

**INTELLIGENCE ACTIVITIES AND THE
RIGHTS OF AMERICANS**

BOOK II

FINAL REPORT
OF THE
SELECT COMMITTEE
TO STUDY GOVERNMENTAL OPERATIONS

WITH RESPECT TO
INTELLIGENCE ACTIVITIES
UNITED STATES SENATE
TOGETHER WITH
ADDITIONAL, SUPPLEMENTAL, AND SEPARATE
VIEWS

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**II. THE GROWTH OF DOMESTIC INTELLIGENCE:
1936 TO 1976**

A. SUMMARY

1. The Lesson: History Repeats Itself

During and after the First World War, intelligence agencies, including the predecessor of

the FBI, engaged in repressive activity. 1

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

2. The Pattern: Broadening Through Time

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

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

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

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

a. 1936-1945

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

b. 1946-1963

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

National Security Agency, the FBI, and the CIA re-instituted intrusive wartime surveillance techniques in contravention of law.

c.1964-1976

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

B. ESTABLISHING A PERMANENT DOMESTIC INTELLIGENCE STRUCTURE: 1936-1945

1. Background. -- The Stone Standard

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

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

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

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

There is always the possibility that a secret police may become a menace to free government and free institutions, because it carries with it the possibility of abuses of power which are not always quickly apprehended or understood. ... It is important that its activities be strictly limited to the performance of those functions for which it was created and that its agents themselves be not above the law or beyond its reach. ... The Bureau of Investigation is not concerned with political or other opinions of individuals. It is concerned only with their

conduct and then only with such conduct -as is forbidden by the laws of the United States. When a police system passes beyond these limits, it is dangerous to the proper administration of justice and to human liberty, which it should be our first concern to cherish. 6

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

The activities of the Bureau are to be limited strictly to investigations of violations of law, under my direction or under the direction of an Assistant Attorney General regularly conducting the work of the Department of Justice. 7

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

2. Main Developments of the 1936-1945 Period

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

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

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

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

3. Domestic Intelligence Authority: Vague and Conflicting Executive Orders

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

a. The Original Roosevelt Orders

In 1934, according to a memorandum by J. Edgar Hoover, President Roosevelt ordered an

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

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

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

Hoover indicated further that the President wanted:

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

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

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

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

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

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

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

It is my desire that the investigation of all espionage, counter espionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation of the Department of Justice, the Military Intelligence Division of the War Department, and the Office of Naval Intelligence in the Navy

Department. The directors of these three agencies are to function as a committee to coordinate their activities.

No investigations should be conducted by any investigative agency of the Government into matters involving actually *or potentially* any espionage, counterespionage, or sabotage, except by the three agencies mentioned above. [Emphasis added.] 16

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

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

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

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

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

c. Orders 1940-43: The Confusion Continues

President Roosevelt used the term "subversive activities" in a secret directive to Attorney General Robert Jackson on wiretapping in 1940. Referring to activities of other nations engaged in "propaganda of so-called 'fifth columns' and 'preparation for sabotage.'" He directed the Attorney General to authorize wiretaps "of persons suspected of subversive activities against the Government of the United States, including suspected spies." The President instructed that such wiretaps be limited "insofar as possible" to aliens. 20 Neither the President nor the Attorney General subsequently clarified the scope of the FBI's authority to investigate "subversive activity."

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

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

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

4. The Role of Congress

a. Executive Avoidance of Congress

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

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

Director Hoover contended that the FBI had authority to engage in intelligence activity beyond investigating crimes at the request of the Attorney General or the Department of State. He relied on an amendment to the FBI Appropriations Act, passed before World War I, authorizing the Attorney General to appoint officials not only to "detect and prosecute" federal crimes but also to:

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

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

b. Congress Declines to Confront the Issue

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

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

In 1940, a joint resolution was introduced by New York City Congressman Emmanuel Celler which would have given the FBI broad jurisdiction to investigate, by wiretapping or other means, or "frustrate" any "interference with the national defense" due to certain specified crimes (sabotage, treason, seditious conspiracy, espionage, and violations of the neutrality laws) or "in any other manner." 30 Although the resolution failed to reach the House floor, it seems likely that, rather than opposing domestic intelligence investigations, Congress was simply choosing to avoid the issue of defining the FBI's intelligence jurisdiction. This view is supported by Congress' passage in 1940 and 1941 of two new criminal statutes: the Smith Act made it a crime to advocate the violent overthrow of the Government; 31 and the Voorhis Act required "subversive" organizations advocating the Government's violent overthrow and having foreign ties to register or be subject to criminal penalties. 32

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

Mr. Hoover is in agreement with me that the principles which Attorney General Stone laid down in 1924 when the Federal Bureau of Investigation was reorganized and Mr. Hoover appointed as Director are sound, and that the usefulness of the Bureau depends upon a faithful adherence to these limitations.

The Federal Bureau of Investigation will confine its activities to the investigation of violation of Federal statutes, the collecting of evidence in cases in which the United States is or may be a party in interest, and the service of process issued by the courts. 33

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

5. Scope of Domestic Intelligence

a. Beyond Criminal Investigations

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

unrelated to the enforcement of federal criminal laws. The second purpose of FBI domestic intelligence gathering was essentially "preventive," in compliance with the President's June 1939 directive to investigate "potential" espionage or sabotage. 37 As war moved closer, preventive intelligence investigations focused on individuals who might be placed on a Custodial Detention List for possible internment in case of war. 38

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

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

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

b. "Infiltration," Investigations The FBI based its pure intelligence investigations on a theory of subversive "infiltration" which remained an essential part of the rationale for domestic intelligence after the war: anyone who happened to associate with Communists or Fascists or was simply alleged to have such associations became the subject of FBI intelligence reports. 43 Thus, "subversive" investigations produced intelligence about a wide variety of lawful groups and law-abiding citizens. By 1938, the FBI was investigating alleged subversive infiltration of:

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

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

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

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

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

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

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

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

c. Partisan Use

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

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

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

d. Centralized Authority: FBI and Military Intelligence

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

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

Centralization of authority for domestic intelligence also served the FBI's bureaucratic interests. Director Hoover complained about attempts by other agencies to "literally chisel into this type of work." 54 He exhorted: "We don't want to let it slip away from us." 55

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

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

6. Control by the Attorney General: Compliance and Resistance

The basic outlines of the FBI's domestic intelligence program were approved by Attorney General Cummings in 1938 and Attorney General Murphy in 1939. 59 Director Hoover also asked Attorney General Jackson in 1940 for policy guidance concerning the FBI's "suspect list of individuals whose arrest might be considered necessary in the event the United States becomes involved in war." 60

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

confidential informants became known, it would endanger their "life and safety" and thus the Department would "abandon" the "subversives field." 61

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

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

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

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

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

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

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

7. Intrusive Techniques: Questionable Authorization

a. Wiretaps: A Strained Statutory Interpretation

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

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

Jackson informed the Congress of his interpretation. Congress considered enacting an exception to the 1934 Act, and held hearings in which Director Hoover said wiretapping was "of considerable importance" because of the "gravity" to "national safety" of such offenses as espionage and sabotage. 72 Apparently relying upon Jackson's statutory interpretation, Congress then dropped the matter, leaving the authorization of wiretaps to Executive discretion, without either statutory standards or the requirement of a judicial warrant. 73

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

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

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

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

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

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

b. Bugging, Mail Opening and Surreptitious Entry.

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

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

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

C. DOMESTIC INTELLIGENCE IN THE COLD WAR ERA: 1946-1963

1. Main Developments of the 1946-1963 Period

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

Despite Director Hoover's statement that the intelligence structure could be "discontinued or very materially curtailed" with the termination of the national emergency, after the war intelligence operations were neither discontinued nor curtailed. 80 Congressional deference to the executive branch, the broad scope of investigations, the growth of the FBI's power, and the substantial immunity of the Bureau from effective outside supervision became increasingly significant features of domestic intelligence in the United States. New domestic intelligence functions were added to previous responsibilities. No attempt was made to enact a legislative charter replacing the wartime emergency orders, as was done in the foreign intelligence field in 1947.

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

a. Domestic Intelligence Authority

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

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

b. Scope of Domestic Intelligence

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

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

c. Accountability and Control

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

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

d. Intrusive Techniques

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

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

e. Domestic Covert Action

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

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

2. Domestic Intelligence Authority

a. Anti-Communist Consensus

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

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

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

The consensus should not be portrayed as monolithic. President Truman was concerned

about risks to constitutional government posed by the zealous anti-Communism in Congress. According to one White House staff member's notes during the debate over the Internal Security Act:

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

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

b. The Federal Employee Loyalty-Security Program

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

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

The President's Commission accepted Director Hoover's broad view of the threat, along with the view endorsed by a Presidential Commission on Civil Rights that there also was a danger from "those who would subvert our democracy by ... destroying the civil rights of some groups." 91 Consequently, the Executive Order included, as an indication of disloyalty, membership in or association with groups designated on an "Attorney General's list" as:

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

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

(2) Breadth of the Investigations. -- By the mid-1950s, the Bureau believed that the Communist Party was no longer used for Soviet espionage; it represented only a "potential"

recruiting ground for spies. 96 Thereafter, FBI investigations of Communist organizations and other groups unconnected to espionage but falling within the standards of the Attorney General's list frequently became a means for monitoring the political background of prospective federal employees by means of the "name check" of Bureau files. These investigations also served the "pure intelligence" function of informing the Attorney General of the influence and organizational affiliations of so-called "subversives." 97

No organizations were formally added to the Attorney General's list after 1955. 98 However, the FBI's "name check" reports on prospective employees were never limited to information about listed organizations. The broad standards for placing a group on the Attorney General's list were used to evaluate an employee's background, regardless of whether or not he was a member of a group on the list. 99 If a "name check" uncovered information about a prospective employee's association with a group which *might* come within those standards, the FBI would report the data and attach a "characterization" of the organization relating to the standards. 100

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

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

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

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

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

c. Executive Directives: Lack of Guidance and Controls

Two public presidential statements on FBI domestic intelligence authority -- by President

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

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

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

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

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

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

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

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

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

President Kennedy issued no public statement comparable to the Roosevelt, Truman, and Eisenhower "directives." However, in 1962 he did transfer the Interdepartmental Intelligence Conference to "the supervision of the Attorney General;" 119 and in 1964 Attorney General Robert Kennedy reissued the IIC charter, citing as authority the President's 1962 order and retaining the term "subversion." The 'charter added that it did not "modify" or "affect" the

previous "Presidential Directives" relating to the duties of the FBI, and that the Delimitations Agreement between the FBI and military intelligence "shall remain in full force and effect." 120

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

3. Scope of Domestic Intelligence

a. "Subversive Activities"

The breadth of the FBI's investigations of "subversive activity" led to massive collection of information on law abiding citizens. FBI domestic intelligence investigations extended beyond known or suspected Communist Party members. They included other individuals who regarded the Soviet Union as the "champion of a superior way of life" and "persons holding important positions who have shown sympathy for Communist objectives and policies." Members of "non-Stalinist" revolutionary socialist groups were investigated because, even though they opposed the Soviet regime, the FBI viewed them as regarding the Soviet Union "as the center for world revolution." 121 Moreover, the FBI's concept of "subversive Infiltration" was so broad that it permitted the investigation for decades of peaceful protest groups such as the NAACP.

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

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

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

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

The FBI Manual did not define "subversive" groups in terms of their links to a foreign government. Instead, they were "Marxist revolutionary-type" organizations "seeking the

overthrow of the U. S. Government." 126 One purpose of investigation was possible prosecution under the Smith Act. But no prosecutions were initiated under the Act after 1957. 127 The Justice Department advised the FBI in 1956 that such a prosecution required "an actual plan for a violent revolution." 128 The Department's position in 1960 was that "incitement to action in the foreseeable future" was needed. 129 Despite the strict requirements for prosecution, the FBI continued to investigate "subversive" organizations "from an intelligence viewpoint" to appraise their "strength" and "dangerousness." 130

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

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

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

In other words, the COMINFIL program supplied the Attorney General and the President with intelligence about a wide range of groups seeking to influence national policy under the rationale of determining whether Communists were involved. 136 The FBI said it was not concerned with the "legitimate activities" of "nonsubversive groups," but only with whether Communists were "gaining a dominant role." 137 Nevertheless, COMINFIL reports inevitably described "legitimate activities" totally unrelated to the alleged "subversive activity." This is vividly demonstrated by the COMINFIL reports on American's leading civil rights group in this period, the NAACP. 138 The investigation continued for at least twenty-five years in cities throughout the nation, although no evidence was ever found to rebut the observation that the NAACP had a "strong tendency" to "steer clear of Communist activities." 139

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

The FBI reported to the White House in 1961 that the Communist Party had "attempted" to take advantage of "racial disturbances" in the South and had "endeavored" to bring "pressure to bear" on government officials "through the press, labor unions, and student

groups." At that time the FBI was investigating "two hundred known or suspected communist front and communist-infiltrated organizations. " 141 By not stating how effective the "attempts" and "endeavors" of the Communists were, and by not indicating whether they were becoming more or less successful, the FBI offered a deficient rationale for its sweeping intelligence collection policy.

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

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

b. "Racial Matters" and "Hate Groups"

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

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

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

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

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

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

A briefing of the Cabinet by Director Hoover in 1956 illustrates the breadth of collection

and dissemination under the racial matters program. The briefing covered not only incidents of violence and the "efforts" and "plans" of Communists to "influence" the civil rights movement, but also the legislative strategy of the NAACP and the activities of Southern Governors and Congressmen on behalf of groups opposing integration peacefully. 149

C. FBI Political Intelligence for the White House

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

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

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

President Eisenhower and his aides received similar tid-bits of political intelligence, including an advance text of a speech to be delivered by a prominent labor leader, 159 reports from Bureau "sources" on the meetings of an NAACP delegation with Senators Paul Douglas and Everett Dirksen of Illinois; 160 the report of an "informant" on the role of the United Auto Workers Union at an NAACP conference, 161 summaries of data in FBI files on thirteen persons (including Norman Thomas, Linus Pauling, and Bertrand Russell) who had filed suit to stop nuclear testing, 162 a report of a "confidential source" on plans of Mrs. Eleanor Roosevelt to hold a reception for the head of a civil rights group, 163 and reports on the activities of Robert Welch and the John Birch Society. 164

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

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

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

The pattern continued during the Kennedy administration. A summary of material in FBI files on a prominent entertainer was volunteered to Attorney General Kennedy because Hoover thought it "may be of interest." 172 Attorney General Kennedy sent to the President an FBI memorandum on the purely personal life of Dr. Martin Luther King, Jr. 173 Director Hoover supplied Attorney General Kennedy with background information on a woman who told an Italian newspaper that she had once been engaged to marry President Kennedy 174 and on the husband of a woman who was reported in the press to have stated that the President's daughter would enroll in a cooperative nursery with which she was connected. 175 The FBI Director also passed on information from a Bureau "source" regarding plans of a group to publish allegations about the President's personal life. 176

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

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

d. IRS Investigations of Political Organizations

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

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

While the IRS efforts begun in 1961 to investigate the political activities of tax exempt organizations were not as extensive as later programs in 1969-1973, they were a significant departure by the IRS from normal enforcement criteria for investigating persons or groups on the basis of information indicating noncompliance. By directing tax audits at individuals and groups solely because of their political beliefs, the Ideological Organizations Audit Project (as the 1961 program was known) 184 established a precedent for a far more elaborate program of targeting "dissidents." 185

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

a. The Emergency Detention Act

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

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

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

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

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

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

b. Withholding Information

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

no mention must be made in any investigative report relating to the

classifications of top functionaries and key figures, nor to the Detcom and Comsab Programs, nor to the Security Index or the Communist Index. These investigative procedures and administrative aides are confidential and should not be known to any outside agency. 193

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

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

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

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

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

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

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

c. CIA Domestic Activity

(1) Vague Controls on CIA. -- The vagueness of Congress's prohibitions of "internal security functions" by the CIA left room for the Agency's subsequent domestic activity. A restriction against "police, law enforcement or internal security functions" first appeared in President Truman's order establishing the Central Intelligence Group in 1946. 201

