Ostensibly, the Ad Hoc Committee was established to provide better intelligence to the President, primarily, on New Left activities, and secondarily, on foreign influence over the New Left. The radical protesters were clearly Tom Huston's main interest. Data collection on the New Left and black militancy was of great interest to others as well, such as George Moore, who was the Bureau Section Chief with responsibilities in this area. However, several of the participants saw the concern of the President over domestic intelligence chiefly as a way to ride piggyback through the White House approval process their own primary goal of knocking down obstacles to *foreign* intelligence collection. As one FBI observer at the Langley meetings has commented:

Hoover put us out of business in 1966 and 1967 when he placed sharp restrictions on intelligence collection. I was a Soviet specialist and I wanted a better coverage of the Soviets. I felt—and still feel—that we need technical coverage on every Soviet in the country. I didn't give a damn about the Black Panthers myself, but I did about the Russians. I saw these meetings as a perfect opportunity to get back the methods we needed . . . and so did Sullivan.²⁴⁴

Huston was aware that Gayler and others were in the venture for reasons other than strictly to improve domestic intelligence. "The whole question of surreptitious entry . . . was an issue going into this thing I didn't know anything about, and didn't understand really what it had to do with the subject underhand," Huston recalls. "It was really clear to me that it was a foreign intelligence matter. . . . It just seemed to me that if these people felt so strongly about it, why

²⁴¹ Downie (staff summary), 5/18/75.

²⁴² Staff summary of Donald E. Moore interview, 7/28/75.

²⁴³ Donald Moore (staff summary), 7/28/75.

²⁴⁴ [FBI counterintelligence expert] (staff summary), 8/20/75.

should I say no? And so it went in [to the report for the President]."²⁴⁵

Huston remembers another example of the approach used by NSA: the modification of its authority for the collection of communications intelligence. "For all I know that [directive] could have authorized people to have free lunch in the White House mess," he says. "In other words, Admiral Gayler said, 'This is what needs to be done' and that's what I did."²⁴⁶

Those focusing on domestic intelligence objectives and those on foreign intelligence, those committed to relaxing collection restraints and those reluctant to be involved—these were the central cleavages in the staff of the Interagency Committee on Intelligence (Ad Hoc).

D. "Credit Card Revolutionaries"

Just as hidden from the President and Tom Huston as the mail program—though more from reasons of their own selection than from duplicity—was the reality of the antiwar movement which helped spur the writing of the intelligence report in the first place. The threat assessment section of the Special Report was not too different from earlier assessment prepared for Ehrlichman and Huston in April and June of 1969. Though more thorough, it also failed to produce much concrete evidence of foreign influence over domestic unrest. During the public hearings on the Huston Plan, C. D. Brennan, the FBI witness, said that the Bureau was never able to find evidence indicating the antiwar protesters in the United States were financed by external sources. "I felt that the extremist groups and the others who were involved in antiwar activities and the like at that time were of the middle- and upper-level income," stated Brennan, "and we characterized them generally as credit-card revolutionaries."²⁴⁷

Despite the lack of any substantial evidence of foreign involvement, the White House under both Johnson and Nixon had persistently tasked the Bureau to discover evidence of foreign funding.²⁴⁸ As in earlier reports, however, the assessment section of the Special Report pointed to the danger of foreign connections developing in the future. Consensus here was high. Like those in the White House, the intelligence officers writing the Report walked a slippery slope when they began to speak of the need to expand intelligence collection more because of *potential* rather than actual findings.

These were among the main forces, not immediately visible, which were particularly important in shaping the Special Report and the Huston Plan. Those who had sought to obtain presidential authority to broaden intelligence collection methods had ultimately failed; but they remained committed to their objective of expansion nonetheless. The intelligence collectors were not to be dissuaded by the simple absence of presidential or congressional authority.

²⁴⁵ Huston deposition, 5/22/75, p. 41.

²⁴⁶ Huston deposition, 5/22/75, p. 46. Fordella has also alluded to an additional reason for high NSA interest in these proceedings. Intelligence budgets were sagging in 1970 and some saw chances here for expanded intelligence activities and increased funding. Fordella (staff summary), 1/16/75.

²⁴⁷ Brennan, 9/25/75, Hearings, p. 184.

²⁴⁸ Brennan, 9/25/75, Hearings, pp. 104, 107, 186.

VIII. AFTERMATH: THE END—OR THE BEGINNING?

Two events of particular significance followed in the close wake of the Huston Plan. One was the creation of the Interagency Evaluation Committee (IEC), and the other was a secret meeting involving Hoover, Helms, Gayler, and Mitchell.

The IEC has become controversial, since it was similar in some respects to the permanent interagency group recommended in the Huston Plan. Questions have thus been raised concerning whether the IEC became the instrument for carrying out the provisions of the Huston Plan, possibly even serving as the precursor of the "Plumbers" group which broke into the Democratic National Headquarters in the Watergate building in 1972.

A review of the IEC history by the Committee, summarized below, suggests that the Committee did resemble the interagency committee outlined in the Huston Plan; however, the IEC amounted to little more than a research group, with no operational dimension and no ties to the "Plumbers" unit. The IEC, however, did bring to fruition the Huston Plan concept of an interagency intelligence committee.

