

In the years after 1956, the purpose of the Communist Party COINTELPRO changed somewhat. Supreme Court decisions substantially curbed criminal prosecution of Communists.<sup>274</sup> Subsequently, the FBI "rationale" for COINTELPRO was that it had become "impossible to prosecute Communist Party members" and some alternative was needed "to contain the threat."<sup>275</sup>

### *b. Early Expansion of COINTELPRO*

From 1956 until 1960, the COINTELPRO program was primarily aimed at the Communist Party organization. But, in March 1960, participating FBI field offices were directed to make efforts to prevent Communist "infiltration" of "legitimate mass organizations, such as Parent-Teacher Associations, civil organizations, and racial and religious groups." The initial technique was to notify a leader of the organization, often by "anonymous communications," about the alleged Communist in its midst.<sup>276</sup> In some cases, both the Communist and the "infiltrated" organization were targeted.

This marked the beginning of the progression from targeting Communist Party members, to those allegedly under Communist "influence," to persons taking positions supported by the Communists. For example, in 1964 targets under the Communist Party COINTELPRO label included a group with some Communist participants urging increased employment of minorities<sup>277</sup> and a non-Communist group in opposition to the House Committee on Un-American Activities.<sup>278</sup>

In 1961, a COINTELPRO operation was initiated against the Socialist Workers Party. The originating memorandum said it was not a "crash" program; and it was never given high priority.<sup>279</sup> The SWP's support for "such causes as Castro's Cuba and integration problems arising in the South" were noted as factors in the FBI's decision to target the organization. The Bureau also relied upon its assessment that the SWP was "not just another socialist group but follows the revolutionary principles of Marx, Lenin, and Engels as interpreted by Leon Trotsky" and that it was "in frequent contact with international Trotskyite groups stopping short of open and direct contact with these groups."<sup>280</sup> The SWP had been designated as "subversive" on the "Attorney General's list" since the 1940s.<sup>281</sup>

## D. INTELLIGENCE AND DOMESTIC DISSENT: 1964-1976

### *1. Main Developments of the 1964-1976 Period*

Beginning in the mid-sixties, the United States experienced a period of domestic unrest and protest unparalleled in this century. Violence erupted in the poverty-stricken urban ghettos, and opposition to American intervention in Vietnam produced massive demonstrations.

<sup>274</sup> E.g., *Yates v. United States*, 354 U.S. 298 (1957).

<sup>275</sup> Deposition of Supervisor, Internal Security Section, FBI Intelligence Division, 10/16/75, pp. 10, 14.

<sup>276</sup> Memorandum from FBI Headquarters to New York field office, 3/31/60.

<sup>277</sup> Memorandum from FBI Headquarters to San Francisco field office, 4/16/64.

<sup>278</sup> Memorandum from FBI Headquarters to Cleveland field office, 11/6/64.

<sup>279</sup> Forty-five actions were approved by FBI Headquarters under the SWP COINTELPRO from 1961 until it was discontinued in 1969. The SWP program was then subsumed under the New Left COINTELPRO, see pp. 88-89.

<sup>280</sup> Memorandum from Director, FBI, to New York field office, 10/12/61.

<sup>281</sup> Memorandum from the Attorney General to Heads of Departments and Agencies, 4/29/53.

A small minority deliberately used violence as a method for achieving political goals—ranging from the brutal murder and intimidation of black Americans in parts of the South to the terrorist bombing of office buildings and government-supported university facilities. But three Presidential commissions found that the larger outbreaks of violence in the ghettos and on the campuses were most often spontaneous reactions to events in a climate of social tension and upheaval.<sup>282</sup>

During this period, thousands of young Americans and members of racial minorities came to believe in civil disobedience as a vehicle for protest and dissent.

The government could have set an example for the nation's citizens and prevented spiraling lawlessness by respecting the law as it took steps to predict or prevent violence. But agencies of the United States, sometimes abetted by public opinion and government officials, all too often disregarded the Constitutional rights of American in their conduct of domestic intelligence operations.

The most significant developments in domestic intelligence activity during this period may be summarized as follows:

#### *a. Scope of Domestic Intelligence*

FBI intelligence reports on protest activity and domestic dissent accumulated massive information on lawful activity and law-abiding citizens for vaguely defined "pure intelligence" and "preventive intelligence" purposes related only remotely or not at all to law enforcement or the prevention of violence. The FBI exaggerated the extent of domestic Communist influence, and COMINFIL investigations improperly included groups with no significant connections to Communists.

The FBI expanded its use of informers for gathering intelligence about domestic political groups, sometimes upon the urging of the Attorney General. No significant limits were placed on the kind of political or personal information collected by informers, recorded in FBI files, and often disseminated outside the Bureau.

Army intelligence developed programs for the massive collection of information about, and surveillance of, civilian political activity in the United States and sometimes abroad.

In contrast to previous policies for centralizing domestic intelligence investigations, the Federal Government encouraged local police to establish intelligence programs both for their own use and to feed into the Federal intelligence-gathering process. This greatly expanded the domestic intelligence apparatus, making it harder to control.

The Justice Department established a unit for storing and evaluating intelligence about civil disorders which was designed to use non-intelligence agencies as regular sources of information, which, in fact, drew on military intelligence as well as the FBI, and which transmitted its computer list of citizens to the CIA and the IRS.

#### *b. Domestic Intelligence Authority*

Intelligence gathering related to protest activity was generally increased in response to vague requests by Attorneys General or other

<sup>282</sup> Report of the National Advisory Commission on Civil Disorders (1968), ch. 2; Report of the National Commission on the Causes and Prevention of Violence (1969); Report of the President's Commission on Campus Unrest (1970).

officials outside the intelligence agencies; such increases were sometimes ratified retroactively by such officials.

The FBI's exclusive control over civilian domestic intelligence at the Federal level was consolidated by formal agreements with the Secret Service regarding protective intelligence and with the Bureau of Alcohol, Tobacco, and Firearms regarding terrorist bombings.

#### *c. Domestic Covert Action*

The FBI developed new covert programs for disrupting and discrediting domestic political groups, using the techniques originally applied to Communists. The most intensive domestic intelligence investigations, and frequently COINTELPRO operations, were targeted against persons identified not as criminals or criminal suspects, but as "rabble rousers," "agitators," "key activists," or "key black extremists" because of their militant rhetoric and group leadership. The Security Index was revised to include such persons.

Without imposing adequate safeguards against misuse, the Internal Revenue Service passed tax information to the FBI and CIA, in some cases in violation of tax regulations. At the urging of the White House and a Congressional Committee, the IRS established a program for investigating politically active groups and individuals, which included auditing their tax returns.

#### *d. Foreign Intelligence and Domestic Dissent*

A 1966 agreement concerning "coordination" between the CIA and the FBI permitted CIA involvement in internal security functions. Under pressure from the Johnson and Nixon White Houses to determine whether there was "foreign influence" behind anti-war protests and black militant activity, the CIA began collecting intelligence about domestic political groups.

The CIA also conducted operations within the United States under overly broad interpretations of its responsibility to protect the physical security of its facilities and to protect intelligence "sources" and "methods." These operations included surreptitious entry, recruitment of informers in domestic political groups, and at least one instance of warrantless wiretapping approved by the Attorney General.

In the same period, the National Security Agency monitored international communications of Americans involved in domestic dissent despite the fact that its mission was supposed to be restricted to collecting foreign intelligence and monitoring only foreign communications.

#### *e. Intrusive Techniques*

As domestic intelligence operations broadened and focused upon dissenters, the Government increased the use of many of its most intrusive surveillance techniques. During the period from 1964 to 1972, the standards and procedures for warrantless electronic surveillance were tightened, but actual practice was sometimes at odds with the articulated policy. Also during these years, CIA mail opening expanded at the Bureau's request, and NSA monitoring expanded to target domestic dissenters. However, the FBI cut back use of certain techniques under the pressure of Congressional probes and changing public opinion.

### *f. Accountability and Control*

During this period several sustained domestic intelligence efforts illustrated deficiencies in the system for controlling intelligence agencies and holding them accountable for their actions.

In 1970, presidential approval was temporarily granted for a plan for interagency coordination of domestic intelligence activities which included several illegal programs. Although the approval was subsequently revoked, some of the programs were implemented separately by various agencies.

Throughout the administrations of Presidents Johnson and Nixon, the investigative process was misused as a means of acquiring political intelligence for the White House. At the same time, the Justice Department's Internal Security Division, which should have been a check against the excesses of domestic intelligence, generally failed to restrain such activities. For example, as late as 1971-1973, the FBI continued to evade the will of Congress, partly with Justice Department approval, by maintaining a secret "Administrative Index" of suspects for round-up in case of national emergency.

### *g. Reconsideration of FBI Authority*

Partly in reaction to congressional inquiries, the FBI in the early 1970s began to reconsider the extent of its authority to conduct domestic intelligence activities and requested clarification from the Attorney General and an executive mandate for intelligence investigations of "terrorists" and "revolutionaries".

In the absence of any new standards imposed by statute, or by the Attorney General, the FBI continued to collect domestic intelligence under sweeping authorizations issued by the Justice Department in 1974 for investigations of "subversives," potential civil disturbances, and "potential crimes". These authorizations were explicitly based on broad theories of inherent executive power. Attorney General Edward H. Levi recently promulgated guidelines which represent the first significant attempt by the Justice Department to set standards and limits for FBI domestic intelligence investigations.

## *2. Scope of Domestic Intelligence*

During this period the FBI continued the same broad investigations of the lawful activities of Americans that were based on the Bureau's vague mandate to collect intelligence about "subversion."

In addition, the Bureau—joined by CIA, NSA, and military intelligence agencies—took on new and equally broad assignments to investigate "racial matters," the "New Left," "student agitation," and alleged "foreign influence" on the antiwar movement.

### *a. Domestic Protest and Dissent: FBI*

"We are an intelligence agency," stated a policy directive to all FBI offices in 1966, "and as such are expected to know what is going on or is likely to happen."<sup>283</sup> Written in the context of demonstrations over the Vietnam war and civil rights, this order illustrates the general attitude among Bureau officials and high administration officials who established intelligence policy: in a country in ferment, the FBI could, and should, know everything that might someday be useful in some undefined manner.

<sup>283</sup> SAC letter 67-27, 5/3/66.

(1) *Racial Intelligence*.—During the 1960s, the FBI, partly on its own and partly in response to outside requests, developed sweeping programs for collecting domestic intelligence concerning racial matters. These programs had roots in the late 1950s.<sup>284</sup> By the early 1960s, they had grown to the point that the Bureau was gathering intelligence about proposed “civil demonstrations” and the related activities of “officials, committees, legislatures, organizations, etc.” in the “racial field.”<sup>285</sup>

In 1965, FBI field offices were directed to supply “complete” information (including “postponement or cancellation”):

regarding planned racial activity, such as demonstrations, rallies, marches, or threatened opposition to activity of this kind.

Field offices reported their full “coverage” of “meetings” and “any other pertinent information concerning racial activities.”<sup>286</sup>

In late 1966, field offices were instructed to begin preparing semi-monthly summaries of “existing racial conditions in major urban areas,” relying upon “established sources,” and “racial,” “criminal,” and “security informants.” These reports were to describe the “general programs” of *all* “civil rights organizations” and “black nationalist organizations,” as well as subversive or “hate-type” groups. The information to be gathered was to include: “readily available personal background data” on “leaders and individuals in the civil rights movement” and other “leaders and individuals involved,” as well as any data in Bureau files on “subversive associations” they might have; the “objectives sought by the minority community;” the community reaction to “minority demands;” and “the number, character, and intensity of the techniques used by the minority community, such as picketing or sit-in demonstrations, to enforce their demands.”<sup>287</sup>

Thus, the FBI was mobilized to use all its available resources to discover everything it could about “general racial conditions.” While the stated objective was to arrive at an “evaluation” of potential for violence, the broad sweep of the directives issued to the field resulted in the collection and filing of vast amounts of information unrelated to violence.

Some programs concerning “general racial matters” were directed to concentrate on groups with a “propensity for violence and civil disorder.”<sup>288</sup> But even these programs were so overboard in their application as to include Dr. Martin Luther King, Jr. and his non-violent Southern Christian Leadership Conference in the “radical and violence-prone” “hate group” category. The stated justification, unsupported by any facts, was that Dr. King might “abandon his supposed ‘obedience’ to ‘white, liberal doctrines’ (nonviolence) and embrace black nationalism.”<sup>289</sup>

Another leading civil rights group, the Congress of Racial Equality (CORE), was investigated under the “Racial Matters” Program because the Bureau concluded that it was moving “away from a legiti-

<sup>284</sup> See p. 50.

<sup>285</sup> 1964 FBI Manual Section 122, p. 1.

<sup>286</sup> 1965 FBI Manual Section 122, pp. 6–8.

<sup>287</sup> FBI Manual Section 122, revised 12/13/66, pp. 8–9.

<sup>288</sup> Memorandum from FBI Headquarters to all SACs, 8/25/67.

<sup>289</sup> Memorandum from FBI Headquarters to all SACs, 3/4/68.

mate civil rights organization" and "assuming a militant black nationalist posture." The FBI reached this conclusion on the grounds that "some leaders in their public statements" had condoned "violence as a means of attaining Negro rights." The investigation was intensified, even though it was recognized there was no information that its members "advocate violence" or "participate in actual violence."<sup>290</sup>

The same overbreadth characterized the FBI's collection of intelligence about "white militant groups." Among the groups investigated were those "known to sponsor demonstrations against integration and against the busing of Negro students to white schools." As soon as a new organization of this sort was formed, the Bureau used its informants and "established sources" to determine "the aims and purposes of the organization, its leaders, approximate membership," and other "background data" bearing upon "the militancy" of the group.<sup>290a</sup>

(2) "*New Left*" Intelligence.—The FBI collected intelligence under its VIDEM (Vietnam Demonstration) and STAG (Student Agitation) Programs on "anti-Government demonstrations and protest rallies" which the Bureau considered "disruptive." Field offices were warned against "incomplete and nonspecific reporting" which neglected such details as "number of protesters present, identities of organizations, and identities of speakers and leading activists."<sup>291</sup>

The FBI attempted to define the "New Left," but with little success. The Bureau agent who was in charge of New Left intelligence conceded that:

It has never been strictly defined, as far as I know. . . . It's more or less an attitude, I would think.

He also stated that the definition was expanded continually.<sup>292</sup>

Field offices were told that the New Left was a "subversive force" dedicated to destroying our "traditional values." Although it had "no definable ideology," it was seen as having "strong Marxist, existentialist, nihilist and anarchist overtones." Field offices were instructed that "proper areas of inquiry" regarding the subjects of "New Left" investigations were "public statements, the writings and the leadership activities" which might establish their "rejection of law and order" and thus their "potential" threat to security. Such persons would also be placed on the Security Index (for detention in a time of emergency) because of these "anarchistic tendencies," even if the Bureau could not prove "membership in a subversive organization."<sup>293</sup>

A Bureau memorandum which recommended the use of disruptive techniques against the "New Left" paid particular attention to one of its "anarchistic tendencies":

<sup>290</sup> SAC Letter 68-16, 3/12/68, Subject: Congress of Racial Equality.

<sup>290a</sup> SAC Letter 68-25, 4/30/68.

<sup>291</sup> SAC Memorandum 1-72; 5/23/72, Subject: Reporting of Protest Demonstrations.

<sup>292</sup> Supervisor, FBI Intelligence Division, deposition, 10/28/75, pp. 7-8.

<sup>293</sup> SAC Letter 68-21, 4/2/68. This directive did caution that "mere dissent and opposition to Governmental policies pursued in a legal constitutional manner" was "not sufficient to warrant inclusion in the Security Index." Moreover, "anti-Vietnam or peace group sentiments" were not, in themselves, supposed to "justify an investigation." The failure of this admonition to achieve its stated objective is discussed in the findings on "Overbreadth" and "Covert Action to Disrupt."

the New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigations and drive us off the college campuses.<sup>294</sup>

Later instructions to the field stated that the term "New Left" did not refer to "a definite organization," but to a "loosely-bound, free-wheeling, college-oriented movement" and to the "more extreme and militant anti-Vietnam war and antidraft protest organizations." These instructions directed a "comprehensive study of the whole movement" for the purpose of assessing its "dangerousness." Quarterly reports were to be prepared, and "subfiles" opened, under the following headings:

- Organizations ("when organized, objectives, locality which active, whether part of a national organization")
- Membership (and "sympathizers"—use "best available informants and sources")
- Finances (including identity of "angels" and funds from "foreign sources")
- Communist Influence
- Publications ("describe publications, show circulation and principal members of editorial staff")
- Violence
- Religion ("support of movement by religious groups or individuals")
- Race Relations
- Political Activities ("details relating to position taken on political matters including efforts to influence public opinion, the electorate and Government bodies")
- Ideology
- Education ("courses given together with any educational outlines and assigned or suggested reading")
- Social Reform ("demonstrations aimed at social reform")
- Labor ("all activity in the labor field")
- Public Appearances of Leaders ("on radio and television" and "before groups, such as labor, church and minority groups," including "summary of subject matter discussed")
- Factionalism
- Security Measures
- International Relations ("travel in foreign countries," "attacks on United States foreign policy")
- Mass Media ("indications of support of New Left by mass media")

Through these massive reports, the FBI hoped to discover "the true nature of the New Left movement."<sup>295</sup> Few Bureau programs better reflect "pure intelligence" objectives which extended far beyond even the most generous definition of "preventive intelligence."<sup>296</sup>

<sup>294</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.

<sup>295</sup> Memorandum from FBI Headquarters to all SACs, 10/28/68, and enclosure, Subject: New Left Movement—Report Outline.

<sup>296</sup> A further reason for collecting information on the New Left was put forward by Assistant Director Brennan, head of the FBI Intelligence Division in 1970-1971. Since New Left "leaders" had "publicly professed" their desire to overthrow the Government, the Bureau should file the names of anyone who "joined in membership" for "future reference" in case they ever "obtained a sensitive Government position." (Charles Brennan testimony, 9/25/75, Hearings, Vol. 2, pp. 116-117.)

Apart from the massive general reports required on the "New Left," examples of particular investigations included: a stockholders group planning to protest their corporation's war production at the annual stockholders meeting;<sup>297</sup> a university professor who was "an active participant in New Left demonstrations," publicly surrendered his draft card, and had been arrested in antiwar demonstrations, but not convicted;<sup>298</sup> and two university instructors who helped support a student "underground" newspaper whose editorial policy was described as "left-of-center, anti-establishment, and opposed [to] the University administration."<sup>299</sup>

The FBI also investigated emerging "New Left" groups, such as "Free Universities" attached to various college campuses, to determine whether they were connected "in any way" with "subversive groups." For example, when an article appeared in a newspaper stating that one "Free University" was being formed and that it was "anti-institutional," the FBI sought to determine its "origin," the persons responsible for its "formation," and whether they had "subversive backgrounds."<sup>300</sup> The resulting report described in detail the formation, curriculum content, and associates of the group. It was disseminated to military intelligence and Secret Service field offices and headquarters in Washington as well as to the State Department and the Justice Department.<sup>301</sup>

#### *b. FBI Informants*

The FBI Manual has never significantly limited informant reporting about the lawful political activities or personal lives of American citizens, except for prohibiting reports about legal defense "plans or strategy," "employer-employee relationships" connected with labor unions, and "legitimate campus activities."<sup>302</sup> In practice, FBI agents imposed no other limitations on the informants they handled and, on occasion, disregarded the prohibitions of the Manual.<sup>303</sup>

(1) *Infiltration of the Klan.*—In mid-1964, Justice Department officials became increasingly concerned about the spread of Ku Klux Klan activity and violence in the Deep South. Attorney General Kennedy advised President Johnson that, because of the "unique difficulty" presented by a situation where "lawless activities" had the "sanction of local law enforcement agencies," the FBI should apply to the Klan the same "techniques" used previously "in the infiltration of Communist groups."<sup>304</sup>

Former Attorney General Katzenbach, under whose tenure FBI activities against the Klan expanded, vigorously defended this deci-

<sup>297</sup> Memorandum from Minneapolis field office to FBI Headquarters, 4/1/70.

<sup>298</sup> Memorandum from FBI Headquarters to Pittsburgh field office, 5/1/70.

<sup>299</sup> Memorandum from Mobile field office to FBI Headquarters, 12/9/70.

<sup>300</sup> Memorandum from FBI Headquarters to Detroit field offices, 2/17/66.

<sup>301</sup> Memorandum from Detroit field office to FBI Headquarters, 4/15/66.

<sup>302</sup> FBI Manual, Section 107.

<sup>303</sup> See Findings on use of informants in "Intrusive Techniques," p. 192.

<sup>304</sup> Memorandum from Attorney General Kennedy to the President, June 1964, quoted in Victor Navasky, *Kennedy Justice* (New York: Atheneum, 1971), pp. 105–106. The President asked former CIA Director Allen Dulles to evaluate the situation in Mississippi. Upon his return from a survey of the state, Dulles endorsed the Attorney General's recommendation that the FBI be used to "control the terrorist activities." ("Dulles Requests More FBI Agents for Mississippi," New York Times, 6/27/64.)



sion as necessary to “deter violence” by sowing “deep mistrust among Klan members” and making them aware that they were “under constant observation.”<sup>305</sup> The FBI Manual did, in fact, advise Bureau agents against “wholesale investigations” of persons who “merely attend meetings on a regular basis.”<sup>306</sup> But FBI intelligence officials chafed under this restriction and sought expanded informant coverage.<sup>307</sup> Subsequently, the Manual was revised in 1967 to require the field to furnish the “details” of Klan “rallies” and “demonstrations.”<sup>308</sup> By 1971, the Special Agents in Charge of field offices had the discretion to investigate not only persons with “a potential for violence,” but also anyone else who in the SAC’s “judgment” was an “extremist.”<sup>309</sup>

(2) *“Listening Posts” in the Black Community.*—Two special informant programs illustrates the breadth of the Bureau’s infiltration of the black community. In 1970, the FBI used its “established informants” to determine the “background, aims and purposes, leaders and Key Activists” in every black student group in the country, “regardless of [the group’s] past or present involvement in disorders.”<sup>310</sup> Field offices were instructed to “target informants” against these groups and to “develop such coverage” where informants were not already available.<sup>311</sup>

In response to Attorney General Clark’s instructions regarding civil disorders intelligence in 1967, the Bureau launched a “ghetto informant program” which lasted until 1973.<sup>312</sup> The number of ghetto informants expanded rapidly: 4,067 in 1969 and 7,402 by 1972.<sup>313</sup> The original concept was to establish a “listening post”<sup>314</sup> by recruiting a person “who lives or works in a ghetto area” to provide information regarding the “racial situation” and “racial activities.”<sup>315</sup> Such informants could include “the proprietor of a candy store or barber shop.” As the program developed, however, ghetto informants were:

utilized to attend public meetings held by extremists, to identify extremists passing through or locating in the ghetto area, to identify purveyors of extremist literature as well as given specific assignments where appropriate.<sup>316</sup>

<sup>305</sup> Testimony of Nicholas deB. Katzenbach 12/3/75. Hearings, Vol. 6, p. 207.

<sup>306</sup> 1965 FBI manual, Section 122, pp. 1–2.

<sup>307</sup> FBI Executives conference memorandum, 3/24/66, Subject: Establishment of a Special Squad Against the Ku Klux Klan.

<sup>308</sup> 1967 FBI manual, Section 122, p. 2.

<sup>309</sup> 1971 FBI manual, Section 122, p. 2.

<sup>310</sup> Memorandum from FBI Executive Conference to Mr. Tolson, 10/29/70.

<sup>311</sup> Memorandum from FBI Headquarters to all SACs, 11/4/70.

<sup>312</sup> Memorandum from G. C. Moore to William C. Sullivan, 10/11/67. For Attorney General Clark’s order, see pp. 83–84.

<sup>313</sup> Memorandum from FBI to Select Committee, 8/20/75 and enclosures.)

<sup>314</sup> Memorandum from G. C. Moore to E. S. Miller, 9/8/72.

<sup>315</sup> Memorandum from G. C. Moore to C. D. Brennan, 10/27/70.

<sup>316</sup> Memorandum from Moore to Miller, 9/27/72. This program continued until 1973, when the FBI decided to rely on its regular extremist informants “for ‘by-product’ information on civil unrest.” The most “productive” ghetto informants were “converted” into regular informants. (FBI Inspection Division Memorandum, 11/24/72; Memorandum from Director Clarence M. Kelley to all SACs, 7/31/73.)