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

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

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

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

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

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

(2) Drug Testing and Cover Programs. -- In the early 1950s, the CIA began a program of surreptitiously testing, chemical and biological materials, which included drug testing on unwitting Americans. The existence of such a program was kept secret because, as the CIA's Inspector General wrote 1957, it, was necessary to "protect operations from exposure" to "the American public" as well as "enemy forces." Public knowledge of the CIA's "unethical and illicit activities" was thought likely to have serious "political repercussions." 207 CIA drug experimentors disregarded instructions of their superiors within the Agency and failed to take "reasonable precautions" when they undertook the test which resulted in the death of Dr. Frank Olsen. 208

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

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

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

5. Intrusive Techniques

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

a. Communications Interception: CIA and NSA

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

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

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

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

The CIA sought no outside authorization before instituting its mail opening program. Several Post Office officials were misled into believing that the CIA's request for access to the mail only involved examining the exterior of the envelopes. 223 President Kennedy's Postmaster General, J. Edward Day, testified that he told CIA Director Allen Dulles he did

not want to "know anything about" what the CIA was doing. 224 Beyond undocumented assumptions by CIA officials, there is no evidence that the President or the Attorney General was ever informed about any aspect of CIA mail-opening operations in this period. 225

b. FBI Covert Techniques

(1) *Electronic Surveillance.*

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

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

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

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

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

In fact, the FBI had already used microphone surveillance for broader coverage than Communists or spies. Indeed, it had "bugged" a hotel room occupied by a Congressman in February 1961. There is no evidence that Attorney General Kennedy or Deputy Attorney General White were specifically informed of this surveillance. But the Attorney General received information which came from the "bug" and authorized a wiretap of the Congressman's secretary. 233

Furthermore, FBI records disclose that the FBI conducted warrantless microphone surveillances in 1960-1963 directed at a "black separatist group," "black separatist group

functionaries" and a "(white) racist organization." 234 There may have been others for purely domestic intelligence purposes. 235

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

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

No permanent records were kept for approvals of "black bag jobs," or surreptitious entries conducted for purposes other than installing a "bug". The FBI has described the procedure for authorization of surreptitious entries as requiring the approval of Director Hoover or his Assistant Clyde Tolson. The authorizing memorandum was filed in the Director's office under a "Do Not File" procedure, and thereafter destroyed. In the field office, the Special Agent in Charge maintained a record of approval in his office safe. At the next yearly field office inspection, an Inspector would review these records to ensure that the SAC had secured FBI headquarters approval in conducting surreptitious entries. Upon completion of the review, these records were destroyed. 237

The only internal FBI memorandum found discussing the policy for surreptitious entries confirms that this was the procedure and states that "we do not obtain authorization from outside the Bureau" because the technique was "clearly illegal." The memorandum indicates that "black bag jobs" were used not only "in the espionage field" but also against "subversive elements" not directly connected to espionage activity. It added that the techniques resulted "on numerous occasions" in obtaining the "highly secret and closely guarded" membership and mailing lists of "subversive" groups. 238

(3) *Mail Opening*. -- The FBI did not seek outside authorization when it reinstated mail opening programs in the fifties and early sixties. Eight programs were conducted for foreign intelligence and counterespionage purposes, and Bureau officials who supervised these programs have testified that legal considerations were simply not raised at the time. 239

Beyond their original purpose, the FBI mail opening programs produced some information of an essentially domestic nature. For example, during this period one program supplied "considerable data" about American citizens who expressed pro-Communist sympathies or made "anti-U.S. statements." 240 Some of the mail-opening by-product regarding Americans was disseminated to other agencies for law enforcement purposes, with the source disguised. 241

c. Use of FBI Wiretaps

The authorization for wiretapping issued by President Truman in 1946 allowed the Attorney General to approve wiretaps in the investigation of "subversive activity" to protect the "domestic security." 242

A wiretap on an official of the Nation of Islam, originally authorized by Attorney General Herbert Brownell in 1957, continued thereafter without re-authorization until 1965. 243 Attorney General Robert Kennedy approved FBI requests for wiretaps on an Alabama Klan leader in 1963 244 and on black separatist group leader Malcolm X in 1964. 245 Kennedy

also authorized wiretap coverage requested by the Warren Commission in 1964. 246 Kennedy's approval of FBI requests for wiretaps on Dr. Martin Luther King and several of his associates are discussed in greater detail elsewhere in the Committee's report. 247

In addition, Attorney General Kennedy approved wiretaps on four American citizens during investigations of "classified information leaks." The taps failed to discover the sources of the alleged "leaks" and involved procedural irregularities. In 1961 Attorney General Kennedy told Director Hoover that the President wanted the FBI to determine who was responsible for an apparent "leak" to Newsweek reporter Lloyd Norman, author of an article about American military plans in Germany. 248 But the Attorney General was not asked to approve a wiretap on Norman's residence until after it was installed.

According to contemporaneous Bureau memoranda, wiretaps in 1962 on the residence of New York Times reporter Hanson Baldwin and his secretary to determine the source of an article about Soviet missile sites were also instituted without prior written approval of the Attorney General; and one of them - the tap on the secretary - was instituted without the Attorney General's prior knowledge. 249 Kennedy's written approval was obtained, however, three days after the Baldwin tap was installed and four days after the tap on the secretary was installed. 250

The pattern, including *ex post facto* approval, was repeated for wiretaps of a former FBI agent who disclosed "confidential" Bureau information in a public forum. The first tap lasted for eight days in 1962, and it was reinstated in 1963 for an undetermined period. 251 Attorney General Kennedy was advised that the FBI desired to place the initial coverage; but he was not informed that it had been effected the day before, and he did not grant written approval until the day it was terminated. 252 It appears that only oral authorization was obtained for reinstating the tap in 1963. 253

In February 1961, Attorney General Kennedy requested the FBI to initiate an investigation for the purpose of developing:

intelligence data which would provide President Kennedy a picture of what was behind pressures exerted on behalf of [a foreign country] regarding sugar quota deliberations in Congress . . . in connection with pending sugar legislation. 254

This investigation lasted approximately nine weeks, and was reinstated for a three-month period in mid-1962.

According to an FBI memorandum, the Attorney General authorized the wiretaps in 1961 on the theory that "the administration has to act if money or gifts are being passed by the [representatives of a foreign country]." 255 Specifically, he approved wiretaps on several American citizens: three officials of the Agriculture Department (residences only) ; 256 the clerk of the House Committee on Agriculture who was also secretary to the chairman (residence only) ; 257 and a registered agent of the foreign country (both residence and business telephones). 258 After passage of the Administration's own sugar bill in April 1961, these wiretaps were discontinued. 259

The investigation was reinstated in June 1962, when the Bureau learned that representatives of the same foreign country again might be influencing congressional deliberations concerning an amendment to the sugar quota legislation. 260 Attorney General

Kennedy approved wiretaps on the office telephone of an attorney believed to be an agent of the foreign country and, again, on the residence telephone of the Clerk of the House, Agriculture Committee. 261 The latter tap continued for one month, but the former apparently lasted for three months. 262

These wiretaps in 1961 and 1962 were arguably related to "foreign intelligence" -- but not to "subversive activity" unless that term is interpreted beyond its conventional meaning. 263 More important, they generated information which was potentially useful to the Kennedy administration for purely political purposes relating to the legislative process. 264

The wiretap authorized by Attorney General Kennedy on another high executive official in this period did not relate to political considerations, but to concern about possible disclosure of classified information to a foreign government. 265 There is no indication that the wiretap authorized by Attorney General Katzenbach in 1965 on the editor of an anti-communist newsletter was related in any way to the book he had written in 1964 alleging personal impropriety by Attorney General Kennedy. 266

6. Domestic Covert Action

In its COINTELPRO operation, the FBI went beyond excessive information-gathering and dissemination to the use of secret tactics designed to "disrupt" and "neutralize" domestic intelligence targets. At the outset, the target was the Communist Party, U.S.A. But, consistent with the pattern revealed in other domestic intelligence activities, the program widened to other targets, increasingly concentrating on domestic dissenters. The expansion of COINTELPRO began in the Cold War period and accelerated in the latter part of the 1960s.

a. COINTELPRO: Communist Party

The COINTELPRO program, authorized by Director Hoover against the Communist Party in 1956, had its roots in two lines of Bureau policy going back to the 1940s. The first was the accepted FBI practice of attempting to disrupt "subversive" organizations. A former head of the FBI Intelligence Division has testified:

We were engaged in COINTELPRO tactics, to divide, confuse, weaken, in diverse ways, an organization. We were engaged in that when I entered the Bureau in 1941. 267

The memorandum recommending the institution of COINTELPRO stated that the Bureau was already seeking to "foster factionalism" and "cause confusion" within the Communist Party. 268

The second line of pre-existing Bureau policy involved propaganda to discredit the Communist Party publicly. For example, in 1946, an earlier head of the FBI Intelligence Division proposed that efforts be made to release "educational material" through "available channels" to influence "public opinion." The "educational" purpose was to undermine Communist support among "labor unions," "persons prominent in religious circles," and "the Liberal elements," and to show "the basically Russian nature of the Communist Party in this country." 269 By 1956, a propaganda effort was underway to bring the Party and its leaders "into disrepute before the American public." 270

The evidence indicates that the FBI did not believe that the Communist Party, when the COINTELPRO program was formalized in 1956, constituted as serious a threat in terms of actual espionage as it had in the 1940s. 271 Nevertheless, the FBI systematized its covert action program against the Communist Party in part because the surfacing of informants in legal proceedings had somewhat limited the Bureau's coverage of Party activities, and also to take advantage of internal conflicts within the Party. 272 Covert "disruption" was also designed to make sure that the Party would not reorganize under a new label and thus would remain an easier target for prosecution. 273

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

b. Early Expansion of COINTELPRO

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

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

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

D. INTELLIGENCE AND DOMESTIC DISSENT: 1964-1976

1. Main Developments of the 1964-1976 Period

Beginning in the mid-sixties, the United States experienced a period of domestic unrest and protest unparalleled in this century. Violence erupted in the poverty-stricken urban ghettos,

and opposition to American intervention in Vietnam produced massive demonstrations.

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. 282

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

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

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

a. Scope of Domestic Intelligence

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

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

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

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

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

b. Domestic Intelligence Authority Intelligence gathering related to protest activity was generally increased in response to vague requests by Attorneys General or other 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 responsibility to protect the physical security of its facilities and to protect intelligence "sources" and "methods." These operations included surreptitious entry, recruitment of informers in domestic political groups, and at least one instance of warrantless wiretapping approved by the Attorney General.

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

e. Intrusive Techniques

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

f. Accountability and Control

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

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

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

g. Reconsideration of FBI Authority

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

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

2. Scope of Domestic Intelligence

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

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

a. Domestic Protest and Dissent: FBI

"We are an intelligence agency," stated a policy directive to all FBI offices in 1966, "and as such are expected to know what is going on or is likely to happen." 283 Written in the context of demonstrations over the Vietnam war and civil rights, this order illustrates the general attitude among Bureau officials and high administration officials who established

intelligence policy: in a country in ferment, the FBI could, and should, know everything that might someday be useful in some undefined manner.

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

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

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

Field offices reported their full "coverage" of "meetings" and "any other pertinent information concerning racial activities." 286

In late 1966, field offices were instructed to begin preparing 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." 287

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." 288 But even these programs were so overbroad in their application as to include Dr. Martin Luther King, Jr. and his non-violent Southern Christian Leadership Conference in the "radical and violence-prone" "hate group" category. The stated justification, unsupported by any facts, was that Dr. King might "abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism." 289

Another leading civil rights group, the Congress of Racial Equality (CORE), was investigated under the "Racial Matters" Program because the Bureau concluded that it was moving "away from a legitimate civil rights organization" and "assuming a militant black nationalist posture." The FBI reached this conclusion on the grounds that "some leaders in their public statements" had condoned "violence as a means of attaining Negro rights." The investigation was intensified, even though it was recognized there was no information that

its members "advocate violence" or "participate in actual violence." 290

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

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

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

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

He also stated that the definition was expanded continually. 292

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

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

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

Later instructions to the field stated that the term "New Left" did not refer to "a definite organization," but to a "loosely bound, freewheeling, 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")
 Reform ("demonstrations aimed at social reform")
 Labor ("all activity in the labor field")
 Public Appearances of Leaders ("on radio and television" and "before groups, such as labor, church and minority groups," including "summary of subject matter discussed")
 Factionalism
 Security Measures
 International Relations ("travel in foreign countries," "attacks on United States foreign policy")
 Mass Media ("indications of support of New Left by mass media")

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

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

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

b. FBI Informants

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

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

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

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

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

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

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

(3) Infiltration of the "New Left". -- The FBI used its "security" informant program to report

extensively on all activities relating to opposition to the Vietnam war. Moreover, informants already in groups considered "subversive" by the FBI also reported on the activities of other organizations and their members, if the latter were being "infiltrated" by the former groups. 318

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

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

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

c. Army Surveillance of Civilian Political Activity

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

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

d. Federal Encouragement of Local Police Intelligence

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

During the winter of 1967-1968, the Justice Department and the National Advisory Commission on Civil Disorders reiterated the message that local police should establish "intelligence units" to gather and disseminate information on "potential" civil disorders. These units would use "undercover police personnel and informants" and draw on "community leaders, agencies, and organizations in the ghetto." 332 The Commission also urged that these local units be linked to "a national center and clearinghouse" in the Justice Department. 333 One consequence of these recommendations was that the FBI, because of regular liaison with local police, became a channel and repository for much of this intelligence data.

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

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

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

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

Joseph Califano, President Johnson's assistant in 1967, testified that the Newark and Detroit riots were a "shattering experience" for Justice Department officials and "for us in the White House." They were concerned about the "lack of intelligence" about "black groups."

Consequently, "there was a desire to have the Justice Department have better intelligence, for lack of a better term, about dissident groups." This desire "precipitated the intelligence unit" established by Attorney General Ramsey Clark in late 1967. According to Califano, the President and the White House staff were insisting: "There must be a way to predict violence. We've got to know more about this." 337

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

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

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

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

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

This study recommended that FBI reports relating "to the civil disturbance problem" under the headings "black power, new left, pacifist, pro-Red Chinese, anti-Vietnam war, pro-Castro, etc." be used to develop "a master index on individuals, or organizations, and by cities." 340

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

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

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

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

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

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

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

In 1971, the IDIU computer included data on such prominent persons as Rev. Ralph Abernathy, Caesar Chavez, Bosley Crowther (former New York Times film critic), Sammy Davis, Jr., Charles Evers, James Farmer, Seymour Hersh, and Coretta King. Organizations on which information had been collected included the NAACP, the Congress of Racial Equality, the Institute for Policy Studies, VISTA, United Farm Workers of California, and the Urban League. Ordinary private citizens who were not nationally prominent were also included. One was described as "a local civil rights worker," another as a "student at Merritt College and a member of the Peace and Freedom Party as of mid-68," and another as "a bearded militant who writes and recites poetry." 347

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

f. COMINFIL Investigations: Overbreadth

In the late 1960's the Communist infiltration or association concept continued to be used as a central basis for FBI intelligence investigations. In many cases it led to the collection of information on the same groups and persons who were swept into the investigative net by the vague missions to investigate such subjects as "racial matters" or the "New Left." As it had from its beginning, the COMINFIL concept produced investigations of individuals and

groups who were not Communists. Dr. Martin Luther King, Jr. is the best known example. 348 But the lawful activities of many other persons were recorded in FBI files and reports, because they associated in some wholly innocent way with Communists, a term which the Bureau required its agents to "interpret in its broad sense" to include "splinter" and "offshoot" groups. 349

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

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

3. Domestic Intelligence Authority

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

a. FBI Intelligence

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

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

President Johnson ordered the FBI to investigate and report on the origins and extent of the first small-scale Northern ghetto disturbances in the summer of 1964. 358 After the FBI submitted a report on the Watts riot in Los Angeles in 1965, however, Attorney General Katzenbach advised President Johnson that the FBI should investigate "directly" only the possible "subversive involvement." Katzenbach did not believe that the FBI should conduct a "general investigation" of "other aspects of the riot," since these were local law

enforcement matters. The President approved this "limited investigation." 359 Nonetheless, internal Bureau instructions in 1965 and 1966 went far beyond this limitation. 360 By 1967 new Attorney General Ramsey Clark reversed the Department's position on such limitations.