A. The Interagency Evaluation Committee

Within a month of John Dean's arrival in the White House, he had learned—chiefly through conversations with Huston—the basic details about the work of the Ad Hoc Committee on Intelligence and the collision with Hoover. By late August, Haldeman had approached Dean on the Huston Plan, instructing him "to see what I could do to get the plan implemented."²⁵¹ Dean has testified that he had found the plan "totally uncalled for and unjustified."²⁵²

Eventually, on September 17, 1970, Dean went to see John Mitchell about the Huston Plan and Haldeman's request for its implementation. Mitchell explained to him some of the details of the Plan. As Dean now recalls, his reaction was to think: "You've got to be kidding. This sounds like something the people on Mission Impossible would dream up."²⁵³

The Attorney General reiterated his position against the Plan—with one exception. Unlike Hoover, Mitchell now thought that a permanent interagency committee for intelligence evaluation might be useful. As Dean testified in 1973: "After my conversations with Mitchell, I wrote a memorandum requesting that the evaluation committee be established, and *the restraints could be removed later*. I told Mr. Haldeman that the only way to proceed was one step at a time and this could be an important first step. He agreed." [Emphasis added.]²⁵⁴

This memo of September 18th from Dean to Mitchell read in part: "A key to the entire operation will be the creation of a (sic) interagency intelligence unit for both *operational* and *evaluation* purposes . . . and then to proceed to remove the restraints as necessary to obtain such intelligence." [Emphasis added.]²⁵⁵ Echoing Huston's

²⁵¹ Dean (staff summary), 8/7/76.

²⁵² Dean, Senate Watergate Hearings, 6/25/78, p. 916.

²⁵³ Dean (staff summary), 8/7/76.

²⁵⁴ Dean, Senate Watergate Hearings, 6/25/78, p. 916.

²⁵⁵ Memorandum from John Dean to John Mitchell, 9/18/70. (Hearings, Vol. 2, Exhibit 24.)

recommendation to Haldeman of a month before, the memo bore the postscript: "Bob Haldeman has suggested to me that if you would like him to join you in a meeting with Hoover he will be happy to do so."

Looking back on this memorandum, Dean pointed out that, although he was against the intelligence collection methods in the Huston Plan, he knew Haldeman supported them and would be reading the memo, too. Dean recalls that to keep his rapport with Haldeman—and his job—he included the operational language in the memorandum, actually believing, he claims, that the permanent evaluation committee would be as far as the undertaking would ever go. He and Mitchell were in agreement that "the enthusiasts" in the White House would require some kind of pacifier and this memorandum would give them at least a sense of action and commitment.²⁶⁶

Whatever the truth may be about the later intentions of Dean, Mitchell, or Haldeman, an interagency Intelligence Evaluation Committee was planned and set up by Dean and Robert Mardian (Assistant Attorney General in charge of Internal Security) during the waning weeks of 1970. The IEC held its first meeting in Dean's EOB office on December 3rd, with Mardian in charge.²⁶⁷ The meeting represented the fulfillment of one Huston Plan objective: the creation of a permanent interagency intelligence committee.

At this opening session of the IEC were several old hands from the earlier ICI Ad Hoc Committee: Angleton of CIA, George Moore of FBI, Bfman of NSA, and John Downie of DOD. At the subsequent meetings the group would be supplemented by staff aides, many of whom (like Richard Ober of CIA) had also seen duty at the Langley meetings in June. The focus of the IEC, it was decided at the meeting, would be on—

intelligence in the possession of the United States Government respecting revolutionary terrorist activities in the United States and to evaluate this intelligence to determine (a) the severity of the problem and (b) what form the Federal response to the problem identified should take.²⁶⁸

Though Dean had received a special security clearance at CIA on September 30th and had immersed himself, at Haldeman's request, into the details of the Special Report and the Huston Plan, his participation in IEC meetings soon came to an end. The IEC began meeting in the Justice Department under Mardian's tutelage, and by January of the new year Dean had stopped attending the sessions.²⁶⁹ Thereafter, the IEC was chiefly operated by Mardian and Bernard A. Wells, his deputy.

One of the military staffmen assigned to the Intelligence Evaluation Committee was Army counterintelligence specialist Col. Werner E. Michel. His views on the IEC are shared by virtually everyone familiar with its activities. Michel observes that (1) the IEC did very little—and nothing of an operational character; (2) what little it did do

²⁶⁶ Dean (staff summary), 8/7/76.

²⁶⁷ Memorandum from Robert Mardian to John Mitchell, 12/4/70. (Hearings, Vol. 2, Exhibit 25.)

²⁶⁸ Mardian memorandum, 12/4/70.

²⁶⁹ Dean (staff summary), 8/7/76.