Material to be furnished by ghetto informants included names of "Afro-American type book stores" and their "owners, operators and clientele."<sup>317</sup>

(3) *Infiltration of the "New Left".*—The FBI used its "security" informant program to report extensively on all activities relating to opposition to the Vietnam war. Moreover, informants already in groups considered "subversive" by the FBI also reported on the activities of other organizations and their members, if the latter were being "infiltrated" by the former groups.<sup>318</sup>

The agent who handled one informant in an antiwar group believed to be infiltrated by "subversive groups and/or violent elements" testified that the informant told him "everything she knew" about the chapter she joined.<sup>319</sup> Summaries of her reports indicate that she reported extensively about personal matters and lawful political activity.<sup>320</sup> This informant estimated that her reports identified as many as 1,000 people to the FBI over an 18-month period. The vast majority of these persons were members of peaceful and law-abiding groups, including the United Church for Christ, which were engaged in joint social welfare projects with the antiwar group which the informant had infiltrated.<sup>321</sup>

Other FBI informants reported, for example, on the Women's Liberation Movement, identifying its members at several mid-western universities<sup>322</sup> and reporting statements made by women concerning their personal reasons for participating in the women's movement.<sup>323</sup>

Moreover, as in the case of informants in the black community, efforts were made to greatly increase the number of informants who could report on antiwar and related groups. In 1969, the Justice Department specifically asked the FBI to use not only "existing sources," but also "any other sources you may be able to develop" to collect information about "serious campus disorders."<sup>324</sup> The Bureau ordered its field offices in 1970 to "make every effort" to obtain "informant coverage" of every "New Left commune."<sup>325</sup> Later that year, after Director Hoover lifted restrictions against recruiting 18 to 21-year-old informants, field offices were urged to take advantage of this "tremendous opportunity" to expand coverage of New Left "collectives, communes, and staffs of their underground newspapers."<sup>326</sup>

<sup>317</sup> Philadelphia Field Office memo 8/12/68, re Racial Informant.

<sup>318</sup> FBI Manual Section 87.

<sup>319</sup> Testimony of FBI Special Agent, 11/20/75, p. 55.

<sup>320</sup> Staff review of informant report summaries.

<sup>321</sup> Mary Jo Cook, testimony, 12/2/75, Hearings, Vol. 6, pp. 111, 119-120.

<sup>322</sup> Report of Kansas City Field Office, 10/20/70.

<sup>323</sup> Memorandum from New York Field Office to FBI Headquarters, 5/28/69.

<sup>324</sup> Memorandum from Assistant Attorney General J. Walter Yeagley to J. Edgar Hoover, 3/3/69. This memorandum stated that the Department was considering "conducting a grand jury investigation" under the antiriot act and other statutes.

<sup>325</sup> Memorandum from FBI Headquarters to all SACs, 4/17/70. This directive defined a "commune" as "a group of individuals residing in one location who practice communal living, i.e., they share income and adhere to the philosophy of a Marxist-Leninist-Maoist-oriented violent revolution."

<sup>326</sup> SAC Letter 70-48, 9/15/70. This directive implemented one provision of the "Huston Plan," which had been disapproved as a domestic intelligence package. See pp. 113, 116.

*c. Army Surveillance of Civilian Political Activity*

In the early 1960s, after several commitments of troops to control racial disturbances and enforce court orders in the South, Army intelligence began collecting information on civilian political activity in all areas where it believed civil disorders might occur. The growth of the Army's domestic intelligence program typifies, once again, the general tendency of information-gathering operations to continually broaden their coverage.

Shortly after the Army was called upon to quell civil disorders in Detroit and to cope with an antiwar demonstration at the Pentagon in 1967, the Army Chief of Staff approved a recommendation for "continuous counterintelligence investigations" to obtain information on "subversive personalities, groups or organizations" and their "influence on urban populations" in promoting civil disturbances.<sup>327</sup> The Army's "collection plan" for civil disturbances specifically targeted as "dissident elements" (without further definition) the "civil rights movement" and the "anti-Vietnam/anti-draft movements."<sup>328</sup> As revised later, Army intelligence-gathering extended beyond "subversion" and "dissident groups" to "prominent persons" who were "friendly" with the "leaders of the disturbance" or "sympathetic with their plans."<sup>329</sup>

*d. Federal Encouragement of Local Police Intelligence*

In reaction to civil disorders in 1965–1966, Attorney General Katzenbach turned for advice to the newly created President's Commission on Law Enforcement and Administration of Justice. After holding a conference with police and National Guard officials, the President's Commission urged police not to react with too much force to disorder "in the course of demonstrations," but to make advance plans for "a true riot situation." This meant that police should establish "procedures for the acquisition and channeling of intelligence" for the use of "those who need it."<sup>330</sup> Former Assistant Attorney General Vinson recalled the Justice Department's concern that local police did not have "any useful intelligence or knowledge about ghettos, about black communities in the big cities."<sup>331</sup>

During the winter of 1967–1968, the Justice Department and the National Advisory Commission on Civil Disorders reiterated the message that local police should establish "intelligence units" to gather and disseminate information on "potential" civil disorders. These units would use "undercover police personnel and informants" and draw on "community leaders, agencies, and organizations in the ghetto."<sup>332</sup> The Commission also urged that these local units be linked

<sup>327</sup> See Memorandum for the Record from Milton B. Hyman, Office of the General Counsel, to the Army General Counsel, 1/23/71, in *Military Surveillance*, Hearings before the Subcommittee on Constitutional Rights, Committee on the Judiciary, United States Senate, 93rd Cong., 2nd Sess. (1974), p. 203.

<sup>328</sup> *Federal Data Banks, Computers and the Bill of Rights*, Hearings before the Senate Subcommittee on Constitutional Rights (1971), at pp. 1120–1121.

<sup>329</sup> *Federal Data Banks*, Hearings, at pp. 1123–1138.

<sup>330</sup> President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), pp. 118–119.

<sup>331</sup> Fred M. Vinson testimony, 1/27/76, p. 32.

<sup>332</sup> Report of the National Advisory Commission on Civil Disorders (1968), p. 487 (Bantam Books ed.).

to "a national center and clearinghouse" in the Justice Department.<sup>333</sup> One consequence of these recommendations was that the FBI, because of regular liaison with local police, became a channel and repository for much of this intelligence data.

Local police intelligence provided a convenient manner for the FBI to acquire information it wanted while avoiding criticism for using covert techniques such as developing campus informants. For example, in 1969, Director Hoover decided "that additional student informants cannot be developed" by the Bureau.<sup>334</sup> Field offices were instructed, however, that one way to continue obtaining intelligence on "situations having a potential for violence" was to develop "in-depth liaison with local law enforcement agencies."<sup>335</sup> Instead of recruiting student informants itself, the FBI would rely on local police to do so.

These Federal policies contributed to the proliferation of local police intelligence activities, often without adequate controls. One result was that still more persons were subjected to investigation who neither engaged in unlawful activity, nor belonged to groups which might be violent. For example, a recent state grand jury report on the Chicago Police Department's "Security Section" described its "close working relationship" with Federal intelligence agencies, including Army intelligence and the FBI. The report found that the police intelligence system produced "inherently inaccurate and distortive data" which contaminated Federal intelligence. One police officer testified that he listed "any person" who attended two "public meetings" of a group as a "member." This conclusion was forwarded "as a fact" to the FBI. Subsequently, an agency seeking, "background information" on that person from the Bureau in an employment investigation or for other purposes would be told that the individual was "a member." The grand jury stated:

Since federal agencies accepted data from the Security Section without questioning the procedures followed, or methods used to gain information, the federal government cannot escape responsibility for the harm done to untold numbers of innocent persons.<sup>336</sup>

*e. The Justice Department's Interdivision Information Unit (IDIU)*

Joseph Califano, President Johnson's assistant in 1967, testified that the Newark and Detroit riots were a "shattering experience" for Justice Department officials and "for us in the White House." They were concerned about the "lack of intelligence" about "black groups." Consequently, "there was a desire to have the Justice Department have better intelligence, for lack of a better term, about dissident groups." This desire "precipitated the intelligence unit" established by Attorney General Ramsey Clark in late 1967. According to Califano,

<sup>333</sup> Report of the National Advisory Commission, p. 490.

<sup>334</sup> SAC Letter 69-16, 3/11/69. This order "recognized that with the graduation of senior classes, you will lose a certain percentage of your existing student informant coverage." But this would "not be accepted as an excuse for not developing the necessary information."

<sup>335</sup> SAC Letter 69-44, 8/19/69.

<sup>336</sup> "Improper Police Intelligence Activities." A Report by the Extended March 1975 Cook County (Illinois) Grand Jury, 11/10/75.

the President and the White House staff were insisting: "There must be a way to predict violence. We've got to know more about this."<sup>337</sup>

In September 1967 Attorney General Clark asked Assistant Attorney General John Doar to review the Department's "facilities" for civil disorders intelligence.<sup>338</sup> Doar recommended creating a Departmental "intelligence unit" to analyze FBI information about "certain persons and groups" (without further definition) in the urban ghettos. He proposed that its "scope be very broad initially" so as to "measure the influence of particular groups." Doar recommended that, in addition to the FBI, agencies who should "funnel information" to the unit should include:

- Community Relations Service
- Poverty Programs
- Neighborhood Legal Services Program
- Labor Department Programs
- Intelligence Unit of the Internal Revenue Service
- Alcohol, Tobacco, and Firearms Division of the Treasury Department
- Narcotics Bureau (then in the Treasury Department)
- Post Office Department

Doar recognized that the Justice Department's Community Relations Service, designed to conciliate racial conflicts, risked losing its "credibility" and thereby its ability to help prevent riots, but he assured the Attorney General that the "confidentiality" of its information could be protected.<sup>339</sup>

A later study for Attorney General Clark added the following agencies to Doar's list:

- President's Commission on Civil Disorders
- New Jersey Blue Ribbon Commission (and similar state agencies)
- State Department
- Army Intelligence
- Office of Economic Opportunity
- Department of Housing and Urban Development (surveys and Model City applications)
- Central Intelligence Agency
- National Security Agency

This study recommended that FBI reports relating "to the civil disturbance problem" under the headings "black power, new left, pacifist, pro-Red Chinese, anti-Vietnam war, pro-Castro, etc." be used to de-

<sup>337</sup> 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.)

<sup>338</sup> In 1966, the Justice Department had started an informal "Summer Project," staffed by a handful of law students, to pull together data from the newspapers, the U.S. Attorneys, and "some Bureau material" for the purpose, according to former Assistant Attorney General Fred Vinson, Jr., of finding out "what's going on in the black community." (Vinson, 1/27/76 p. 33.)

<sup>339</sup> Memorandum from Assistant Attorney General John Doar to Attorney General Clark, 9/27/67.

velop "a master index on individuals, or organizations, and by cities." <sup>340</sup>

Attorney General Clark approved these recommendations and established the Interdivision Information Unit (IDIU) for:

reviewing and reducing to quickly retrievable form all information that may come to this Department relating to organizations and individuals who may play a role, whether purposefully or not, either in instigating or spreading civil disorders, or in preventing or checking them. <sup>341</sup>

In early instructions, Clark had stated that the Department must "endeavor to increase" such intelligence from "external sources." <sup>342</sup>

In fact, according to its first head, the IDIU did use intelligence from the Army, the Internal Revenue Service, and "other investigative agencies." Sometimes IDIU information was used to "determine whether or not" the Community Relations Service should "mediate" a dispute. <sup>343</sup> The Unit developed a computer system which could generate lists of all "members or affiliates" of an organization, their location and travel, "all incidents" relating to "specific issues", and "all information" on a "planned specific demonstration" <sup>344</sup>

By 1970, the IDIU computer was receiving over 42,000 "intelligence reports" a year relating to "civil disorders and campus disturbances" from:

the FBI, the U.S. Attorneys, Bureau of Narcotics, Alcohol, Tobacco, and Firearms Division of the Treasury Department and other intelligence gathering bodies within the Executive Branch. <sup>345</sup>

IDIU computer tapes, which included 10-12,000 entries on "numerous anti-war activists and other dissidents," were provided to the Central Intelligence Agency in 1970 by Assistant Attorney General Jerris Leonard, then the Attorney General's Chief of Staff for Civil Disturbance and head of the Civil Rights Division. <sup>346</sup> This list of persons was sent to the Internal Revenue Service where the Special Services staff opened intelligence files on all persons and organizations listed. Many of them were later investigated or audited, in some cases merely because they were on the list.

In 1971, the IDIU computer included data on such prominent persons as Rev. Ralph Abernathy, Caesar Chavez, Bosley Crowther

<sup>340</sup> Memorandum from Messrs. Maroney, Nugent, McTiernan, and Turner to Attorney General Clark, 12/6/67.

<sup>341</sup> Memorandum from Attorney General Clark to Assistant Attorneys General John Doar, Fred Vinson, Jr., Roger W. Wilkins, and J. Walter Yeagley, 12/18/67.

<sup>342</sup> Memorandum from Attorney General Clark to Kevin T. Maroney, *et al.*, 11/9/67.

<sup>343</sup> Testimony of Kevin T. Maroney (Deputy Assistant Attorney General), 1/27/76, pp. 59-60.

<sup>344</sup> Memorandum from Assistant Attorney General Yeagley to Deputy Attorney General Richard Kleindienst, 2/6/69.

<sup>345</sup> Justice Department memorandum from James T. Devine, 9/10/70, Subject: Interdivisional Information Unit.

<sup>346</sup> Statement of Deputy Attorney General Laurence H. Silberman, Justice Department, 1/14/75. According to this statement, a Justice Department inquiry in 1975 concluded that Leonard "initiated the transaction by requesting the CIA to check against its own sources whether any of the individuals on the IDIU list were engaged in foreign travel, or received foreign assistance or funding."

(former New York Times film critic), Sammy Davis, Jr., Charles Evers, James Farmer, Seymour Hersh, and Coretta King. Organizations on which information had been collected included the NAACP, the Congress of Racial Equality, the Institute for Policy Studies, VISTA, United Farm Workers of California, and the Urban League. Ordinary private citizens who were not nationally prominent were also included. One was described as "a local civil rights worker," another as a "student at Merritt College and a member of the Peace and Freedom Party as of mid-68," and another as "a bearded militant who writes and recites poetry."<sup>347</sup>

Thus, beginning in 1967-1968, the IDIU was the focal point of a massive domestic intelligence apparatus established in response to ghetto riots, militant black rhetoric, antiwar protest, and campus disruptions. Through IDIU, the Attorney General received the benefits of information gathered by numerous agencies, without setting limits to intelligence reporting or providing clear policy guidance. Each component of the structure—FBI, Army, IDIU, local police, and many others—set its own generalized standards and priorities, resulting in excessive collection of information about law abiding citizens.

*f. COMINFIL Investigations: Overbreadth*

In the late 1960's the Communist infiltration or association concept continued to be used as a central basis for FBI intelligence investigations. In many cases it led to the collection of information on the same groups and persons who were swept into the investigative net by the vague missions to investigate such subjects as "racial matters" or the "New Left. As it had from its beginning, the COMINFIL concept produced investigations of individuals and groups who were not Communists. Dr. Martin Luther King, Jr. is the best known example.<sup>348</sup> But the lawful activities of many other persons were recorded in FBI files and reports because they associated in some wholly innocent way with Communists, a term which the Bureau required its agents to "interpret in its broad sense" to include "splinter" and "offshoot" groups.<sup>349</sup>

During this period, when millions of Americans demonstrated in favor of civil rights and against the Vietnam war, many law-abiding citizens and groups came under the scrutiny of intelligence agencies. Under the COMINFIL program, for example, the Bureau compiled extensive reports on moderate groups, like the NAACP.<sup>350</sup>

<sup>347</sup> Staff Memorandum for the Subcommittee on Constitutional Rights, United States Senate, 9/14/71.

<sup>348</sup> See detailed report on Martin Luther King, Jr.

<sup>349</sup> FBI Manual, Section 87.

<sup>350</sup> The Bureau frequently disseminated reports on the NAACP to military intelligence because (as one report put it) of the latter's "interest in matters pertaining to infiltration of the NAACP." (Report from Los Angeles Field Office to FBI Headquarters, 11/5/65.) All the national officers and board members were listed, and any data in FBI files on their past "association" with "subversives" was included. Most of this information went back to the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/65.) When changes occurred in the NAACP's leadership and board, the Bureau once again went back to its files to dredge up "subversive" associations from the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/66.) Chapter membership information was sometimes obtained by "pretext telephone call . . . utilizing the pretext of being interested in joining that branch of the NAACP." (Memorandum from Los Angeles field office to FBI Headquarters, 11/5/65.) As discussed previously, the Bureau never found that the NAACP had abandoned its consistent anti-Communist policy. (See p. 49).

The FBI significantly impaired the democratic decisionmaking process by its distorted intelligence reporting on Communist infiltration of and influence on domestic political activity. In private remarks to Presidents and in public statements, the Bureau seriously exaggerated the extent of Communist influence in both the civil rights and anti-Vietnam war movements.<sup>351</sup>

### 3. Domestic Intelligence Authority

During this period there were no formal executive directives outlining the scope of authority for domestic intelligence activity of the sort previously issued by Presidents Roosevelt, Truman, Eisenhower, and Kennedy.<sup>352</sup> However, there was a series of high-level requests for intelligence concerning racial and urban unrest directed to the FBI and military intelligence agencies. As with the earlier formal Presidential directives on subjects like "subversion," these instructions provided no significant guidelines or controls.

#### a. FBI Intelligence

Since the early 1960s, the Justice Department had been making sporadic requests for intelligence related to specific racial events. For example, the FBI was requested to provide a tape recording of a speech by Governor-elect George Wallace of Alabama in late 1962<sup>353</sup> and for "photographic coverage" of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation.<sup>354</sup> On its own initiative, the FBI supplied the Civil Rights Division with information from a "confidential source" about plans for a demonstration in Virginia, including background data on its "sponsor" and the intention to make "a test case."<sup>355</sup> The Civil Rights Division prepared regular summaries of information from the Bureau on "demonstrations and other racial matters."<sup>356</sup>

<sup>351</sup> See examples of the exaggeration of Communist influence set forth in Findings on Political Abuse. Such distortion continues today. An FBI Intelligence Division Section Chief told the Committee that he could not "think of very many" major demonstrations in this country in recent years "that were not caused by" the Communist Party or the Socialist Workers Party. In response to questioning, the Section Chief listed eleven specific demonstrations since 1965. Three of these turned out to be principally SDS demonstrations, although some individual Communists did participate in one of them. Six others were organized by the National (or New) Mobilization Committee, which the Section Chief stated was subject to Communist and Socialist Workers Party "influence." But the Section Chief admitted that the mobilization Committee "probably" included a wide spectrum of persons from all elements of American society. (R. L. Shackelford deposition, 2/13/76, pp. 3-8.) The FBI has not alleged that the Socialist Workers Party is dominated or controlled by any foreign government. (Shackelford testimony, 2/6/76, pp. 73-77, 114.)

<sup>352</sup> See Sections B-3 and C-2.

<sup>353</sup> Memorandum from Director, FBI, to Assistant Attorney General Burke Marshall (Civil Rights Division), 12/4/62.

<sup>354</sup> Memorandum from St. J. B. (St. John Barrett) to Burke Marshall, 6/18/63.

<sup>355</sup> Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 7/11/63.

<sup>356</sup> Memorandum from Carl W. Gabel to Burke Marshall, 7/19/63. This memorandum described twenty-one such "racial matters" in ten states, including states outside the South such as Ohio, New Jersey, Pennsylvania, Indiana, and Nevada. While some of the items in this and later summaries related to violent or potentially violent protest demonstrations, they went beyond those limits to include entirely peaceful protest activity and group activities (such as conferences, meetings, leadership changes) unrelated to demonstrations. (Memoranda from Gabel to Marshall, 7/22 and 7/25, 8/2 and 8/22/63.) The Justice Department's role in expanding FBI intelligence operations against the Klan is discussed at pp. —.



A formal directive, for a similar purpose, was sent by Attorney General Kennedy to U.S. Attorneys throughout the South in May 1963. It instructed them to "make a survey" to ascertain "any places where racial demonstrations are expected within the next 30 days" and to make "assessments of situations" in their districts. The FBI was "asked to cooperate."<sup>357</sup>

President Johnson ordered the FBI to investigate and report on the origins and extent of the first small-scale Northern ghetto disturbances in the summer of 1964.<sup>358</sup> After the FBI submitted a report on the Watts riot in Los Angeles in 1965, however, Attorney General Katzenbach advised President Johnson that the FBI should investigate "directly" only the possible "subversive involvement." Katzenbach did not believe that the FBI should conduct a "general investigation" of "other aspects of the riot," since these were local law enforcement matters. The President approved this "limited investigation."<sup>359</sup> Nonetheless, internal Bureau instructions in 1965 and 1966 went far beyond this limitation.<sup>360</sup> By 1967 new Attorney General Ramsey Clark reversed the Department's position on such limitations.

After the riots in Newark and Detroit in the summer of 1967, President Johnson announced that the FBI had "standing instructions" for investigating riots "to search for evidence on conspiracy."<sup>361</sup> This announcement accompanied the creation of a National Advisory Commission on Civil Disorders to investigate the "basic factors and causes leading to" the riots, including the "influence" of groups or persons "dedicated to the incitement or encouragement of violence." The President ordered the FBI in particular to "provide investigative information and assistance" to the Commission.<sup>362</sup> Director Hoover also agreed to investigate "allegations of subversive influence, involvement of out-of-state influences, and the like."<sup>363</sup>

In September 1967, Attorney General Clark directed the FBI to:

use the maximum resources, investigative and intelligence, to collect and report all facts bearing upon the question as to whether there has been or is a scheme or conspiracy by any group of whatever size, effectiveness or affiliation, to plan, promote or aggravate riot activity.<sup>364</sup>

<sup>357</sup> Telegram from Attorney General Kennedy to U.S. Attorneys, 5/27/63.

<sup>358</sup> The basis for the inquiry was explained in the most general terms: "Keeping the peace in this country is essentially the responsibility of the state government. Where lawless conditions arise, however, with similar characteristics from coast to coast, the matter is one of national concern even though there is no direct connection between the events and even though no Federal law is violated." (Text of FBI Report on Recent Racial Disturbances, New York Times, 9/27/64.)

<sup>359</sup> Memorandum from Attorney General Katzenbach to President Johnson, 8/17/65.

<sup>360</sup> See p. 71.

<sup>361</sup> Remarks of the President, 7/29/67, in *Report of the National Advisory Commission on Civil Disorders* (1968), p. 537 (Bantam Books ed.)

<sup>362</sup> Executive Order 11365, 7/29/67.

<sup>363</sup> Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67, Subject: Director's Testimony Before National Advisory Commission on Civil Disorders. This memorandum indicates that, following this testimony, Director Hoover ordered his subordinates to intensify their collection of intelligence about "vociferous rabble-rousers." The creation thereafter of a "Rabble Rouser Index" is discussed at pp. 89-90.

<sup>364</sup> Memorandum from Attorney General Ramsey Clark to J. Edgar Hoover, 9/14/67.

Justice Department executives were generally aware of, and in some cases sought to widen, the scope of FBI intelligence collection. In a lengthy review of Bureau reports, John Doar, Assistant Attorney General for the Civil Rights Division, expressed concern that the FBI had not "taken a broad spectrum approach" to intelligence collection, since it had "focused narrowly" on "traditional subversive groups" and on persons suspected of "specific statutory violations."<sup>365</sup>

Reiterating this viewpoint, Attorney General Clark told Director Hoover that "existing intelligence sources" may not have "regularly monitored" possible riot conspirators in "the urban ghetto." He added that it was necessary to conduct a "broad investigation" and that

sources or informants in black nationalist organizations, SNCC (Student Nonviolent Coordinating Committee) and other less publicized groups should be developed and expanded to determine the size and purpose of these groups and their relationship to other groups . . .<sup>366</sup>

Clark described his directive as setting forth "a relatively new area of investigation and intelligence reporting for the FBI."<sup>367</sup>

In response to the Attorney General's instructions, the FBI advised its field offices of the immediate "need to develop additional penetrative coverage of the militant black nationalist groups and the ghetto areas."<sup>368</sup>

#### *b. Army Intelligence*

On January 10, 1968, a meeting took place at the White House for the purpose of "advance planning for summer riots." The White House memorandum of the meeting reported:

The Army has undertaken its own intelligence study, and has rated various cities as to their riot potential. They are making contingency plans for troop movements, landing sites, facilities, etc.

It added that the Attorney General and the Deputy Secretary of Defense "had agreed to coordinate their efforts."<sup>369</sup> The Army General Counsel's memorandum of the meeting stated that Attorney General Clark had "stressed the difficulty of the intelligence effort," especially because there were "only 40 Negro FBI agents" out of the total of about 6,300. Clark added that "every resource" was needed in "the intelligence collection effort," although he asked the Defense Department to "screen" its "incoming intelligence" and send "only key items" to the Justice Department.<sup>370</sup>

<sup>365</sup> Memorandum from Assistant Attorney General John Doar to Attorney General Clark, 9/27/67.

<sup>366</sup> Memorandum from Clark to Hoover, 9/14/67.

<sup>367</sup> Clark to Hoover, 9/14/67. The Department's establishment of a special unit for intelligence evaluation is discussed at pp. 115-116.

<sup>368</sup> SAC Letter 67-72, 10/17/67. The scope of the "ghetto informant program" is described at pp. 75-76.

<sup>369</sup> Memorandum from Joseph Califano to the President, 1/18/68. Those present were Attorney General Clark, Deputy Attorney General Warren Christopher, Deputy Secretary of Defense Paul Nitze, Acting Army General Counsel Robert Jordan, and Presidential assistants Matthew Nimetz and Califano.

<sup>370</sup> Memorandum from the Army General Counsel to the Under Secretary of the Army, 1/10/68. Former Army Chief of Staff Harold K. Johnson has said that there were several other meetings at the White House where the Army was urged to take a greater role in the civil disturbance collection effort. (Staff summary of Harold K. Johnson interview, 11/18/75.)

There is no record that at this or any other similar meeting in this period the Attorney General or White House aides explicitly ordered the Army to conduct intelligence investigations using infiltration or other covert surveillance techniques. However, even though Army collection plans which were circulated to the Justice Department and the FBI<sup>371</sup> did not mention techniques of collection, the information they described could only be obtained by covert surveillance. No objections were voiced by the Justice Department.