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

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

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

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

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

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

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

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

b. Army Intelligence

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

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

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

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

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

c. FBI Interagency Agreements

After the assassination of President Kennedy, the FBI and the Secret Service negotiated an agreement which recognized that the Bureau had "general jurisdiction" over "subversion." The term was more narrowly than it had been defined by practice in the past, 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 WU without notifying the FBI. The Bureau, on the other hand, would not investigate individuals "solely" to determine their "dangerousness to the President." 374

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

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

4. Domestic Covert Action

a. COINTELPRO

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

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

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

(1) Klan and "White Hate" COINTELPRO. -- The expansion of Klan investigations, in response to pressure from President Johnson and Attorney General Kennedy, 378 was accompanied by an internal Bureau decision to shift their supervision from the General Investigative Division to the Domestic Intelligence Division. One internal FBI argument for the transfer was that the Intelligence Division was "in a position to launch a disruptive counterintelligence program" against the Klan with the "same effectiveness" it had against the Communist Party. 379

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

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

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

leaders. 383

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

- (1) prevent the "coalition of militant black nationalist groups;"
- (2) prevent the rise of a "messiah" who could "unify and electrify" the movement, naming specifically Dr. Martin Luther King, Jr., Stokely Carmichael, and Elijah Muhammed;
- (3) prevent violence by pinpointing "potential troublemakers" and "neutralizing" them before they "exercise their potential for violence;"
- (4) prevent groups and leaders from gaining "respectability by discrediting them to the "responsible" Negro community, the "responsible" white community, "liberals" with "vestiges of sympathy" for militant black nationalists, and "Negro radicals;" and
- (5) "prevent these groups from recruiting young people." 384

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

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

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

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

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

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

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

Further directives issued soon after initiation of the program urged field offices to "vigorously and enthusiastically" explore "every avenue of possible embarrassment" of New Left adherents. Agents were instructed to gather information on the "immorality" and the "scurrilous and depraved" behavior, "habits, and living conditions" of the members of targeted groups. 390 This message was reiterated several months later, when the offices were taken to task for their failure to remain alert for and seek specific data depicting the "depraved nature and moral looseness of the New Left" and to "use this Material in a vigorous and enthusiastic approach to neutralizing them." 391

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

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

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

b. FBI Target Lists

The FBI's most intensive domestic intelligence investigations and COINTELPRO operations were directed against persons identified, not as criminals or criminal suspects, but in vague terms such as "rabble rouser," "agitators," "key activists," or "key black extremists." The 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 intelligence about "vociferous rabble-rousers." 393a He also directed a "Key Black Extremist" "that an index be compiled of racial agitators and individuals who have demonstrated a potential for fomenting racial discord." 394

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

a person who tries to arouse people to violent action by appealing to their emotions, prejudices, etcetera; a demagogue. 395

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

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

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

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

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

selected because they were suspected of committing or planning to commit any specific Federal crime. 400

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

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

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

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

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

(3) Obtain suitable handwriting specimens. . . .

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

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

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

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

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

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

After a large-scale march on the Pentagon against the Vietnam War in October 1967, President Johnson ordered a comprehensive review of the government's emergency plans. Attorney General Clark was appointed chairman of a committee to review the Presidential

Emergency Action Documents (PEADs) prepared under the Emergency Detention Program. One result of this review, in which the FBI took Part, was a decision to bring the Detention Program into line with the Emergency Detention Act of 1950, reversing the previous decision to "disregard" as "unworkable" the procedural requirements of the Act, which were tighter than the standards which had been applied by FBI and Justice. 407

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

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

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

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

Initially, the Justice Department approved informally these changes in the criteria for "the persons listed for apprehension." 412 After several months of "study," the Justice Department's Office of Legal Counsel formally approved the new Security Index criteria. This was the first time since 1955 that the Department had fully considered the matter, and the previous policy of disregarding the procedures of the Emergency Detention Act of 1950 was formally abandoned. If an emergency occurred, the Attorney General would abide by "the requirement that any person actually detained will be entitled to a hearing at which time the evidence will have to satisfy the standards of [the Act]." However, the Office of Legal Counsel declared that the Security Index criteria themselves could be - as they were - less precise than those of the Act because of the "needed flexibility and discretion at the operating level in order to carry on an effective surveillance program." 413 Thus while the plan to ignore Congress' procedural limitations was abandoned, Congress' substantive standards were disregarded as insufficiently "flexible."

c. Internal Revenue Service Program

(1) Misuse by FBI and CIA. -- IRS information was used as an instrument of domestic intelligence mainly by the FBI. For example, in 1965, the Bureau obtained the tax returns of

Ku Klux Klan members in order to develop "discrediting or embarrassing" information as part of the Bureau's COINTELPRO against the Klan. 414 The procedure by which FBI obtained access to tax returns and related information held by IRS was deemed "illegal" when it was discovered by the Chief of the IRS Disclosure Branch in 1968. 415 The FBI had not followed the procedures for obtaining returns which required written application to the IRS Disclosure Branch. Instead the Bureau had arranged to obtain the returns and information surreptitiously through contacts inside the IRS Intelligence Division. The procedure for FBI access was regularized by the IRS after 1968: a formal request on behalf of the Bureau was made to the IRS Disclosure Branch, by the internal Security Division of the Justice Department.

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

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

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

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

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

Among the tax returns which the CIA obtained informally from IRS in an informal and illegal manner were those of the author of a book, the publication of which the CIA sought

to prevent, 422 and of Ramparts magazine which had exposed the CIA's covert use of the National Student Association. 423 In the latter case, CIA memoranda indicate that its officials were unwilling to risk a formal request for tax information without first learning through informal disclosure whether the tax returns contained any information that would be helpful in their effort to deter this "attack on the CIA" and on "the administration in general ." 424

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

The SSS originated as a result of pressure from the permanent Subcommittee on Investigations of the Senate Committee on Government Operations 425 and from President Nixon, acting through White House assistants Tom Charles Huston and Dr- Arthur Burns. 426 According to the IRS Commissioner's memorandum, Dr. Burns expressed to him the President's concern

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

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

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

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

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

"Commonwealth;" and government institutions including the United States Civil Rights Commission. 433

SSS officials have conceded that some cases referred to the field for tax investigations would not have qualified for referral but for the ideological category in which they fell. While IRS field offices closed out many cases because, of the lack of tax grounds upon which legal 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. 433a

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

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

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

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

5. Foreign Intelligence and Domestic Dissent

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

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

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

Under Director Hoover, the FBI interpreted the term "internal security functions" broadly to encompass almost "anything that CIA might be doing in the United States." 436 Throughout the 1950's and into the early 1960's, Director Hoover's position led to jurisdictional conflicts between the CIA and the FBI.

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

In 1966 the FBI and CIA negotiated an informal agreement to regularize their coordination. This agreement was said to have "led to a great improvement" and almost eliminated the "flaps." 438

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

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

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

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

The policies embodied in the 1966 agreement and the practice under 'it clearly involved the CIA in the performance of "internal security functions." At no time did the Executive branch ask Congress to amend the 1947 act to modify its ban against CIA exercising "internal security functions." Nor was Congress asked to clarify the ambiguity of the 1947 act about the CIA's authority to conduct clandestine foreign intelligence and counterintelligence activities within the United States, a matter dealt with even today by Executive Order. 442

Moreover, National Security Council Intelligence Directive 5 provided authority within the Executive Branch for the Director of Central Intelligence to coordinate, and for the CIA to

conduct, counterintelligence activities abroad to protect the United States against not only espionage and sabotage, but also "subversion." 443 However, NSCID 5 did not purport to give the CIA authority for counterintelligence activities in the United States, as provided in the FBI-CIA agreement of 1966.

b. CIA Intelligence About Domestic Political Groups

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

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

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

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

The FBI's broad approach to the investigations of foreign influence which it coordinated with the CIA is shown by a memorandum 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 against the police in general and the FBI in particular, to drive us off the campuses; as well as attacks against the new administration to degrade President Nixon. 448

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

The enlistment of both CIA and NSA resources in domestic intelligence is illustrated by the

"Black Nationalist" investigations. In 1967, FBI Headquarters instructed field offices that:

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

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

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

(2) Operation CHAOS. -- The CIA did not restrict itself to servicing the FBI's requests. Under White House pressure, the CIA developed its own program -- Operation CHAOS -- as an adjunct to the CIA's foreign counterintelligence activities, although CIA officials recognized from the outset that it had "definite domestic counterintelligence aspects." 450

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

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

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

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

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

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

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

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 activities. 458 In a few instances, the CIA agents appear to have been encouraged to participate in specific protest activity or to obtain particular domestic information. 459 The CHAOS program also involved obtain information about Americans from the CIA mail opening project other domestic CIA components 460 and from a National Security Agency international communications intercept program. 461

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

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

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

Director Richard Helms testified that the only manner in which the CIA could support its conclusion that there was no significant foreign influence on the domestic dissent, in the

face of incredulity at the White House, was to continually expand the coverage of CHAOS. Only by being able to demonstrate that it had investigated *all* anti-war persons and *all* contacts between them and any foreign person could CIA "prove the negative" that none were under foreign domination. 464

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

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

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

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

The CIA undertook a series of specific security investigations within the United States, in some cases to find the source of news leaks and in others to determine whether government employees were involved in espionage or otherwise constituted "security risks." These investigations were directed at former CIA employees, employees of other government agencies, newsmen and other private, citizens in this country. 472 Among the techniques used were physical surveillance, mail and tax information coverage, electronic surveillance, and surreptitious entry. Attorney General Robert Kennedy appears to have authorized CIA wiretapping in one of these investigations. With this exception, however, there is no suggestion that the CIA's security investigations were specifically approved by the Attorney General. 473

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

were broadened to include general information about the leadership, funding, activities, and policies of the targeted groups.

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

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

d. NSA Monitoring

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

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

[The] mission of NSA is directed to foreign intelligence obtained from foreign electrical communications 479

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

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

6. *Intrusive Techniques*

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

Informants were used to gather more information about more Americans, often targeting an individual because of his political views and "regardless of past or present involvement in disorders." 483 The CIA's mail opening program increasingly focused upon domestic groups, including "protest and peace organizations" which were covered at the FBI's request. 484 Similarly, NSA--largely in response to Army, CIA, and FBI pressures -- expanded its international interception program to include "information on U.S. organizations or individuals who are engaged in activities which may result in civil disturbances or otherwise subvert the national security of the United States." 485

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

a. Warrantless Electronic Surveillance

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

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

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

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

There were no similar electronic surveillance authorizations by Attorney General Ramsey

Clark in cases involving purely domestic "national security" considerations.¹⁹⁶ Clark has stated that his policy was "to confine the area of approval to international activities directly related to the military security of the United States." ⁴⁹⁷

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

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

The last two categories dealt with domestic intelligence interests:

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

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

Between 1969 and 1972, the Nixon administration used these criteria to justify a number of questionable wiretaps. One New Left organization was tapped because, among other factors, its members desired to "take the radical politics they learned on campus and spread them among factory workers." ⁵⁰¹ Four newsmen were wiretapped or bugged during this period, as were sixteen executive branch officials, one former executive official, and a relative of an executive official." ⁵⁰² There were numerous wiretaps and some microphones used against the Black Panther Party and similar domestic groups. ⁵⁰³ Attorney Gen John Mitchell approved FBI requests for wiretaps on organizations involved in planning the November 1969 antiwar "March on Washington" including the moderate Vietnam Moratorium Committee. ^{503a}

(a) Supreme Court Restrictions on National Security Electronic Surveillance: 1972. -- The issue of national security electronic surveillance was not addressed by the Supreme Court until 1972, when it held in the so-called Keith case that the President did not have the "constitutional power" to authorize warrantless electronic surveillance to protect the

security of the nation from "domestic" threats. 504 The Court remained silent, however, on the legality of warrantless electronic surveillance where there was a 'significant connection with a foreign power, its agents or agencies.'" 505 As a result of this decision, the Justice Department eliminated as criteria for the use of warrantless electronic surveillance the two categories, described by Congress in the 1968 Act, dealing with domestic intelligence interests. 506

b. CIA Mail Opening

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

New Left activists, extremists, and other subversives.

Extremist and New Left organizations.

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

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

Traffic to and from Puerto Rico and the Virgin Islands showing anti-U.S. or subversive sympathies."

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

c. Expansion of NSA Monitoring

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

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

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

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

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

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

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

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

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

According to testimony before the Committee, the material which resulted from the "Watch List" was of little intelligence value; most intercepted communications were of a private or personal nature or involved rallies and demonstrations that were public knowledge. 512

d. FBI Cutbacks

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

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

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

In February 1965, President Johnson asked Attorney General Katzenbach to coordinate all matters relating to the investigation, and Katzenbach then met with senior FBI officials to

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

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

I don't see what all the excitement is about. I would have no hesitancy in discontinuing all techniques -- technical coverage, microphones, trash covers, mail covers, etc. While it might handicap us I doubt they are as valuable as some believe and none warrant the FBI being used to justify them. 517

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

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

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

In July 1966, after hundreds of FBI "black bag job" operations had been approved over many years, Director Hoover decided to eliminate warrantless surreptitious entries for purposes other than microphone installations. 525 In response to an Intelligence Division analysis that such break-ins were an "invaluable technique," although "clearly illegal," Hoover stated that "no more such techniques must be used." 526 Bureau subordinates took Hoover's "no more such techniques" language as an injunction against the Bureau's mail opening program as well. 527 Apparently, a termination order was issued to field offices by

telephone. FBI mail-opening was suspended, although the Bureau continued to seek information from CIA's illegal mail-opening program until its suspension in 1973.