(chiefly, prepare intelligence reports) was not done very well; and (3) its leadership—specifically, Mardian—was inexperienced when it came to intelligence work.²⁰¹

The principal representatives to the IEC, experts like Angleton, Buffham, Downie, and George Moore, dropped out of the proceedings by July 20, 1971, leaving behind subalterns to observe and participate. General Bennett has said, for example, that an enlisted man was assigned to the IEC staff "to make sure Mardian wasn't trying to drag the military into something unwarranted."²⁰²

The IEC prepared about thirty staff reports and fifty-five "intelligence calendars" on radical events which were distributed to Dean in the White House and to the heads of participating agencies (including Treasury and the Secret Service). These reports were considered to be of low quality by experienced intelligence specialists.²⁰³ The singularly most questionable document to emerge from the IEC files was a memorandum appearing on January 19, 1971. Typed on Justice Department stationery and addressed to Mitchell, Ehrlichman, and Haldeman, the unsigned memorandum purported to speak unanimously for the IEC participants. It asked for the implementation of the Special Report of June 1970; obviously, from the text, the memorandum actually sought the adoption of Tom Huston's recommendations. "All those who have been involved in the project firmly believe," read the memorandum, "that the starting point for an effective domestic intelligence operation should be the implementation of the Special Report of the Interagency Committee on Intelligence." The anonymous author, or authors, added that "there is considerable doubt as to how significant a contribution the proposed committee [the IEC] would make to existing domestic intelligence operations without implementation of the Ad Hoc Committee Report. . . ." [Emphasis added.]²⁰⁴

Dean has stated that Mardian was responsible for this memorandum.²⁰⁵ Mardian, however, denies he made any attempt or suggestion to implement provisions of the Huston Plan or the Special Report of June 1970. In his view, the IEC was strictly an effort "to increase formal liaison among the intelligence agencies, since Hoover had broken it off the previous summer. . . . The IEC was only for analysis."²⁰⁶

The Committee does not appear to have done anything more than try to evaluate raw intelligence data, over 90 per cent of which was generated by the FBI.²⁰⁷ Like the Huston Plan itself, this interagency effort also failed in large part because of Hoover's truculence toward it. At one point, Hoover wrote to Mardian concerning a proposed

²⁰¹ Staff summary of Col. Werner E. Michel interview, 5/12/76. See also memorandum for the record, by Col. Werner E. Michel May 21, 1976.

²⁰² Bennett (staff summary), 6/5/76.

²⁰³ Michel (staff summary), 5/12/75; Stilwell (staff summary), 5/21/75; Downie (staff summary), 8/13/75; Buffham (staff summary), 7/19/75; Angleton (staff summary), 11/5/75.

²⁰⁴ Memorandum (unsigned) on Justice Department stationery to John Mitchell, John Ehrlichman, and H. R. Haldeman, 1/19/71. (Hearings, Vol. 2, Exhibit 29.)

²⁰⁵ Dean (staff summary), 8/7/76.

²⁰⁶ Staff summary of Robert Mardian telephone interview, 1/18/76.

²⁰⁷ Michel (staff summary), 5/12/76. The FBI did have, however, the benefit of NSA data, the CIA mail opening product, and information from the CIA/CHAOS project.

charter for the IEC: ". . . it is requested that an appropriate change be made in the wording of paragraph IV entitled 'Staff' to clearly show that the FBI will not provide personnel for the proposed permanent intelligence estimation staff."²⁶⁸

Mardian later complained to the Attorney General on February 12, 1971 that the content of the intelligence estimates would be of insufficient quality "to warrant continuing without [FBI] cooperation."²⁶⁹ Eventually, Hoover did send over two analysts; but they were considered to be less than satisfactory by most other participants.²⁷⁰ The Director of the FBI clearly was not interested in the success of the IEC, no more than he had cared for the concept of an interagency committee as outlined in the Huston Plan.

According to various sources, the secrecy of the IEC stemmed from its handling of secret documents; its desire to avoid publicity and criticism which might come to an interagency intelligence group, regardless of how innocuous its works; and, Mardian's attempt to make the IEC appear to be more important than it really was.²⁷¹

In early June 1973, the IEC was finally abolished by Assistant Attorney General Henry E. Petersen. He concluded in a memorandum to participating agencies: "Now that the war in Vietnam has ended, demonstrations carrying a potential for violence have virtually ended; therefore, I feel that the IEC function is no longer necessary."²⁷² Behind this smoke screen lay the real reason, according to IEC staff member, James Stilwell: IEC leaders feared the mounting criticism of the recently revealed Huston Plan (a copy of which appeared in the *New York Times*) would lead the "jackals of the press" to their door.²⁷³ It was time to close shop. Some members of the IEC staff argued that it would be a mistake to abolish the IEC at this time because people would conclude wrongly that it was in some way an extension of the Huston scheme. This viewpoint was overridden.²⁷⁴

B. Secret Meeting with Hoover

On March 25, 1971, an FBI counterintelligence officer wrote a memorandum for Hoover's information regarding a request from Attorney General Mitchell which asked the Director to meet with him, Helms, and Gayler on March 31. The officer did not know the agenda for the meeting, but speculated that it would cover the subject of foreign intelligence as it related to domestic subversives.²⁷⁵

²⁶⁸ Memorandum from J. Edgar Hoover to Robert Mardian, 1/8/71.