Not until 1969 was there a formal civilian decision specifically authorizing Army surveillance of civilian political activity. At that time, Attorney General John Mitchell and Secretary of Defense Melvin Laird considered the matter and over the objections of the Army General Counsel, decided that the Army would participate in intelligence collection concerning civil disturbances.<sup>372</sup> The Army's collection plan was not rescinded until June 1970, after public exposure and congressional criticism.<sup>373</sup>

### *c. FBI Interagency Agreements*

After the assassination of President Kennedy, the FBI and the Secret Service negotiated an agreement which recognized that the Bureau had "general jurisdiction" over "subversion." The term was defined, more narrowly than it had been defined by practice in the past, as "knowingly or wilfully advocat[ing]" overthrow of the Government by "force or violence" or by "assassination." Except for "temporary" action to "neutralize" a threat to the President, the Secret Service agreed to "conduct no investigation" of "members of subversive groups" without notifying the FBI. The Bureau, on the other hand, would not investigate individuals "solely" to determine their "dangerousness to the President."<sup>374</sup>

<sup>371</sup> *Federal Data Banks*, Hearings, at p. 1137. On at least one occasion, Deputy Attorney General Warren Christopher thanked an Army intelligence officer for spot reports and daily summaries. (Letter from Deputy Assistant General Christopher to Maj. Gen. William P. Yarborough, Assistant Chief of Staff for Intelligence, 5/15/68.) The Justice Department's intelligence analysis unit received "army intelligence reports" during 1968 on persons and groups involved in "racial agitation." (Memorandum from Assistant Attorney General J. Walter Yeagley to Deputy Attorney General Richard G. Kleindienst, 2/6/69.)

<sup>372</sup> Memorandum from Secretary of Defense Melvin Laird and Attorney General John N. Mitchell to the President, 4/1/69. Subject: Interdepartmental Action Plan for Civil Disturbances. This reflected a failure on the part of the Army General Counsel to persuade the Justice Department to relieve the Army of its domestic intelligence-gathering role. (Memorandum from Robert E. Jordan, Army General Counsel, to the Secretary of the Army, Subject: Review of Civil Disturbance Intelligence History, in *Military Surveillance*, Hearings, p. 296.)

<sup>373</sup> Letter from Robert E. Lynch, Acting Adjutant General of the Army, to subordinate commands, 6/9/70, Subject: Collection, Reporting, Processing, and Storage of Civil Disturbance Information.

See discussion of the termination of this program in Section III ["Terminations" Sub-finding under "Accountability and Control"].

<sup>374</sup> Agreement Between the Federal Bureau of Investigation and the Secret Service Concerning Presidential Protection, 2/3/65. The FBI was to report to Secret Service information about "subversives, ultra-rightists, racists and fascists" who expressed "strong or violent anti-U.S. sentiment" or made "statements indicating a propensity for violence and antipathy toward good order and government."

These reporting standards were modified in 1971 to require the FBI to refer to Secret Service: "Information concerning civil disturbances, anti-U.S. demonstrations or incidents or demonstrations against foreign diplomatic establish-

(Continued)

After Congress enacted antibombing legislation in 1970, the FBI was assigned primary responsibility for investigating "offenses perpetrated by terrorist/revolutionary groups."<sup>375</sup> When these guidelines were developed, the FBI shifted supervision of bombing cases from its General Investigative Division to the Intelligence Division because, as one official put it, the specific criminal investigations were "so inter-related with the gathering of intelligence in the racial and security fields that overlap constantly occurs."<sup>376</sup>

The agreement with Secret Service and the "guidelines" covering bombing investigations did not give the FBI any additional domestic intelligence-gathering authority. They simply provided for dissemination of information to Secret Service and allocated criminal investigative jurisdiction between the FBI and the Alcohol, Firearms, and Tobacco Division. Nevertheless, both presupposed that the FBI had broad authority to investigate "subversives" or "terrorist/revolutionary groups."

#### 4. Domestic Covert Action

##### a. COINTELPRO

The FBI's initiation of COINTELPRO operations against the Ku Klux Klan, "Black Nationalists" and the "New Left" brought to bear upon a wide range of domestic groups the techniques previously developed to combat Communists and persons who happened to associate with them.

The start of each program coincided with significant national events. The Klan program followed the widely-publicized disappearance in 1964 of three civil rights workers in Mississippi. The "Black Nationalist" program was authorized in the aftermath of the Newark and Detroit riots in 1967. The "New Left" program developed shortly after student disruption of the Columbia University campus in the spring of 1968. While the initiating memoranda approved by Director Hoover do not refer to these specific events, it is clear that they shaped the context for the Bureau's decisions.

These programs were not directed at obtaining evidence for use in possible criminal prosecutions arising out of those events. Rather, they were secret programs—"under no circumstances" to be "made known outside the Bureau"<sup>377</sup>—which used unlawful or improper acts to "disrupt" or "neutralize" the activities of groups and individuals targeted on the basis of imprecise criteria.

(1) *Klan and "White Hate" COINTELPRO.*—The expansion of Klan investigations, in response to pressure from President Johnson and Attorney General Kennedy,<sup>378</sup> was accompanied by an internal

(Continued)

ments;" and "information concerning persons who may be considered potentially dangerous to individuals protected by the [Secret Service] because of their . . . participation in groups engaging in activities inimical to the United States." With respect to organizations, the FBI reported information on their "officers," "size," "goals," "source of financial support," and other "background data." (Agreement Between the Federal Bureau of Investigation and the United States Secret Service Concerning Protective Responsibilities, 11/26/71.)

<sup>375</sup> Investigative Guidelines: Title XI, Organized Crime Control Act of 1970, Regulation of Explosives.

<sup>376</sup> FBI Inspection Report, Domestic Intelligence Division, August 17–September 9, 1971, pp. 224–38.

<sup>377</sup> Memoranda from FBI headquarters to all SAC's, 9/2/64; 8/25/67; 5/9/68.

<sup>378</sup> See pp. 74–75.

Bureau decision to shift their supervision from the General Investigative Division to the Domestic Intelligence Division. One internal FBI argument for the transfer was that the Intelligence Division was "in a position to launch a disruptive counterintelligence program" against the Klan with the "same effectiveness" it had against the Communist Party.<sup>379</sup>

Accordingly, in September 1964 a directive was sent to seventeen field offices instituting a COINTELPRO against the Klan and what the FBI considered to be other "White Hate" organizations (*e.g.*, American Nazi Party, National States Rights Party) "to expose, disrupt, and otherwise neutralize" the activities of the groups, "their leaders, and adherents."<sup>380</sup>

During the 1964-1971 period, when the program was in operation, 287 proposals for COINTELPRO actions against Klan and "White Hate" groups were authorized by FBI headquarters.<sup>381</sup> Covert techniques used in this COINTELPRO included creating new Klan chapters to be controlled by Bureau informants and sending an anonymous letter designed to break up a marriage.<sup>382</sup>

(2) "*Black Nationalist*" COINTELPRO.—The stated strategy of the "Black Nationalist" COINTELPRO instituted in 1967 was "to expose, disrupt, misdirect, discredit, or otherwise neutralize" such groups and their "leadership, spokesmen, members, and supporters." The larger objectives were to "counter" their "propensity for violence" and to "frustrate" their efforts to "consolidate their forces" or to "recruit new or youthful adherents." Field offices were instructed to exploit conflicts within and between groups; to use news media contacts to ridicule and otherwise discredit groups; to prevent "rabble rousers" from spreading their "philosophy" publicly; and to gather information on the "unsavory backgrounds" of group leaders.<sup>383</sup>

In March 1968, the program was expanded from twenty-three to forty-one field offices and the following long-range goals were set forth:

(1) prevent the "coalition of militant black nationalist groups;"

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

(3) prevent violence by pinpointing "potential troublemakers" and "neutralizing" them before they "exercise their potential for violence;"

(4) prevent groups and leaders from gaining "respectability" by discrediting them to the "responsible" Negro community, the "responsible" white community, "liberals" with

<sup>379</sup> Memorandum from J. H. Gale to Mr. Tolson, 7/30/64 (Gale was Assistant Director for the Inspection Division).

<sup>380</sup> Memorandum from FBI Headquarters to all SACs, 9/2/64.

<sup>381</sup> The average of 40 "White Hate" actions per year may be compared to an average of over 100 per year against the Communist Party from 1956-1971 (totalling 1636). Exhibit 11, Hearings, vol. 6, p. 371.

<sup>382</sup> These techniques and those used against the other target groups referred to below are discussed in greater detail in the COINTELPRO detailed report and in the Covert Action section of the Findings, Part III, p. 211.

<sup>383</sup> Memorandum from FBI Headquarters to all SACs, 8/25/67.

"vestiges of sympathy" for militant black nationalists, and "Negro radicals;" and  
 (5) "prevent these groups from recruiting young people." <sup>384</sup>

After the Black Panther Party emerged as a group of national stature, FBI field offices were instructed to develop "imaginative and hard-hitting counterintelligence measures aimed at crippling the BPP." Particular attention was to be given to aggravating conflicts between the Black Panthers and rival groups in a number of cities where such conflict had already taken on the character of "gang warfare with attendant threats of murder and reprisals." <sup>385</sup>

During 1967-1971, FBI headquarters approved 379 proposals for COINTELPRO actions against "black nationalists." <sup>386</sup> These operations utilized dangerous and unsavory techniques which gave rise to the risk of death and often disregarded the personal rights and dignity of the victims.

(3) *"New Left" COINTELPRO.*—The most vaguely defined and haphazard of the COINTELPRO operations was that initiated against the "New Left" in May 1968. It was justified to the FBI Director by his subordinates on the basis of the following considerations:

The nation was "undergoing an era of disruption and violence" which was "caused to a large extent" by individuals "generally connected with the New Left."

Some of these "activists" were urging "revolution" and calling for "the defeat of the United States in Vietnam."

The problem was not just that they committed "unlawful acts," but also that they "falsely" alleged police brutality, and that they "scurrilously attacked the Director and the Bureau" in an attempt to "hamper" FBI investigations and to "drive us off the college campuses." <sup>387</sup>

Consequently, the COINTELPRO was intended to "expose, disrupt, and otherwise neutralize" the activities of "this group" and "persons connected with it." <sup>388</sup> The lack of any clear definition of "New Left" meant, as an FBI supervisor testified, that "legitimate" and nonviolent antiwar groups were targeted because they were "lending aid and comfort" to more disruptive groups. <sup>389</sup>

Further directives issued soon after initiation of the program urged field offices to "vigorously and enthusiastically" explore "every avenue of possible embarrassment" of New Left adherents. Agents were instructed to gather information on the "immorality" and the "scurrilous and depraved" behavior, "habits, and living conditions" of the members of targeted groups. <sup>390</sup> This message was reiterated several months later, when the offices were taken to task for their failure to remain alert for and seek specific data depicting the "depraved nature and moral looseness of the New Left" and to "use this

<sup>384</sup> Memorandum from FBI Headquarters to all SACs, 3/4/68.

<sup>385</sup> Memorandum from FBI Headquarters to SACs, 11/25/68.

<sup>386</sup> The average was over 90 per year. (Exhibit 11. Hearings, Vol. 6, p. 371.)

<sup>387</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.

<sup>388</sup> C. D. Brennan to W. C. Sullivan, 5/9/68.

<sup>389</sup> Supervisor, FBI Intelligence Division, 10/28/75, p. 39.

<sup>390</sup> Memorandum from FBI Headquarters to all SACs, 5/23/68.

material in a vigorous and enthusiastic approach to neutralizing them.”<sup>391</sup>

In July 1968, the field offices were further prodded by FBI headquarters to:

- (1) prepare leaflets using “the most obnoxious pictures” of New Left leaders at various universities;
- (2) instigate “personal conflicts or animosities” between New Left leaders;
- (3) create the impression that leaders are “informants for the Bureau or other law enforcement agencies” (the “snitch jacket” technique);
- (4) send articles from student or “underground” newspapers which show “depravity” (“use of narcotics and free sex”) of New Left leaders to university officials, donors, legislators, and parents;
- (5) have members arrested on marijuana charges;
- (6) send anonymous letters about a student’s activities to parents, neighbors, and the parents’ employers;
- (7) send anonymous letters about New Left faculty members (signed “A Concerned Alumni” or “A Concerned Taxpayer”) to university officials, legislators, Board of Regents, and the press;
- (8) use “cooperative press contacts;”
- (9) exploit the “hostility” between New Left and Old Left groups;
- (10) disrupt New Left coffee houses near military bases which are attempting to “influence members of the Armed forces;”
- (11) use cartoons, photographs, and anonymous letters to “ridicule” the New Left;
- (12) use “misinformation” to “confuse and disrupt” New Left activities, such as by notifying members that events have been cancelled.<sup>392</sup>

During the period 1968–1971, 291 COINTELPRO actions against the “New Left” were approved by headquarters.<sup>393</sup> Particular emphasis was placed upon preventing the targeted individuals from public speaking or teaching and providing “misinformation” to confuse demonstrators.

#### *b. FBI Target Lists*

The FBI’s most intensive domestic intelligence investigations and COINTELPRO operations were directed against persons identified, not as criminals or criminal suspects, but in vague terms such as “rabble rouser,” “agitators,” “key activists,” or “key black extremists.” The Security Index for detention in time of national emergency was revised to include such persons.

(1) “*Rabble Rouser/Agitator*” Index.—Following a meeting with the National Advisory Commission on Civil Disorders in August 1967, Director Hoover ordered his subordinates to intensify collection of

<sup>391</sup> Memorandum from FBI Headquarters to all SACs, 10/9/68.

<sup>392</sup> Memorandum from FBI Headquarters to all SACs, 7/6/68.

<sup>393</sup> Approximately 100 per year (Exhibit 11, Hearings, Vol. 6, p. 371.).

intelligence about "vociferous rabble-rousers."<sup>393a</sup> He also directed "that an index be compiled of racial agitators and individuals who have demonstrated a potential for fomenting racial discord."<sup>394</sup>

The already vague standards for the Rabble Rouser Index were broadened in November 1967 to cover persons with a "propensity for fomenting" any disorders affecting the "internal security"—as opposed to only racial disorders—and to include persons of local as well as national interest. This included "black nationalists, white supremacists, Puerto Rican nationalists, anti-Vietnam demonstration leaders, and other extremists." A rabble rouser was defined as:

a person who tries to arouse people to violent action by appealing to their emotions, prejudices, et cetera; a demagogue.<sup>395</sup>

In March 1968, the Rabble Rouser Index was renamed the Agitator Index and field offices were ordered to obtain a photograph of each person on the Index.<sup>396</sup> However, expanding the size of the Agitator Index lessened its value as an efficient target list for FBI intelligence operations. Consequently, the Bureau developed a more refined tool for this purpose—the Key Activist Program.

(2) "*Key Activist*" Program.—Instructions were issued to ten major field offices in January 1968 to designate certain persons as "Key Activists," who were defined as

individuals in the Students for Democratic Society and the anti-Vietnam war groups [who] are extremely active and most vocal in their statements denouncing the United States and calling for civil disobedience and other forms of unlawful and disruptive acts.

There was to be an "intensive investigation" of each Key Activist, which might include "high-level informant coverage" and "technical surveillances and physical surveillances."<sup>397</sup>

The "New Left" COINTELPRO was designed in part to "neutralize" the Key Activists, who were "the moving forces behind the New Left."<sup>398</sup> One of the first techniques employed in this program was to obtain the Federal income tax returns of Key Activists for use in disrupting their activities.<sup>399</sup> In October 1968, the Key Activist Program was expanded to virtually all field offices. The field agents were instructed to recommend additional persons for the program and to "consider if the individual was rendered ineffective would it curtail [disruptive] activity in his area of influence." While the FBI considered Federal prosecution a "logical" result of these investigations and "the best deterrent," Key Activists were not selected because they were suspected of committing or planning to commit any specific Federal crime.<sup>400</sup>

<sup>393a</sup> Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67. (At the meeting, a Commission member had asked the Bureau to "identify the number of militant Negroes and whites.")

<sup>394</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 8/3/67; SAC Letter 67-56, 9/12/67.

<sup>395</sup> SAC Letter No. 67-70, 11/28/67.

<sup>396</sup> Memorandum from FBI Headquarters to all SACs, 3/21/68.

<sup>397</sup> Memorandum from FBI Headquarters to all SACs, 1/30/68.

<sup>398</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 5/9/68.

<sup>399</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/68.

<sup>400</sup> Memorandum from FBI Headquarters to all SACs, 10/24/68.



(3) "*Key Black Extremist*" Program.—A "Key Black Extremist" target list for concentrated investigation and COINTELPRO actions was instituted in 1970. Key Black Extremists were defined as

leaders or activists [who] are particularly extreme, agitative, anti-Government, and vocal in their calls for terrorism and violence.<sup>401</sup>

Field offices were instructed to place all Key Black Extremists in the top priority category of the Security Index and in the Black Nationalist Photograph Album, which concentrated on "militant black nationalists" who traveled extensively. In addition, the following steps were to be taken :

(1) All aspects of the finances of a KBE must be determined. Bank accounts must be monitored. . . .

(2) Continuing consideration must be given by each office to develop means to neutralize the effectiveness of each KBE. . . .

(3) Obtain suitable handwriting specimens. . . .

(4) Particular efforts should be made to obtain records of and/or reliable witnesses to, inflammatory statements. . . .

(5) Where there appears to be a possible violation of a statute within the investigative jurisdiction of the Bureau, [it should be] vigorously investigated. . . .

(6) Particular attention must be paid to travel by a KBE and every effort made to determine financial arrangements for such travel. . . .

(7) The Federal income tax returns of all KBEs must be checked annually. . . .

Reports on all Key Black Extremists were to be submitted every ninety days, and the field was urged to use "initiative and imagination" to achieve "the desired results."<sup>403</sup> Once again, the "result" was not limited to prosecution of crimes and the targets were not chosen because they were suspected of committing crimes.

(4) *Security Index*.—The Agitator Index was abolished in 1971 because "extremist subjects" were "adequately followed" through the Security Index.<sup>404</sup> In contrast to the other indices, the Security Index was not reviewed by the FBI alone. It had, from the late 1940's, been largely a joint FBI-Justice Department program based on the Department's plans for emergency detention.<sup>405</sup> According to FBI memoranda, moreover, President Johnson was directly involved in the updating of emergency detention plans.<sup>406</sup>

After a large-scale March on the Pentagon against the Vietnam War in October 1967, President Johnson ordered a comprehensive review of the government's emergency plans. Attorney General Clark was appointed chairman of a committee to review the Presidential Emergency Action Documents (PEADs) prepared under the Emergency Detention Program. One result of this review, in which the FBI took part, was a decision to bring the Detention Program into line with the

<sup>401</sup> Memorandum from G. C. Moore to C. D. Brennan, 12/22/70.

<sup>403</sup> Memorandum from FBI Headquarters to all SACs, 12/23/70.

<sup>404</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

<sup>406</sup> See pp. 54-55.

<sup>406</sup> C. D. Brennan to W. C. Sullivan, 4/30/68.

Emergency Detention Act of 1950, reversing the previous decision to "disregard" as "unworkable" the procedural requirements of the Act, which were tighter than the standards which had been applied by FBI and Justice.<sup>407</sup>

The Bureau also had to revise its criteria for inclusion of names on the Security Index, which since 1950 had disregarded the statutory standards. However, the definition chosen of a "dangerous individual" was so broad that it enabled the Bureau to *add* persons not previously eligible. A "dangerous individual" was defined as a

person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage and sabotage, *including* acts of terrorism or assassination and *any interference with* or threat to the survival of and *effective operation* of the national, state, and *local governments* and of the national defense effort. [Emphasis added.]<sup>408</sup>

The emphasized language greatly broadened the Security Index standards. It gave FBI intelligence officials the opportunity to include on the Security Index "racial militants", "black nationalists", and individuals associated with the "New Left" who were not affiliated with the "basic revolutionary organizations" as the Bureau characterized the Communist Party, which had previously been the focus of the Security Index.<sup>409</sup> Once again, the limitations which a statute was intended to impose were effectively circumvented by the use of elastic language in a Presidential directive.

Moreover, the Bureau adopted a new "priority" ranking for apprehension in case of an emergency. Top priority was now given not only to leaders of "basic subversive organizations," but also to "leaders of anarchistic groups."<sup>410</sup> It was said to be the "anarchistic tendencies" of New Left and racial militants that made them a "threat to the internal security."<sup>411</sup>

Initially, the Justice Department approved informally these changes in the criteria for "the persons listed for apprehension."<sup>412</sup> After several months of "study," the Justice Department's Office of Legal Counsel formally approved the new Security Index criteria. This was the first time since 1955 that the Department had fully considered the matter, and the previous policy of disregarding the procedures of the Emergency Detention Act of 1950 was formally abandoned. If an emergency occurred, the Attorney General would abide by "the requirement that any person actually detained will be entitled to a hearing at which time the evidence will have to satisfy the standards of [the Act]." However, the Office of Legal Counsel declared that the Security Index criteria themselves could be—as they were—less precise than those of the Act because of the "needed flexibility and discretion at the operating level in order to carry on an effective surveillance

<sup>407</sup> See pp. 54–55 and Report on FBI Investigations.

<sup>408</sup> Presidential Emergency Action Document 6, as quoted in Brennan to Sullivan, 4/30/68.

<sup>409</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

<sup>410</sup> C. D. Brennan to W. C. Sullivan, 4/30/68.

<sup>411</sup> C. D. Brennan to W. C. Sullivan, 4/30/68.

<sup>412</sup> Memorandum from J. Edgar Hoover to J. Walter Yeagley, 5/1/68; Yeagley to Hoover, 6/17/68.

program.”<sup>413</sup> Thus, while the plan to ignore Congress’ procedural limitations was abandoned, Congress’ substantive standards were disregarded as insufficiently “flexible.”

*c. Internal Revenue Service Programs*

(1) *Misuse by FBI and CIA.*—IRS information was used as an instrument of domestic intelligence mainly by the FBI. For example, in 1965, the Bureau obtained the tax returns of Ku Klux Klan members in order to develop “discrediting or embarrassing” information as part of the Bureau’s COINTELPRO against the Klan.<sup>414</sup> The procedure by which FBI obtained access to tax returns and related information held by IRS was deemed “illegal” when it was discovered by the Chief of the IRS Disclosure Branch in 1968.<sup>415</sup> The FBI had not followed the procedures for obtaining returns which required written application to the IRS Disclosure Branch. Instead the Bureau had arranged to obtain the returns and information surreptitiously through contacts inside the IRS Intelligence Division. The procedure for FBI access was regularized by the IRS after 1968: a formal request on behalf of the Bureau was made to the IRS Disclosure Branch, by the Internal Security Division of the Justice Department.

During this same period, the CIA was obtaining tax returns in a manner similar to the FBI, although in much smaller numbers. Yet even after procedures were changed for the FBI’s access to tax information in 1968, the IRS did not re-examine the CIA’s practices.<sup>416</sup> Therefore, CIA continued to receive tax return information without filing requests as required by the regulations.

Between 1968 and 1974, either directly or through the Internal Security Division of the Justice Department, the FBI requested at least 130 tax returns for domestic intelligence purposes. This included the returns of 46 “New Left activists” and 74 “black extremists,”<sup>417</sup> as part of Bureau COINTELPRO operations to “neutralize” these individuals.<sup>418</sup> These requests were not predicated upon any specific information suggesting delinquency in fulfilling tax obligations.

Even after a formal request was required before supplying the FBI with tax returns, the IRS accepted the Justice Department’s undocu-

<sup>413</sup> Among the criteria specifically approved by the Justice Department which went beyond the statutory standard of reasonable likelihood of espionage and sabotage were the expanded references to persons who have “anarchistic or revolutionary beliefs” and are “likely to seize upon the opportunity presented by a national emergency” to commit acts which constitute “interference with” the “effective operation of the national, state and local governments and of the defense effort.” (Assistant Attorney General Frank M. Wozencraft, Office of Legal Counsel, to Assistant Attorney General J. Walter Yeagley, Internal Security Division, 9/9/68.) The standards as approved were transmitted to the FBI, and its Manual was revised accordingly. (Yeagley to Hoover, 9/19/68; Hoover to Yeagley, 9/26/68; FBI Manual, Section 87, p. 45, revised 10/14/68.) The FBI still maintained its Reserve Index, unbeknownst to the Department.

<sup>414</sup> One of the express purposes was to use tax information to “expose” the Klan members “within the Klan organization [or] publicly by showing income beyond their means.” (Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/10/65.) Disclosure of tax information “publicly” or “within the Klan organization” is prohibited by statute.

<sup>415</sup> Memorandum from D. O. Virdin to H. E. Snyder, 5/2/68. Subject: Inspection of Returns by FBI.

<sup>416</sup> Donald O. Virdin testimony, 9/16/75, pp. 69–73.

<sup>417</sup> Staff Memorandum: Review of Materials in FBI Administrative File on “Income Tax Returns Requested.”