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

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

7. Accountability and Control

a. The Huston Plan: A Domestic Intelligence Network

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

In 1970, there was an intensification of the social tension in America that had provided the impetus in the 1960s for ever-widening domestic intelligence operations. The spring invasion of Cambodia by United States forces triggered the most extensive campus demonstrations and student "strikes" in the history of the war in Southeast Asia. Domestic strife heightened even further when four students were killed by National Guardsmen at Kent State University. Within one twenty-four hour period, there were 400 bomb threats in New York City alone. To respond, White House Chief of Staff, H. R. Haldeman, assigned principal responsibility for domestic intelligence planning to staff assistant Tom Charles Huston. 533

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

(1) Intelligence Community Pressures. -- The interest of the White House in better intelligence about domestic protest activity coincided with growing dissatisfaction among

the foreign intelligence agencies with the FBI Director's restrictions on their performance of foreign intelligence functions in America. 537

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

CIA Director Helms subsequently attempted to reopen the question of FBI cooperation with CIA requests for installing electronic surveillances and covering mail. 540 Hoover replied that he agreed with Helms that there should be, expanded "exchange of information between our agencies concerning New Left and racial extremist matters." However, he refused the request for aid with electronic surveillance and mail coverage. Hoover cited the "widespread concern by the American public regarding the possible misuse of this type of coverage." Their use, in "domestic investigations" posed legal problems not encountered "in similar operations abroad." Hoover added, "The FBI's effectiveness has always depended in large measure on our capacity to retain the full confidence of the American people." 541

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

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

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

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

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

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

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

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

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

Huston also raised and dismissed questions about the legality of two collection techniques in particular. "Covert [mail opening] coverage is illegal, and there are serious risks involved," he wrote. "However, the advantages to be derived from its use outweigh the risks." 546 As for surreptitious entry, Huston advised:

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

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

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

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

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

Despite my clear-cut and specific opposition to the lifting of the various investigative restraints referred to above and to the creation of a permanent interagency committee on domestic intelligence, the FBI is prepared to

implement the instructions of the White House at your direction. Of course, we would continue to seek your specific authorization, where appropriate, to utilize the various sensitive investigative techniques involved in individual cases. 553

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

(3) Implementation. -- The President's withdrawal of approval for the "Huston plan" did not, in fact, result in the termination of either the NSA program for covering the communications of Americans or the CIA mail-opening program. These programs continued without formal authorization which had been hoped for. 557 The directors of the CIA and NSA also continued to explore means of expanding their involvement in, and access to, domestic intelligence. 558 A new group, the Intelligence Evaluation Committee (IEC), was created by Attorney General Mitchell within the Justice Department to consider such expansion. 559 NSA, CIA, Army counterintelligence, and the FBI 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. 561 Although the IEC merely evaluated raw intelligence data, over 90 percent of which came to it through the FBI, it had access to domestic intelligence from NSA coverage and the CIA's mail-opening and CHAOS programs, which was channeled to the FBI. 561

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

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

b. Political Intelligence

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

(1) Name Check Requests. -- White House aides serving under Presidents Johnson and Nixon made numerous requests for "name checks" of FBI files to elicit all Bureau information on particular critics of each administration. Johnson aides requested such reports on critics of the escalating war in Vietnam. 568 President Johnson's assistants also requested name checks on members of the Senate staff of Presidential candidate Barry Goldwater in 1964, 569 on Justice and Treasury Department officials responsible for a phase of the criminal investigation of Johnson's former aide Bobby Baker, 569a on the authors of books critical of the Warren Commission report, 570 and on prominent newsmen. 571 President Nixon's aides asked for similar name checks on another newsman, the Chairman of Americans for Democratic Action, and the producer of a film critical of the President. 572

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

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

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

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

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

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

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

Jenkins received a steady stream of reports on political strategy in the struggle to seat the MFDP delegation and other political plans and discussions by the civil rights groups under surveillance. 581 Moreover, the 1975 Inspection Report stated that "several Congressmen, Senators, and Governors of States" were overheard on the King tap." 582

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

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

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

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

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

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

As a result of the President's request, the FBI prepared a chronological summary --

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

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

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

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

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

Beyond this general claim, however, there is little evidence that any national security issue was involved in the case. Former Deputy Attorney General and Acting FBI Director William Ruckelshaus testified that after reviewing the matter he "could never see any national security justification" for the surveillance of Kraft. Ruckelshaus stated that the Administration's "justification" for bugging Kraft's hotel room was that he was "asking questions of some members of the North Vietnamese Government." Ruckelshaus believed that this was not an adequate national security justification for placing "any kind of

surveillance on an American citizen or newsman." 595 Mr. Kraft agreed he was in contact with North Vietnamese officials while he was abroad in 1969, but noted that this was a common practice among journalists and that "at the time" he never knowingly published any classified information. 596

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

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

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

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

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

c. The Justice Department's Internal Security Division

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

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

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

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

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

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

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

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

(2) The Sullivan-Mardian Relationship. -- In 1971, Director Hoover expressed growing concern over the close relationship developing between his FBI subordinates in the Domestic Intelligence Division and the Internal Security Division under Mardian. For

example, when FBI intelligence officials met with Mardian's principal deputy, A. William Olsen, to discuss "proposed changes in procedure" for the Attorney General's authorization of electronic surveillance, Hoover reiterated instructions that Bureau officials be "very careful in our dealings" with Mardian. Moreover, to have a source of legal advice independent of the Justice Department, the FBI Director created a new position of Assistant Director for Legal Counsel and required that he attend "at any time officials of the Department are being contacted on any policy consideration which affects the Bureau." 617

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

Shortly thereafter, Director Hoover appointed W. Mark Felt, formerly Assistant Director for the Inspection Division, to a newly created position as Sullivan's superior. Apparently realizing that he was on his way out, Sullivan gave Assistant Attorney General Mardian the FBI's documents recording the authorization for, and dissemination of, information from the "17" wiretaps placed on Executive officials and newsmen in 1969-1971. The absence of these materials was not discovered by other FBI officials until after Sullivan was forced to resign in September 1971. 620 Mardian eventually took part in the transfer of these records to the White House. 621

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

d. The FBI's Secret "Administrative Index"

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

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

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

Thus, FBI officials hoped there would be a way to circumvent the repeal "in which the essence of the Security Index and emergency detention of dangerous individuals could be

utilized under Presidential powers." 624

Assistant Director Dwight Dalbey, the FBI's Legal Counsel, recommended writing to the Attorney General for "a reassessment" in order to "protect" the Bureau in case "some spokesman of the extreme left" claimed that repeal of the Detention Act eliminated FBI authority for domestic intelligence activity. Dalbey agreed that, since the Act "could easily be put back in force should an emergency convince Congress of its need," the Bureau should "have on hand the necessary action information pertaining to individuals." 625 Thereupon, a letter was sent to Attorney General Mitchell proposing that the Bureau be allowed to "maintain an administrative index" of individuals who "pose a threat to the internal security of the country." Such an index would be an aid to the Bureau in discharging its "investigative responsibility." However, the letter made no reference to the theory prevailing within the FBI that the new "administrative index" would serve as the basis for a revived detention program in some future emergency. 625a

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

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

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

An individual who, although not a member of or participant in activities of revolutionary organizations or considered an activist in affiliated fronts, has exhibited a revolutionary ideology and is likely to seize upon the opportunity presented by national emergency to commit acts of espionage or sabotage, including acts of terrorism, assassination or any interference with or threat to the survival and effective operation of the national, state, and local governments and of the defense efforts. [Emphasis added.] 630

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

A Bureau memorandum indicates that "representatives of the Department" in fact agreed

with the view that there might be "circumstances" where it would be necessary "to quickly identify persons who were a threat to the national security" and that the President could then go to Congress "for emergency legislation permitting apprehension and detention." 632

Thus, although the Attorney General did not formally authorize the ADEX as a continuation of the previous detention list, there was informal Departmental knowledge that the FBI would proceed on that basis. One FBI official later recognized that the ADEX could be "interpreted as a means to circumvent repeal of the Emergency Detention Act." 633

8. Reconsideration of FBI Authority

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

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

a. Developments in 1972-1974

There is no indication that FBI "guidelines" material or the FBI Manual provisions themselves were submitted to, or requested by, the Justice Department prior to 1972. 636 Indeed, when Deputy Attorney General Richard Kleindienst testified in February 1972 at the hearings on his nomination to be Attorney General, he stated that he was "not sure" what guidelines were used by the FBI. Kleindienst also stated that he believed FBI investigations were "restricted to criminal conduct or the likelihood of criminal conduct." 637 Director Hoover noted on a newspaper report of the testimony, "Prepare succinct memo to him on our guidelines." 638

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

Acting Director Gray postponed making any formal decisions on this matter; he did not formally request advice from the Attorney General. 640 Meanwhile, the Domestic Intelligence Division proceeded on its own to revise the pertinent Manual sections and the ADEX standards. 641 The list was to be trimmed to those who were "an actual danger now," reducing the number of persons on the ADEX by two-thirds. 642

A revision of the FBI Manual was completed by May 1973. It was described as "a major step" away from "heavy reliance upon Presidential Directives" to an approach "based on existing Federal statutes. 643 Although field offices were instructed to "close" investigations not meeting the new criteria, headquarters did not want "a massive review on crash basis" of all existing cases. 644

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

After Clarence M. Kelley was confirmed as FBI Director, he authorized a request for guidance from Attorney General Elliot Richardson. 647 Kelley advised that it "would be folly" to limit the Bureau to investigations only when a crime "has been committed," since the government had to "defend itself against revolutionary and terrorist efforts to destroy it." Consequently, he urged that the President exercise his "inherent Executive power to *expand* by further *defining* the FBI's investigative authority to enable it to develop advance information" about the plans of "terrorists and revolutionaries who seek to overthrow or destroy the Government." 648 [Emphasis added.]

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

The general study of FBI authority was 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. 650

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

As a result, the Petersen committee's review of COINTELPRO did not consider anything more than a brief FBI prepared summary of foreign counterintelligence operations. 652 Moreover, the inquiry into domestic COINTELPRO cases was based mainly on short summaries of each incident compiled by FBI agents, with Department attorneys making only spot-checks of the underlying files to assure the accuracy of the summaries. Thus, the inquiry was unable to consider the complete story of COINTELPRO as reflected in the actual memoranda discussing the reasons for adopting particular tactics and the means by which they were implemented. 653

Thus, at the same time that the Bureau was seeking guidance and clarification of its authority, vestiges remained of its past resistance to outside scrutiny and its desire to rely on Executive authority, rather than statute, for the definition of its intelligence activities.

b. Recent Domestic Intelligence Authority

In the absence of any new standards imposed by statute, or by the Attorney General, the FBI continued to collect domestic intelligence under sweeping authorizations issued by the Justice Department in 1974 for investigations of "subversives," potential civil disturbances, and "potential crimes." These authorizations were explicitly based on conceptions of inherent Executive power, broader in theory than the FBI's own claim in 1973 that its authority could be found in the criminal 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. 655

(1) Executive Order 10450, As Amended. -- The Federal employee security program continued to serve as a basis for FBI domestic intelligence investigations. An internal Bureau memorandum stated that the Justice Department's instruction regarding the program:

specifically requires the FBI to check the names of all civil applicants and incumbents of the Executive Branch against our records. In order to meet this responsibility FBIHQ records must contain identities of all persons connected with subversive or extremist activities, together with necessary identifying information. 656

FBI field offices were instructed in mid-1974 to report to Bureau headquarters such data as the following:

Identities of subversive and/or extremist groups or movements (including front groups) with which subject has been identified, period of membership, positions held, and a summary of the type and extent of subversive or extremist activities engaged in by subject (e.g., attendance at meetings or other functions, fundraising or recruiting activities on behalf of the organization, contributions, etc.). 657

In June 1974, President Nixon formally abolished the "Attorney General's list" upon the recommendation of Attorney General Saxbe. However, the President's order retained a revised definition of the types of organizations, association [with] which would still be considered in evaluating prospective federal employees. 658 The Justice Department instructed the FBI that it should "detect organizations with a potential" for falling within the terms of the order and investigate "individuals who are active either as members of or as affiliates of" such organizations. The Department instructions added:

It is not necessary that a crime occur before the investigation is initiated, but only that a reasonable evaluation of the available information suggests that the activities of the organization may fall within the prescription of the Order....

It is *not possible to set definite parameters covering the initiation* of investigations of potential organizations falling within the Order but once the investigation reaches a stage that offers a basis for determining that the activities are legal in nature, then the investigation should cease, but if the investigation suggests a determination that the organization is engaged in illegal activities or *potentially* illegal activities it should continue. [Emphasis added.]

The Department applied "the same yardstick" to investigations of individuals "when information is received suggesting their involvement." 659

(2) Civil Disorders Intelligence. -- The Justice Department also instructed the FBI in 1974 that it should not, as the Bureau had suggested, limit its civil disturbance reporting "to those particular situations which are of such a serious nature that Federal military personnel may be called upon for assistance." The Department advised that this suggested "guideline" was

"not practical" since, it "would place the burden on the Bureau" to make an initial decision as to "whether military personnel may ultimately be needed," and this responsibility rested "legally" with the President. Instead, the FBI was ordered to "continue" to report on

all significant incidents of civil unrest and should not be restricted to situations where, in the judgment of the Bureau, military personnel eventually may be used. 660

Moreover, under this authority the Bureau was also ordered to "continue" reporting on

all disturbances where there are indications that extremist organizations such as the Communist Party, Ku Klux Klan, or Black Panther Party are believed to be involved in efforts to instigate or exploit them.

The instructions specifically declared that the Bureau "should make timely reports of significant disturbances, even when no specific violation of Federal law is indicated." This was to be done, at least in part, through "liaison" with local law enforcement agencies. 661

Even after the Justice Department's IDIU dismantled its computerized data bank, its basic functions continued to be, performed by a Civil Disturbance Unit in the office of the Deputy Attorney General, and the FBI was under instructions to disseminate its civil disturbance reports to that Unit. 662

FBI officials considered these instructions "significant" because they gave it "an official, written mandate from the Department." The Department's desires were viewed as "consistent with what we have already been doing for the past several years," although the Bureau Manual was rewritten to "incorporate into it excerpts from the Department's letter." 663

(3) "Potential" Crimes. -- The FBI recently abolished completely the administrative index (ADEX) of persons considered "dangerous now." However, the Justice Department has advanced a theory to support broad power for the Executive Branch in investigating groups which represent a "potential threat to the public safety" or which have a "potential" for violating specific statutes. For example, the Department advised the FBI that the General Crimes Section of the Criminal Division had "recommended continued investigation" of one group on the basis of "potential violations" of the antiriot statutes. 665 These same instructions added that there need not be a "potential" for violation of any specific statute. 666

(4) Claim of Inherent Executive Power. -- The Department's theory of executive power was set forth in 1974 testimony before the House Internal Security Committee. According to Deputy Assistant Attorney General Kevin Maroney, "the primary basis" for FBI domestic intelligence authority rests in "the constitutional powers and responsibilities vested in the President under Article II of the Constitution." These powers were specified as: the President's duty undertaken in his oath of office to "preserve, protect, and defend the Constitution of the United States;" 667 the Chief Executive's duty to "take care that the laws be faithfully executed;" 668 the President's responsibilities as Commander-in-Chief of the military; and his "power to conduct our foreign relations." 669

The chairman of the Internal Security Committee, Rep. Richard H. Ichord, stated at that

time that, except in limited areas, the Congress "has not directly imposed upon the FBI clearly defined duties in the acquisition, use, or dissemination of domestic or internal security intelligence." 670

Subsequently, the FBI Intelligence Division revised its 1972-1973 position on its legal authority, and in a paper completed in 1975 it returned to the view "that the intelligence-gathering activities of the FBI have had as their basis the intention of the President to delegate his Constitutional authority," as well as the statutes "pertaining to the national security." 671

The Attorney General has continued to assert the claim of inherent executive power to conduct warrantless electronic surveillance of American citizens, although this power has been exercised sparingly. 672 The Justice Department has also claimed that this inherent executive power permits warrantless surreptitious entries. 673 However, the Executive Branch has recently joined a bipartisan group of Senators and Representatives in sponsoring a legislative proposal requiring judicial warrants for all electronic surveillance by the FBI.

(5) Attorney General Levi's Guidelines. -- During 1975, the Congress and the Executive Branch began major efforts to review the field of domestic intelligence. A Presidential commission headed by Vice President Rockefeller inquired into the CIA's improper surveillance of Americans. 674 Attorney General Edward H. Levi established a committee in the Justice Department to develop "guidelines" for the FBI, 675 and the Justice Department began to work on draft legislation to require warrants for national security electronic surveillance. 676

These efforts have begun to bear fruit in recent months. President Ford has issued an Executive Order regulating foreign intelligence activities; 677 Attorney General Levi has promulgated several sets of "guidelines" for the FBI. 678 And the administration has endorsed a specific bill to establish a warrant procedure for all national security wiretaps and bugs in the United States. 679

These Executive initiatives are a major step forward in creating safeguards and establishing standards, but they are incomplete without legislation. 680 Among the issues left open by the President's Executive Order, for example, are: (1) the definition of the term "foreign subversion" used to characterize the counter-intelligence responsibilities of the CIA and the FBI; and (2) clarification of the vague provisions in the National Security Act of 1947 relating to the authority of the Director of Central Intelligence to protect "sources" and "methods;" and (3) amplification of the 1947 Act's prohibition against the CIA's exercise of "law enforcement powers" or "internal security functions."

Although they represent only a partial answer to the need for permanent restraints, the initiatives of the Executive Branch demonstrate a willingness to seriously consider the need for legislative action. The Attorney General has recognized that Executive "guidelines" are not enough to regulate, and authorize FBI intelligence activities. 681 The Committee's conclusions and recommendations in Part IV of this report indicate the areas most in need of legislative attention.