²⁶⁹ Memorandum from Robert Mardian to John Mitchell, 2/12/71. (Hearings, Vol. 2, Exhibit 37).

²⁷⁰ For example, Michel (staff summary), 5/12/75; Stilwell, (staff summary), 5/21/75.

²⁷¹ For example, Downie (staff summary), 3/18/75; Stilwell (staff summary), 5/21/75.

²⁷² Memorandum from Henry E. Petersen to Col. Werner E. Michel, 6/11/73.

²⁷³ Stilwell (staff summary), 5/21/75.

²⁷⁴ Stilwell (staff summary), 5/21/75.

²⁷⁵ Memorandum from W. R. Wannall to C. D. Brennan, 3/28/75. (Though W. R. Wannall is the name on the memorandum, it may have been actually dictated by a subordinate in the FBI Intelligence Division.) In January 1971 the NSA Director had written a memorandum to the Secretary of Defense and the Attorney General on how his Agency could assist with "intelligence bearing on domestic problems." See memorandum from Noel Gayler to Melvin Laird and John Mitchell, 1/26/71. Benson Buffham of NSA personally showed the memorandum to John Mitchell. (Memorandum for the record by Benson K. Buffham, 2/3/71).

The NSA, noted the memorandum, was already sending intelligence to the CIA and the FBI "on an extremely confidential basis" on the international communications of American citizens, but only as by-product from NSA's communications monitoring responsibilities. This information was not developed in any systematic way. The memorandum suggested that Helms and Gayler might have an interest in increasing intelligence output of this type.

The memorandum stated that the principal source of Bureau data on subversive activities was electronic surveillance and live informants. To supplement these collection techniques, Hoover was advised to "take advantage of any resources of NSA and CIA which can be tapped for the purpose of contributing to the solution of the problem." The memorandum sounded like a fragment of conversation from the Langley meetings the previous June.

The meeting in Mitchell's office actually occurred on March 20. Later, Hoover prepared a memorandum for the files which indicated that Helms was primarily responsible for the gathering. The purpose of the meeting was to discuss "a broadening of operations, particularly of the very confidential type in covering intelligence both domestic and foreign." Gayler was "most desirous" of having the Bureau reinstate certain intelligence collection programs; and Helms spoke of "further coverage of mail."

These approaches were rebuffed by Hoover, who told Helms and Gayler (according to his memorandum) that he "was not at all enthusiastic about such an extension of operations insofar as the FBI was concerned in view of the hazards involved." Mitchell then intervened, according to Hoover's memorandum, and asked Helms and Gayler to prepare "an in-depth examination" of exactly what collection methods they desired. After reading the report, Mitchell said he would convene the group again "and make the decision as to what could or could not be done." According to the Hoover memo, Helms agreed and said he would have the report prepared "very promptly."²⁷⁵

The Huston Plan battle had been fought again, this time with the inclusion of the major missing participant: Attorney General Mitchell. The results were similar to the earlier outcome: a victory for Hoover. Yet, clearly, the war was not over. While neither Helms nor Gayler nor Mitchell recall this meeting, or the outcome of the Helms-Gayler report, and while it is unclear whether such a report was ever actually prepared, one thing is certain: *efforts to implement provisions of the Huston Plan persisted. The unlawful CIA mail-opening program continued; the list of names of American citizens on the NSA Watch List expanded during the years 1970 to 1973; the age limit on FBI campus informants was lowered from 21 to 18; and the Bureau intensified its investigations in the internal security field.*²⁷⁶

²⁷⁵ Memorandum for the files by J. Edgar Hoover, 4/12/71. (Hearings, Vol. 2, Exhibit 81). Subsequent to the meeting with Mitchell, "the Attorney General reversed the FBI decision" against a proposed CIA electronic surveillance, according to Angleton, and in May 1971 "all the devices which had been installed . . . were tested and all were working." See Memorandum for the record by James Angleton, 5/18/73, p. 6. (Hearings, Vol. 2, Exhibit 61).

²⁷⁶ For the detailed documented evidence on these points, see the Select Committee Reports on the CIA mail program, the NSA, and the FBI internal security programs. Information on the incidents of surreptitious entry remains classified but the cases are limited to foreign targets. See also Brennan testimony, 9/25/75, Hearings, p. 100, on the extent of the FBI internal security investigation.

The intensified intelligence activities of the FBI included surveillance of "every Black Student Union and similar group, regardless of their past or present involvement in disorders." [Emphasis added.]²⁷⁶ This involved the opening of 4,000 new cases. Also, members of the Students for a Democratic Society (SDS) were placed under investigation accounting for an additional 6,500 new cases.²⁷⁹

The FBI witness during the Huston Plan public hearings did not believe the President was ever 'old about this increased Bureau activity.²⁸⁰ Nor, according to other witnesses, was he told about the instances of expanded intelligence collection by other agencies, Speaking of the CIA mail program, former Attorney General John Mitchell suggested that "the old-school-tie boys, who had been doing it for 20 years, just decided they were going to continue to do it."²⁸¹