<sup>418</sup> Memorandum from C. D. Brennan to W. C. Sullivan, 12/6/68.

mented assertions that tax information was "necessary" in connection with an "official matter" involving "internal security."<sup>419</sup> Yet in making such assertions, the Justice Department's Internal Security Division relied entirely on the Bureau's judgment. Thus, while the IRS is required by the statute to release tax information only where necessary, it in effect delegated its responsibility to the Internal Security Division which in turn delegated the decision to the FBI. Although most FBI requests for tax information were for targets of various COINTELPRO operations, the Justice Department official who made the requests on behalf of the Bureau said he was never informed of the existence of COINTELPRO.<sup>420</sup>

Even after 1968, the Bureau sometimes used tax information in improper or unlawful ways. For example, the Bureau attempted to use such information to cause IRS to audit a mid-western college professor associated with "new left" activities at the time he was planning to attend the 1968 Democratic Party National Convention in Chicago. The FBI agent in charge of the operation against the professor explained its purpose in a memorandum:

if IRS contact with [the Professor] can be arranged within the next two weeks their demands upon him may be a source of distraction during the critical period when he is engaged in meetings and plans for disruption of the Democratic National Convention. Any drain upon the time and concentration which [the Professor], a leading figure in Demcon planning, can bring to bear upon this activity can only accrue to the benefit of the Government and general public.<sup>421</sup>

Among the tax returns which the CIA obtained informally from IRS in an informal and illegal manner were those of the author of a book, the publication of which the CIA sought to prevent,<sup>422</sup> and of *Ramparts* magazine which had exposed the CIA's covert use of the National Student Association.<sup>423</sup> In the latter case, CIA memoranda indicate that its officials were unwilling to risk a formal request for tax information without first learning through informal disclosure whether the tax returns contained any information that would be helpful in their effort to deter this "attack on the CIA" and on "the administration in general."<sup>424</sup>

(2) *The Special Service Staff: IRS Targeting of Ideological Groups.*—In 1969, the IRS established a Special Service Staff to gather intelligence on a category of taxpayers defined essentially by political criteria. The SSS attempted to develop tax cases against the targeted taxpayers and initiated tax fraud investigations against some who would otherwise never have been investigated.

The SSS originated as a result of pressure from the permanent Subcommittee on Investigations of the Senate Committee on Government Operations<sup>425</sup> and from President Nixon, acting through White House

<sup>419</sup> Leon Green deposition, 9/12/75, pp. 6-8.

<sup>420</sup> Statement of J. W. Yeagley to Senate Select Committee, September 1975.

<sup>421</sup> Memorandum from Midwest City Field Office to FBI Headquarters, 8/1/68.

<sup>422</sup> CIA memorandum, Subject: BUTANE—Victor Marchetti.

<sup>423</sup> CIA memorandum, Subject: IRS Briefing on Ramparts, 2/2/67.

<sup>424</sup> CIA memorandum, Subject: IRS Briefing on Ramparts, 2/2/67.

<sup>425</sup> Leon C. Green testimony, 9/12/75, p. 36.

assistants Tom Charles Huston and Dr. Arthur Burns.<sup>426</sup> According to the IRS Commissioner's memorandum, Dr. Burns expressed to him the President's concern

over the fact that tax-exempt funds may be supporting activist groups engaged in stimulating riots both on the campus and within our inner cities.<sup>427</sup>

The administration did not supply any facts to support the assertion that such groups were violating tax laws.

After the SSS was established, the FBI and the Justice Department's Interdivisional Information Unit (IDIU) became its largest sources of names. An Assistant IRS Commissioner requested the FBI to provide information regarding "various organizations of predominantly dissident or extremist nature and/or people prominently identified within those organizations."<sup>428</sup> The FBI agreed, believing, as one intelligence official put it, that SSS would "deal a blow" to "dissident elements."<sup>429</sup>

Among the material received by SSS from the FBI was a list of 2,300 organizations categorized as "Old Left," "New Left," and "Right Wing."<sup>430</sup> The SSS also received about 10,000 names on IDIU computer printouts.<sup>431</sup> SSS opened files on all these taxpayers, many of whom were later subjected to tax audits and some to tax fraud investigations. There is no reason to believe that the names listed by the FBI or the IDIU were selected on the basis of any probable noncompliance with the tax laws. Rather, these groups and individuals were targeted because of their political and ideological beliefs and activities.<sup>432</sup>

The SSS, by the time it was disbanded in 1973, had gone over approximately half of the IDIU index and established files on those individuals on whom it had no file. Names on the SSS list included Nobel Prize winner Linus Pauling, Senators Charles Goodell and Ernest Gruening, Congressman Charles Diggs, journalists Joseph Alsop and Jimmy Breslin, and attorney Mitchell Rogovin. Organizations on the SSS list included: political groups ranging from the John Birch Society to Common Cause; religious organizations such as the B'nai Brith Antidefamation League and the Associated Catholic Charities; professional associations such as the American Law Institute and the Legal Aid Society; private foundations such as the Carnegie Foundation; publications ranging from "Playboy" to "Commonwealth;" and government institutions including the United States Civil Rights Commission.<sup>433</sup>

SSS officials have conceded that some cases referred to the field for tax investigations would not have qualified for referral but for the ideological category in which they fell. While IRS field offices closed out many cases because of the lack of tax grounds upon which legal

<sup>426</sup> "Investigation of the Special Service Staff of the IRS" by the staff of the Joint Committee on Internal Revenue Taxation, 6/5/75, pp. 17-18.

<sup>427</sup> Memorandum of IRS Commissioner Thrower, 6/16/69.

<sup>428</sup> Memorandum from D. W. Bacon to Director, FBI, 8/8/69.

<sup>429</sup> Memorandum from D. J. Brennan, Jr., to W. C. Sullivan, 8/15/69.

<sup>430</sup> SSS Bi-weekly Report, 6/15/70.

<sup>431</sup> SSS Bi-weekly Report, 8/29/69.

<sup>432</sup> For a discussion of IDIU standards, see pp. 78-81, 122-123.

<sup>433</sup> Donald Alexander testimony, 10/2/25, Hearings, Vol. 3, pp. 29-30.

action could be taken, referral from the SSS probably resulted in the examination of some cases despite the lack of adequate grounds. Interviews with IRS field personnel confirm that this did occur in several instances.<sup>433a</sup>

Upon discovering that its functions were not tax-related, new IRS Commissioner Alexander ordered the Special Service Staff abolished. He testified:

Mr. ALEXANDER. I ordered the Special Service staff abolished. That order was given on August the 9th, 1973. It was implemented by manual supplements issued on August the 13th, 1973. We held the files. I ordered the files be held intact—I'm not going to give any negative assurances to this Committee—in order that this Committee and other Committees could review these files to see what was in them, and see what sort of information was supplied to us on this more than 11,000 individuals and organizations as to whom and which files were maintained.

I suggested, Mr. Chairman, that at the end of all of these inquiries, I would like to take those files to the Ellipse and have the biggest bonfire since 1814.

The CHAIRMAN. Well, I concur in that judgment. I would only say this to you; in a way, it might be a more important bonfire than the Boston Tea Party when it comes to protecting individual rights of American citizens. I am glad you feel that way. I am glad you took that action.<sup>434</sup>

##### 5. *Foreign Intelligence and Domestic Dissent*

In the late 1960's, CIA and NSA, acting in response to presidential pressure, turned their technological capacity and great resources toward spying on certain Americans. The initial impetus was to determine whether the antiwar movement—and to a lesser extent the "black power" movement—were controlled by foreigners. Despite evidence that there was no significant foreign influence, the intelligence gathering which culminated in CIA's "Operation CHAOS" followed the general pattern of broadening in scope and intensity. The procedure for one aspect of these programs was established by an informal agreement between the CIA and FBI in 1966, which permitted CIA to engage in "internal security" activities in the United States.

###### *a. Origins of CIA Involvement in "Internal Security Functions"*

The National Security Act of 1947 explicitly prohibited the CIA from exercising "police, subpoena, or law-enforcement powers, or internal security functions." But the Act did not address the question of the CIA's authority to conduct clandestine intelligence activity within the United States for what Secretary Forrestal called "purposes outside of this country."<sup>435</sup>

Under Director Hoover, the FBI interpreted the term "internal security functions" broadly to encompass almost "anything that CIA

<sup>433a</sup> Green, 9/12/75, pp. 65-66, 73-74; Statement of Auditor, San Francisco District, 7/30/75, p. 1; statement of Collector, Los Angeles District, 8/3/75.

<sup>434</sup> Donald Alexander testimony, 10/2/75, Hearings, Vol. 3, pp. 10-11.

<sup>435</sup> Hearings before the House Committee on Expenditures in the Executive Departments, on H.R. 2319, 80th Cong. (1947), p. 127.

might be doing in the United States.”<sup>436</sup> Throughout the 1950's and into the early 1960's, Director Hoover's position led to jurisdictional conflicts between the CIA and the FBI.

The Bureau insisted on being informed of the CIA's activity in the United States so that it could be coordinated with the Bureau. As the FBI liaison with the CIA in that period recalled, “CIA would take action, it would come to our attention and we would have a flap.”<sup>437</sup>

In 1966 the FBI and CIA negotiated an informal agreement to regularize their coordination. This agreement was said to have “led to a great improvement” and almost eliminated the “flaps.”<sup>438</sup>

Under the agreement, the CIA would “seek concurrence and coordination of the FBI” before engaging in clandestine activity in the United States and the FBI would “concur and coordinate if the proposed action does not conflict with any operation, current or planned, including active investigation of the FBI.”<sup>439</sup> When an operative recruited by the CIA abroad arrived in the United States, the FBI would “be advised” and the two agencies would “confer regarding the handling of the agent in the United States.” The CIA would continue its “handling” of the agent for “foreign intelligence” purposes. The FBI would also become involved where there were “internal security factors,” although it was recognized that the CIA might continue to “handle” the agent in the United States and provide the Bureau with “information” bearing on “internal security matters.”<sup>440</sup>

As part of their handling of “internal security factors,” CIA operatives were used after 1966 to report on domestic “dissidents” for the FBI. There were infrequent instances in which, according to the former FBI liaison with CIA:

CIA had penetrations abroad in radical, revolutionary organizations and the individual was coming here to attend a conference, a meeting, and would be associating with leading dissidents, and the question came up, can he be of any use to us, can we have access to him during that period.

In most instances, because he was here for a relatively short period, we would levy the requirement or the request upon the CIA to find out what was taking place at the meetings to get his assessment of the individuals that he was meeting, and any other general intelligence that he could collect from his associations with the people who were of interest to us.<sup>441</sup>

The policies embodied in the 1966 agreement and the practice under it clearly involved the CIA in the performance of “internal security

<sup>436</sup> Former FBI Liaison with CIA testimony, 9/22/75, p. 9.

<sup>437</sup> Former FBI liaison with CIA testimony, 9/22/75, pp. 9-11.

<sup>438</sup> Liaison, 9/22/75, p. 11. For a discussion of liaison problems between FBI and CIA in 1970. see pp. 112-113.

<sup>439</sup> Liaison, 9/22/75, p. 52. “Central Intelligence Agency Operations in the United States,” FBI-CIA Memorandum of Understanding, 2/7/66.

<sup>440</sup> Liaison, 9/22/75, p. 55.

<sup>441</sup> Liaison, 9/22/75, pp. 57-58. These “internal security” aspects of the 1966 FBI-CIA agreement were not the only pre-CHAOS arrangements bringing the CIA into liaison with the FBI. For example, as early as 1963 the FBI Manual was revised to state that information concerning “proposed travel abroad” by domestic “subversives” was to be “furnished by the Bureau to the Department of State” and the “Central Intelligence Agency:” and field offices were advised to recommend the “extent of foreign investigation” which was required. (FBI Manual Section 87, p. 33a, revised 4/15/63.)

functions." At no time did the Executive branch ask Congress to amend the 1947 act to modify its ban against CIA exercising "internal security functions." Nor was Congress asked to clarify the ambiguity of the 1947 act about the CIA's authority to conduct clandestine foreign intelligence and counterintelligence activities within the United States, a matter dealt with even today by Executive Order.<sup>442</sup>

Moreover, National Security Council Intelligence Directive 5 provided authority within the Executive Branch for the Director of Central Intelligence to coordinate, and for the CIA to conduct, counterintelligence activities abroad to protect the United States against not only espionage and sabotage, but also "subversion."<sup>443</sup> However, NSCID 5 did not purport to give the CIA authority for counterintelligence activities in the United States, as provided in the FBI-CIA agreement of 1966.

*b. CIA Intelligence About Domestic Political Groups*

In the late 1960s, the CIA increasingly was drawn into collecting intelligence about domestic political groups, particularly the anti-war movement, in response to FBI requests and to pressure from Presidents Johnson and Nixon. A principal assistant to President Johnson testified that high governmental officials could not believe that

a cause that is so clearly right for the country, as they perceive it, would be so widely attacked if there were not some [foreign] force behind it.<sup>444</sup>

The same pressures and beliefs led to CIA investigations of "militant black nationalists" and radical students.

(1) *CIA Response to FBI Requests.*—The FBI was the main channel for mobilizing foreign intelligence resources and techniques against domestic targets. The FBI regularly notified the CIA that it wished coverage of Americans overseas.<sup>444a</sup> Indeed, the CIA regarded the mention of a name in any of the thousands of reports sent to it by the FBI as a standing requirement from the FBI for information about those persons.<sup>445</sup> FBI reports flowed to the CIA at a rate of over 1,000 a month.<sup>446</sup> From 1967 to 1974, the CIA responded with over 5,000 reports to the FBI. These CIA disseminations included some reports of information acquired by the CIA in the course of its own operations, not sought in response to a specific FBI request.<sup>447</sup>

The FBI's broad approach to the investigations of foreign influence which it coordinated with the CIA is shown by a memorandum

<sup>442</sup> President Ford's Executive Order 11905, 2/18/76. This order, discussed more fully in Part IV, Recommendations, in effect reinforces the 1966 FBI-CIA agreement and defines CIA counterintelligence duties abroad to include "foreign subversion" directed against the United States.

<sup>443</sup> The National Security Council Intelligence Directives, or NSCIDs, have been promulgated by the National Security Council to provide the basic organization and direction of the intelligence agencies.

<sup>444</sup> Joseph Califano testimony, 1/27/76, p. 70.

<sup>444a</sup> Richard Ober testimony, 10/30/75, p. 88.

<sup>445</sup> Ober, 10/28/75, p. 45.

<sup>446</sup> Memorandum from Richard Ober to James Angleton, 6/9/70, p. 9.

<sup>447</sup> Letter from Director W. Colby to Vice President Rockefeller, 8/8/75, p. 6 of attachment.



prepared in the Intelligence Division early in 1969 summarizing its "coverage of the New Left:"

Foreign influence of the New Left movement offers us a fertile field to develop valuable intelligence data. To date there is no real cohesiveness between international New Left groups, but . . . despite the factionalism and confusion now so prevalent, *there is great potential* for the development of an international student revolutionary movement. [Emphasis added.]

The memorandum expressed concern that "old line" leftist groups were

. . . making a determined effort to move into the New Left movement . . . [and were] influencing the thinking of the New Left . . . against the police in general and the FBI in particular, to drive us off the campuses; as well as attacks against the new administration to degrade President Nixon.<sup>448</sup>

There was no mention of, or apparent concern for, direct influence or control of the "New Left" by agents of hostile foreign powers. Instead, the stress was almost entirely upon ideological links and similarities, and the threat of ideas considered dangerous by the FBI.

The enlistment of both CIA and NSA resources in domestic intelligence is illustrated by the "Black Nationalist" investigations. In 1967, FBI Headquarters instructed field offices that:

. . . penetrative investigations should be initiated at this time looking toward developing any information regarding contacts on the part of these individuals with foreign elements and looking toward developing any additional information having a bearing upon whether the individual involved is currently subjected to foreign influence or direction. . . .

During your investigative coverage of all militant black nationalists, be most alert to any foreign travel. Advise the Bureau promptly of such in order that *appropriate overseas investigations* may be conducted to establish activities and contacts abroad. [Emphasis added.]<sup>449</sup>

The FBI passed such information to the CIA, which in turn began to place individual black nationalists on a "watch list" for the interception of international communications by the National Security Agency. After 1969, the FBI began submitting names of citizens engaged in domestic protest and violence to the CIA not only for investigation abroad, but also for placement on the "watch list" of the CIA's mail opening project. Similar lists of names went from the FBI to the National Security Agency, for use on a "watch list" for monitoring other channels of international communication.

(2) *Operation CHAOS*.—The CIA did not restrict itself to servicing the FBI's requests. Under White House pressure, the CIA developed its own program—Operation CHAOS—as an adjunct to the

<sup>448</sup> Memorandum from C. D. Brennan to W. C. Sullivan re New Left Movement, 2/3/69.

<sup>449</sup> SAC Letter No. 67-66, 11/7/67.

CIA's foreign counterintelligence activities, although CIA officials recognized from the outset that it had "definite domestic counterintelligence aspects."<sup>450</sup>

Former CIA Director Richard Helms testified that he established the program in response to President Johnson's persistent interest in the extent of foreign influence on domestic dissidents. According to Helms, the President would repeatedly ask, "How are you getting along with your examination?" and "Have you picked up any more information on this subject?"<sup>451</sup>

The first CHAOS instructions to CIA station chiefs in August 1967 described the need for "keeping tabs on radical students and U.S. Negro expatriates as well as travelers passing through certain select areas abroad." The originally stated objective was "to find out [the] extent to which Soviets, Chicoms (Chinese Communists) and Cubans are exploiting our domestic problems in terms of espionage and subversion."<sup>452</sup>

Following the consistent pattern of intelligence activities, those original instructions gradually broadened without any precision in the kind of foreign contacts which were to be targeted by CIA operations. For example:

—President Johnson asked the CIA to conduct a study of "International Connections of the U.S. Peace Movement" following the October 1967 demonstration at the Pentagon.<sup>453</sup> In response, CIA headquarters sent a directive to CIA stations seeking information on "illegal and subversive" connections between U.S. activists and "communist, communist front, or other anti-American and foreign elements abroad. Such connections might range from *casual contacts based merely on mutual interest* to closely controlled channels for party directives." [Emphasis added.]<sup>454</sup>

—In mid-1968, the DDP described CHAOS to CIA stations as a "high priority program" concerning foreign "contacts" with the "Radical Left," which was defined as: "radical students, antiwar activists, draft resisters and deserters, black nationalists, anarchists, and assorted 'New Leftists.'" <sup>455</sup>

—In 1969, President Nixon's White House required the CIA to study foreign communist support of American protest groups and stressed that "support" should be "liberally construed" to include "encouragement" by Communist countries.<sup>456</sup>

—In the fall of 1969, CIA stations were asked to report on any foreign support, guidance, or "inspiration" to protest activities in the United States.<sup>457</sup>

<sup>450</sup> Memorandum from Thomas Karamessines to James Angleton, 8/15/67, p. 1.

<sup>451</sup> Helms, Rockefeller Commission, 4/28/75, pp. 2434-2435.

<sup>452</sup> CIA Headquarters cable to several field stations, August, 1967, p. 1.

<sup>453</sup> Memorandum from Richard Helms to President Johnson, 11/15/67.

<sup>454</sup> VIA Cable from Acting DDP to various field stations, November 1967, pp. 1-2.

<sup>455</sup> CIA Cable from Thomas Karamessines to various field stations, July 1968, p. 1.

<sup>456</sup> Memorandum from Tom Huston to the Deputy Director, CIA, 6/20/69, p. 1.

<sup>457</sup> Cable from CIA headquarters to stations, November 1969.

Thus, this attempt to ascertain and evaluate "foreign links" was so broadly defined that it required much more than background information or investigation of a few individuals suspected of being agents directed by a hostile power. Instead, at a time when there was considerable international communication and travel by Americans engaged in protest and dissent, a substantial segment by American protest groups was encompassed by CIA collection requirements to investigate foreign "encouragement," "inspiration," "casual contacts" or "mutual interest." Once again, the use of elastic words in mandates for intelligence activity resulted in overbroad coverage and collection.

In addition to their intelligence activity directed at Americans abroad, CHAOS undercover agents, while in the United States in preparation for overseas assignment or between assignments, provided substantial information about lawful domestic activities of dissident American groups, as well as providing leads about possible foreign ties.<sup>458</sup> In a few instances, the CIA agents appear to have been encouraged to participate in specific protest activity or to obtain particular domestic information.<sup>459</sup> The CHAOS program also involved obtaining information about Americans from the CIA mail opening project and other domestic CIA components<sup>460</sup> and from a National Security Agency international communications intercept program.<sup>461</sup>

CIA officials recognized that the CIA's examination of domestic groups violated the Agency's mandate and thus accorded it a high degree of sensitivity. As CIA Director Richard Helms wrote in 1969, when he transmitted to the White House the CIA's study of "Restless Youth:":

In an effort to round out our discussion of this subject, we have included a section on American students. This is an area not within the charter of this Agency, so I need not emphasize how extremely sensitive this makes the paper. Should anyone learn of its existence, it would prove most embarrassing for all concerned.<sup>462</sup>

The reaction to such admissions of illegality was neither an instruction to stop the program or an attempt to change the law. Rather, the White House continued to ask for more information and continued to urge the CIA to confirm the theory that American dissidents were under foreign control.<sup>463</sup>

Director Richard Helms testified that the only manner in which the CIA could support its conclusion that there was no significant foreign influence on the domestic dissent, in the face of incredulity at the White House, was to continually expand the coverage of CHAOS. Only by being able to demonstrate that it had investigated *all* anti-war persons and *all* contacts between them and any foreign

<sup>458</sup> Charles Marcules testimony, Rockefeller Commission, 3/10/75, pp. 1538-1547, 1566-1567; Ober, 9/24/75, p. 46. (For security reasons, the CHAOS agent case officer testified as "Charles Marcules".)

<sup>459</sup> Marcules Contact Report, 4/17/71; Marcules, Rockefeller Commission, 3/10/75, pp. 1556-1558.

<sup>460</sup> Memorandum from Richard Ober to Chief, CI Project, 2/15/72.

<sup>461</sup> Ober, 10/30/75, pp. 16-17.

<sup>462</sup> Letter from Richard Helms to Henry Kissinger, 2/18/69.

<sup>463</sup> Richard Helms deposition, Rockefeller Commission, 4/24/75, p. 223.

person could CIA "prove the negative" that none were under foreign domination.<sup>464</sup>

In 1972, the CIA Inspector General found "general concern" among the overseas stations "over what appeared to constitute a monitoring of the political views and activities of Americans not known to be, or suspected of, being involved in espionage." Several stations had "doubts as to the nature and legitimacy of the program" because requests for reports on "prominent persons" were based on "nebulous" allegations of "subversion."<sup>465</sup> This led to "a reduction in the intensity of attention to political dissidents,"<sup>466</sup> although the program was not terminated until March 1974.<sup>467</sup>

By the end of the CHAOS program, 13,000 different files were accumulated, including more than 7,200 on American citizens. Documents in these files included the names of more than 300,000 persons and groups, indexed by computer.<sup>468</sup> In addition to collecting information on an excessive number of persons, some of the kinds of information were wholly irrelevant to the legitimate interests of the CIA or any other government agency. For example, one CIA agent supplying information on domestic activities to Operation CHAOS submitted detailed accounts of the activities of women who were interested in "women's liberation."<sup>469</sup>

*c. CIA Security Operations Within the United States: Protecting "Sources" and "Methods"*

The National Security Act of 1947 granted the Director of Central Intelligence a vaguely-worded responsibility for "protecting intelligence sources and methods from unauthorized disclosure."<sup>470</sup> The legislative history of this provision suggests that it was initially intended to allay concerns of the military services that the new CIA would not operate with adequate safeguards to protect the military intelligence secrets which would be shared with the CIA.<sup>471</sup> However, this authority was later read by the CIA to authorize infiltration of domestic groups in order to protect CIA personnel and facilities from possibly violent public demonstrations. It was also read to permit electronic surveillance and surreptitious entry to protect sensitive information.

The CIA undertook a series of specific security investigations within the United States, in some cases to find the source of news leaks and in others to determine whether government employees were involved in espionage or otherwise constituted "security risks." These investigations were directed at former CIA employees, employees of other government agencies, newsmen and other private citizens in this country.<sup>472</sup> Among the techniques used were physical surveillance,

<sup>464</sup> Helms deposition, Rockefeller Commission, 4/24/75, p. 234; Ober deposition, Rockefeller Commission, 3/28/75, pp. 137-138.

<sup>465</sup> Memorandum from Inspector General to Executive Director-Comptroller, 11/9/72, p. 1.

<sup>466</sup> Memorandum from Executive Director-Comptroller to DDP, 12/20/72.

<sup>467</sup> Cable from CIA Director William Colby to Field Stations, March 1974.

<sup>468</sup> Rockefeller Commission Report, p. 23.

<sup>469</sup> Agent 1, Contact Report, Volume II, Agent 1 file.

<sup>470</sup> 50 U.S.C. 403 (d) (3).

<sup>471</sup> Lawrence Houston testimony, Rockefeller Commission, 3/17/75, pp. 1654-1655.

<sup>472</sup> Rockefeller Commission Report, pp. 162-166.

mail and tax information coverage, electronic surveillance, and surreptitious entry. Attorney General Robert Kennedy appears to have authorized CIA wiretapping in one of these investigations. With this exception, however, there is no suggestion that the CIA's security investigations were specifically approved by the Attorney General.<sup>473</sup>

The CIA Office of Security established two programs directed at protest demonstrations which involved the CIA in domestic affairs on the theory that doing so was necessary to safeguard CIA facilities in the United States.<sup>474</sup> Project MERRIMACK (1967 to 1973) involved the infiltration by CIA agents of Washington-based peace groups and Black activist groups. The stated purpose of the program was to obtain early warning of demonstrations and other physical threats to the CIA. However, the collection requirements were broadened to include general information about the leadership, funding, activities, and policies of the targeted groups.