Footnotes:

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

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

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

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

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

4 See footnote 1, p. 21.

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

6 New York Times, 5/10/24.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subversive - I believe that is the word - of our form of Government." (1939 Public Papers of Franklin D. Roosevelt. pp. 495-496.)

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

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

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

23 Cummings to Roosevelt, 10/20/38.

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

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

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

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

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

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

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

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

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

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

32 18 U. S.C. 2386.

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

34 Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense, 8/5-6/40. Several months earlier, Attorney General Tuckson had warned federal prosecutors about the dangers of prosecuting "subversives" because of the lack of standards and the danger of overbreadth. (Robert H. Jackson. "The Federal Prosecutor," Journal of the American Judicature Society, 6/40, p. 18.)

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

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

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

38 See pp. 34--35.

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

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

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

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

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

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

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

46 Letter from Attorney General Cummings to the President (and enclosure), 8/11/37 (FDR Library).

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

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

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

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

51 omitted in original.

52 Memorandum from* Stephen Early, secretary to the President, to J. Edgar Hoover, 6/17/40.

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

54 Memorandum from J. Edgar Hoover to Attorney General Murphy, 9/16/39. The "literally chisel" reference reflects concern with a State Department attempt to "coordinate" all domestic intelligence. It may explain why, after 1938, the FBI no longer relied for its intelligence authority on the statutory provision for FBI investigations of "official matters under control of . . . the Department of State." Director Hoover stated that the FBI required State Department authorization only where "the subject of a particular investigation enjoys

any diplomatic status."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score." [Dennis v. United States, 341 U.S. 494 510--511].]

82 64 Stat. 987 (1950) The Subversive Activities Control Act's registration provision was held not to violate the First Amendment in 1961. (Communist Party v. Subversive Activities Control Board, 367 U.S. 1 (1961).] However, registration of Communists under the Act was later held to violate the Fifth Amendment privilege against self-incrimination. [Albertson v. Subversive Activities Control Board, 882 U.S. 70 (1965).] The Emergency Detention Act was repealed in 1971.

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

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

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

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

85 Yates v United states, 354 U.S. 298, 325 (1957).

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

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

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

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

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

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

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

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

93 Executive order 9835, part 1, section 2; cf. Executive Order 10450, Section 8 (a) (5).

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

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

96 FBI monograph, "The Menace of Communism in the United states Today", 7/29/55, pp. iv-v. See footnote 271.

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

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

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

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

101 Executive Order 10450, section 8 (d).

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

103 Memoranda from J. Edgar Hoover to Attorney General Toni Clark, 3/1()/41 and 3/31/47.

104 File memorandum of George H. Eley, 5/2/47. (Harry S. Truman Library.)

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

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

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

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

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

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

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

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

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

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

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

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

116 See footnotes 19 and 22.

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

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

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

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

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

122 Memorandum from the FBI to the Senate Select Committee, 10/28/75. An indication of the breadth of the investigations is illustrated by the fact that the number of files far exceeded the Bureau's estimate of the "all time high" in Communist Party membership which was 80,000 in 1944 and steadily declined thereafter. (William C. Sullivan testimony, 11/1/75, pp. 33-34.)

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

124 Such investigations were conducted because the Communist Party had issued instructions that "sleepers" should leave the Party and go "underground," still maintaining secret links to the Party. (Memorandum from J. F. Bland to A. 11. Belmont, 7/30/58.)

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

125 1960 FBI Manual Section 87, p. 5.

126 1960 FBI Manual Section 87, p. 5.

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

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

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

130 1960 FBI Manual Section 87, p. 5.

131 1960 FBI Manual Section 87, pp. 83-84.

132 1960 FBI Manual Section 87, pp. 5-11.

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

134 Annual Report for 1958, p. 338.

135 Annual Report for 1964, p. 375.

136 (Examples of such reports to the White House are set forth later, pp. 5153.) The Chief of the Internal Security Section of the FBI Intelligence Division in 1948-1966 testified that the Bureau "had to be certain" that a group's position did not coincide with the Communist line "just by accident." The FBI would not "open a case" until it had "specific information" that "the Communists were there" and were "influencing" the group to "assist the Communist movement." (F. J. Baumgardner testimony, 10/8/75 p. 47.)

137 Annual Report for 1955, p. 195.

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

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

140 Annual Report of the Attorney General for Fiscal Year 1959, pp. 247-249.

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

142 William C. Sullivan testimony, 11/1/75, pp. 40-41.

143 1960 FBI Manual Section 122, p. 1.

144 SAC Letter No. 63-27, 6/11/63.

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

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

147 1960 FBI Manual Section 122, pp. 5--6.

148 1960 FBI 'Manual Section 122,pp. 5-6.

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

150 See p. 37 for discussion of White House wiretap requests in 1945-1948.

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

152 Letter from J. Edgar Hoover to Maj. Gen. Harry 14. Vaughn, Military Aide to the President, 2/15/47. (Harry S. Truman Library.)

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

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

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

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

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

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

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

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

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

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

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

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

165 Letter from Hoover to Cutler, 6/6/58. (Eisenhower Library). This involved contact with a foreign official whose later contacts with U.S. official were reported by the FBI under the Kennedy Administration in connection with the "sugar lobby," see pp. 64-6.1.

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

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

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

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

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

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

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

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

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

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

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

177 Memorandum from Attorney General Kennedy to the President, 4/12/62 enclosing memorandum from Director, FBI. to the Attorney General. 4/12/62: testimony of Courtney Evans, former Assistant Director, FBI, 12/1/77, p. 39.

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

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

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

181 Leon Green testimony, 9/12/75, pp. 6-8.

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

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

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

185 See pp. for discussion of later IRS programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

204 93 Cong. Rec. 9430 (1947).

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

206 See pp. 102-103.

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

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

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

210 CIA Inspector General's Report, 1963.

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

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

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

214 Robert Andrews, Special Assistant to the General Counsel, Department Of Defense, testimony, 9/23/75, pp. 34- 40.

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

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

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

218 Abernathy memorandum, 8/21/61.

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

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

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

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

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

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

225 Helms, 10/22/75, Hearings, Vol. 4, pp, 87-89.

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

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

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

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

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

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

232 omitted in original.

233 In the course of an investigation, authorized by Attorney General Kennedy, into lobbying efforts on behalf of a foreign country regarding sugar quota legislation, FBI determined that Congressman Harold D. Cooley, chairman of the House Agriculture Committee, planned to meet with representatives of a foreign country in a hotel room. (FBI memorandum, 2/15/61 ; Memorandum from W.R. Wannall to W. C. Sullivan, 12/22/66.)

At the instruction of Director Hoover, the Bureau installed a microphone in the hotel room to record this meeting. (FBI memorandum, 2/15/61; Memorandum from D. E. Moore to A. 11. Belmont, 2/16/61.) The results of the meeting were subsequently disseminated to the Attorney General. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/18/61.)

A review of this case by FBI officials in 1966 concluded that "our files, contain no clear Indication that the Attorney General was specifically advised that a microphone surveillance was being utilized. . ." (Memorandum from Wannall to Sullivan, 12/21/66.) It was noted, however, that on the morning of February 17, 1961-- after the microphone was in place but all hour or two before the meeting actually occurred -- Director Hoover spoke with Attorney General Kennedy and, according to Hoover's contemporaneous memorandum, advised him that the Cooley meeting was to take place that day and that "we are trying to cover" it. (Memorandum from J. Edgar Hoover to Messrs. Tolson, Parsons, Mohr, Belmont, and DeLoach, 2/17/61.)

234 According to records compiled by the FBI, there was FBI microphone surveillance of one "black separatist group" in 1960; one "black separatist group" and one "black separatist group functionary" in 1961; two "black separatist groups," one "black separatist group functionary," and one "(white) racist organization" in 1962; and two "black separatist groups" and one "black separatist group functionary" in 1963. (Memorandum from FBI to Select Committee, 10/23/75.)

235 The Select Committee has determined that the FBI, on at least one occasion, maintained no records of the approval of a microphone surveillance authorized by an Assistant Director. (FBI Memorandum, 1/30/75, Subject: Special Squad at Democratic National Convention, Atlantic City, New Jersey, 8/22-28/64.)

236 Memorandum from the FBI to the Senate Select Committee, 10/17/75. This memorandum also states that, on the basis of the recollections of agents and a review of headquarters files, the FBI has "been able to identify" the following number of "surreptitious entries for microphone installations" in "internal security

intelligence, and counterintelligence" investigations: 1960: 49; 1961: 63; 1962: 75; 1963: 79; and the following number of such entries "in criminal investigations" (as opposed to intelligence) 1960: 11; 1961: 69; 1962: 106; 1963: 84.

237 Memorandum from the FBI to the Senate Select Committee, 9/23/75.

238 Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66. Subject: "Black Bag" Jobs. Initials on this memorandum indicate that it was prepared by F. J. Baumgardner, an FBI Intelligence Division Section Chief, and approved by J. A. Sizoo, principal deputy to Assistant Director W. C. Sullivan. This memorandum was located in Director Hoover's "Official and Confidential" files, and it appears that the memorandum was shifted from Hoover's "Personal Files" shortly before his death. (Helen Gandy deposition, 11/12/75, pp. 4-6.) The FBI compiled a list of the "domestic subversive" targets, based "upon recollections of Special Agents who have knowledge of such activities, and review of those files identified by recollection as being targets of surreptitious entries." The list states "at least fourteen domestic subversive targets were the subject of at least 238 entries from 1942 to April 1968. In addition, at least three domestic subversive targets were the subject of numerous entries from October 1952 to June 1966. . . . One white hate group was the target of an entry in March 1966." The Bureau admits that this list is "incomplete." (Memorandum from the FBI to the Senate Select Committee, 9/23/75.)

239 Deposition of William R. Branigan, Section Chief, FBI Intelligence Division, 10/9/75, pp. 13, 39, 40. Testimony of Assistant Director W. Raymond Wannall, FBI Intelligence Division, 10/24/75, Hearings, vol. 4, pp. 148-9.

240 Memorandum from San Francisco field office to FBI Headquarters, 3/11/60.

241 Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61 ; Memorandum from San Francisco field office to FBI headquarters, 7/28/61.

242 Letter from Attorney General Clark to President Truman, 7/17/46.

243 Memorandum from Hoover to Brownell, 12/31/56.

244 Memorandum from Hoover to Kennedy, 10/9/63.

245 Memorandum from Hoover to Kennedy, 4/1/64.

246 Memorandum from Hoover to Kennedy, 2/24/64.

247 See Findings C and G and Committee Report on the FBI and Dr. Martin Luther King, Jr.

248 Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66. On the same day, and without specific authorization from the Attorney General, the FBI Placed a wiretap on Norman's residence. Attorney General Kennedy was informed of the wiretap two days later, and approved it the following day. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 6/29/61.) The tap continued for four days until Norman went on vacation. (Memorandum from S. B. Donahoe to W. C. Sullivan, 7/3/61.) At no time did this or any other aspect of the FBI's investigation produce any evidence that Norman had actually obtained classified information. An FBI summary stated: "The majority of those interviewed thought a competent, well-informed reporter could have written the article without having reviewed or received classified information." (Memorandum from Cotter to Sullivan, 12/15/66.)

249 Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/27/62.

250 Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/31/62. The tap on the secretary lasted three weeks, and the tap on Baldwin a month. Memoranda from W. R. Wannall to W. C. Sullivan, 8/13/62 and 8/28/62.

251 Unaddressed memorandum from A. H. Belmont, 1/9/63.

252 Memorandum from J. Edgar Hoover to Attorney General Kennedy, 10/19/62.

253 Unaddressed memorandum from "hwg" (Director Hoover's secretary was Helen W. Gandy), 1/9/63. This memorandum reads: "Mr. Belmont called to say (Courtney) Evans spoke to the Attorney General replacing the tech on [former FBI agent] again, and the Attorney General said by all means do this. Mr. Belmont has instructed New York to do so." (Assistant Director Courtney Evans was the FBI's normal liaison with Attorney General Kennedy.)

254 Memorandum from W. R. Wanall to W. C. Sullivan, 12/22/66. The Sugar Lobby investigation is also discussed at footnote 233.

255 Memorandum from A. H. Belmont to Mr. Parsons, 2/14/61.

256 Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/14/61.

257 Memorandum from Hoover to the Attorney General, 2/16/61.

258 Memorandum from Hoover to the Attorney General, 2/16/61.

259 According to a memorandum of a meeting between Attorney General Kennedy and Courtney Evans, Kennedy stated that "now the law was passed he did not feel there was justification for continuing this extensive investigation." (Memorandum from C. A. Evans to Mr. Parsons 4/14/61.) The investigation did discover possibly unlawful influence was being exerted by representatives of the foreign country involved, but it did not reveal that money was actually being passed to any Executive or congressional official. (Memorandum from Wannall to Sullivan, 12/22/66.)

260 FBI letterhead memoranda, 6/15, 18, 19/62.

261 Memorandum from J. Edgar Hoover to the Attorney General, 6/26/62.

262 The wiretap on the House Committee Clerk had "produced no information of value." While there is no indication that the other wiretaps, including five directed at foreign targets, produced evidence of actual payoff.,; they did reveal that possibly unlawful influence was again being exerted by the foreign government, and internal Bureau permission was obtained to continue them for sixty day.,; beyond the initial thirty-day period. (Memorandum from W. R. Wan nail to W. C. Sullivan, 8/16/62.)

263 A White House "briefing paper," prepared in February 1961, stated, "It is thought by some informed observers that the outcome of the sugar legislation which comes up for renewal in the U.S. Congress in March 1961 will be all-important to the future of U.S./ (foreign country) relations." (Memorandum from Richard M. Bissell, Jr. to McGeorge Bundy, 2/17/61.) Another White House "briefing memorandum" in June 1962 stated, "The action taken by the House of Representatives in passing the House Agriculture Committee bill (The Cooley bill) has created a furor in the (foreign country) . . ." Officials of that country said that the legislation "would be disastrous" to its "economy." (Memorandum from William H. Brubeck to McGeorge Bundy and Myer Feldman, 6/23/62.) (JFK Library.)

264 See Finding on Political Abuse, pp. 233, 234. The wiretapping of American citizens in these instances could only serve "intelligence," rather than law enforcement purposes, since any criminal prosecution (i.e., for bribery) would have been "tainted" by the warrantless wiretaps. [Coplon v. United States, 185 F. 2d 629 (1950), 191 F. 2d 749 (1951).]

265 The circumstances indicating this possibility and the eventual determination that the allegation was unfounded are set forth in a memorandum from Director Hoover to Attorney General Kennedy in 1964. (Hoover to Kennedy, 5/4/64 and enclosure. (John F. Kennedy Library))

266 The FBI requested the wiretap on the editor and an accompanying tap on a Washington attorney in contact with the editor because of its concern about possible "leaks" of information about FBI loyalty-security investigations of government officials. Director Hoover advised that publication of this "classified

information" constituted "a danger to the internal security of the United States." (Memorandum from Hoover to Katzenbach, 4/19/65.) However, in 1964 Director Hoover had volunteered to Attorney General Kennedy information about the Publication of the book alleging impropriety. The author himself had supplied information about the book to the FBI. (Memoranda from Hoover to Attorney General Kennedy, 7/8/64 and 7/15/64.)

267 Testimony of William C. Sullivan, Assistant Director for the Domestic Intelligence Division (1961-1970) and Assistant to the Director (1970-1971), 11/1/75, pp. 42-43.

268 Memorandum from A. H. Belmont to L. V. Boardman, 8/28/56.

269 Memorandum from D. M. Ladd to J. Edgar Hoover, 2/27/46. According to this memorandum the underlying reason for such Bureau propaganda was to anticipate and counteract the "flood of propaganda from Leftist and so-called Liberal sources" which would "be encountered in the event of extensive arrests of Communists" if war with the Soviet Union broke out.

270 Belmont to Boardman, 8/28/56.

271 A Bureau monograph in mid-1955 "measured" the Communist Party threat as:

"Influence over the masses, ability to create controversy leading to confusion and disunity, penetration of specific channels in American life where public opinion is molded, and espionage and sabotage *potential*." [Emphasis supplied.] (Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 7/29/55, and enclosed FBI monograph, "The Menace of Communism in the United States Today," pp. iv-v.)