Looking back on the Huston Plan, President Nixon said in an official statement in 1973: "Because the approval was withdrawn before it had been implemented, the net result was that the plan for expanded intelligence activities never went into effect."²⁸² It was not that simple, however. As a former CIA Chief of Counterintelligence, James Angleton, noted:

The Huston Plan, in effect, as far as we were concerned, was dead in five days and therefore all of the other matters of enlarging procurement within the intelligence community were the same concerns that existed prior to the Huston Plan, and subsequent to the Huston Plan. The Huston Plan had no impact whatsoever on the priorities within the intelligence community.²⁸³

"People are reading a lot into the Huston Plan," Angleton continued, "and, at the same time, are unaware that on several levels in the community identical bilateral discussions were going on."²⁸⁴ Angleton stated that, since the creation of the CIA in 1947, "there has been constant discussion of operations and improvement of collection, so there is nothing unusual in time. . . . There were a number of ongoing bilateral discussions every day with other elements within the intelligence community which may or may not have duplicated the broad, general plan that Huston brought about."²⁸⁵

The fact that the President approved the Huston Plan—if only briefly—is deeply troubling in itself, as some of its provisions contravened the law. That some of the intelligence agencies could continue these programs after the President revoked his authority—and, in fact, expand them—is cause for great alarm. These facts raise serious questions about the sensitivity of the White House and the intelligence agencies to the law and the Constitution.

²⁷⁶ Memorandum from Executives Conference to Clyde Tolson, 10/29/70. (Hearings, Vol. 2, 10/29/70). The Executives Conference was an occasional gathering of senior officials in the FBI.

²⁷⁷ Executives Conference memorandum, 10/29/70.

²⁷⁸ Brennan, 9/25/75, Hearings, pp. 138-139.

²⁷⁹ Mitchell, 10/24/75, Hearings, p. 141. On the apparent lack of presidential awareness of the NSA watch list expansion, see Allen, 10/20/75, Hearings, pp. 28-29 and Nixon's answers to interrogatories, 8/9/76, p. 1.

²⁸⁰ President Richard Nixon, *Presidential Documents*, 5/22/73, pp. 693-695.

²⁸¹ Angleton, 9/24/75, Hearings, pp. 70-71.

²⁸² Angleton, 9/24/75, Hearings, p. 82.

²⁸³ Angleton, 9/24/75, Hearings, p. 83.

IX. SUMMARY AND CONCLUSIONS

The Huston Plan episode is a story of lawlessness and impropriety at the highest levels of government. It is also a story of high-level deception, for some of the intelligence agencies concealed illegal programs from the President and his representatives, from the Congress, and from one another. The findings in this investigation are similar to those disclosed in other phases of the Select Committee inquiry into the American intelligence community, namely: a lack of accountability, unclear lines of authority, and frequent disregard for the law.

A. Accountability, Authority, and the Law

On June 5, 1970, the President ordered the intelligence community to provide the White House with a complete and factual review of selected intelligence collection procedures, restraints upon these procedures, and options for relaxing the restraints. Instead, his representative, Tom Charles Huston, was deceived. The intelligence report for the President failed to disclose an ongoing illegal mail-opening program conducted by the CIA (with the cooperation and knowledge of the FBI). It also failed to mention the improper domestic intelligence activities of the CIA and the FBI, now known respectively as "Operation CHAOS" and "COINTELPRO."²⁰⁰ In short, the authority of the President's order for a candid report carried little weight.

Later, on July 23, 1970, when the President revoked his authority to implement the Huston Plan provisions, his action again had little effect upon the intelligence services. The CIA mail-opening continued; Operation CHAOS and COINTELPRO went on; NSA selection of international communications involving Americans was expanded (apparently, largely as a result of names contributed to the NSA "Watch List" by the Bureau of Narcotics and Dangerous Drugs, ENDD); the FBI opened thousands of new cases on domestic dissenters and intensified its campus surveillance by lowering the age of informants to 18; the intelligence agencies formed a permanent interagency committee for intelligence, as envisaged in the Huston Plan; and, the intelligence directors from the CIA and the NSA continued to seek the full implementation of certain Huston Plan provisions.

The intelligence officers conducted illegal and questionable collection programs apparently partly because they concluded the good that flowed from them in terms of anticipating threats to the United States made the programs worthwhile, and partly because of the pressure for results from the White House. In addition, the threats of civil strife faced by the nation in 1970 seemed to justify to the intelligence collectors the use of extraordinary methods. Few of the counterintelligence experts who prepared the report leading to the Huston Plan objected to the inclusion of illegal options for the President. They did not consult the Attorney General; they did not consult the Congress; and they did not consult their own legal counsels.

²⁰⁰ Although these two programs were not strictly within the intelligence collection mandate of the ICI Ad Hoc Committee, they did deal with matters of internal security and, in the case of CHAOS, with the connection between domestic dissent and foreign powers; therefore, the CIA and FBI were being far from candid with one another—and with the President's representative—by concealing these programs at the Langley meetings.