Project RESISTANCE (1967 to 1973) was a broad effort to obtain general background information about radical groups across the country, particularly on campuses. The CIA justified this program as a means of predicting violence which might threaten CIA installations, recruiters, or contractors, and gathering information with which to evaluate applicants for CIA employment. Much of the reporting by CIA field offices to headquarters was from open sources such as newspapers. But additional information was obtained from cooperating police departments, campus officials, and other local authorities, some of whom in turn were using collection techniques such as informants.

These programs illustrated fundamental weaknesses and contradictions in the statutory definition of CIA authority in the 1947 Act. While the Director of Central Intelligence is charged with responsibility to protect intelligence "sources and methods," the CIA is forbidden from exercising law enforcement and police powers and "internal security functions." The CIA never went to Congress for a clarification of this ambiguity, nor did it seek interpretation from the chief legal officer of the United States—the Attorney General—except on the rarest of occasions.<sup>477</sup>

<sup>473</sup> According to a "memorandum for the record" sent by CIA General Counsel Lawrence R. Houston to Deputy Attorney General William P. Rogers in 1954, an agreement was reached at that time allowing the CIA to investigate on its own any "actual or probable violation of criminal statutes" involving the CIA's "covert operations" and to determine for itself, without consulting the Justice Department, whether there were "possibilities for prosecution." The Justice Department would not be informed if the CIA decided that there should be no prosecution on the ground that it might lead to "revelation of highly classified information." (Memorandum from Houston to Rogers, 3/1/54, and enclosed memorandum from Houston to the Director of Central Intelligence, 2/23/54.)

This practice was reviewed and re-confirmed internally within the CIA on at least two subsequent occasions. (Memorandum from Houston to the Assistant to the Director, CIA, 1/6/60; memorandum from Houston to the Deputy Director of Central Intelligence, 6/10/64.) It was not terminated until 1975. (Memorandum from John S. Warner, CIA General Counsel, for the record, 1/31/75.)

<sup>474</sup> These CIA activities, Projects MERRIMACK and RESISTANCE, were described in great detail by the Rockefeller Commission. (Rockefeller Commission Report, Chs. 12 and 13.)

<sup>477</sup> The Rockefeller Commission Report describes "... two cases in which telephones of three newsmen were tapped ... [One] occurred in 1962, apparently with the knowledge and consent of Attorney General Kennedy." (Rockefeller Commission Report, p. 164.)

#### *d. NSA Monitoring*

The National Security Agency was created by Executive Order in 1952 to conduct "signals intelligence," including the interception and analysis of messages transmitted by electronic means, such as telephone calls and telegrams.<sup>478</sup> In contrast to the CIA, there has never been a statutory "charter" for NSA.

The executive directives which authorize NSA's activities prohibit the agency from monitoring communication between persons within the United States and communication concerning purely domestic affairs. The current NSA Director testified:

[The] mission of NSA is directed to foreign intelligence obtained from foreign electrical communications. . . .<sup>479</sup>

However, NSA has interpreted "foreign communications" to include communication where one terminal is outside the United States. Under this interpretation, NSA has, for many years, intercepted communications between the United States and a foreign country even though the sender or receiver was an American. During the past decade, NSA increasingly broadened its interpretation of "foreign intelligence" to include economic and financial matters and "international terrorism."<sup>480</sup>

The overall consequence, as in the case of CIA activities such as Project CHAOS, was to break down the distinction between "foreign" and "domestic" intelligence. For example, in the 1960s, NSA began adding to its "watch lists," at the request of various intelligence agencies, the names of Americans suspected of involvement in civil disturbance or drug activity which had some foreign aspects. Second, Operation Shamrock, which began as an effort to acquire the telegrams of certain foreign targets, expanded so that NSA obtained from at least two cable companies essentially all cables to or from the United States, including millions of the private communications of Americans.

#### *6. Intrusive Techniques*

As domestic intelligence activity increasingly broadened to cover domestic dissenters under many different programs, the government intensified the use of covert techniques which intruded upon individual privacy.

Informants were used to gather more information about more Americans, often targeting an individual because of his political views and "regardless of past or present involvement in disorders."<sup>481</sup> The CIA's mail opening program increasingly focused upon domestic groups, including "protest and peace organizations" which were covered at the FBI's request.<sup>482</sup> Similarly, NSA—largely in response to Army, CIA, and FBI pressures—expanded its international interception program to include "information on U.S. organizations or individuals who are engaged in activities which may result in civil

<sup>478</sup> Memorandum from President Truman to Secretary of Defense, 10/24/52.

<sup>479</sup> General Lew Allen testimony, 10/29/75, Hearings, Vol. 2, p. 6.

<sup>480</sup> Allen, 10/29/75, Hearings, vol. 2, p. 11. The programs of NSA are discussed further in the succeeding section, "Intrusive Techniques," p. 183.

<sup>481</sup> Memorandum from FBI Executive Conference to Mr. Tolson, 10/29/70. See pp. 74-76.

<sup>482</sup> Memorandum from Hoover to Angleton, 3/10/72.

disturbances or otherwise subvert the national security of the United States.”<sup>485</sup>

During this period, Director Hoover ordered cutbacks on the FBI’s use of a number of intrusive techniques. Frustration with Hoover’s cutbacks was a substantial contributing factor to the effort in 1970—coordinated by White House Aide Tom Charles Huston and strongly supported by CIA Director Helms, NSA Director Gaylor and Hoover’s Intelligence Division subordinates—to obtain Presidential authorization for numerous illegal or questionable intelligence techniques.

#### *a. Warrantless Electronic Surveillance*

(1) *Executive Branch Restrictions on Electronic Surveillance: 1965–1968.*—In March 1965, Attorney General Nicholas deB. Katzenbach established a new requirement for the FBI’s intelligence operations: the Bureau had to obtain the written approval of the Attorney General prior to the implementation of any microphone surveillance. He also imposed a six month limitation on both wiretaps and microphone surveillances, after which time new requests had to be submitted for the Attorney General’s re-authorization.<sup>486</sup>

Upon Katzenbach’s recommendation, President Johnson issued a directive in June 1965 forbidding all federal government wiretapping “except in conjunction with investigations related to national security.”<sup>487</sup> This standard was reiterated by Attorney General Katzenbach, for both wiretapping and microphone surveillances three months later, and again in July 1966.<sup>487a</sup>

While the procedures were tightened, the broad “national security” standard still allowed for questionable authorizations of electronic surveillance. In fact, Katzenbach told Director Hoover that he would “continue to approve all such requests in the future as I have in the past.” He saw “no need to curtail any such activities in the national security field.”<sup>488</sup>

In line with that policy, Katzenbach approved FBI requests for wiretaps on the Student Non-Violent Coordinating Committee,<sup>489</sup> Students for a Democratic Society,<sup>490</sup> the editor of an anti-communist newsletter,<sup>491</sup> a Washington attorney with whom the editor was in frequent contact,<sup>492</sup> a Klan official,<sup>493</sup> and a leader of the black Revolutionary Action Movement.<sup>494</sup> According to FBI records, Katzenbach also initialed three memoranda informing him of microphone surveillances of Dr. Martin Luther King, Jr.<sup>495</sup>

<sup>485</sup> Memorandum from NSA MINARET Charter, 7/1/69.

<sup>486</sup> Memorandum from Hoover to Katzenbach, 3/30/65.

<sup>487</sup> Memorandum from President Johnson to Heads of Departments, 6/30/65.

<sup>487a</sup> Memorandum from Katzenbach to Hoover, 9/27/65; Supplemental Memorandum to the Supreme Court in *Black v. United States*, July 13, 1966.

Katzenbach also stated to Hoover that while he believed such techniques could be properly used in cases involving organized crime, he would not approve any such requests in the immediate future “in light of the present atmosphere.”

<sup>488</sup> Memorandum from Katzenbach to Hoover, 9/27/65.

<sup>489</sup> Memorandum from Hoover to Katzenbach, 6/15/65.

<sup>490</sup> Memorandum from Hoover to Katzenbach, 5/25/65.

<sup>491</sup> Memorandum from Hoover to Katzenbach, 4/19/65, see footnote 266.

<sup>492</sup> Memorandum from Hoover to Katzenbach, 6/7/65, see footnote 266.

<sup>493</sup> Memorandum from Hoover to Katzenbach, 9/28/64.

<sup>494</sup> Memorandum from Hoover to Katzenbach, 3/3/65.

<sup>495</sup> Memoranda from Hoover to Katzenbach, 5/17/65, 10/19/65, 12/1/65.

There were no similar electronic surveillance authorizations by Attorney General Ramsey Clark in cases involving purely domestic "national security" considerations.<sup>496</sup> Clark has stated that his policy was "to confine the area of approval to international activities directly related to the military security of the United States."<sup>497</sup>

(2) *Omnibus Crime Control Act of 1968*.—In response to a 1967 Supreme Court decision that required judicial warrants for the use of electronic surveillance in criminal cases,<sup>498</sup> Congress enacted the Omnibus Crime Control Act of 1968. This Act established warrant procedures for wiretapping and microphone surveillances, but it included a provision that neither it nor the Federal Communications Act of 1934 "shall limit the constitutional power of the President."<sup>499</sup> Although Congress did not purport to define the President's power,<sup>500</sup> the Act suggested five broad categories in which warrantless electronic surveillance might be permitted. The first three categories related to foreign intelligence and counterintelligence matters:

- (1) to protect the nation against actual or potential attack or other hostile acts of a foreign power;
- (2) to obtain foreign intelligence information deemed essential to the security of the United States; and
- (3) to protect national security information against foreign intelligence activities.

The last two categories dealt with domestic intelligence interests:

- (4) to protect the United States against overthrow of the government by force or other unlawful means, or
- (5) against any other clear and present danger to the structure or existence of the government.

Thus, although Congress suggested criteria for warrantless electronic surveillance for intelligence purposes, it left to the courts the task of defining the scope of the national security exception, if any, to the warrant requirement.

Between 1969 and 1972, the Nixon administration used these criteria to justify a number of questionable wiretaps. One New Left organization was tapped because, among other factors, its members desired to "take the radical politics they learned on campus and spread them among factory workers."<sup>501</sup> Four newsmen were wiretapped or bugged during this period, as were sixteen executive branch officials, one

<sup>496</sup> For example, Clark turned down FBI requests to wiretap the National Mobilization Committee Office for Demonstrations at the Democratic National Convention in Chicago in 1968. (Memoranda from Hoover to Clark 3/11/68, 3/22/68, 6/11/68). Clark decided that there was not "an adequate demonstration of a direct threat to the national security." (Clark to Hoover, 3/12/68) (These memoranda appear at Hearings, Vol. 6, pp. 740-755).

<sup>497</sup> Clark has stated that he denied requests "to tap Abba Eban when he was on a visit to this country, an employee of the United Nations Secretariat, the Organization of Arab Students in the U.S., the Tanzanian Mission to the U.N., the office of the Agricultural Counselor at the Soviet Embassy and a correspondent of TASS." [Statement of Former Attorney General Ramsey Clark, Hearings before the Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, United States Senate (1974).]

<sup>498</sup> *Katz v. United States*, 397 U.S. 347 (1967). This case explicitly left open the question of warrantless electronic surveillance in "situation(s) involving the national security." (397 U.S., at 358 n. 23.)

<sup>499</sup> 18 U.S.C. 2511(3).

<sup>500</sup> See *United States v. United States District Court*, 407 U.S. 297 (1972).

<sup>501</sup> Memorandum from Hoover to Attorney General Mitchell, 3/16/70.



former executive official, and a relative of an executive official.”<sup>502</sup> There were numerous wiretaps and some microphones used against the Black Panther Party and similar domestic groups.<sup>503</sup> Attorney General John Mitchell approved FBI requests for wiretaps on organizations involved in planning the November 1969 antiwar “March on Washington,” including the moderate Vietnam Moratorium Committee.<sup>503a</sup>

(3) *Supreme Court Restrictions on National Security Electronic Surveillance: 1972.*—The issue of national security electronic surveillance was not addressed by the Supreme Court until 1972, when it held in the so-called Keith case that the President did not have the “constitutional power” to authorize warrantless electronic surveillance to protect the security of the nation from “domestic” threats.<sup>504</sup> The Court still remained silent, however, on the legality of warrantless electronic surveillance where there was a “significant connection with a foreign power, its agents or agencies.”<sup>505</sup> As a result of this decision, the Justice Department eliminated as criteria for the use of warrantless electronic surveillance the two categories, described by Congress in the 1968 Act, dealing with domestic intelligence interests.<sup>506</sup>

#### *b. CIA Mail Opening*

Although Director Hoover terminated the FBI’s own mail opening programs in 1966, the Bureau’s use of the CIA program continued. In 1969, upon the recommendation of the official in charge of the CIA’s CHAOS program, the FBI began submitting names of domestic political radicals and black militants to the CIA for inclusion on its mail opening “Watch List.”<sup>507</sup> By 1972, the FBI’s list of targets for CIA mail opening included:

New Left activists, extremists, and other subversives.

Extremist and New Left organizations.

Protest and peace organizations, such as People’s Coalition for Peace and Justice, National Peace Action Committee, and Women’s Strike for Peace.

Subversive and extremist groups, such as the Black Panthers, White Panthers, Black Nationalists and Liberation Groups, Students for a Democratic Society, Resist, Revolutionary Union, and other New Left Groups.

<sup>502</sup> See Findings C and E, pp. 183 and 225.

<sup>503</sup> For example, at one time in March 1971 the FBI was conducting one microphone surveillance of Black Panther Party leader Huey Newton, seven wiretaps of Black Panther Party offices including Newton’s residence, one wiretap on another black extremist group, one wiretap on Jewish Defense League headquarters, one wiretap on a “New Left extremist group”, and two wiretaps on “New Left extremist activities.” (Memorandum from W. R. Wannall to C. D. Brennan, 3/29/71, printed in Hearings, Vol. II, pp. 270-271.)

<sup>503a</sup> Memoranda from Hoover to Attorney General Mitchell, 11/5/69 and 11/7/69. This and other aspects of electronic surveillance in this period are discussed in Findings C and E in greater detail, pp. 183 and 225.

<sup>504</sup> *United States v. United States District Court*, 407 U.S. 297 (1972).

<sup>505</sup> *United States v. United States District Court*, 407 U.S., at 309 (1972).

<sup>506</sup> Memorandum from William Olson to Elliott Richardson, June 1973. Until 1975, however, the Justice Department stretched the term “connection with a foreign power” to include domestic groups, such as the Jewish Defense League, whose protest actions against a foreign nation were believed to threaten the United States’ relations with that nation. [*Zwibon v. Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975).]

<sup>507</sup> Memorandum from FBI/CIA Liaison Agent to D. J. Brennan, 1/16/69.

Traffic to and from Puerto Rico and the Virgin Islands showing anti-U.S. or subversive sympathies.<sup>508</sup>

Thus, the mail opening program that began fourteen years earlier as a means of discovering hostile intelligence efforts in the United States had expanded to encompass communications of domestic dissidents of all types.

*c. Expansion of NSA Monitoring*

Although NSA began to intercept and disseminate the communications of selected Americans in the early 1960s, the systematic inclusion of a wide range of American names on the "Watch List" did not occur until 1967.

The Army Chief of Staff for Intelligence requested "any information on a continuing basis" that NSA might intercept concerning:

A. Indications that foreign governments or individuals or organizations acting as agents of foreign governments are controlling or attempting to control or influence the activities of U.S. "peace" groups and "Black Power" organizations.

B. Identities of foreign agencies exerting control or influence on U.S. organizations.

C. Identities of individuals and organizations in U.S. in contact with agents of foreign governments.

D. Instructions or advice being given to U.S. groups by agents of foreign governments.<sup>509</sup>

Two years later, NSA issued an internal instruction intended to ensure the secrecy of the fact that it was monitoring and disseminating communications to and from Americans.<sup>510</sup> This memorandum described the "Watch List" program in terms which indicated that it had widened beyond its originally broad mandate. In addition to describing the program as covering foreigners who "are attempting" to "influence, coordinate or control" U.S. groups or individuals who "may foment civil disturbance or otherwise undermine the national security of the U.S.," the memorandum indicated that the program intercepted communications dealing with:

Information on U.S. organizations or individuals who are engaged in activities which may result in civil disturbances or otherwise subvert the national security of the U.S.<sup>511</sup>

This standard, which was clearly outside the foreign intelligence mandate of NSA, resulted in sweeping coverage. Communications such as the following were intercepted, disseminated, and stored in Government files: discussion of a peace concert; the interest of the wife of a U.S. Senator in peace causes; a correspondent's report from Southeast Asia to his magazine in New York; an anti-war activist's request for a speaker in New York.

According to testimony before the Committee, the material which resulted from the "Watch List" was of little intelligence value; most

<sup>508</sup> Routing Slip from J. Edgar Hoover to James Angleton (attachment), 3/10/72.

<sup>509</sup> DOD Cable, Yarborough to Carter, 10/20/67.

<sup>510</sup> NSA's name, for example, was to be kept off any of the disseminated "product."

<sup>511</sup> MINARET Charter, 7/1/69.

intercepted communications were of a private or personal nature or involved rallies and demonstrations that were public knowledge.<sup>512</sup>

*d. FBI Cutbacks*

The reasons for J. Edgar Hoover's cutback in 1966 on FBI use of several covert techniques are not clear. Hoover's former assistants have cited widely divergent factors.

Certainly by the mid-1960s, Hoover was highly sensitive to the possibility of damage to the FBI from public exposure of its most intrusive intelligence techniques. This sensitivity was reflected in a memorandum to Attorney General Katzenbach in September 1965, where Hoover referred to "the present atmosphere" of "Congressional and public alarm and opposition to any activity which could in any way be termed an invasion of privacy."<sup>513</sup> The FBI Director was particularly concerned about an inquiry by the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee chaired by Senator Edward Long.

(1) *The Long Subcommittee Investigation.*—The Senate Subcommittee was primarily investigating electronic surveillance and mail cover. The Bureau was seen as a major subject of the inquiry, although the Internal Revenue Service and other Executive agencies were also included.

In February 1965, President Johnson asked Attorney General Katzenbach to coordinate all matters relating to the investigation, and Katzenbach then met with senior FBI officials to discuss the problems it raised.<sup>515</sup> According to a memorandum by A. H. Belmont, one of the FBI Director's principal assistants, Katzenbach stated that he planned to see Senator Edward Long, the Subcommittee chairman, for the purpose of "impressing on him that the committee would not want to stumble by mistake into an area of extreme interest to the national security." According to Belmont, the Attorney General added that he "might have to resort to pressure from the President" and that he did not want the Subcommittee to "undermine the restricted and tightly controlled operations of the Bureau." FBI officials had assured Katzenbach that their activities were, indeed, "tightly controlled" and restricted to "important security matters."<sup>516</sup>

The following note on the memorandum of this meeting provides a sign of Director Hoover's attitude at that time:

I don't see what all the excitement is about. I would have no hesitancy in discontinuing all techniques—technical coverage, microphones, trash covers, mail covers, etc. While it might handicap us I doubt they are as valuable as some

<sup>512</sup> W. R. Wannall (FBI Assistant Director for Intelligence), 10/3/75, p. 13. "The feeling is that there was very little in the way of good product as a result of our having supplied names to NSA."

<sup>513</sup> Memorandum from Hoover to Katzenbach, 9/14/65. This memorandum dealt specifically with electronic surveillance and did not mention mail openings or "Black Bag Jobs." Hoover said the FBI had "discontinued" microphone surveillances (bugs), a restriction which Attorney General Katzenbach said went too far. (Katzenbach to Hoover, 9/27/65.)

<sup>515</sup> Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65. Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 204.

<sup>516</sup> Memorandum from A. H. Belmont to C. Tolson, 2/27/65.

believe and none warrant the FBI being used to justify them.<sup>517</sup>

Several days later, according to a memorandum of the FBI Director, the Attorney General "advised that he had talked to Senator Long,"<sup>518</sup> and that the Senator "said he did not want to get into any national security area."<sup>518</sup> Katzenbach has confirmed that he "would have been concerned" in these circumstances about the Subcommittee's demands for information about "matters of a national security nature" and that he was "declining to provide such information" to Long.<sup>519</sup>

Again in 1966, the FBI took steps to, in the words of Bureau official Cartha DeLoach, "neutralize" the "threat of being embarrassed by the Long Subcommittee."<sup>520</sup> This time the issue involved warrantless electronic surveillance by the FBI, particularly in organized crime matters. DeLoach and another ranking Bureau official visited Senator Long to urge that he issue a statement that "the FBI had never participated in uncontrolled usage of wiretaps or microphones and that FBI usage of such devices had been completely justified in all instances."<sup>521</sup> The Bureau prepared such a statement for Senator Long to release as his own, which apparently was not used.<sup>522</sup> At another meeting with DeLoach, Senator Long agreed to make "a commitment that he would in no way embarrass the FBI." When the Subcommittee's Chief Counsel asked if a Bureau spokesman could appear and "make a simple statement," DeLoach replied that this would "open a Pandora's box, in so far as our enemies in the press were concerned." Senator Long then stated that he would call no FBI witnesses.<sup>523</sup>

(2) *Director Hoover's Restrictions.*—The Director subsequently issued instructions that the number of warrantless wiretaps installed at any one time be cut in half. One of his subordinates speculated that this was done out of a concern that the Subcommittee's "inquiry might get into the use of that technique by the FBI."<sup>524</sup>

In July 1966, after hundreds of FBI "black bag job" operations had been approved over many years, Director Hoover decided to eliminate warrantless surreptitious entries for purposes other than microphone installations.<sup>525</sup> In response to an Intelligence Division analysis that such break-ins were an "invaluable technique," although "clearly illegal," Hoover stated that "no more such techniques must be used."<sup>526</sup> Bureau subordinates took Hoover's "no more such tech-

<sup>517</sup> Hoover Note on Belmont Memorandum to Tolson, 2/27/65.

<sup>518</sup> Memorandum from Hoover to Tolson, *et al.*, 3/2/65.

<sup>519</sup> Katzenbach testimony, 12/3/75, Hearings, Vol. 6, pp. 205-206.

<sup>520</sup> Memorandum from DeLoach to Tolson, 1/21/66.

<sup>521</sup> Memorandum from DeLoach to Tolson, 1/10/66.

<sup>522</sup> Memorandum from M. A. Jones to Robert Wick, 1/11/66.

<sup>523</sup> Memorandum from DeLoach to Tolson, 1/21/66.

<sup>524</sup> C. D. Brennan deposition, 9/23/75, p. 42.

<sup>525</sup> According to FBI records and the recollections of Bureau agents, the following number of microphone surveillances involving "surreptitious entry" were installed in "internal security, intelligence, and counterintelligence" investigations: 1964: 80; 1965: 59; 1966: 4; 1967: 0; 1968: 9; 1969: 8; 1970: 15; 1971: 6; 1972: 22; 1973: 18; 1974: 9; 1975: 13. The similar figures for "criminal investigations" (including installations authorized by judicial warrant after 1968) are: 1964: 83; 1965: 41; 1966: 0; 1967: 0; 1968: 0; 1969: 3; 1970: 8; 1971: 7; 1972: 19; 1973: 27; 1974: 22; 1975: 11. (Memorandum from FBI to Select Committee, 10/17/75.)

<sup>526</sup> Hoover note on memorandum from Sullivan to DeLoach, 7/19/66. This memorandum cited as a "prime example" of the utility of a "black bag jobs" a break-in to steal records of three high-ranking Klan officials relating to finances

niques" language as an injunction against the Bureau's mail opening program as well.<sup>527</sup> Apparently, a termination order was issued to field offices by telephone. FBI mail-opening was suspended, although the Bureau continued to seek information from CIA's illegal mail-opening program until its suspension in 1973.

A year and a half before Hoover's cutbacks on wire-tapping, "black bag jobs," and mail-opening, he prohibited the FBI's use of other covert techniques such as mail covers and trash covers.<sup>528</sup>

FBI intelligence officials persisted in requesting authority for "black bag" techniques. In 1967 Director Hoover ordered that "no such recommendations should be submitted."<sup>529</sup> At about this time, Attorney General Ramsey Clark was asked to approve a "breaking and entering" operation and declined to do so.<sup>530</sup> There was an apparently unauthorized surreptitious entry directed at a "domestic subversive target" as late as April, 1968.<sup>531</sup> A proposal from the field to resume mail opening for foreign counterintelligence purposes was turned down by FBI officials in 1970.<sup>532</sup>

## 7. Accountability and Control

### *a. The Huston Plan: A Domestic Intelligence Network*

In 1970, pressures from the White House and from within the intelligence community led to the formulation of a plan for coordination and expansion of domestic intelligence activity. The so-called "Huston Plan" called for Presidential authorization of illegal intelligence techniques, expanded domestic intelligence collection, and centralized evaluation of domestic intelligence. President Nixon approved the plan and then, five days later, revoked his approval. Despite the revocation of official approval, many major aspects of the plan were implemented, and some techniques which the intelligence community asked for permission to implement had already been underway.

In 1970, there was an intensification of the social tension in America that had provided the impetus in the 1960s for ever-widening domestic intelligence operations. The spring invasion of Cambodia by United States forces triggered the most extensive campus demonstrations and student "strikes" in the history of the war in Southeast Asia. Domestic strife heightened even further when four students were killed by Na-

and membership which "we have been using most effectively to disrupt the organization."