The FBI official who served as Director Hoover's liaison with the CIA in the 1950s stated that "the Communist Party provided a pool of talent for the Soviet [intelligence] services" in the "30s and into the 40s." During that period the Soviets recruited agents "from the Party" to penetrate "the U.S. Government" and "scientific circles." He added, however, that "primarily because of the action and counter-action taken by the FBI during the late 40s, the Soviet services changed their tactics and considerably reduced any programs or projects designed to recruit CP members, realizing or assuming that they were getting heavy attention from the Bureau." (Testimony of former FBI liason with CIA, 0/22/75, p. 32.)

272 Belmont to Boardman, 8/28/65.

273 Belmont to Boardman, 9/5/56; memorandum from FBI headquarters to SAC, New York, 9/6/56.

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

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

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

277 Memorandum from FBI Headquarters to San Francisco field office. 4/16/64.

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

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

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

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

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

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

284 See p. 50.

285 1964 FBI Manual section 122, p. 1.

286 1965 FBI Manual section 122, pp. 6-8.

287 FBI Manual Section 122, revised 12/13/06, pp. 8-9.

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

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

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

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

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

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

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

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

295 Memorandum from FBI Headquarters to all SACs, 10/28/68, and enclosure, New Left Movement -- Report outline.

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

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

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

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

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

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

302 FBI Manual, Section 107.

303 See Findings on use of informants in "Intrusive Techniques," p. 192.

304 Memorandum from Attorney General Kennedy to the President, June 1964, quoted in Victor Navasky, *Kennedy Justice* (New York: Atheneum, 1971), pp. 105--106. The President asked former CIA Director Allen Dulles to evaluate tile 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.)

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

306 1965 FBI manual, section 122, pp. 1-2.

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

308 1967 FBI manual, Section 122, p. 2.

309 1971 FBI manual, Section 122, p. 2.

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

311 Memorandum from FBI Headquarters to all SACs. 11/4/70.

312 Memorandum from G. C. Moore to William C. Sullivan, 10/11/67. For Attorney General Clark's order, see pp. 83-84.

313 Memorandum from FBI to Select committee, 8/20/75 and enclosures.)

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

315 Memorandum from G. C. Moore to C. D. Brennan. 10/27/70.

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

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

318 FBI Manual Section 87.

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

320 Staff review of informant report summaries.

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

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

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

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

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

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

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

228 *Federal Data Banks, Computers and the Bill of Rights, Hearings before the Senate Subcommittee on Constitutional Rights (1971)*, at pp. 1120-1121.

329 *Federal Data Banks. Hearings*, at pp. 1123-1138.

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

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

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

333 *Report of the National Advisory Commission*, p. 490.

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

335 SAC Letter 69-44, 8/19/69.

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

337 Califano testimony, 1/27/76, pp. 6-9. Califano states in retrospect that the attempt to "predict violence" was "not a successful undertaking," that "advance intelligence about dissident groups" would not "have been of much help," and that what is "important" is "physical intelligence about geography, hospitals, power stations, etc." (Califano, 1/27/76, pp. 8, 11-12.)

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

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

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

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

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

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

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

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

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

347 Staff Memorandum for the Subcommittee on constitutional Rights, United States Senate, 9/14/71.

348 See detailed report on Martin Luther King, Jr.

349 Manual, Section 87.

350 The Bureau frequently disseminated reports on the NAACP to military intelligence because (as one report put it) of the latter's "interest in matters pertaining to infiltration of the NAACP." (Report from Los Angeles Field Office to FBI Headquarters, 11/5/65.) All the national officers and board members were listed, and any data in FBI files on their past "association" with "subversives" was included. Most of this information went back to the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/65.) When changes occurred in the NAACP's leadership and board, the Bureau once again went back to its files to dredge up "subversive" associations from the 1940's. (Report from New York Field Office to FBI Headquarters, 4/15/66.) Chapter member 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).

351 See examples of the exaggeration of Communist influence set forth in Findings on Political Abuse. Such distortion continues today. An FBI Intelligence Division Section Chief told the Committee that he could not "think of very many" major demonstrations in this country in recent years "that were not caused by" the Communist Party or the Socialist Workers Party. In response to questioning, the Section Chief listed eleven specific demonstrations since 1965. Three of these turned out to be principally SDS demonstrations, although some individual Communists did participate in one of them. Six others were organized by the National (or New) Mobilization Committee, which the Section Chief stated was subject to Communist and Socialist Workers Party "influence." But the Section Chief admitted that the mobilization Committee "probably" included a wide spectrum of persons from all elements of American society. (R. L. 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.)

352 See Sections B-3 and C-2.

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

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

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

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

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

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

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

360 See p.. 71.

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

362 Executive Order 11365 7/29/67.

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

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

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

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

367 Clark to Hoover, 9/14/67. The Department's establishment of a special unit for Intelligence evaluation Is discussed at pp. 115-116.

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

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

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

371 Federal Data Banks, Hearings, at p. 1137 on at least one occasion, Deputy Attorney General Warren Christopher thanked an Army intelligence officer for 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 Duputy Attorney General Richard G. Kleindienst. 2/6/69.)

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

373 Letter from Robert E. Lynch, Acting Adjutant General of the Army, to subordinate commands, 6/9/70,

Subject: Collection, Reporting, Processing, and Storage of Civil Disturbance information.

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

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

These reporting standards were modified in 1971 to require the FBI to refer to Secret Service: "Information concerning civil disturbances, anti-U.S. demonstrations or incidents or demonstrations against foreign diplomatic establishments;" and "Information concerning persons who may be considered potentially dangerous to individuals protected by the [Secret Service] because of their -- participation in groups engaging in activities inimical to the United States." With respect to organizations, the FBI reported information on their "officers," "size," "goals," "source of financial support," and other "background data." (Agreement Between the Federal Bureau of Investigation and the United States Secret Service Concerning Protective Responsibilities, 11/26/71.)

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

376 FBI Inspection Report, Domestic Intelligence Division, August 17-September 9, 1971, pp. 224-38.

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

378 See pp. 74-75.

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

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

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

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

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

384 Memorandum from FBI Headquarters to all SACS. 3/4/68.

385 Memorandum from FBI Headquarters to SACS. 11/25/68.

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

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

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

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

390 Memorandum from FBI Headquarters to all SACS, 5/23/68.

391 Memorandum from FBI Headquarters to all SACS, 10/9/68.

392 Memorandum from FBI Headquarters to all SACS, 7/6/68.

393 Approximately 100 per year (Exhibit 11, Hearings, Vol. 6, P. 371.).

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

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

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

396 Memorandum from FBI Headquarters to all SACs. 3/21/68.

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

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

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

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

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

402 omitted in original.

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

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

405 See pp. 54-55.

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

407 See pp. 54-55 and Report on FBI Investigations.

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

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

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

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

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

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

414 One of the express purposes was to use tax information to "expose" the Klan Members "within the Klan organization for] 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" in is prohibited by statute.

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

416 Donald O. Virdin testimony, 9/16/75, pp. 69-73.

417 Staff Memorandum: Review of Materials in FBI Administrative File on "Income Tax Returns Requested."

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

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

420 Statement of J. W. Yeagley to Senate Select Committee, September 1975.

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

422 CIA memorandum, Subject: BUTANE-Victor Marchetti.

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

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

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

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

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

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

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

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

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

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

433 Donald Alexander testimony, 10/2/75, Hearings, Vol. 3, pp. 29-30.

433a Green. 9/12/75, pp. 65-456, 73-74; Statement of Auditor, San Francisco District, 7/30/75, p. 1 ; statement of Collector. Los Angeles District, 8/3/75.

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

435 Hearings before the House Committee on Expenditures In the Executive Departments, on H.R. 2319 80th Cong. (1947), p. 127.

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

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

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

439 Liaison, 9/22/75, p. 52. "Central intelligence Agency operations in the United States,, FBI-CIA Memorandum of Understanding, 2/7/66.

440 Liaison, 9/22/75, p, 55

441 Liaison, 9/22/75, PI). *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.)

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

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

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

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

445 Ober, 10/28/75, p. 45.

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

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

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

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

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

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

452 CIA Headquarters cable to several field stations, August, 1967, p. 1.

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

454 CIA Cable from Acting DDP to various field stations, November 1967, pp. 1-2.

455 CIA Cable from Thomas Karamessines to various field stations, July 1968, P. 1.

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

457 Cable from CIA headquarters to stations, November 1969.

458 Charles Marcules testimony, Rockefeller Commission, 3/10/75, pp. 1538-1547, 16566-1567; Ober,

- 9/24/75, p. 46. (For security reasons, the CHAOS agent case officer testified as "Charles Marcules".)
- 459 Marcules Contact Report, 4/17/71; Marcules, Rockefeller Commission, 3/10/75 Jr. 1556-1558.
- 460 Memorandum from Richard Ober to Chief, CI Project, 2/15/72.
- 461 Ober, 10/30/75, pp. 16-17.
- 462 Letter from Richard Helms to Henry Kissinger, 2/18/69.
- 463 Richard Helms deposition, Rockefeller Commission, 4/24/75, p. 223.
- 464 Helms deposition, Rockefeller Commission, 4/24/75, p. 234, Ober deposition, Rockefeller Commission, 3/28/75, pp. 137-138.
- 465 memorandum from Inspector General to Executive Director-comptroller, 11/9/72, P. 1.
- 466 Memorandum from Executive Director-Comptroller to DDP, 12/20/72.
- 467 Cable from CIA Director William Colby to Field Stations, March 1974.
- 468 Rockefeller Commission Report, p. 23.
- 469 Agent 1. Contact Report, Volume 11, Agent 1 file.
- 470 50 U. S.C. 403 (d) (3).
- 471 Lawrence Houston testimony, Rockefeller Commission, 3/17/75, pp. 1654-1655.
- 472 Rockefeller Commission Report, pp. 162-166.
- 473 According to a "memorandum for the record" sent by CIA General Counsel Lawrence R. Houston to Deputy Attorney General William P. Rogers in 1954, an agreement was reached at that time allowing the CIA to investigate on its own any "actual or probable violation of criminal statutes" involving the CIA's "covert operations" and to determine for itself, without consulting the Justice Department, whether there were "possibilities for prosecution." The Justice Department would not be informed if the CIA decided that there should be no prosecution on the ground that it might lead to "revelation of highly classified information." (Memorandum from Houston to Rogers, 3/1/54, and enclosed memorandum from Houston to the Director of Central Intelligence, 2/23/54.)
- This practice was reviewed and re-confirmed internally within the CIA on at least two subsequent occasions. (Memorandum from Houston to the Assistant to the Director, CIA, 1/6/60; memorandum from Houston to the Deputy Director of Central Intelligence. 6/10/64.) It was not terminated until 1975. (Memorandum from John S. Warner, CIA General Counsel, for the record. 1/31/75.)
- 474 These CIA activities, Projects MERRIMACK and RESISTANCE, were described in great detail by the Rockefeller Commission. (Rockefeller Commission Report. Chg. 12 and 13.)
- 477 The Rockefeller Commission Report describes two cases in which telephones of three newsmen were tapped ... [One] occurred in 1962, apparently with the knowledge and consent of Attorney General Kennedy." (Rockefeller Commission Report, p. 164.)
- 478 Memorandum from President Truman to Secretary of Defense, 10/24/52.
- 479 General Lew Allen testimony, 10/29/75, Hearings, Vol. 2, p. 6.

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

481 omitted in original.

482 omitted in original.

483 Memorandum from FBI Executive Conference to Mr. Tolson, 10/29/70. see pp. 74-76.

484 Memorandum from Hoover to Angleton, 3/10/72.

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

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

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

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

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

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

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

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

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

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

493 Memorandum from Hoover to Katzenbach, 9/28/64.

494 Memorandum from Hoover to Katzenbach, 3/3/65.

495 Memoranda from Hoover to Katzenbach, 5/17/65, 10/19/65, 12/1/65.

496 For example, Clark turned down FBI requests to wiretap the National Mobilization Committee Office for Demonstrations at the Democratic National Convention in Chicago in 1968. (Memoranda from Hoover to Clark 3/11/68, 3/22/68, 6/11/68). Clark decided that there was not "an adequate demonstration of a direct threat to the national security." (Clark to Hoover, 3/12/68) (These memoranda appear at Hearings, Vol. 6, pp. 740-755.

497 Clark has stated that he denied requests "to tap Abba Eban when he was on a visit to this country, an employee of the United Nations Secretariat, the Organization of Arab Students in the U.S., the Tanzanian Mission to the U.N., the office of the Agricultural Counselor at the Soviet Embassy and a correspondent of TASS." [Statement of Former Attorney General Ramsey Clark, Hearings before the Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, United States Senate (1974).]

498 *Katz v. United States*, 397 U.S. 347 (1967). This case explicitly left open the question of warrantless electronic surveillance in "situation(s) involving the national security." (397 U.S., at 358 n. 23.)

499 19 U. S.C. 2511 (3).

500 See *United States v. United States District Court*, 407 U.S. 297 (1972).

501 Memorandum from Hoover to Attorney General Mitchell, 3/16/70.

502 See Findings C and E, pp. 183 and 225.

503 For example, at one time in March 1971 the FBI was conducting one microphone surveillance of Black Panther Party leader Huey Newton, seven wiretaps of Black Panther Party offices including Newton's residence, one wiretap on another black extremist group, one wiretap on Jewish Defense League headquarters, one wiretap on a "New Left extremist group", and two wiretaps on "New Left extremist activities." (Memorandum from W. R. Wannall to C. D. Brennan, 3/29/71, printed in Hearings, Vol. II, pp. 270-271.)

503a Memoranda from Hoover to Attorney General Mitchell, 11/5/69 and 11/7/69. This and other aspects of electronic surveillance in this period are discussed in Findings C and E in greater detail, pp. 183 and 225.

504 *United States v. United States District Court*. 407 U.S. 297 (1972).

505 *United States v. United States District Court*, 407 U.S., at 309 (1972).

506 Memorandum. from William Olson to Elliott Richardson, June 1973. Until 1975, however, the Justice Department stretched the term "connection with a foreign Power" to include domestic groups, such as the Jewish Defense League, whose protest actions against a foreign nation were believed to threaten the United States," relations with that nation. [*Zweibon v. Mitchell*, 516 F. 2d 594 (D.C. Cir. 1975).]

507 Memorandum from FBI/CIA Liaison Agent to D. J. Brennan, 1/16/69.

508 Routing Slip from J. Edgar Hoover to James Angleton (attachment), 3/10/72.

509 DOD Cable, Yarborough to Carter, 10/20/67.

510 NSA's name, for example, was to be kept off any of the disseminated "product."

511 MINARET Charter, 7/1/69.

512 W. R. Wannall (FBI Assistant Director for Intelligence), 10/3/75, p. 13. "The feeling is that there was very little in the way of good product as a result of our having supplied names to NSA."

513 Memorandum from Hoover to Katzenbach, 9/14/65. This memorandum dealt specifically with electronic surveillance and did not mention mail openings or "Black Bag Jobs." Hoover said the FBI had "discontinued" microphone surveillances (bugs), a restriction which Attorney General Katzenbach said went too far. (Katzenbach to Hoover 9/27/65.)

514 omitted in original.

515 Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65. Katzenbach testimony, 12/3/75. Hearings, Vol. 6. p. 204.