B. The Quality and Coordination of Intelligence

The Huston Plan is a story not only of impropriety and duplicity in the nation's intelligence community, but also of frustration over the quality and coordination of intelligence. The frustration came from several sources and took many forms. The White House was dissatisfied with the information available on domestic dissenters and their foreign supporters, and was concerned about the disintegration of liaison ties between the FBI and the other intelligence agencies. Within the intelligence agencies themselves various degrees of dissatisfaction over the quality and coordination of intelligence were also expressed. In particular, J. Edgar Hoover was viewed widely as an obstacle to the expansion of intelligence collection methods, especially for the acquisition of foreign intelligence.

Most of the counterintelligence experts involved in the Huston Plan episode did not share the White House view that domestic dissenters were receiving substantial foreign funding. Despite considerable attention to this matter, at the request of the White House, the intelligence agencies were unable to discover evidence of such a link. Nonetheless, the President's men insisted upon still further investigation of possible foreign ties and complained about the poor quality of intelligence data in this area.

Reactions to the break-down of formal liaison coordination between the FBI and the other intelligence agencies was also viewed from different perspectives by various participants in 1970. William C. Sullivan of the FBI and Tom Huston saw the severing of formal ties by Hoover as another manifestation of paralysis in the conduct of Bureau intelligence affairs. Others viewed the development as an unfortunate inconvenience, but one that was soon surmounted by sundry informal methods of communication. Severing formal liaison, in other words, did not terminate cooperation between the intelligence agencies and the FBI; rather, it forced the establishment of different channels of communication, chiefly through increased telephone conversation and the exchange of memoranda. No one, however, thought the situation was as good as before formal ties were broken; and everyone looked upon the general lack of communication between Hoover and the other directors—especially Helms—as unfortunate.

C. Public Policy Implications

The case of the Huston Plan provides a tragic commentary on the state of American democracy in the summer of 1970. Tom Charles Huston, the top White House adviser for internal security affairs, advised the President of the United States, in effect, authorize the violation of the Constitution and specific federal statutes protecting the rights of American citizens. The President, Richard M. Nixon, accepted the advice and gave his brief approval to the unlawful intelligence plan which now bears the name of his adviser. Throughout the episode, some of the intelligence agencies concealed projects from the White House and from one another; and, after the President took back his authority from the intelligence plan, certain agencies continued to implement the provisions anyway.

The conclusion to be drawn from this case is that: no longer can the intelligence agencies be exempted from the law or from lines of higher authority. The final report of the Senate Select Committee on

Intelligence sets forth a series of recommendations to help prevent this from happening again. Central to each of the issues of accountability, authority, lawlessness, and the quality and coordination of intelligence is the question of control. The provisions in the Final Report would tighten control over the intelligence community.

Yet to avoid the dangers of tyranny inherent in greater control in the government, the authority and responsibility for this increased supervision must be shared among the intelligence agencies themselves, the President, the Justice Department, the Congress, and the courts.

If shared and closer control is one answer emerging from this investigation into the Huston Plan, another is the need for more frequent dialogue on intelligence problems among responsible individuals in each branch of the Government. The Huston Plan arose because well-meaning and intelligent people wanted solutions to pressing questions of intelligence quality and coordination. The solutions arrived at in June 1970 were inappropriate and have been rightly criticized, but the original problems have not been completely unresolved. And they will not be until leaders in the Congress and the Executive Branch face them, discuss them, and decide upon appropriate courses of action. The objective of the Select Committee has been to contribute to this vital process.

APPENDIX

"CHRONOLOGY OF HUSTON PLAN AND INTELLIGENCE EVALUATION COMMITTEE" PREPARED BY SENATE SELECT COMMITTEE STAFF

Date	Central event	Related developments
1965.....		As a result of Senator Long's wiretap hearings, Hoover terminates "black bag" jobs.
December 1966.....	FBI terminates break-ins.	
1967-68.....	Capt. Thomas Charles Huston, U.S. Army, works at DIA in the area of covert aerial reconnaissance.	
1968.....	Huston works part time in the Nixon campaign.	
April 1968.....		Dr. Martin Luther King, Jr., is murdered; student riots at Columbia University.
May 1, 1968.....		Poor People's march heads for Washington from Memphis.
June 5, 1968.....		Robert F. Kennedy is murdered in Los Angeles.
Aug. 28, 1968.....		Chicago police see some 3,000 demonstrators confront outside the Chicago Hilton.
January 1969.....	Huston begins employment at the White House on the Speechwriting and Research staff.	
March 1969.....		Student riots at San Francisco State College.
April 1969.....		Rioting in Black neighborhoods of Chicago, student riots at Harvard and Cornell.
April 1969.....		Ehrlichman prepares a report for Nixon on foreign Communist support of campus disorders; the White House concludes that present intelligence collection capabilities were inadequate.
May 1969.....		Nixon places first of 17 taps on government officials.
June 1969.....	Huston is assigned by Ehrlichman (through Krogh) to investigate possible foreign support of campus disorders; receives briefings and reports from CIA and FBI; obtains little evidence to support the hypothesis, though is displeased with quality of data—especially from the Bureau; has first contact with the intelligence community since entering the White House.	
July 1, 1969.....		Huston advises IRS to move against leftist organizations.
July 22, 1969.....		Mitchell establishes the "Civil Disturbance Group" (CDG) to coordinate intelligence, policy and action within Justice concerning domestic civil disturbances—apparently because he doubted the adequacy of FBI efforts in this area.
October-November 1969.....	During the demonstrations, Huston monitors FBI intelligence estimates for the White House; Krogh, Haldeman, and Ehrlichman complain about quality of FBI data.	
December 1969.....	Huston asks Sullivan to have the Bureau prepare a report on the November moratorium, showing that the Weathermen were to blame for the violence of the New Mobilization (a conclusion agreed upon by Huston and Sullivan and contrary to the position of the Department of Justice).	
January 1970.....		Army domestic surveillance program is revealed; Ervin begins investigation; Huston continues responsibilities for monitoring and disseminating FBI intelligence to the White House; student riots at UC Santa Barbara.
March 1970.....		Explosion of Greenwich Village townhouse "bomb factory"; Weathermen bombings of corporation offices in New York; increase in bombing incidents throughout the United States.