<sup>527</sup> Wannall, 10/13/75, pp. 45-46. There is to this day no formal order prohibiting FBI mail-opening, although Assistant Director Wannall contended that general FBI Manual instructions now applicable forbid any unlawful technique.

<sup>528</sup> These techniques were not prohibited by law. Their use was banned in all cases, including serious criminal investigations and foreign counterintelligence matters. (Memorandum from W. C. Sullivan to A. H. Belmont, 9/30/64.) Mail covers, which may be used to identify from their exteriors certain letters which can then be opened with a judicial warrant, were reinstituted with Justice Department approval in 1971. (Memorandum from Hoover to Mitchell, 7/27/71; Memorandum from Assistant Attorney General Will Wilson to Hoover, 9/31/71.)

<sup>529</sup> Memorandum from Hoover to Tolson and DeLoach, 1/6/67.

<sup>530</sup> "Once Mr. Hoover, apparently at the request of the National Security Agency, sought approval to break and enter into a foreign mission at the United Nations to procure cryptographic materials to facilitate decoding of intercepted transmissions. The request was presented with some urgency, rejected and presented again on perhaps several occasions. It was never approved and constituted the only request of that kind." [Statement of former Attorney General Ramsey Clark, Hearings before the Senate Judiciary Subcommittee on Administrative Practice and Procedure. (1974).]

<sup>531</sup> Memorandum from FBI to Senate Select Committee, 2/23/75.

<sup>532</sup> Memorandum from W. A. Branigan to W. C. Sullivan, 3/31/70.

tional Guardsmen at Kent State University. Within one twenty-four hour period, there were 400 bomb threats in New York City alone. To respond, White House Chief of Staff, H. R. Haldeman, assigned principal responsibility for domestic intelligence planning to staff assistant Tom Charles Huston.<sup>533</sup>

Since June 1969, Huston had been in touch with the head of the FBI Domestic Intelligence Division, Assistant Director William C. Sullivan. Huston initially contacted Sullivan on President Nixon's behalf to request "all information possibly relating to foreign influences and financing of the New Left."<sup>534</sup> Huston also made similar requests to CIA, NSA, and the Defense Intelligence Agency. The quality of the data provided by these agencies, especially the FBI, had failed to satisfy Huston and Presidential assistant John Ehrlichman.<sup>535</sup> Thereafter, Huston's continued discussions with Assistant Director Sullivan convinced him that the restraints imposed upon domestic intelligence techniques by Director Hoover impeded the collection of important information about dissident activity.<sup>536</sup>

(1) *Intelligence Community Pressures.*—The interest of the White House in better intelligence about domestic protest activity coincided with growing dissatisfaction among the foreign intelligence agencies with the FBI Director's restrictions on their performance of foreign intelligence functions in America.<sup>537</sup>

The CIA's concerns crystallized in March 1970 when—as a result of a "flap" over the CIA's refusal to disclose information to the FBI—Hoover issued an order that "direct liaison" at FBI headquarters with CIA "be terminated" and that "any contact with CIA in the future" was to take place "by letter only."<sup>538</sup> This order did not bar interagency communication; secure telephones were installed and working-level contacts continued. But the position of FBI "liaison agent" with CIA was eliminated.<sup>539</sup>

CIA Director Helms subsequently attempted to reopen the question of FBI cooperation with CIA requests for installing electronic surveillances and covering mail.<sup>540</sup> Hoover replied that he agreed with Helms that there should be expanded "exchange of information between our agencies concerning New Left and racial extremist matters." However, he refused the request for aid with electronic surveillance and mail coverage. Hoover cited the "widespread concern

<sup>533</sup> Memorandum from John R. Brown to H. R. Haldeman, 4/30/70.

<sup>534</sup> Memorandum from Sullivan to DeLoach, 6/20/69; Memorandum from Huston to Hoover, 6/20/69.

<sup>535</sup> Tom Charles Huston testimony, 5/23/75, p. 19.

<sup>536</sup> Huston, 5/23/75, pp. 23, 28.

<sup>537</sup> Helms deposition, 9/10/75, p. 3; Bennett deposition, 8/5/75, p. 12; Gayler deposition, 6/19/75, pp. 6–7. As early as 1963, the FBI Director had successfully opposed a proposal to the President's Foreign Intelligence Advisory Board by CIA Director John McCone for expanded domestic wiretapping for foreign intelligence purposes. (Memorandum from W. C. Sullivan to C. D. DeLoach, 3/7/70). In 1969, CIA Director Richard Helms was told by the Bureau, when he asked it to institute electronic surveillance on behalf of the CIA, that he should "refer such requests directly to Attorney General for approval." (Memorandum from Sullivan to DeLoach, 3/30/70.) The administrators of NSA also failed to persuade Director Hoover to lift his restraints on foreign intelligence electronic surveillance. (Staff summary of Louis Tordella interview, 6/16/75.)

<sup>538</sup> Note by Hoover on letter from Helms to Hoover, 2/26/70.

<sup>539</sup> Former FBI Liaison with CIA testimony, 9/22/75, p. 3.

<sup>540</sup> Memorandum from Sullivan to DeLoach, 3/30/70, pp. 1–2, 4.

by the American public regarding the possible misuse of this type of coverage." Their use in "domestic investigations" posed legal problems not encountered "in similar operations abroad." Hoover added, "The FBI's effectiveness has always depended in large measure on our capacity to retain the full confidence of the American people."<sup>541</sup>

(2) *The Interagency Committee Report*.—In the following months, Tom Charles Huston arranged a meeting between President Nixon and the directors of the FBI, CIA, NSA, and DIA on June 5, 1970.<sup>542</sup> The President's emphasis was upon improved coordination among the agencies to strengthen their capabilities to collect intelligence about "revolutionary activism" and "the support—ideological and otherwise—of foreign powers" for these activities. The talking paper prepared by Huston for the President to read at the meeting declared, "We are now confronted with a new and grave crisis in our country—one which we know too little about."<sup>543</sup>

From this meeting emanated the Special Report of the Interagency Committee on Intelligence (Ad Hoc), prepared jointly by representatives of the FBI, CIA, NSA, and DIA, and submitted to the President a month later.<sup>544</sup> The report presented the President a series of options, and Huston recommended that the President approve the following:

(1) "coverage by NSA of the communications of U.S. citizens using international facilities;"

(2) "intensification" of "electronic surveillances and penetrations" directed at individuals and groups "who pose a major threat to the internal security" and at "foreign nationals" in the United States "of interest to the intelligence community;"

(3) removal of restrictions on "legal" mail coverage and relaxation of "restrictions on covert coverage" [mail opening] on "selected targets of priority foreign intelligence and internal security interest;"

(4) modification of "present restrictions" on "surreptitious entry" to allow "procurement of vitally needed foreign cryptographic material" and "to permit selective use" against "high priority internal security targets;"

(5) relaxation of "present restrictions" on the "development of campus sources" to permit "expanded coverage of violence-prone and student-related groups;"

(6) "increased" coverage by CIA "of American students (and others) traveling or living abroad;"

(7) appointment of a "permanent committee consisting of the FBI, CIA, NSA, DIA, and the military counterintelligence agencies" to evaluate "domestic intelligence" and to "carry out the other objectives specified in the report."<sup>545</sup>

Huston also raised and dismissed questions about the legality of two collection techniques in particular. "Covert [mail opening] cov-

<sup>541</sup> Memorandum from Hoover to Helms, 3/31/70.

<sup>542</sup> Huston deposition, 5/23/75, p. 32.

<sup>543</sup> Presidential Talking Paper, 6/5/70, from the Nixon Papers.

<sup>544</sup> The report was written by the Research Section of the FBI Domestic Intelligence Division on the basis of committee decisions and FBI Director Hoover's revisions (Staff Summary of Richard Cotter interview, 9/15/75.)

<sup>545</sup> The seven recommendations were made in an attachment to a memorandum from Huston to Haldeman, 7/70.

erage is illegal, and there are serious risks involved," he wrote. "However, the advantages to be derived from its use outweigh the risks."<sup>546</sup> As for surreptitious entry, Huston advised:

Use of this technique is clearly illegal: it amounts to burglary. It is also highly risky and could result in great embarrassment if exposed. However, it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion."<sup>547</sup>

Huston testified that his recommendations "reflected what I understood to be the consensus of the working group" of intelligence officials on the interagency committee.<sup>548</sup>

Just over a week later, the FBI, CIA, NSA, and DIA were advised by Huston that "the President has . . . made the following decisions"—to adopt all of Huston's recommendations.<sup>549</sup> Henceforth, with Presidential authority, the intelligence community could intercept the international communications of Americans; eavesdrop electronically on anyone deemed a "threat to the internal security;" read the mail of American citizens; break into the homes of anyone regarded as a security threat; and monitor the activities of student political groups at home and abroad.

There is no indication that the President was informed at this time that NSA was already covering the international communications of Americans and had been doing so for domestic intelligence purposes since at least 1967. Nor is there any indication that he was told that the CIA was opening the mail of Americans and sharing the contents with the FBI and the military for domestic intelligence purposes. In effect, the "Huston plan" supplied Presidential authority for operations previously undertaken in secret without such authorization. For instance, the plan gave FBI Assistant Director Sullivan the "support" from "responsible quarters" which he had believed necessary to resume the "black bag jobs"<sup>550</sup> and mail-opening programs Director Hoover had terminated in 1966.<sup>550</sup>

Nevertheless, the FBI Director was not satisfied with Huston's memorandum concerning the authorization of the plan.<sup>551</sup> Hoover went immediately to Attorney General Mitchell, who had not known of the prior deliberations or the President's "decisions."<sup>552</sup> In a memorandum, Director Hoover said he would implement the plan, but only with the explicit approval of the Attorney General or the President:

<sup>546</sup> Memorandum from Huston to Haldeman, 7/70.

<sup>547</sup> Memorandum from Huston to Haldeman, 7/70. In using the word "burglary," Huston said he sought to "escalate the rhetoric . . . to make it as bold as possible." He thought that, as a staff man, he should give the President "the worst possible interpretation of what the recommendation would result in." (Huston deposition, 5/22/75, p. 69.)

<sup>548</sup> Huston deposition, 5/22/75, p. 8.

<sup>549</sup> Memorandum from Tom Charles Huston to Intelligence Directors, 7/23/70.

<sup>550</sup> Memorandum from Sullivan to DeLoach, 4/14/70.

<sup>551</sup> An assistant to the head of the Defense Intelligence Agency recalls agreeing with his superior that the memorandum from Huston to the intelligence directors showed that the White House had "passed that one down about as low as they could go" and that the absence of signatures by the President or his top aides indicated "what a hot potato it was." (Staff summary of James Stillwell interview, 5/21/75.)

<sup>552</sup> Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 122.



Despite my clear-cut and specific opposition to the lifting of the various investigative restraints referred to above and to the creation of a permanent interagency committee on domestic intelligence, the FBI is prepared to implement the instructions of the White House at your direction. Of course, we would continue to seek your specific authorization, where appropriate, to utilize the various sensitive investigative techniques involved in individual cases.<sup>553</sup>

CIA Director Helms shortly thereafter indicated his support for the plan to the Attorney General, telling him "we had put our backs into this exercise."<sup>554</sup> Nonetheless, Mitchell advised the President to withdraw his approval.<sup>555</sup> Huston was told to rescind his memorandum, and the White House Situation Room dispatched a message requesting its return.<sup>556</sup>

(3) *Implementation.*—The President's withdrawal of approval for the "Huston plan" did not, in fact, result in the termination of either the NSA program for covering the communications of Americans or the CIA mail-opening program. These programs continued without the formal authorization which had been hoped for.<sup>557</sup> The directors of the CIA and NSA also continued to explore means of expanding their involvement in, and access to, domestic intelligence.<sup>558</sup> A new group, the Intelligence Evaluation Committee (IEC), was created by Attorney General Mitchell within the Justice Department to consider such expansion.<sup>559</sup> NSA, CIA, Army counterintelligence, and the FBI

<sup>553</sup> Memorandum from Hoover to Mitchell, 7/25/70.

<sup>554</sup> Helms memorandum for the record, 7/28/70.

<sup>555</sup> Mitchell, 10/24/75, Hearings, Vol. 4, p. 123.

<sup>556</sup> Huston deposition, 5/23/75, p. 56; staff summary of David McManus interview, 7/1/75.

<sup>557</sup> Director Helms thinks he told Attorney General Mitchell about the CIA mail program. Helms also believes President Nixon may have known about the program although Helms did not personally inform him. (Helms, 10/22/75, Hearings, Vol. 4, pp. 88–89.) Mitchell denied that Helms told him of a CIA mail-opening program and testified that the President had no knowledge of the program, "at least not as of the time we discussed the Huston Plan." (Mitchell, 9/24/75, Hearings, Vol. 4, pp. 120, 138.)

<sup>558</sup> In March 1971, NSA Director Noel Gayler and CIA Director Helms met with Attorney General Mitchell and Director Hoover. According to Hoover's memorandum of the meeting, it had been arranged by Helms to discuss "a broadening of operations, particularly of the very confidential type in covering intelligence both domestic and foreign." Hoover was again "not enthusiastic" because of "the hazards involved." Mitchell asked Helms and Gayler to prepare "an in-depth examination" of the collection methods they desired. (Memorandum for the files by J. Edgar Hoover, 4/12/71.) It was less than two months after this meeting that, according to a CIA memorandum, Director Helms briefed Mitchell on the mail program. (CIA memorandum for the record, 6/3/71.) Even before this meeting, NSA Director Gayler sent a memorandum to Attorney General Mitchell and Defense Secretary Melvin Laird describing "NSA's Contribution to Domestic Intelligence." This memorandum refers to a discussion with both Mitchell and Laird on how NSA could assist with "intelligence bearing on domestic problems." The memorandum mentioned the monitoring of foreign support for subversive activities, as well as for drug trafficking, although it did not discuss specifically the NSA "Watch List" of Americans. (Memorandum from NSA Director Noel Gayler to the Secretary of Defense and the Attorney General, January 26, 1971.) NSA official Benson Buffham recorded that he personally showed this memorandum to Mitchell and had been told by the Military Assistant to Secretary Laird that the Secretary had read and agreed with it. (Memorandum for the record by Benson K. Buffham, 2/3/71.)

<sup>559</sup> Memorandum from Assistant Attorney General Robert Mardian to Attorney General Mitchell, 12/4/70.

each sent representatives to the IEC. NSA Director Gayler provided the IEC with a statement of NSA's capabilities and procedures for supplying domestic intelligence.<sup>560</sup> Although the IEC merely evaluated raw intelligence data, over 90 percent of which came to it through the FBI, it had access to domestic intelligence from NSA coverage and the CIA's mail-opening and CHAOS programs, which was channeled to the FBI.<sup>561</sup>

Two of the specific recommendations in the "Huston Plan" were thereafter implemented by the FBI—the lowering of the age limit for campus informants from 21 to 18 and the resumption of "legal mail covers."<sup>562</sup> Two men who had participated in developing the "Huston Plan" were promoted to positions of greater influence within the Bureau.<sup>563</sup> More important the Bureau greatly intensified its domestic intelligence investigations in the fall of 1970 without using "clearly illegal" techniques. The Key Black Extremist Program was inaugurated and field offices were instructed to open approximately 10,500 new investigations, including investigations of all black student groups "regardless of their present or past involvement in disorders." All members of "militant New Left campus organizations" were also to be investigated even if they were not "known to be violence prone." The objective of these investigations was "to identify potential" as well as "actual extremists."<sup>564</sup>

The chief of the Domestic Intelligence Division in 1970 said the "Huston Plan" had "nothing to do" with the FBI's expanded intelligence activities. Rather, both the "Huston Plan" and the Bureau intensification represented the same effort by FBI intelligence officials "to recommend the types of action and programs which they thought necessary to cope with the problem."<sup>565</sup> Brennan admits that "the FBI was getting a tremendous amount of pressure from the White House," although he attributes this pressure to demands from "a vast majority of the American people" who wanted to know "why something wasn't being done" about violence and disruption in the country.<sup>566</sup>

#### *b. Political Intelligence*

The FBI practice of supplying political information to the White House and, on occasion, responding to White House requests for such information was established before 1964. However, under the administrations of President Lyndon Johnson and Richard Nixon, this practice grew to unprecedented dimensions.<sup>567</sup>

(1) *Name Check Requests.*—White House aides serving under Presidents Johnson and Nixon made numerous requests for "name checks"

<sup>560</sup> Memorandum from Gayler to Laird and Mitchell, 1/26/71.

<sup>561</sup> For a discussion of the FBI as "consumer," see pp. 107–109.

<sup>562</sup> The resumption of mail covers is discussed above at footnote 528. FBI field offices were instructed that they could recruit 18–21 year-old informers in September 1970. (SAC Letter No. 70–48, 9/15/70.) See, p. 76.

<sup>563</sup> The head of the FBI Domestic Intelligence Division, William C. Sullivan, was promoted to be Assistant to the Director for all investigative and intelligence activities. His successor in charge of the Domestic Intelligence Division was Charles D. Brennan.

<sup>564</sup> Executives Conference to Tolson, 10/29/70; Memorandum from FBI Headquarters to all SACs, 11/4/70.

<sup>565</sup> Brennan deposition, 9/23/75, pp. 29–31.

<sup>566</sup> Brennan testimony, 9/25/75, Hearings, Vol. 2, p. 108.

<sup>567</sup> The involvement of the Central Intelligence Agency in improper activities for the White House is described in the Rockefeller Commission Report, Ch. 14.

of FBI files to elicit all Bureau information on particular critics of each administration. Johnson aides requested such reports on critics of the escalating war in Vietnam.<sup>568</sup> President Johnson's assistants also requested name checks on members of the Senate staff of Presidential candidate Barry Goldwater in 1964,<sup>569</sup> on Justice and Treasury Department officials responsible for a phase of the criminal investigation of Johnson's former aide Bobby Baker,<sup>569a</sup> on the authors of books critical of the Warren Commission report,<sup>570</sup> and on prominent newsmen.<sup>571</sup> President Nixon's aides asked for similar name checks on another newsmen, the Chairman of Americans for Democratic Action, and the producer of a film critical of the President.<sup>572</sup>

According to a memorandum by Director Hoover, Vice President Spiro Agnew received ammunition from Bureau files that could be used in "destroying [the] credibility" of Southern Christian Leadership Conference leader Reverend Ralph Abernathy.<sup>573</sup>

(2) *Democratic National Convention, Atlantic City, 1964.*—On August 22, 1964, at the request of the White House, the FBI sent a "special squad" to the Democratic National Convention site in Atlantic City, New Jersey. The squad was assigned to assist the Secret Service in protecting President Lyndon Johnson and to ensure that the convention itself would not be marred by civil disruption.

But it went beyond these functions to report political intelligence to the White House. Approximately 30 Special Agents, headed by Assistant Director Cartha DeLoach, "were able to keep the White House fully apprised of all major developments during the Convention's course" by means of "informant coverage, by use of various confidential techniques, by infiltration of key groups through use of undercover agents, and through utilization of agents using appropriate cover as reporters."<sup>574</sup> Among these "confidential techniques" were: a wiretap on the hotel room occupied by Dr. Martin Luther King, Jr., and microphone surveillance of a storefront serving as headquarters for the Student Nonviolent Coordinating Committee and another civil rights organization.<sup>575</sup>

<sup>568</sup> Letter from J. Edgar Hoover to Marvin Watson, 6/4/65.

<sup>569</sup> Memorandum from Hoover to Moyers, 10/27/64, cited in FBI summary memorandum, subject: Senator Barry Goldwater, 1/31/75.

<sup>569a</sup> Memorandum from DeLoach to Tolson, 1/17/67.

<sup>570</sup> Memorandum from Hoover to Marvin Watson, 11/8/66.

<sup>571</sup> See Finding on Political Abuse, p. 225.

<sup>572</sup> Letter from J. Edgar Hoover to John D. Ehrlichman, 10/6/69; House Judiciary Committee Hearings, *Statement of Information* (1974), Book VII, p. 1111; Book VIII, p. 183. Director Hoover volunteered information from Bureau files to the Johnson White House on the author of a play satirizing the President. (Memorandum from Hoover to Watson, 1/9/67.)

<sup>573</sup> Memorandum from Hoover to Tolson, *et al.*, 5/18/70. Agnew admits having received such information, but denies having asked for it. (Staff summary of Spiro Agnew interview, 10/15/75.)

<sup>574</sup> Memorandum from C. D. DeLoach to Mr. Mohr, 8/29/64.

<sup>575</sup> DeLoach memorandum, 8/29/64; Cartha DeLoach testimony, 12/3/75, Hearings, Vol. 6, p. 177. A 1975 FBI Inspection Report has speculated that the SNCC bug may have been planted because the Bureau had information in 1964 that "an apparent member of the Communist Party, USA, was engaging in considerable activity, much in a leadership capacity in the Student Nonviolent Coordinating Committee." (FBI summary memorandum, 1/30/75.) It is unclear, however, whether this bug was even approved internally by FBI Headquarters, as ordinarily required by Bureau procedures. DeLoach stated in a contemporaneous memorandum that the microphone surveillance of SNCC was instituted

Neither of the electronic surveillances at Atlantic City were specifically authorized by the Attorney General. At that time, Justice Department procedures did not require the written approval of the Attorney General for bugs such as the one directed against SNCC in Atlantic City. Bureau officials apparently believed that the wiretap on King was justified as an extension of Robert Kennedy's October 10, 1963, approval for surveillance of King at his then-current address in Atlanta, Georgia, or at any future address to which he might move.<sup>576</sup> The only recorded reason for instituting the wiretap on Dr. King in Atlantic City, however, was set forth in an internal memorandum prepared shortly before the Convention:

Martin Luther King, Jr., head of the Southern Christian Leadership Conference (SCLC), an organization set up to promote integration which we are investigating to determine the extent of Communist Party (CP) influence on King and the SCLC, plans to attend and possibly may indulge in a hunger fast as a means of protest.<sup>577</sup>

Walter Jenkins, an Administrative Assistant to President Johnson who was the recipient of information developed by the Bureau, stated that he was unaware that any of the intelligence was obtained by wiretapping or bugging.<sup>578</sup> DeLoach, moreover, has testified that he is uncertain whether he ever informed Jenkins of these sources.<sup>579</sup>

Walter Jenkins, and presumably President Johnson, received a significant volume of information from the electronic surveillance at Atlantic City, much of it purely political and only tangentially related to possible civil disturbances. The most important single issue for President Johnson at the Atlantic City Convention was the seating challenge of the Mississippi Freedom Democratic Party to the regular Mississippi delegation.<sup>580</sup> From the electronic surveillances of King and SNCC, the White House was able to obtain the most intimate details of the plans of individuals supporting the MFDP's challenge unrelated to the possibility of violent demonstrations.

Jenkins received a steady stream of reports on political strategy in the struggle to seat the MFDP delegation and other political plans and discussions by the civil rights groups under surveillance.<sup>581</sup> Moreover, the 1975 Inspection Report stated that "several Congressmen,

(Continued)

"with Bureau approval." (Memorandum from DeLoach to Mohr, 8/29/64.) But the Inspection Report concluded that "a thorough review of Bureau records fails to locate any memorandum containing [internal] authorization for same." (FBI summary memorandum, 1/30/75.)

<sup>576</sup> Mr. DeLoach cited the fact that in the summer of 1964 "there was an ongoing electronic surveillance on Dr. Martin Luther King . . . as authorized by Attorney General Kennedy." (Cartha DeLoach testimony, 11/26/75, p. 110) The Inspection Report noted that the Special Agent in Charge of the Newark office was instructed to institute the wiretap on the ground that "the Bureau had authority from the Attorney General to cover any residences which King may use with a technical installation." (FBI summary memorandum 1/30/75, Subject: "Special Squad at Democratic National Convention, Atlantic City, New Jersey, August 22-28, 1964.")

<sup>577</sup> Memorandum from W. C. Sullivan to A. H. Belmont, 8/21/64.

<sup>578</sup> Staff summary of Walter Jenkins interview, 12/1/75.

<sup>579</sup> DeLoach, 11/26/75, p. 114.

<sup>580</sup> Theodore White, *Making of the President 1964* (New York: Atheneum, 1965), pp. 277-280. Walter Jenkins also confirmed this characterization. (Staff summary of Jenkins interview, 12/1/75).

<sup>581</sup> Memorandum from DeLoach to Mohr, 8/29/64.

Senators, and Governors of States" were overheard on the King tap.<sup>582</sup>

According to both Cartha DeLoach and Walter Jenkins, the Bureau's coverage in Atlantic City was not designed to serve political ends. DeLoach testified:

I was sent there to provide information . . . which could reflect on the orderly progress of the convention and the danger to distinguished individuals, and particularly the danger to the President of the United States, as exemplified by the many, many references [to possible civil disturbances] in the memoranda furnished Mr. Jenkins. . . .<sup>583</sup>

Jenkins has stated that the mandate of the FBI's special unit did not encompass the gathering of political intelligence and speculated that the dissemination of any such intelligence was due to the inability of Bureau agents to distinguish dissident activities which represented a genuine potential for violence.<sup>584</sup> Jenkins did not believe the White House ever used the incidental political intelligence that was received. However, a document located at the Lyndon B. Johnson Presidential Library suggests that at least one political use was made of Mr. DeLoach's reports.<sup>585</sup>

Thus, although it may have been implemented to prevent violence at the Convention site, the Bureau's coverage in Atlantic City—which included two electronic surveillances—undeniably provided useful political intelligence to the President as well.<sup>586</sup>

(3) *By-Product of Foreign Intelligence Coverage.*—Through the FBI's coverage of certain foreign officials in Washington, D.C., the Bureau was able to comply with President Johnson's request for reports of the contacts between members of Congress and foreign officials opposed to his Vietnam policy. According to a summary memorandum prepared by the FBI:

On March 14, 1966, then President Lyndon B. Johnson informed Mr. DeLoach [Cartha DeLoach, Assistant Director of the FBI] . . . that the FBI should constantly keep abreast of the actions of [certain foreign officials] in making contact with Senators and Congressmen and any citizen of a prominent nature. The President stated he strongly felt that much of the protest concerning his Vietnam policy, particularly the hearings in the Senate, had been generated by [certain foreign officials].<sup>587</sup>

<sup>582</sup> Memorandum from H. N. Bassett to Mr. Callahan, 1/29/75.