516 Memorandum from A. H. Belmont to C. Tolson, 2/27/65.

517 Hoover Note on Belmont Memorandum to Tolson, 2/27/65.

518 Memorandum from Hoover to Tolson, et al., 3/2/65.

519 Katzenbach testimony, 12/3/75, Hearings, Vol. 6, pp. 205-206.

520 Memorandum from DeLoach to Tolson, 1/21/66.

521 Memorandum from DeLoach to Tolson, 1/10/66.

522 Memorandum from M. A. Tones to Robert Wick, 1/11/66.

523 Memorandum from DeLoach to Tolson, 1/21/66.

524 C. D. Brennan deposition, 9/23/75, p. 42.

525 According to FBI records and the recollections of Bureau agents, the following number of microphone surveillances involving "surreptitious entry" were installed in "internal security, intelligence, and counterintelligence" investigations: 1964: 80; 1965: 59; 1966: 4; 1967: 0; 1968: 9; 1969: 8; 1970: 15; 1971: 6; 1972: 22; 1973: 18; 1974: 9; 1975: 13. The similar figures for "criminal investigations" (including installations authorized by judicial warrant after 1968) are: 1964: 83; 1965: 41; 1966: 0; 1967: 0; 1968: 0; 1969: 3; 1970: 8; 1971: 7; 1972: 19; 1973: 27; 1974: 22; 1975: 11. (Memorandum from FBI to Select Committee, 10/17/75.)

526 Hoover note on memorandum from Sullivan to DeLoach, 7/19/66. This memorandum cited as a "prime example" of the utility of a "black bag jobs" a break-in to steal records of three high-ranking Klan officials relating to finances and membership which "we have been using most effectively to disrupt the organization."

527 Wannall, 10/13/75, pp. 45-46. There is to this day no formal order prohibiting FBI mail-opening, although Assistant Director Wannall contended that general FBI Manual instructions now applicable forbid any unlawful technique.

528 These techniques were not prohibited by law. Their use was banned in all cases, including serious criminal investigations and foreign counterintelligence matters. (memorandum from W. C. Sullivan to A. 11. 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 reinstated with Justice Department approval in 1971. (Memorandum from Hoover to Mitchell, 7/27/71; Memorandum from Assistant Attorney General Will Wilson to Hoover, 9/31/71.)

529 Memorandum from Hoover to Tolson and DeLoach, 1/6/67.

530 "Once Mr. Hoover, apparently at the request of the National Security Agency, bought approval to break and enter into a foreign mission at the United Nations to procure cryptographic materials to facilitate decoding of intercepted transmissions. The request was presented with some urgency, rejected and presented again on perhaps several occasions. it was never approved and constituted the only request of that kind." [Statement of former Attorney General Ramsey Clark, Hearings before the Senate Judiciary Subcommittee on Administrative Practice and Procedure, (1974).]

531 Memorandum from FBI to Senate Select Committee, 2/23/75.

532 Memorandum from W. A. Branigan to W. C. Sullivan, 3/31/70.

533 Memorandum from John R. Brown to H. R. Haldeman, 4/30/70.

534 Memorandum from Sullivan to DeLoach, 6/20/69; Memorandum from Huston to Hoover, 6/20/69.

535 Tom Charles Huston testimony, 5/23/75, p. 19.

536 Huston, 5/23/75, pp. 23, 28.

537 Helms deposition, 9/10/75, p. 3; Bennett deposition, 8/5/75, p. 12; Gayler deposition, 6/19/75, pp. 6-7. As

early as 1963, the FBI Director had successfully opposed a proposal to the President's Foreign Intelligence Advisory Board by CIA Director John McCone for expanded domestic wiretapping for foreign Intelligence purposes. (Memorandum from W. C. Sullivan to C. D. DeLoach, 3/7/70). In 1969, CIA Director Richard Helms was told by the Bureau, when he asked it to institute electronic surveillance on behalf of the CIA, that he should "refer such requests directly to Attorney General for approval." (Memorandum from Sullivan to DeLoach, 3/30/70.) The administrators of NSA also failed to persuade Director Hoover to lift his restraints on foreign intelligence electronic surveillance. (Staff summary of Louis Tordella interview, 6/16/75.)

538 Note by Hoover on letter from Helms to Hoover. 2/26/70.

539 Former FBI Liaison with CIA testimony, 9/22/75, p. 3.

540 Memorandum from Sullivan to DeLoach, 3/30/70, pp. 1-2, 4.

541 Memorandum from Hoover to Helms, 3/31/70.

542 Huston deposition, 5/23/75, p. 32.

543 Presidential Talking Paper, 6/5/70, from the Nixon Papers.

544 The report was written by the Research Section of the FBI Domestic Intelligence Division on the basis of committee decisions and FBI Director Hoover's revisions (Staff Summary of Richard Cotter interview, 9/15/75.)

545 The seven recommendations were made in an attachment to a memorandum from Huston to Haldeman, 7/70.

546 Memorandum from Huston to Haldeman, 7/70.

547 Memorandum from Huston to Haldeman, 7/70. In using the word "burglary," Huston said he sought to "escalate the rhetoric ... to make it as bold as possible." He thought that, as a staff man, he should give the President "the worst possible interpretation of what the recommendation would result in." (Huston deposition. 5/22/75, p. 69.)

548 Huston deposition. 5/22/75, p. 8.

549 Memorandum from Tom Charles Huston to Intelligence Directors, 7/23/70.

550 Memorandum from Sullivan to DeLoach, 4/14/70.

551 An assistant to the head of the Defense Intelligence Agency recalls agreeing with his superior that the memorandum from Huston to the intelligence directors showed that the White House had "passed that one down about as low as they could go" and that the absence of signatures by the President or his top aides indicated "what a hot potato it was." (Staff summary of James Stillwell interview, 5/21/75.)

552 Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 122.

553 Memorandum from Hoover to Mitchell, 7/25/70.

554 Helms memorandum for the record, 7/28/70.

555 Mitchell, 10/24/75, Hearings, Vol. 4, p. 123.

556 Huston deposition, 5/23/75, p. 56; staff summary of David McManus interview, 7/1/75.

557 Director Helms thinks he told Attorney General Mitchell about the CIA mail program. Helms also

believes President Nixon may have known about the program although Helms did not personally inform him. (Helms, 10/22/75, Hearings, Vol. 4, pp. 88-89.) Mitchell denied that Helms told him of a CIA mail opening program and testified that the President had no knowledge of the at least not as of the time we discussed the Huston Plan." (Mitchell, 9/24/75, Hearings, Vol. 4, pp. 120,138.)

558 In March 1971, NSA Director Noel Gayler and CIA Director Helms met with Attorney General Mitchell and Director Hoover. According to Hoover's memo 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 program. (CIA memorandum for the record, 6/3/71.) Even before this meeting, NSA Director Gayler sent a memorandum to Attorney General Mitchell and 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 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 by Benson K. Buffham, 2/3/71.)

559 Memorandum from Assistant Attorney General Robert Mardian to Attorney Mitchell, 12/4/70.

560 Memorandum from Gayler to Laird and Mitchell. 1/26/71.

561 For a discussion of the FBI as "consumer," see pp. 107-109.

562 The resumption of mail covers is discussed above at footnote 528. FBI field offices were instructed that they could recruit 18-21 year-old informers in September 1970. (SAC Letter No. 70-48, 9/15/70.) See. p. 76.

563 The head of the FBI Domestic Intelligence Division, William C. Sullivan, was promoted to be Assistant to the Director for all investigative and intelligence activities. His successor in charge of the Domestic Intelligence Division was Charles D. Brennan.

564 Executives Conference to Tolson, 10/29/70; Memorandum from FBI Headquarters to all SACs, 11/4/70.

565 Brennan deposition, 9/23/75, pp. 29-31.

566 Brennan testimony, 9/2.5/75, Hearings, Vol. 2, p. 108.

567 The involvement of the Central Intelligence Agency in improper activities for the White House is described in the Rockefeller Commission Report, Ch. 14.

568 Letter from J. Edgar Hoover to Marvin Watson, 6/4/65.

569 Memorandum from Hoover to Moyers, 10/27/64, cited in FBI summary memorandum, subject: Senator Barry Goldwater, 1/31/75.

569a Memorandum from DeLoach to Tolson, 1/17/67.

570 Memorandum from Hoover to Marvin Watson, 11/8/66.

571 See Finding on Political Abuse, p. 225.

572 Letter from J. Edgar Hoover to John D. Ehrlichman, 10/6/69, House Judiciary Committee Hearings, Statement of Information (1974), Book VII, P. 1111; Book VIII, p. 183 Director Hoover volunteered

information from Bureau files to the Johnson White House on the author of a play satirizing the President. (Memorandum from Hoover to Watson, 1/9/67.)

573 Memorandum from Hoover to Tolson, et al., 5/18/70. Agnew admits having received such information, but denies having asked for it. (Staff summary of Spiro Agnew interview, 10/15/75.)

574 Memorandum from C. D. DeLoach to Mr. Mohr, 8/29/64.

575 DeLoach memorandum, 8/29/64; Cartha DeLoach testimony, 12/3/75, Hearings, Vol. 6, p. 177. A 1975 FBI Inspection Report has speculated that the SNCC bug may have been planted because the Bureau had information in 1964 that "an apparent member of the Communist Party, USA, was engaging in considerable activity, much in a leadership capacity in the Student Nonviolent Coordinating Committee." (FBI summary memorandum, 1/30/75.) It is unclear, however, whether this bug was even approved internally by FBI Headquarters, as ordinarily required by Bureau procedures. DeLoach stated in a contemporaneous memorandum that the microphone surveillance of SNCC was instituted "with Bureau approval." (Memorandum from DeLoach to Mohr, 8/29/64.) But the Inspection Report concluded that "a thorough review of Bureau records fails to locate any memorandum containing [internal] authorization for same." (FBI summary memorandum, 1/30/75.)

576 Mr. DeLoach cited the fact that In the summer of 1964 "there was an ongoing electronic surveillance on Dr. Martin Luther King . . . as authorized by Attorney General Kennedy." (Cartha DeLoach testimony, 11/26/75, p. 110) The Inspection Report noted that the Special Agent in Charge of the Newark office was instructed to institute the wiretap on the ground that "the Bureau had authority from the Attorney General to cover any residences which King may use with a technical installation." (FBI summary memorandum 1/30/75, Subject: "Special Squad at Democratic National Convention, Atlantic City, New Jersey, August 22-28, 1964.")

577 Memorandum from W. C. Sullivan to A. H. Belmont, 8/21/64.

578 Staff summary of Walter Jenkins interview, 12/1/75.

579 DeLoach, 11/26/75. p. 114.

580 Theodore White, Making of the President 1964 (New York: Athenium, 1965). pp. 277-280. Walter Jenkins also confirmed this characterization. (Staff summary of Jenkins interview, 12/1/75).

581 Memorandum from DeLoach to Mohr, 8/29/64.

582 Memorandum from H. N. Bassett to Mr. Callahan, 1/29/75.

583 DeLoach, 11/26/75, p. 139.

584 Staff summary of Jenkins interview, 1/21/75.

585 Exhibit 68-2, Hearings, Vol. VI, p. 713.

586 FBI memoranda indicate that in 1968 Vice President Hubert Humphrey's Executive Assistant, Bill Connell, asked the Bureau to send a "special team" to the forthcoming Democratic National Convention, since President Johnson "allegedly told the Vice President that the FBI had been of great service to him and he had been given considerable information on a timely basis throughout the entire convention." (Memorandum from DeLoach to Tolson, 8/7/68). After talking with Connell, Director Hoover advised the SAC in Chicago that the Bureau was "not going to get into anything political but anything of extreme action or violence contemplated we want to let Connell know." (Memorandum from Hoover to Tolson, Pt al., 8/15/68.) Democratic Party Treasurer John Criswell made a similar request, stating that Postmaster General Marvin Watson "had informed him of the great service performed by the FBI during the last Democratic Convention." (Memorandum from DeLoach to Tolson, 8/22/68.)

587 FBI summary memorandum, 2/3/75.

588 FBI summary memorandum, 2/3/75.

589 FBI summary memorandum, 2/3/75.

590 FBI summary memorandum, 2/3/75. See Findings on Political Abuse.

591 FBI summary memorandum, 2/1/75.

592 Memorandum from Director, FBI to Attorney General, 10/29/68; memorandum from Director, FBI to Attorney General, 10/30/68; memorandum from Director, FBI to Attorney General. 3/27/69.

Attorney General Clark testified that he was unaware of any surveillance of Mrs. Chennault, (Clark, 12/3/75. Hearings, Vol. 6, pp. 251-252.) 593

593 See Findings on Political Abuse, p. 225.

594 John Ehrlichman testimony, Senate Watergate Committee, 7/24/73, p. 2535. According to the transcript of the White House tapes, President Nixon stated to John Dean on April 16, 1973:

"What I mean is I think in the case of the Kraft stuff what the FBI did, they were both fine. I have checked the facts. There were some done through private sources. Most of it was done through the Bureau after we got -- Hoover didn't want to do Kraft. What it involved apparently, John, was this: the leaks from NSC [National Security Council]. They were in Kraft and others columns and we were trying to plug the leaks and we had to get it done and finally we turned it over to Hoover. And then when the hullabaloo developed we just knocked it off altogether. (Submission of Recorded Presidential Conversations to the Committee on the Judiciary of the House of Representatives by President Richard Nixon, 4/30/74.) The President's statement was made in the context of 'coaching' John Dean on what to say to the Watergate Grand Jury.

595 William Ruckelshaus testimony before the Subcommittee on Administrative Practice and Procedure, 5/9/74, p. 320.

596 Kraft testified that Henry Kissinger, then the President's Special Adviser National Security, informed him that he had no knowledge of either the wire or the hotel room bug. Kraft also stated that former Attorney General Elliot Richardson indicated to him that "there was no justification for these activities." (Joseph Kraft testimony, Senate Subcommittee on Administrative Practice and Procedure, 5/10/74, p. 381.)

597 Letter from W. C. Sullivan to Mr. Hoover, 7/12/69.

598 While the summaries sent to Hoover by Sullivan did show that Kraft contacted North Vietnamese officials (Letter from Sullivan to Hoover, 7/12/69), the Bureau did not discover any improprieties or indiscretions on his part. When Ruckelshaus was asked if his review of these summaries revealed to him that 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.)

599 Memorandum from W. C. Sullivan to Mr. DeLoach, 11/4/69.

600 Memorandum from Sullivan to DeLoach, 12/11/69.

600a For discussion of dissemination of political intelligence from the "17" wiretaps, see Finding on Political Abuse, p. 22-5.

601 Sen. Edmund Muskie testimony, Senate Foreign Relations committee, 9/10/73 Executive Session, pp. 50-51.

602 Memorandum from W. C. Sullivan to C. D. DeLoach, 5/11/69.

603 Report of the House Judiciary Committee, 9/20/74. pp. 146-154.

604 The creation of the "plumbers" unit in the White House led inexorably to Watergate. See Report of the House Judiciary Committee, 8/20/74, pp. 157-162, 166-170.

605 An example of a generalized Departmental Instruction is Attorney General Clark's order of September 1967 (see p. 79) regarding civil disorders.

606 Memorandum from FBI Director to Yeagley, 1/31/64.

607 Memorandum from Yeagley to FBI Director, 3/3/64. There was no reauthorization of the continuing investigation between 1966 and 1974.

608 Memorandum from Dean to Mitchell, 9/18/70.

609 Executive order 11605, 7/71.

610 By 1971, the SACB had the limited function of making findings that specific individuals and groups were Communist. Its registration of Communist had been declared unconstitutional. [Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965).]

611 Robert C. Mardian, address before the Atomic Energy Commission Security Conference, Washington, D.C. 10/27/71. Mardian added that the "problem" was that without an updated, formal list of subversive organizations, federal agencies were required "to individually evaluate information regarding membership in allegedly subversive organizations based on raw data furnished by the Federal Bureau of Investigation or other governmental sources."

612 Brennan testimony, 9/25/75, Hearings, Vol. 2, 116-117.

613 Executive Order 11605, 7/71. By contrast, the prior order had been limited to groups seeking forcible violation of rights "under the Constitution of the United States" or seeking "to alter the form of government of the United States by unconstitutional means." Executive Order 10450 (1953).

614 Hearings on the appropriation for the Department of Justice before the House Subcommittee on Appropriations, 92nd Cong., 2nd Sess., (1972), p. 673

615 Inspection Report, FBI Domestic Intelligence Division, August 17-September 9, 1971.

616 The hostile Congressional reaction to this Order, which shifted duties by Executive fiat to a Board created by statute for other purposes, led to the death of the SACB when no appropriation was granted in 1972.