"CHRONOLOGY OF HUSTON PLAN AND INTELLIGENCE EVALUATION COMMITTEE" PREPARED BY SENATE SELECT COMMITTEE STAFF—Continued

Date	Central event	Related developments
March 19, 1970.....		Executive Protection Service established, placing a heavier guard around embassies. 40,000 march down Pennsylvania Ave. in Washington, D.C.
Apr. 4, 1970.....		
Apr. 22, 1970.....	Meeting in Haldeman's office: Huston is told to meet regularly with intelligence agencies on questions of domestic violence and report to the White House; decision that Nixon should meet with intelligence community principals regarding intelligence gaps; Cambodian incursion prevents meeting from being held in May.	
May 1970.....		Kent State and Jackson State shootings; anti-war demonstrations; Hoover terminates FBI liaison to CIA; Army phases out domestic surveillance program.
June 4, 1970.....	Huston recommends to Nixon that Sullivan be named chairman of work group for Special Report; earlier, Huston and Sullivan had met together to outline the restraints on intelligence collection which Huston could show to Nixon in order to persuade him to establish the Interagency Committee on Intelligence (ICI) (ad hoc).	
June 5, 1970.....	Nixon holds meeting in White House to create ICI (ad hoc); Hoover named chairman; present at the meeting with Nixon are: Hoover, Helms, Bennett, Gayler, Haldeman, Ehrlichman, Finch, and Huston.	
June 8, 1970.....	Hoover convenes meeting of intelligence principals to plan the writing of a Special Report for the President; names Sullivan work group chairman; meeting attended by Helms, Hoover, Gayler, Bennett, Huston, Sullivan, and G. Moore.	
June 9, 1970.....	First meeting of ICI (ad hoc) work group at Langley; discussion on the purpose of the assembled group; each agency assigned task of preparing a list of restraints hampering intelligence collection.	
June 10, 1970.....		Sullivan is promoted to No. 3 man in the Bureau, succeeding De Loach as Assistant to the Director; De Loach retires on July 20, 1970.
June 12, 1970.....	Second meeting of work group.....	
June 17, 1970.....	Third meeting of work group.....	
June 23, 1970.....	Fourth and final meeting of the work group.....	
June 23, 1970.....		Hoover terminates all FBI formal liaison with NSA, DIA, Secret Service, and the military services.
June 25, 1970.....	Principals meet in Hoover's office to sign the Special Report.	
June 26, 1970.....	A copy of the Special Report delivered to Huston at the White House.	
July 1970.....		John Dean transfers to the White House from Justice, where he had often represented the Government in discussions with protest leaders about demonstration permits for the Washington, D.C. area.
Early July 1970.....	In a memo to Haldeman entitled "Operational Restraints on Intelligence Collection," Huston recommends that Nixon select most of the options relaxing restraints on intelligence collection; his recommendation, he says, reflects the consensus of the ICI (ad hoc), not just his own viewpoint. Huston writes a separate memo encouraging Nixon to implement the Special Report options in a face-to-face meeting with the Agency chiefs; otherwise, thought Huston, Hoover might not accept the relaxations.	
July 9, 1970.....	In a memo, Huston proclaims himself the "exclusive" contact point at the White House on matters of domestic intelligence or internal security.	
July 14, 1970.....	Haldeman writes memo to Huston saying that Nixon had approved Huston's plan, though he did not agree to the face-to-face announcement of the decision. Nixon tells Haldeman, who tells Huston, that he did not want to take the time to call the Agency Directors in.	