<sup>583</sup> DeLoach, 11/26/75, p. 139.

<sup>584</sup> Staff summary of Jenkins interview, 1/21/75.

<sup>585</sup> Exhibit 68-2, Hearings, Vol. VI, p. 713.

<sup>586</sup> FBI memoranda indicate that in 1968 Vice President Hubert Humphrey's Executive Assistant, Bill Connell, asked the Bureau to send a "special team" to the forthcoming Democratic National Convention, since President Johnson "allegedly told the Vice President that the FBI had been of great service to him and he had been given considerable information on a timely basis throughout the entire convention." (Memorandum from DeLoach to Tolson, 8/7/68). After talking with Connell, Director Hoover advised the SAC in Chicago that the Bureau was "not going to get into anything political but anything of extreme action or violence contemplated we want to let Connell know." (Memorandum from Hoover to Tolson, et al., 8/15/68.) Democratic Party Treasurer John Criswell made a similar request, stating that Postmaster General Marvin Watson "had informed him of the great service performed by the FBI during the last Democratic Convention." (Memorandum from DeLoach to Tolson, 8/22/68.)

<sup>587</sup> FBI summary memorandum, 2/3/75.

As a result of the President's request, the FBI prepared a chronological summary—apparently based in part on existing electronic surveillances—of the contacts of each Senator, Representative, or legislative staff member who communicated with selected foreign officials during the period July 1, 1964, to March 17, 1966. This 67-page summary was transmitted to the White House on March 21, 1966, with a note that certain foreign officials were “making more contacts” with four named Senators “than with other United States legislators.”<sup>588</sup> A second summary, prepared on further contacts between Congressmen and foreign officials, was transmitted to the White House on May 13, 1966. From then until the end of the Johnson Administration in January 1969, biweekly additions to the second summary were regularly disseminated to the White House.<sup>589</sup>

This practice was reinstituted during the Nixon Administration. On July 27, 1970, Larry Higby, Assistant to H. R. Haldeman, informed the Bureau that Haldeman “wanted any information possessed by the FBI relating to contacts between [certain foreign officials] and Members of Congress and its staff.” Two days later, the Bureau provided the White House with a statistical compilation of such contacts from January 1, 1967, to the present. Unlike the case of the information provided to the Johnson White House, however, there is no indication in related Bureau records that President Nixon or his aides were concerned about critics of the President's policy. The Bureau's reports did not identify individual Senators; they provided overall statistics and two examples of foreign recruitment attempts (with names removed).<sup>590</sup>

In at least one instance the FBI, at the request of the President and with the approval of the Attorney General, instituted an electronic surveillance of a foreign target for the express purpose of intercepting telephone conversations of an American citizen. An FBI memorandum states that shortly before the 1968 Presidential election, President Johnson became suspicious that the South Vietnamese were trying to sabotage his peace negotiations in the hope that Presidential candidate Nixon would win the election and then take a harder line toward North Vietnam. To determine the validity of this suspicion, the White House instructed the FBI to institute physical surveillance of Mrs. Anna Chennault, a prominent Republican, as well as electronic surveillance directed against a South Vietnamese target.<sup>591</sup>

The electronic surveillance was authorized by Attorney General Ramsey Clark on October 29, 1968, installed the same day, and continued until January 6, 1969.<sup>592</sup> Thus, a “foreign” electronic surveillance was instituted to target indirectly an American citizen who could not be legitimately surveilled directly. Also as part of this investigation, President Johnson personally ordered a check of the long distance toll call records of Vice Presidential candidate Spiro Agnew.<sup>593</sup>

<sup>588</sup> FBI summary memorandum, 2/3/75.

<sup>589</sup> FBI summary memorandum, 2/3/75.

<sup>590</sup> FBI summary memorandum, 2/3/75. See Findings on Political Abuse.

<sup>591</sup> FBI summary memorandum, 2/1/75.

<sup>592</sup> Memorandum from Director, FBI to Attorney General, 10/29/68; memorandum from Director, FBI to Attorney General, 10/30/68; memorandum from Director, FBI to Attorney General, 3/27/69.

Attorney General Clark testified that he was unaware of any surveillance of Mrs. Chennault, (Clark, 12/3/75. Hearings, Vol. 6, pp. 251-252.)

<sup>593</sup> See Findings on Political Abuse, p. 225.

(4) *The Surveillance of Joseph Kraft (1969).*—There is no substantial indication of any genuine national security rationale for the electronic surveillance overseas of columnist Joseph Kraft in 1969. John Ehrlichman testified before the Senate Watergate Committee that the national security was involved, but did not elaborate further.<sup>594</sup>

Beyond this general claim, however, there is little evidence that any national security issue was involved in the case. Former Deputy Attorney General and Acting FBI Director William Ruckelshaus testified that after reviewing the matter he “could never see any national security justification” for the surveillance of Kraft. Ruckelshaus stated that the Administration’s “justification” for bugging Kraft’s hotel room was that he was “asking questions of some members of the North Vietnamese Government.” Ruckelshaus believed that this was not an adequate national security justification for placing “any kind of surveillance on an American citizen or newsman.”<sup>595</sup> Mr. Kraft agreed that he was in contact with North Vietnamese officials while he was abroad in 1969, but noted that this was a common practice among journalists and that “at the time” he never knowingly published any classified information.<sup>596</sup>

The documentary record also reveals no national security justification for the FBI’s electronic surveillance of Mr. Kraft overseas. The one memorandum which referred to “Possible Leaks of Information” by Kraft does not indicate that there clearly was a leak of national security significance or that Mr. Kraft was responsible for such a leak if it occurred.<sup>597</sup> Furthermore, the hotel room bug did not produce any evidence that Kraft received or published any classified information.<sup>598</sup>

<sup>594</sup> John Ehrlichman testimony, Senate Watergate Committee, 7/24/73, p. 2535. According to the transcript of the White House tapes, President Nixon stated to John Dean on April 16, 1973:

“What I mean is I think in the case of the Kraft stuff what the FBI did, they were both fine. I have checked the facts. There were some done through private sources. Most of it was done through the Bureau after we got—Hoover didn’t want to do Kraft. What it involved apparently, John, was this: the leaks from the NSC [National Security Council]. They were in Kraft and others columns and we were trying to plug the leaks and we had to get it done and finally we turned it over to Hoover. And then when the hullabaloo developed we just knocked it off altogether. . . .” (Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, 4/30/74.) The President’s statement was made in the context of ‘coaching’ John Dean on what to say to the Watergate Grand Jury.

<sup>595</sup> William Ruckelshaus testimony before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.

<sup>596</sup> Kraft testified that Henry Kissinger, then the President’s Special Adviser for National Security, informed him that he had no knowledge of either the wiretap or the hotel room bug. Kraft also stated that former Attorney General Elliot Richardson indicated to him that “there was no justification for these activities.” (Joseph Kraft testimony, Senate Subcommittee on Administrative Practice and Procedure, 5/10/74, p. 381.)

<sup>597</sup> Letter from W. C. Sullivan to Mr. Hoover, 7/12/69.

<sup>598</sup> While the summaries sent to Hoover by Sullivan did show that Kraft contacted North Vietnamese officials (Letter from Sullivan to Hoover, 7/12/69), the Bureau did not discover any improprieties or indiscretions on his part. When Ruckelshaus was asked if his review of these summaries revealed to him that Kraft engaged in any conduct while abroad that posed a danger to the national security, he replied: “Absolutely not.” (Ruckelshaus testimony before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.)

Similarly, there is no evidence of a national security justification for the physical surveillance and proposed electronic surveillance of Kraft in the fall of 1969. A Bureau memorandum suggests that the Attorney General requested some type of coverage of Kraft,<sup>599</sup> but the record reveals no purpose for this coverage. The physical surveillance was discontinued after five weeks because it had "not been productive." Apparently, the Attorney General himself was unconvinced that a genuine national security justification supported the Kraft surveillance: he refused to authorize the requested wiretap, and it was consequently never implemented.<sup>600</sup>

(5) *The "17" Wiretaps.*—The relative ease with which high administration officials could select improper intelligence targets was demonstrated by the "17" wiretaps on Executive officials and newsmen installed between 1969–1971 under the rationale of determining the source of leaks of sensitive information.<sup>600a</sup> In three cases no national security claim was even advanced. While national security issues were at least arguably involved in the initiation of the other taps, the program continued in two instances against persons who left the government and took positions as advisors to Senator Edmund Muskie, then the leading Democratic Presidential prospect.<sup>601</sup>

The records of these wiretaps were kept separate from the FBI's regular electronic surveillance files;<sup>602</sup> their duration in many cases went beyond the period then required for re-authorization by the Attorney General; and in some cases the Attorney General did not authorize the tap until after it had begun.<sup>603</sup> In 1971, the records were removed from the FBI's possession and sent to the White House.

Thus, misuse of the FBI had progressed by 1971 from the regular receipt by the White House of political "tid-bits" and occasional requests for name checks of Bureau files to the use of a full array of intelligence operations to serve the political interests of the administration. The final irony was that the Nixon administration came to distrust Director Hoover's reliability and, consequently, to develop a White House-based covert intelligence operation.<sup>604</sup>

### *c. The Justice Department's Internal Security Division*

FBI intelligence reports flowed consistently to the Justice Department, especially to the IDIU established by Attorney General Clark in 1967 and to the Internal Security Division. Before 1971, the Justice Department provided little guidance to the FBI on the proper scope of domestic intelligence investigations.<sup>605</sup> For example, in response to a Bureau inquiry in 1964 about whether a group's activities came "within the criteria" of the employee security program or were "in

<sup>599</sup> Memorandum from W. C. Sullivan to Mr. DeLoach, 11/4/69.

<sup>600</sup> Memorandum from Sullivan to DeLoach, 12/11/69.

<sup>600a</sup> For discussion of dissemination of political intelligence from the "17" wiretaps, see Finding on Political Abuse, p. 225.

<sup>601</sup> Sen. Edmund Muskie testimony, Senate Foreign Relations Committee, 9/10/73 Executive Session, pp. 50–51.

<sup>602</sup> Memorandum from W. C. Sullivan to C. D. DeLoach, 5/11/69.

<sup>603</sup> Report of the House Judiciary Committee, 8/20/74, pp. 146–154.

<sup>604</sup> The creation of the "plumbers" unit in the White House led inexorably to Watergate. See Report of the House Judiciary Committee, 8/20/74, pp. 157–162, 166–170.

<sup>605</sup> An example of a generalized Departmental instruction is Attorney General Clark's order of September 1967 (see p. 79) regarding civil disorders.



violation of any other federal statute,"<sup>606</sup> the Internal Security Division replied that there was "insufficient evidence" for prosecution and that the group's leaders were "becoming more cautious in their utterances."<sup>607</sup> Nevertheless, the FBI continued for years to investigate the group with the knowledge and approval of the Division.

(1) *The "New" Internal Security Division.*—When Robert Mardian was appointed Assistant Attorney General in late 1970, the Internal Security Division assumed a more active posture. In fact, one of the alternatives to implementation of the "Huston Plan" suggested to Attorney General John Mitchell by White House aide John Dean was the invigoration of the Division.<sup>608</sup> This included Mardian's establishment of the IEC to prepare domestic intelligence estimates. Equally significant, however, was Mardian's preparation of a new Executive Order on federal employee security. The new order assigned to the moribund Subversive Activities Control Board the function of designating groups for what had been the "Attorney General's list."<sup>609</sup> This attempt to assign broad new functions by Executive fiat to a Board with limited statutory responsibilities clearly disregarded the desires of the Congress.<sup>610</sup>

According to Mardian, there was a "problem" because the list had "not been updated for 17 years." He expected that the revitalized SACB would "deal specifically with the revolutionary/terrorist organizations which have recently become a part of our history."<sup>611</sup>

Assistant Attorney General Mardian's views coincided with those of FBI Assistant Director Brennan, who had seen a need to compile massive data on the "New Left" for future employee security purposes.<sup>612</sup> Since FBI intelligence investigations were based in part on the standards for the "Attorney General's list," the new Executive Order substantially redefined and expanded FBI authority. The new order included groups who advocated the use of force to deny individual rights under the "laws of any State" or to overthrow the government of "any State or subdivision thereof."<sup>613</sup> The new order also continued to use the term "subversive," although it was theoretically more restrictive than the previous standard for the Attorney General's list because it required "unlawful" advocacy.

<sup>606</sup> Memorandum from FBI Director to Yeagley, 1/31/64.

<sup>607</sup> Memorandum from Yeagley to FBI Director, 3/3/64. There was no reauthorization of the continuing investigation between 1966 and 1974.

<sup>608</sup> Memorandum from Dean to Mitchell, 9/18/70.

<sup>609</sup> Executive Order 11605, 7/71.

<sup>610</sup> By 1971, the SACB had the limited function of making findings that specific individuals and groups were Communist. Its registration of Communist had been declared unconstitutional. [*Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965).]

<sup>611</sup> Robert C. Mardian, address before the Atomic Energy Commission Security Conference, Washington, D.C. 10/27/71. Mardian added that the "problem" was that, without an updated, formal list of subversive organizations, federal agencies were required "to individually evaluate information regarding membership in allegedly subversive organizations based on raw data furnished by the Federal Bureau of Investigation or other governmental sources."

<sup>612</sup> Brennan testimony, 9/25/75, Hearings, Vol. 2, 116-117.

<sup>613</sup> Executive Order 11605, 7/71. By contrast, the prior order had been limited to groups seeking forcible violation of rights "under the Constitution of the United States" or seeking "to alter the form of government of the United States by unconstitutional means." Executive Order 10450 (1953).

Mardian made it clear that, under the order, the FBI was to provide intelligence to the Subversive Activities Control Board:

We have a new brand of radical in this country and we are trying to address ourselves to the new situation. With the investigative effort of the FBI, we hope to present petitions to the Board in accordance with requirement of the Executive Order.<sup>614</sup>

FBI intelligence officials learned that the Internal Security Division intended to "initiate proceedings against the Black Panther Party, Progressive Labor Party, Young Socialist Alliance, and Ku Klux Klan." They also noted: "The language of Executive Order 11605 is very broad and generally coincides with the basis for our investigation of extremist groups."<sup>615</sup> Mardian had, in effect, provided a new and wider "charter" for FBI domestic intelligence.<sup>616</sup>

(2) *The Sullivan-Mardian Relationship.*—In 1971, Director Hoover expressed growing concern over the close relationship developing between his FBI subordinates in the Domestic Intelligence Division and the Internal Security Division under Mardian. For example, when FBI intelligence officials met with Mardian's principal deputy, A. William Olsen, to discuss "proposed changes in procedure" for the Attorney General's authorization of electronic surveillance, Hoover reiterated instructions that Bureau officials be "very careful in our dealings" with Mardian. Moreover, to have a source of legal advice independent of the Justice Department, the FBI Director created a new position of Assistant Director for Legal Counsel and required that he attend "at any time officials of the Department are being contacted on any policy consideration which affects the Bureau."<sup>617</sup>

In the summer of 1971, William C. Sullivan openly challenged FBI Director Hoover, possibly counting on Mardian and Attorney General Mitchell to back him up and oust Hoover.<sup>618</sup> Sullivan charged in one memorandum to Hoover that other Bureau officials lacked "objectivity" and "independent thinking" and that "they said what they did because they thought this was what the Director wanted them to say."<sup>619</sup>

Shortly thereafter, Director Hoover appointed W. Mark Felt, formerly Assistant Director for the Inspection Division, to a newly created position as Sullivan's superior. Apparently realizing that he was on his way out, Sullivan gave Assistant Attorney General Mardian the FBI's documents recording the authorization for, and dissemination

<sup>614</sup> Hearings on the appropriation for the Department of Justice before the House Subcommittee on Appropriations, 92nd Cong., 2nd Sess., (1972), p. 673.

<sup>615</sup> Inspection Report, FBI Domestic Intelligence Division, August 17–September 9, 1971.

<sup>616</sup> The hostile Congressional reaction to this Order, which shifted duties by Executive fiat to a Board created by statute for other purposes, led to the death of the SACB when no appropriation was granted in 1972.

<sup>617</sup> FBI Executives Conference Memorandum, 6/2/71. The first Assistant Director for Legal Counsel was Dwight Dalbey, who had for years been in charge of the legal training of Bureau agents. Dalbey's elevation early in 1971, and Hoover's requirement that he review all legal aspects of FBI policy, including intelligence matters, was a major change in Bureau procedure. (Memorandum from Hoover to All Bureau Officials and Supervisors, 3/8/71.)

<sup>618</sup> FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 1–3.

<sup>619</sup> Memorandum from Sullivan to Hoover, 6/16/71.

of, information from the "17" wiretaps placed on Executive officials and newsmen in 1969–1971. The absence of these materials was not discovered by other FBI officials until after Sullivan was forced to resign in September 1971.<sup>620</sup> Mardian eventually took part in the transfer of these records to the White House.<sup>621</sup>

Thus, the Attorney General's principal assistant for internal security collaborated with a ranking FBI official to conceal vital records, ultimately to be secreted away in the White House. This provides a striking example of the manner in which channels of legitimate authority within the Executive Branch can be abused.

*d. The FBI's Secret "Administrative Index"*

In the fall of 1971, the FBI confronted the prospect of the first serious Congressional curtailment of domestic intelligence investigations—repeal of the Emergency Detention Act of 1950—and set a course of evasion of the will of Congress which continued, partly with Justice Department approval, until 1973.

An FBI Inspection Report viewed the prospect of the repeal without great alarm. In the event the Act was repealed, the FBI intended to continue as before under "the Government's inherent right to protect itself internally."<sup>622</sup> After the repeal took place, Bureau officials elaborated the following rationale for keeping the Security Index of "potentially dangerous subversives:"

Should this country come under attack from hostile forces, foreign or domestic, there is nothing to preclude the President from going before a joint session of Congress and requesting necessary authority to apprehend and detain those who would constitute a menace to national defense. At this point, it would be absolutely essential to have an immediate list, such as the SI, for use in making such apprehensions.<sup>623</sup> [Emphasis added.]

Thus, FBI officials hoped there would be a way to circumvent the repeal "in which the essence of the Security Index and emergency detention of dangerous individuals could be utilized under Presidential powers."<sup>624</sup>

Assistant Director Dwight Dalbey, the FBI's Legal Counsel, recommended writing to the Attorney General for "a reassessment" in order to "protect" the Bureau in case "some spokesman of the extreme left" claimed that repeal of the Detention Act eliminated FBI authority for domestic intelligence activity. Dalbey agreed that, since the Act "could easily be put back in force should an emergency convince Con-

<sup>620</sup> Memorandum from T. J. Smith to E. S. Miller, 5/13/73, pp. 1, 8.

<sup>621</sup> FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 2–3. The Watergate Special Prosecutor investigated these events, and did not find sufficient evidence of criminal conduct to bring an indictment. However, they occurred at the time of intense White House pressure to develop a criminal prosecution against Daniel Ellsberg over the Pentagon Papers matter. The dismissal of charges against Ellsberg in 1973 was largely due to the belated discovery of the fact that Ellsberg had been overheard on a wiretap indicated in these records, which were withheld from the court, preventing its determination of the pertinency of the material to the Ellsberg case.

<sup>622</sup> Inspection Report, Domestic Intelligence Division, 8/17–9/9/71, p. 98.

<sup>623</sup> Memorandum from R. D. Cotter to E. S. Miller, 9/21/71.

<sup>624</sup> Memorandum from Cotter to Miller, 9/17/71.

gress of its need," the Bureau should "have on hand the necessary action information pertaining to individuals."<sup>625</sup> Thereupon, a letter was sent to Attorney General Mitchell proposing that the Bureau be allowed to "maintain an administrative index" of individuals who "pose a threat to the internal security of the country." Such an index would be an aid to the Bureau in discharging its "investigative responsibility." However, the letter made no reference to the theory prevailing within the FBI that the new "administrative index" would serve as the basis for a revived detention program in some future emergency.<sup>625a</sup>

Thus, when the Attorney General replied that the repeal of the Act did not prohibit the FBI from compiling an "administrative index" to make "readily retrievable" the "results of its investigations," he did not deal with the question of whether the index would also serve as a round-up list for a future emergency. The Attorney General also stated that the Department did not "desire a copy" of the new index, abdicating even the minimal supervisory role performed previously by the Internal Security Division in its review of the names on the Security Index.<sup>626</sup> FBI officials realized that they were "now in a position to make a sole determination as to which individuals should be included in an index of subversive individuals."<sup>627</sup>

There were two major consequences of the new system. First, the new "administrative index" (ADEX) was expanded to include an elastic category: "the new breed of subversive."<sup>628</sup> Second, the previous Reserve Index, which had never been disclosed to the Justice Department, was incorporated into the ADEX. It included "teachers, writers, lawyers, etc." who did not actively participate in subversive activity "but who were nevertheless influential in espousing their respective philosophies." It was estimated that the total case load under the ADEX would be "in excess of 23,000."<sup>629</sup>

One of the FBI standards for placing someone on the ADEX list demonstrates the vast breadth of the list and the assumption that it could be used as the basis for detention in an emergency:

An individual who, although *not* a member of or participant in activities of revolutionary organizations or considered an activist in affiliated fronts, has exhibited a revolutionary *ideology* and is likely to seize upon the opportunity presented

<sup>625</sup> Memorandum from D. J. Dalbey to C. Tolson, 9/24/71.

<sup>625a</sup> Memorandum from Hoover to Mitchell, 9/30/71.

<sup>626</sup> Memorandum from Mitchell to Hoover, 10/22/71.

<sup>627</sup> Memorandum from T. J. Smith to E. S. Miller, 11/11/71. It was noted that in the past the Department had "frequently removed individuals" from the Security Index because of its strict "legal interpretation."

<sup>628</sup> This new breed was described as follows:

"He may adhere to the old-line revolutionary concepts but he is unaffiliated with any organization. He may belong to or follow one New Left-type group today and another tomorrow. He may simply belong to the loosely knit group of revolutionaries who have no particular political philosophy but who continuously plot the overthrow of our Government. He is the nihilist who seeks only to destroy America."

"On the other hand, he may be one of the revolutionary black extremists who, while perhaps influenced by groups such as the Black Panther Party, is also unaffiliated either permanently or temporarily with any black organization but with a seething hatred of the white establishment will assassinate, explode, or otherwise destroy white America." (T. J. Smith to E. S. Miller, 11/11/71.)

<sup>629</sup> Memorandum from T. J. Smith to E. S. Miller, 11/11/71.

by *national emergency* to commit acts of espionage or sabotage, including acts of terrorism, assassination or *any interference* with or threat to the survival and *effective operation* of the national, state, and local governments and of the defense efforts. [Emphasis added.]<sup>630</sup>

These criteria were supplied to the Justice Department in 1972, and the Attorney General did not question the fact that the ADEX was more than an administrative aid for conducting investigations, as he had previously been told.<sup>631</sup>

A Bureau memorandum indicates that "representatives of the Department" in fact agreed with the view that there might be "circumstances" where it would be necessary "to quickly identify persons who were a threat to the national security" and that the President could then go to Congress "for emergency legislation permitting apprehension and detention."<sup>632</sup>

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."<sup>633</sup>

#### 8. *Reconsideration of FBI Authority*

In February 1971, the Subcommittee on Constitutional Rights of the Senate Judiciary Committee began a series of hearings on federal data banks and the Bill of Rights which marked a crucial turning point in the development of domestic intelligence policy. The Subcommittee, chaired by Senator Sam J. Ervin of North Carolina, reflected growing concern among Americans for the protection of "the privacy of the individual against the 'information power' of government."<sup>634</sup>

Largely in response to this first serious Congressional inquiry into domestic intelligence policy, the Army curtailed its extensive surveillance of civilian political activity. The Senate inquiry also led, after Director Hoover's death in 1972, to reconsideration by the FBI of the legal basis for its domestic intelligence activities and eventually to a request to the Attorney General for clarification of its authority.<sup>635</sup>

<sup>630</sup> Memorandum from FBI Headquarters to all SACs, 11/15/71.

<sup>631</sup> Memorandum from Hoover to Mitchell, 2/10/72; cf. memorandum from Hoover to Mitchell, 9/30/71 for the previous statement.

<sup>632</sup> Memorandum from T. J. Smith to E. S. Miller, 8/29/72.

<sup>633</sup> Memorandum from Domestic Intelligence Division. Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

<sup>634</sup> *Federal Data Banks*, Hearings, Opening Statement of Senator Ervin, February 23, 1971, p. 1. Senator Ervin declared that a major objective of the inquiry was to look into "programs for taking official note of law-abiding people who are active politically or who participate in community activities on social and political issues." The problem, as Senator Ervin saw it, was that there were citizens who felt "intimidated" by these programs and were "fearful about exercising their rights under the First Amendment to sign petitions, or to speak and write freely on current issues of Government policy." The ranking minority member of the Subcommittee, Senator Roman Hruska, endorsed the need for a "penetrating and searching" inquiry. (Hearings, pp. 4, 7.)

<sup>635</sup> Also during March 1971, an FBI office in Media, Pennsylvania was broken into: a substantial number of documents were removed and soon began to appear in the press. One of these was captioned COINTELPRO. The Bureau reacted by ordering its field offices to "discontinue" COINTELPRO operations "for

*a. Developments in 1972-1974*

There is no indication that FBI "guidelines" material or the FBI Manual provisions themselves were submitted to, or requested by, the Justice Department prior to 1972.<sup>636</sup> 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."<sup>637</sup> Director Hoover noted on a newspaper report of the testimony, "Prepare succinct memo to him on our guidelines."<sup>638</sup>

After Hoover's death in 1972, a sharp split developed within the Domestic Intelligence Division over whether or not the Bureau should continue to rely on the various Executive Orders as a basis for its authority.<sup>639</sup>

Acting Director Gray postponed making any formal decisions on this matter; he did not formally request advice from the Attorney General.<sup>640</sup> Meanwhile, the Domestic Intelligence Division proceeded

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security reasons because of their sensitivity." It was suggested, however, that "counter-intelligence action" would be considered "in exceptional instances" so long as there were "tight procedures to insure absolute secrecy." (Memorandum from Brennan to Sullivan, 4/27/71; Memorandum from FBI Headquarters to all SAC's, 4/28/71.) For actions taken thereafter, see COINTELPRO report.

<sup>636</sup> After repeal of the Emergency Detention Act in the fall of 1971, the FBI's Assistant Director for Legal Counsel recommended that the Bureau's request for approval of its new ADEX also include a more general request for re-affirmation of FBI domestic intelligence authority to investigate "subversive activity." (Memorandum from D. J. Dalbey to Mr. Tolson, 9/24/71.) The letter to the Attorney General reviewed the line of "Presidential directives" from 1939 to 1953. (Memorandum from Hoover to Mitchell, 9/30/71.) The Attorney General replied with a general endorsement of FBI authority to investigate "subversive activities." (Memorandum from Mitchell to Hoover, 10/22/71.)

<sup>637</sup> Richard Kleindienst testimony, Senate Judiciary Committee, 2/24/72, p. 64

<sup>638</sup> FBI routing slip attached to *Washington Post* article, 2/24/72. The FBI's summary of its "guidelines," submitted to the Attorney General stated that its investigations were partly based on criminal statutes, but that "subversive activity . . . often does not clearly involve a specific section of a specific statute." Thus, investigations were also based on the 1939 Roosevelt directives which were said to have been "reiterated and broadened by subsequent Directives." (Attachment to Hoover memorandum to Kleindienst, 2/25/72.) (Emphasis added.)

<sup>639</sup> The background for this development may be summarized as follows: In May 1972, FBI intelligence officials prepared a "position paper" for Acting Director L. Patrick Gray. This paper merely recited the various Presidential directives, Executive Orders, delimitation agreements, and general authorizations from the Attorney General, with no attempt at analysis. (FBI Domestic Intelligence Division, Position Paper: Investigations of Subversion, 5/19/72.) Assistant Director E. S. Miller, head of the Domestic Intelligence Division, withdrew this paper at a conference with Gray and other top Bureau officials; Miller then initiated work on a more extensive position paper, which was completed in July. It concluded that domestic intelligence investigations could practically be based on the "concept" that their purpose was "to prevent a violation of a statute." The paper also indicated that the ADEX would be revised so that it could not be "interpreted as a means to circumvent repeal of the Emergency Detention Act." (FBI Domestic Intelligence Division: Position Paper: Scope of FBI Authority, 7/31/72; T. J. Smith to E. S. Miller, 8/1/72.)

<sup>640</sup> Gray did order that the Bureau should indicate its "jurisdictional authority" to investigate in every case, "by citing the pertinent provision of the U.S. Code, or other authority," and also that the Bureau should "indicate whether or not an investigation was directed by DJ (Department of Justice), or we opened it without any request from DJ." In the latter case, the Bureau was to "cite our reasons." (FBI routing slip, 8/27/72.)

on its own to revise the pertinent Manual sections and the ADEX standards.<sup>641</sup> The list was to be trimmed to those who were "an actual danger now," reducing the number of persons on the ADEX by two-thirds.<sup>642</sup>

A revision of the FBI Manual was completed by May 1973. It was described as "a major step" away from "heavy reliance upon Presidential Directives" to an approach "based on existing Federal statutes."<sup>643</sup> 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.<sup>644</sup>

After a series of regional conferences with field office supervisors, the standards were revised to allow greater flexibility.<sup>645</sup> For the first time in FBI history, a copy of the Manual section for "domestic subversive investigations" was sent to the Attorney General.<sup>646</sup>

After Clarence M. Kelley was confirmed as FBI Director, he authorized a request for guidance from Attorney General Elliot Richardson.<sup>647</sup> Kelley advised that it "would be folly" to limit the Bureau

<sup>641</sup> One official observed that there were "some individuals now included in ADEX even though they do not realistically pose a threat to the national security." He added that this would leave the Bureau "in a vulnerable position if our guidelines were to be scrutinized by interested Congressional Committees." (Memorandum from T. J. Smith to E. S. Miller, 8/29/72.)

<sup>642</sup> Memorandum from Smith to Miller, 8/29/72. The anticipated reduction was from 15,259 (the current figure) to 4,786 (the top two priority categories). The Justice Department was advised of this change. (Memorandum from Gray to Kleindienst, 9/18/72.)

<sup>643</sup> Draft copies were distributed to the field for suggestions. (E. S. Miller to Mr. Felt, 5/22/73.)

<sup>644</sup> Memorandum from FBI Headquarters to all SAC's, 6/7/73. The memorandum to the field stated, looking back on past Bureau policy, that since the FBI's authority to investigate "subversive elements" had never been "seriously challenged until recently," Bureau personnel (and "the general public") had accepted "the FBI's right to handle internal security matters and investigate subversive activities without reference to specific statutes." But the "rationale" based on "Presidential Directives" was no longer "adequate."

The field was advised that the "chief statutes" upon which the new criteria were based were those dealing with rebellion or insurrection (18 U.S.C. 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 "overemphasis" on the Communist Party.

<sup>645</sup> For example, the field offices saw the need to undertake "preliminary inquiries" before it was known "whether a statutory basis for investigation exists." This specifically applied where a person had "contact with known subversive groups or subjects," but the Bureau did not know "the purpose of the contact." These preliminary investigations could go on for at least 90 days, to determine whether "a statutory basis for a full investigation exists." Moreover, at the urging of the field supervisors, the period for a preliminary investigation of an allegedly "subversive organization" was expanded from 45 to 90 days. (Memorandum from FBI Headquarters to all SACs, 8/8/73.)

<sup>646</sup> This was apparently "in connection with" a request made earlier by Senator Edward M. Kennedy, who had requested to see this section at the time of the confirmation hearings for Attorney General Kleindienst in 1972. (Kleindienst, Senate Judiciary Committee, 2/24/72, p. 64; memorandum from Kelley to Richardson, 8/7/73.)

<sup>647</sup> In a memorandum to the Attorney General, Director Kelley cited Senator Sam J. Ervin's view that the FBI should be prohibited by statute "from investigating any person without the individual's consent, unless the Government has reason to believe that the person has committed a crime or is about to commit a crime." Kelley then summarized the position paper prepared by the Domestic

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to investigations only when a crime "has been committed," since the government had to "defend itself against revolutionary and terrorist efforts to destroy it." Consequently, he urged that the President exercise his "inherent Executive power to *expand* by further *defining* the FBI's investigative authority to enable it to develop advance information" about the plans of "terrorists and revolutionaries who seek to overthrow or destroy the Government."<sup>648</sup> [Emphasis added.]

Director Kelley's request initiated a process of reconsideration of FBI intelligence authority by the Attorney General.<sup>649</sup>

The general study of FBI authority was 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 Peterson.<sup>650</sup>

Even at this stage, the Bureau resisted efforts by the Department to look too deeply into its operations. Director Kelley advised the Acting Attorney General that the Department should exclude from its review the FBI's "extremely sensitive foreign intelligence collection techniques."<sup>651</sup>

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Intelligence Division and the Bureau's current policy of attempting to rely on statutory authority. However, he observed that the statutes upon which the FBI was relying were either "designed for the Civil War era, not the Twentieth Century" (the rebellion and insurrection laws) or had been "reduced to a fragile shell by the Supreme Court" (the Smith Act dealing with advocacy of overthrow). Moreover, it was difficult to fit into the statutory framework groups "such as the Ku Klux Klan, which do not seek to overthrow the Government, but nevertheless are totalitarian in nature and seek to deprive constitutionally guaranteed rights."

Kelley stated that, while the FBI had "statutory authority," it still needed "a definite requirement from the President as to the nature and type of intelligence data *he* requires in the pursuit of *his* responsibilities based on *our* statutory authority." (Emphasis added.) While the statutes gave "authority," an Executive Order "would define our national security objectives." The FBI Director added:

"It would appear that the President would rather spell out his own requirements in an Executive Order instead of having Congress tell him what the FBI might do to help him fulfill his obligations and responsibilities as President."

<sup>648</sup> Memorandum from Kelley to Richardson, 8/7/73.

<sup>649</sup> Even before Kelley's request, Deputy Attorney General-Designate William Ruckelshaus (who had served for two months as Acting FBI Director between Gray and Kelley), sent a list of questions to the Bureau to begin "an in-depth examination of some of the problems facing the Bureau in the future." (Memorandum from Ruckelshaus to Kelley, 7/20/73.) The Ruckelshaus study was interrupted by his departure in the "Saturday Night Massacre" of October 1973.

<sup>650</sup> Memorandum from Bork to Kelley, 12/5/73.

<sup>651</sup> These techniques were handled within the Bureau "on a strictly need-to-know basis" and Kelley believed that they should not be included in a study "which will be beyond the control of the FBI." (Memorandum from Kelley to Bork, 12/11/73.)

One Bureau memorandum to the Petersen committee even suggested that the Attorney General did not have authority over the FBI's foreign counterintelligence operations, since the Bureau was accountable in this area directly to the United States Intelligence Board and the National Security Council. (Petersen Committee Report, pp. 34-35.) The Petersen Committee sharply rejected this view, especially because the *ad hoc* equivalent of the U.S. Intelligence Board had approved the discredited "Huston plan" in 1970. The Committee declared: "There can be no doubt that in the area of foreign counterintelligence, as in all its other functions, the FBI is subject to the power and authority of the Attorney General." (Petersen Committee Report, p. 35.)



As a result, the Petersen committee's review of COINTELPRO did not consider anything more than a brief FBI-prepared summary of foreign counterintelligence operations.<sup>652</sup> Moreover, the inquiry into domestic COINTELPRO cases was based mainly on short summaries of each incident compiled by FBI agents, with Department attorneys making only spot-checks of the underlying files to assure the accuracy of the summaries. Thus, the inquiry was unable to consider the complete story of COINTELPRO as reflected in the actual memoranda discussing the reasons for adopting particular tactics and the means by which they were implemented.<sup>653</sup>

Thus, at the same time that the Bureau was seeking guidance and clarification of its authority, vestiges remained of its past resistance to outside scrutiny and its desire to rely on Executive authority, rather than statute, for the definition of its intelligence activities.

#### *b. Recent Domestic Intelligence Authority*

In the absence of any new standards imposed by statute, or by the Attorney General, the FBI continued to collect domestic intelligence under sweeping authorizations issued by the Justice Department in 1974 for investigations of "subversives," potential civil disturbances, and "potential crimes." These authorizations were explicitly based on conceptions of inherent Executive power, broader in theory than the FBI's own claim in 1973 that its authority could be found in the criminal statutes. Attorney General Levi has recently promulgated guidelines which stand as the first significant attempt by the Justice Department to set standards and limits for FBI domestic intelligence investigations.<sup>655</sup>

(1) *Executive Order 10450, As Amended.*—The Federal employee security program continued to serve as a basis for FBI domestic intelligence investigations. An internal Bureau memorandum stated that the Justice Department's instruction regarding the program:

specifically requires the FBI to check the names of all civil applicants and incumbents of the Executive Branch against our records. In order to meet this responsibility FBIHQ records must contain identities of all persons connected with subversive or extremist activities, together with necessary identifying information.<sup>656</sup>

FBI field offices were instructed in mid-1974 to report to Bureau headquarters such data as the following:

Identities of subversive and/or extremist groups or movements (including front groups) with which subject has been identified, period of membership, positions held, and a summary of the type and extent of subversive or extremist activities engaged in by subject (e.g., attendance at meetings or

<sup>652</sup> FBI Memorandum, "Overall Recommendations—Counterintelligence Activity," Appendix to Petersen Committee Report.

<sup>653</sup> Henry Petersen Testimony, 12/8/75, Hearings, Vol. 6, pp. 270–71.

<sup>655</sup> Attorney General's Guidelines: "Domestic Security Investigations," "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest," and "White House Personnel Security and Background Investigations."

<sup>656</sup> Memorandum from A. B. Fulton to Mr. Wannall, 7/10/74. See pp. 42–44 for discussion of the initiation of the program.

other functions, fundraising or recruiting activities on behalf of the organization, contributions, etc.).<sup>657</sup>

In June 1974, President Nixon formally abolished the "Attorney General's list," upon the recommendation of Attorney General Saxbe. However, the President's order retained a revised definition of the types of organizations, association which would still be considered in evaluating prospective federal employees.<sup>658</sup> The Justice Department instructed the FBI that it should "detect organizations with a potential" for falling within the terms of the order and investigate "individuals who are active either as members of or as affiliates of" such organizations. The Department instructions added:

It is not necessary that a crime occur before the investigation is initiated, but only that a reasonable evaluation of the available information suggests that the activities of the organization may fall within the prescription of the Order. . . .

It is *not possible to set definite parameters covering the initiation* of investigations of potential organizations falling within the Order but once the investigation reaches a stage that offers a basis for determining that the activities are legal in nature, then the investigation should cease, but if the investigation suggests a determination that the organization is engaged in illegal activities or *potentially* illegal activities it should continue. [Emphasis added.]

The Department applied "the same yardstick" to investigations of individuals "when information is received suggesting their involvement."<sup>659</sup>

(2) *Civil Disorders Intelligence*.—The Justice Department also instructed the FBI in 1974 that it should not, as the Bureau had suggested, limit its civil disturbance reporting "to those particular situations which are of such a serious nature that Federal military personnel may be called upon for assistance." The Department advised that this suggested "guideline" was "not practical" since it "would place the burden on the Bureau" to make an initial decision as to "whether military personnel may ultimately be needed," and this responsibility rested "legally" with the President. Instead, the FBI was ordered to "continue" to report on

<sup>657</sup> Memorandum from FBI Headquarters to all SACs, 8/16/74.

<sup>658</sup> Executive Order 11785, 6/4/74. The new standard: "Knowing membership with the specific intent of furthering the aims of, or *adherence to* and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully *advocates* or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any state, or which seeks to overthrow the Government of the United States or any State or subdivisions thereof by unlawful means." [Emphasis added.]

<sup>659</sup> Memorandum from Glen E. Pommerening, Assistant Attorney General for Administration, to Kelley, 11/17/74.

With respect to one organization, the Department advised the Bureau that "despite the abolition" of the Attorney General's list, the group "would still come within the criteria" of the employee security program if it "may have engaged in activities" of the sort proscribed by the revised executive order. (Memorandum from Henry E. Petersen to Clarence Kelley, 11/13/74.)

all significant incidents of civil unrest and should not be restricted to situations where, in the judgment of the Bureau, military personnel eventually may be used.<sup>660</sup>

Moreover, under this authority the Bureau was also ordered to "continue" reporting on

all disturbances where there are indications that extremist organizations such as the Communist Party, Ku Klux Klan, or Black Panther Party are believed to be involved in efforts to instigate or exploit them.

The instructions specifically declared that the Bureau "should make timely reports of significant disturbances, even when no specific violation of Federal law is indicated." This was to be done, at least in part, through "liaison" with local law enforcement agencies.<sup>661</sup>

Even after the Justice Department's IDIU dismantled its computerized data bank, its basic functions continued to be performed by a Civil Disturbance Unit in the office of the Deputy Attorney General, and the FBI was under instructions to disseminate its civil disturbance reports to that Unit.<sup>662</sup>

FBI officials considered these instructions "significant" because they gave it "an official, written mandate from the Department." The Department's desires were viewed as "consistent with what we have already been doing for the past several years," although the Bureau Manual was rewritten to "incorporate into it excerpts from the Department's letter."<sup>663</sup>

(3) "*Potential*" Crimes.—The FBI recently abolished completely the administrative index (ADEX) of persons considered "dangerous now." However, the Justice Department has advanced a theory to support broad power for the Executive Branch in investigating groups which represent a "potential threat to the public safety" or which have a "potential" for violating specific statutes. For example, the Department advised the FBI that the General Crimes Section of the Criminal Division had "recommended continued investigation" of one group on the basis of "potential violations" of the antiriot statutes.<sup>665</sup> These same

<sup>660</sup> "On the other hand," the instructions stated ambiguously, "the FBI should not report every minor local disturbance where there is no apparent interest to the President, the Attorney General or other Government officials and agencies." (Memorandum from Petersen to Kelley, 10/22/74.)

<sup>661</sup> Memorandum from Petersen to Kelley, 10/22/74. The FBI was expected to "be aware of disturbances and patterns of disorder," although it is not to report "each and every relatively insignificant incident of a strictly local nature."

<sup>662</sup> Memorandum from Petersen to Kelley, 10/22/74. Frank Nyland testimony, 1/27/76, pp. 46-58.

<sup>663</sup> Memorandum from J. G. Deegan to W. R. Wannall, 10/30/74. From a legal viewpoint, the Justice Department's instructors dealing with the collection of intelligence on potential civil disturbances were significant because they relied for authority on: (1) the President's powers under Article IV, section 4 of the Constitution to protect the states, upon application of the legislature or the executive, against "domestic violence;" (2) the statute (10 U.S.C. 331, et seq.) authorizing the use of troops; and (3) the Presidential directive of 1969 designating the Attorney General as chief civilian officer to coordinate the Government's response to civil disturbances. (Memorandum from Petersen to Kelley, 10/22/74; Memorandum from Melvin Laird and John Mitchell to the President, 4/1/69.)

<sup>665</sup> 18 U.S.C. 2101-2102.

instructions added that there need not be a "potential" for violation of any specific statute.<sup>666</sup>

(4) *Claim of Inherent Executive Power.*—The Department's theory of executive power was set forth in 1974 testimony before the House Internal Security Committee. According to Deputy Assistant Attorney General Kevin Maroney, "the primary basis" for FBI domestic intelligence authority rests in "the constitutional powers and responsibilities vested in the President under Article II of the Constitution." These powers were specified as: the President's duty undertaken in his oath of office to "preserve, protect, and defend the Constitution of the United States;"<sup>667</sup> the Chief Executive's duty to "take Care that the Laws be faithfully executed;"<sup>668</sup> the President's responsibilities as Commander-in-Chief of the military; and his "power to conduct our foreign relations."<sup>669</sup>

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."<sup>670</sup>

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

<sup>666</sup> Memorandum from Petersen to Kelley, 11/13/74. This memorandum added:

"[W]ithout a broad range of intelligence information, the President and the departments and agencies of the Executive Branch could not properly and adequately protect our nation's security and enforce the numerous statutes pertaining thereto . . . [T]he Department, and in particular the Attorney General, must continue to be informed of those organizations that engage in violence which represent a potential threat to the public safety." [Emphasis added.]

<sup>667</sup> The opinion of the Supreme Court in the *United States v. United States District Court*, 407 U.S. 297 (1972)—the domestic security wiretapping case—stated, "Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means."

<sup>668</sup> 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).]

<sup>669</sup> The latter power was said to relate "more particularly to the Executive's power to conduct foreign intelligence activities here and abroad." (Kevin Maroney testimony, "Domestic Intelligence Operations for Internal Security Purposes," Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3332-3335.) Mr. Maroney added:

"We recognize the complexity and difficulty of adequately spelling out the FBI's authority and responsibility to conduct domestic intelligence-type investigations. The concept national security is admittedly a broad one, while the term subversive activities is even more difficult to define."

Mr. Maroney also cited the following from the Supreme Court's opinion in the domestic security wiretapping case: "The gathering of security intelligence is often long-range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify . . . Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime." [*United States v. United States District Court*, 407 U.S. 297, 322 (1972).]

<sup>670</sup> House Committee on Internal Security Hearings, 1974, pp. 3330-3331.

his Constitutional authority," as well as the statutes "pertaining to the national security."<sup>671</sup>

The Attorney General has continued to assert the claim of inherent executive power to conduct warrantless electronic surveillance of American citizens, although this power has been exercised sparingly.<sup>672</sup> The Justice Department has also claimed that this inherent executive power permits warrantless surreptitious entries.<sup>673</sup> However, the Executive Branch has recently joined a bipartisan group of Senators and Representatives in sponsoring a legislative proposal requiring judicial warrants for all electronic surveillance by the FBI.

(5) *Attorney General Levi's Guidelines*.—During 1975, the Congress and the Executive Branch began major efforts to review the field of domestic intelligence. A Presidential commission headed by Vice President Rockefeller inquired into the CIA's improper surveillance of Americans.<sup>674</sup> Attorney General Edward H. Levi established a committee in the Justice Department to develop "guidelines" for the FBI,<sup>675</sup> and the Justice Department began to work on draft legislation to require warrants for national security electronic surveillance.<sup>676</sup>

These efforts have begun to bear fruit in recent months. President Ford has issued an Executive Order regulating foreign intelligence activities;<sup>677</sup> Attorney General Levi has promulgated several sets of "guidelines" for the FBI.<sup>678</sup> And the administration has endorsed a specific bill to establish a warrant procedure for all national security wiretaps and bugs in the United States.<sup>679</sup>

<sup>671</sup> W. Raymond Wannall, Assistant Director for the Intelligence Division, Memorandum on the "Basis for FBI National Security Intelligence Investigations," 2/13/75.

<sup>672</sup> After several recent transformations, the policy of the Attorney General was established as authorizing warrantless surveillance "only when it is shown that its subjects are the active, conscious agents of foreign powers;" and this standard "is applied with particular stringency where the subjects are American citizens or permanent resident aliens." (Justice Department memorandum from Ron Carr, Special Assistant to the Attorney General, to Mike Shaheen, Counsel on Professional Responsibility, 2/26/76.)

<sup>673</sup> In May 1975, for the first time in American history, the Department of Justice publicly asserted the power of the Executive Branch to conduct warrantless surreptitious entries unconnected with the use of electronic surveillance. This occurred in a letter to the United States Court of Appeals for the District of Columbia concerning an appeal by John Ehrlichman. Ehrlichman was appealing a conviction arising from the break-in at the office of Daniel Ellsberg's psychiatrist after publication of the "Pentagon Papers" in 1971.

The Justice Department's position was that "warrantless searches involving physical entries into private premises" can be "lawful under the Fourth Amendment," if they are "very carefully controlled."

"There must be solid reason to believe that foreign espionage or intelligence is involved. In addition, the intrusion into any zone of expected privacy must be kept to the minimum and there must be personal authorization by the President or the Attorney General." (Letter from John C. Kenney, Acting Assistant Attorney General, to Hugh E. Cline, Clerk of the United States Court of Appeals for the District of Columbia, 5/9/75.)

<sup>674</sup> Rockefeller Commission Report.

<sup>675</sup> Levi, 12/11/75, Hearings, Vol. 6, pp. 316-317.

<sup>676</sup> Levi, 11/6/75, Hearings, Vol. 5, p. 90.

<sup>677</sup> Executive Order 11509, 2/18/76.

<sup>678</sup> Attorney General's Guidelines, "Domestic Security Investigations", "Whitehouse Personnel Security and Background Investigations", and "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest", 3/10/76.

<sup>679</sup> S. 3197, introduced 3/23/76.

These Executive initiatives are a major step forward in creating safeguards and establishing standards, but they are incomplete without legislation.<sup>680</sup> Among the issues left open by the President's Executive Order, for example, are: (1) the definition of the term "foreign subversion" used to characterize the counter-intelligence responsibilities of the CIA and the FBI; and (2) clarification of the vague provisions in the National Security Act of 1947 relating to the authority of the Director of Central Intelligence to protect "sources" and "methods;" and (3) amplification of the 1947 Act's prohibition against the CIA's exercise of "law enforcement powers" or "internal security functions."

Although they represent only a partial answer to the need for permanent restraints, the initiatives of the Executive Branch demonstrate a willingness to seriously consider the need for legislative action. The Attorney General has recognized that Executive "guidelines" are not enough to regulate and authorize FBI intelligence activities.<sup>681</sup> The Committee's conclusions and recommendations in Part IV of this report indicate the areas most in need of legislative attention.

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<sup>680</sup> The major questions posed by the President's Executive Order and the Attorney General's guidelines for the FBI are discussed in the recommendation section of this report, as are the problems with the national security electronic surveillance bill.

<sup>681</sup> Levi Testimony, 12/11/75, Hearings, Vol. 6, p. 345.