"CHRONOLOGY OF HUSTON PLAN AND INTELLIGENCE EVALUATION COMMITTEE" PREPARED BY SENATE SELECT COMMITTEE STAFF—Continued

Date	Central event	Related developments
July 23, 1970	Huston prepares a memo on Nixon's approval of the extreme options, has the memo approved by Haldeman, and sends it to Helms, Hoover, Gayler, and Bennett. Sullivan calls Huston soon thereafter to say that Hoover was furious about the memo and intended to see Mitchell; Hoover calls and writes Mitchell to complain (the first time Mitchell hears about the Special Report). Hoover goes to Mitchell's office to object to the removal of restraints on intelligence collection methods; Mitchell supports Hoover's objectives.	
July 27, 1970	Mitchell confers with the President. Haldeman calls Huston to say that Mitchell has talked to Nixon about the Huston Plan, and the July 23, 1970, memo was being recalled so that Nixon, Hoover, Mitchell, and Haldeman could reconsider the plan. David McManus of the White House Situation Room telephones each agency to request the return of the decision memo and the Special Report.	
July 28, 1970	The agencies return the decision memorandums to the White House Situation Room.	
Aug. 3, 1970	Huston and Haldeman "bassle" verbally about whether Nixon should let Hoover's objections to the Huston Plan prevail.	
Aug. 5, 1970	Huston writes a memo to Haldeman urging implementation of the Presidential decision reflected in the July 23, memo.	
Aug. 7, 1970	In a memo to Haldeman, Huston advises (1) that Haldeman meet with Mitchell to secure his support for the President's decision; (2) that the FBI Director be informed the decision will stand; and (3) that all intelligence agencies are to proceed to implement them all once.	
Aug. 10, 1970	Huston is shifted to a subordinate position under John Dean, who is charged with assuming Huston's intelligence responsibilities in the White House. Henceforth, Huston's main responsibilities related to conflict of interest clearances and the review of Executive orders, though he occasionally prepared intelligence reports for Haldeman and continued to be the liaison in the White House for FBI information. Huston also worked on a White House history of Vietnam negotiations.	
Aug. 14, 1970		Huston asks IRS for a progress report on its review of the operations of ideological organizations.
Late August	Haldeman shows Dean the Huston Plan and asks him to implement it.	
Aug. 25, 1970		In a memo to Haldeman, Huston urges White House expansion of Subversive Activities Control Board via an Executive order.
Sept. 10, 1970		Huston writes a memo to Haldeman on the subject of air hijacking in which he states the need for improved intelligence community coordination, referring to Hoover as the chief obstacle.
Sept. 17, 1970	Mitchell has lunch at CIA to discuss possibility of improved interagency coordination; meets with Dean in the afternoon and says that he opposes Huston Plan but (unlike Hoover), approves of an interagency evaluation committee to improve intelligence coordination. In a memo to Haldeman, Dean recommends the establishment of such a committee as a first step toward implementing the Huston Plan. Haldeman concurs.	
Sept. 18, 1970	In a memo to Mitchell, Dean recommends the creation of an Intelligence Evaluation Committee (IEC) for the improved coordination and evaluation of domestic intelligence. The Inter-divisional Information Unit in the Department of Justice would provide cover for IEC. (The IDIU monitored information on civil disturbances for the AQ.)	

**"CHRONOLOGY OF HUSTON PLAN AND INTELLIGENCE EVALUATION COMMITTEE" PREPARED BY SENATE SELECT
COMMITTEE STAFF—Continued**

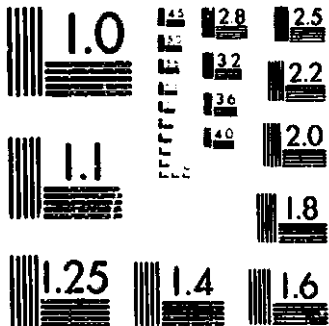
Date	Central event	Related developments
Sept. 21, 1970.....		In a memo to Haldeman, Huston complains that the IRS has failed to take any notable actions against ideological organizations. In a memo to IRS, Huston recommends that the Agency put together a small group of agents to use information gleaned from tax records "to harass or embarrass" certain individuals.
Dec. 3, 1970.....	IEC holds first meeting in Dean's office.....	
Jan. 10, 1971.....	An unsigned memo on Department of Justice stationery goes to Mitchell, Ehrlichman, and Haldeman, recommending implementation of the Huston Plan and supposedly reflecting unanimous IEC opinion.	
Feb. 3, 1971.....	Hoover refuses to provide FBI staff for IEC.....	
Mar. 29, 31, 1971.....	Hoover, Helms, Gayler meet in Mitchell's office to discuss relaxation of restraints on intelligence collection.	
June 13, 1971.....	Pentagon Papers are published; Huston returns to law practice in Indiana soon thereafter, but continues to serve as a consultant to the White House throughout the year.	
July 2, 1971.....		Ehrlichman forms "Plumbers" group at Nixon's request.
Oct. 6, 1971.....		Sullivan resigns from the Bureau.
May 2, 1972.....		Hoover dies.
May 1—June 1972.....		Watergate break-ins.
Oct. 7, 1972.....		Huston is named a member of a Census Bureau Advisory Committee on privacy and confidentiality.
Apr. 30, 1973.....		John Dean is fired as White House Counsel.
June 1973.....	IEC abolished.....	

STAFF LIST

This Final Report is the result of a sustained effort by the entire Committee staff. The Committee wishes to express its appreciation to the members of the support, legal, research, and Task Force staffs, who made a substantial contribution to this Report and who have served the Committee and the Senate with integrity and loyalty:

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