617 FBI Executives Conference Memorandum, 6/2/71. The first Assistant Director for Legal Counsel was Dwight Dalbey, who had for years been in charge of the legal training of Bureau agents. Dalbey's elevation early in 1971, and Hoover's requirement that he review all legal aspects of FBI policy, including intelligence matters, was a major change in Bureau procedure. (Memorandum from Hoover to All Bureau Officials and Supervisors, 3/8/71.)

618 FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 1-3.

619 Memorandum from Sullivan to Hoover, 6/16/71.

620 Memorandum from T. J. Smith to E. S. Miller, 5/13/73, pp. 1, 8.

621 FBI Summary of Interview with Robert Mardian, 5/10/73, pp. 2-3. The Watergate Special Prosecutor

investigated these events, and did not find sufficient evidence of criminal conduct to bring an indictment. However, they occurred at the time of intense White House pressure to develop a criminal prosecution against Daniel Ellsberg over the Pentagon Papers matter. The dismissal of charges against Ellsberg in 1973 was largely due to the belated discovery of the fact that Ellsberg had been overheard on a wiretap indicated in these records, which were withheld from the court, preventing its determination of the pertinency of the material to the Ellsberg case.

622 Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 98.

623 Memorandum from R. D. Cotter to E. S. Miller, 9/21/71.

624 Memorandum from Cotter to Miller, 9/17/71.

625 Memorandum from D. J. Dalbey to C. Tolson, 9/24/71.

625a Memorandum from Hoover to Mitchell, 9/30/71.

626 Memorandum from Mitchell to Hoover, 10/22/71.

627 Memorandum from T. J. Smith to E. S. Miller, 11/11/71. It was noted that in the past the Department had "frequently removed individuals" from the Security Index because of its strict "legal interpretation.

628 This new breed was described as follows:

"He may adhere to the old-line revolutionary concepts but he is unaffiliated with any organization. He may belong to or follow one New Left-type group today and another tomorrow. He may simply belong to the loosely knit group of revolutionaries who have no particular political philosophy but who continuously plot the overthrow of our Government. He is the nihilist who seeks only to destroy America."

"On the other hand, he may be one of the revolutionary black extremists who, while perhaps influenced by groups such as the Black Panther Party, is also unaffiliated either permanently or temporarily with any black organization but with a seething hatred of the white establishment will assassinate, explode, or otherwise destroy white America." (T. J. Smith to E. S. Miller, 11/11/71.)

629 Memorandum from T. J. Smith to E. S. Miller, 11/11/71.

630 Memorandum from FBI Headquarters to all SACs, 11/15/71.

631 Memorandum from Hoover to Mitchell, 2/10/72; cf. memorandum from Hoover to Mitchell, 9/30/71 for the previous statement.

632 Memorandum from T. J. Smith to E. S. Miller, 8/29/72.

633 Memorandum from Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

634 Federal Data Banks, Hearings, Opening Statement of Senator Ervin, February 23, 1971, p. 1. Senator Ervin declared that a major objective of the inquiry was to look into "programs for taking official note of law-abiding people who are active politically or who participate in community activities on social and political issues." The problem, as Senator Ervin saw it, was that there were citizens who felt "intimidated" by these programs and were "fearful about exercising their rights under the First Amendment to sign petitions, or to speak and write freely on current issues of Government policy." The ranking minority member of the Subcommittee, Senator Roman Hruska, endorsed the need for a "penetrating and searching" inquiry. (Hearings, pp. 4, 7.)

635 Also during March 1971, an FBI office in Media, Pennsylvania was broken into; a substantial number of

documents were removed and soon began to appear in the press. One of these was captioned COINTELPRO. The Bureau reacted by ordering its field offices to "discontinue" COINTELPRO operations "for security reasons because of their sensitivity." It was suggested, however, that "counter-intelligence action" would be considered "in exceptional instances" so long as there were "tight procedures to insure absolute secrecy." (Memorandum from Brennan to Sullivan, 4/27/71 ; Memorandum from FBI Headquarters to all SAC's, 4/28/71.) For actions taken thereafter, see COINTELPRO report.

636 After repeal of the Emergency Detention Act in the fall of 1971, the FBI's Assistant Director for Legal Counsel recommended that the Bureau's request for approval of its new ADEX also include a more general request for re-affirmation of FBI domestic intelligence authority to investigate "subversive activity." (Memorandum from D. J. Dalbey to Mr. Tolson, 9/24/71.) The letter to the Attorney General reviewed the line of "Presidential directives" from 1939 to 1951. (Memorandum from Hoover to Mitchell, 9/30/71.) The Attorney General replied with a general endorsement of FBI authority to investigate "subversive activities." (Memorandum from Mitchell to Hoover, 10/22/71.)

637 Richard Kleindienst testimony, Senate Judiciary Committee, 2/24/72, p. 64

638 FBI routing slip attached to Washington Post article, 2/24/72. The FBI's summary of its "guidelines," submitted to the Attorney General stated that its investigations were partly based on criminal statutes, but that "subversive activity . . . often does not clearly involve a specific section of a specific statute." Thus, investigations were also based on the 1939 Roosevelt directives which were said to have been "reiterated *and broadened* by subsequent Directives." (Attachment to Hoover memorandum to Kleindienst, 2/25/72.) (Emphasis added.)

639 The background for this development may be summarized as follows: In May 1972, FBI intelligence officials prepared a "position paper" for Acting Director L. Patrick Gray. This paper merely recited the various Presidential directives, Executive Orders, delimitation agreements, and general authorizations from the Attorney General, with no attempt at analysis. (FBI Domestic Intelligence Division Position Paper: Investigations of Subversion, 5/19/72.) Assistant Director E. S. Miller, head of the Domestic Intelligence Division, withdrew this paper at a conference with Gray and other top Bureau officials; Miller then initiated work on a more extensive position paper, which was completed in July. It concluded that domestic intelligence investigations could practicably be based on the "concept" that their purpose was "to prevent a violation of a statute." The paper also indicated that the ADEX would be revised so that it could not be "interpreted as a means to circumvent repeal of the Emergency Detention Act." (FBI Domestic Intelligence Division: Position Paper: Scope of FBI Authority, 7/31/72; T. J. Smith to E. S. Miller, 8/1/72.)

640 Gray did order that the Bureau should indicate its "jurisdictional authority" to investigate in every case, "by citing the pertinent provision of the U.S. Code. or other authority," and also that the Bureau should "indicate whether or not an investigation was directed by DJ (Department of Justice), or we opened it without any request from DJ." In the latter case, the Bureau was to "cite our reasons." (FBI routing slip, 8/27/72.)

641 One official observed that there were "some individuals now included in ADEX even though they do not realistically pose a threat to the national security." He added that this would leave the Bureau "in a vulnerable position if our guidelines were to be scrutinized by interested Congressional Committees." (Memorandum from T. J. Smith to E. S. Miller, 8/29/72.)

642 Memorandum from Smith to Miller, 8/29/72. The anticipated reduction was from 15,259 (the current figure) to 4,786 (the top two priority categories). The Justice Department was advised of this change. (Memorandum from Gray to Kleindienst, 9/18/72.)

643 Draft copies were distributed to the field for suggestions. (E. S. Miller to Mr. Felt, 5/22/73.)

644 Memorandum from FBI Headquarters to all SAC's, 6/7/73. The memorandum to the field stated, looking back on past Bureau policy, that since the FBI's authority to investigate "subversive elements" had never been "seriously challenged until recently," Bureau personnel (and "the general public") had accepted "the FBI's right to handle internal security matters and investigate subversive activities without reference to specific statutes." But the "rationale" based on "Presidential Directives" was no longer "adequate."

The field was advised that the "chief statutes" upon which the new criteria were based were those dealing with rebellion or insurrection (18 U.S.C. 2583), seditious conspiracy (18 U.S.C. 2584) and advocating overthrow of the government (18 U.S.C. 2528). The ADEX was to be "strictly an administrative device" and should play no part "in investigative decisions or policies." The revision also eliminated "overemphasis" on the Communist Party.

645 For example, the field offices saw the need to undertake "preliminary inquiries" before it was known "whether a statutory basis for investigation exists." This specifically applied where a person had "contact with known subversive groups or subjects," but the Bureau did not know "the purpose of the contact." These preliminary investigations could go on for at least 90 days, to determine whether "a statutory basis for a full investigation exists." Moreover, at the urging of the field supervisors, the period for a preliminary investigation of an allegedly "Subversive organization" was expanded from 45 to 90 days. (Memorandum from FBI Headquarters to all SAC's, 8/8/73.)

646 This was apparently "in connection with" a request made earlier by Senator Edward M. Kennedy, who had requested to see this section at the time of the confirmation hearings for Attorney General Kleindienst in 1972. (Kleindienst, Senate Judiciary Committee, 2/24/72, p. 64; memorandum from Kelley to Richardson, 8/7/73.)

647 In a memorandum to the Attorney General, Director Kelley cited Senator Sam J. Ervin's view that the FBI should be prohibited by statute "from investigating any person without the individual's consent, unless the Government has reason to believe that the person has committed a crime or is about to commit a crime." Kelley then summarized the position paper prepared by the Domestic Intelligence Division and the Bureau's current policy of attempting to rely on statutory authority. However, he observed that the statutes upon which the FBI was relying were either "designed for the Civil War era, not the Twentieth Century" (the rebellion and insurrection laws) or had been "reduced to a fragile shell by the Supreme Court" (the Smith Act dealing with advocacy of overthrow). Moreover, it was difficult to fit into the statutory framework groups "such as the Ku Klux Klan, which do not seek to overthrow the Government, but nevertheless are totalitarian in nature and seek to deprive constitutionally guaranteed rights."

Kelley stated that, while the FBI had "statutory authority," it still needed "a definite requirement from the President as to the nature and type of intelligence data he requires in the pursuit of his responsibilities based on our statutory authority." (Emphasis added.) While the statutes gave "authority," an Executive Order "would define our national security objectives." The FBI Director added:

"It would appear that the President would rather spell out his own requirements in an Executive Order instead of having Congress tell him what the FBI might do to help him fulfill his obligations and responsibilities as President."

648 Memorandum from Kelley to Richardson, 8/7/73.

649 Even before Kelley's request, Deputy Attorney General-Designate William Ruckelshaus (who had served for two months as Acting FBI Director between Gray and Kelley), sent a list of questions to the Bureau to begin "an in-depth examination of some of the problems facing the Bureau in the future." (Memorandum from Ruckelshaus to Kelley, 7/20/73.) The Ruckelshaus study was interrupted by his departure in the "Saturday Night Massacre" of October 1973.

650 Memorandum from Bork to Kelley, 12/5/73.

651 These techniques were handled within the Bureau "on a strictly need-to-know basis" and Kelley believed that they should not be included in a study "which will be beyond the control of the FBI." (Memorandum from Kelley to Bork. 12/11/73.)

One Bureau memorandum to the Petersen committee even suggested that the Attorney General did not have authority over the FBI's foreign counterintelligence operations, since the Bureau was accountable in this area directly to the United States Intelligence Board and the National Security Council. (Petersen Committee Report, pp. 34-35.) The Petersen Committee sharply rejected this view, especially because the ad hoc equivalent of the U.S. Intelligence Board had approved the discredited "Huston plan" in 1970. The Committee

declared: "There can be no doubt that in the area of foreign counterintelligence, as in all its other functions, the FBI is subject to the power and authority of the Attorney General." (Petersen Committee Report, p. 35.)

652 FBI Memorandum, "Overall Recommendations -- Counterintelligence Activity," Appendix to Petersen Committee Report.

653 Henry Petersen Testimony, 12/8/75, Hearings, Vol. 6, pp. 270-71.

655 Attorney General's Guidelines: "Domestic Security Investigations," "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest," and "White House Personnel Security and Background Investigations."

656 Memorandum from A. B. Fulton to Mr. Wannall, 7/10/74. See pp. 42-44 for discussion of the initiation of the program.

657 Memorandum from FBI Headquarters to all SACs, 8/16/74.

658 Executive Order 11785, 6/4/74. The new standard: "Knowing membership with the specific intent of furthering the aims of, or *adherence to* and active participation in, any foreign *or domestic* organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully *advocates* or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or *of any state*, or which seeks to overthrow the Government of the United States or *any State or subdivisions thereof* by unlawful means." [Emphasis added.]

659 Memorandum from Glen E. Pommerening, Assistant Attorney General for Administration, to Kelley, 11/17/74.

With respect to one organization, the Department advised the Bureau that "despite the abolition" of the Attorney General's list, the group "would still come within the criteria" of the employee security program if it "may have engaged in activities" of the sort proscribed by the revised executive order. (Memorandum from Henry E. Petersen to Clarence Kelley, 11/13/74.)

660 "On the other hand," the instructions stated ambiguously, "the FBI should not report every minor local disturbance where there is no apparent interest to the President, the Attorney General or other Government officials and agencies." (Memorandum from Petersen to Kelley, 10/22/74.)

661 Memorandum from Petersen to Kelley, 10/22/74. The FBI was expected to "be aware of disturbances and patterns of disorder," although it is not to report "each and every relatively insignificant incident of a strictly local nature."

662 Memorandum from Petersen to Kelley, 10/22/74. Frank Nyland testimony, 1/27/76, pp. 46--58.

663 Memorandum from J. G. Deegan to W. R. Wannall, 10/30/74. From a legal viewpoint, the Justice Department's instructors dealing with the collection of intelligence on potential civil disturbances were significant because they relied for authority on: (1) the President's powers under Article IV, section 4 of the Constitution to protect the states, upon application of the legislature or the executive, against "domestic violence;" (2) the statute (10 U.S.C. 331. et seq.) authorizing the use of troops; and (3) the Presidential directive of 1969 designating the Attorney General as chief civilian officer to coordinate the Government's response to civil disturbances. (Memorandum from Petersen to Kelley, 10/22/74; Memorandum from Melvin Laird and John Mitchell to the President, 4/1/69.)

664 omitted in original.

665 18 U.S.C. 2101-2102.

666 Memorandum from Petersen to Kelley, 11/13/74. This-memorandum added: "[W]ithout a broad range of

intelligence information, the President and the departments and agencies of the Executive Branch could not properly and adequately protect our nation's security and enforce *the numerous statutes* pertaining thereto . . . [T]he Department, and in particular the Attorney General, must continue to be informed of those organizations that engage in violence which represent *a potential threat to the public safety.*" [Emphasis added.]

667 The opinion of the Supreme Court in the United States v. United States District Court, 407 U.S. 297 (1972) -- the domestic security wiretapping case stated, "Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means."

668 A 19th century Supreme Court opinion was cited as having interpreted the word "laws" broadly to encompass not only statutes enacted by Congress, but also "the rights, duties, and obligations growing out of the Constitution itself, our international relations and all the protection implied by the nature of Government under the Constitution." [In *Re Neagle*, 135 U.S. 1 (1890).]

669 The latter power was said to relate "more particularly to the Executive's power to conduct foreign intelligence activities here and abroad." (Kevin Maroney testimony, "Domestic Intelligence Operations for Internal Security Purposes," Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3332-3335.) Mr. Maroney added:

"We recognize the complexity and difficulty of adequately spelling out the FBI's authority and responsibility to conduct domestic intelligence-type investigations. The concept national security is admittedly a broad one, while the term subversive activities is even more difficult to define."

Mr. Maroney also cited the following from the Supreme Court's opinion in the domestic security wiretapping case: "The gathering of security intelligence is often long-range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify . . . Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible future crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime." [United States v. United States District Court, 407 U.S. 21, 97, 322 (1972).]

670 House Committee on Internal Security Hearings, 1974, pp. 3330-3331.

671 W. Raymond Wannall, Assistant Director for the Intelligence Division, Memorandum on the "Basis for FBI National Security Intelligence Investigations," 2/13/75.

672 After several recent transformations, the policy of the Attorney General was established as authorizing warrantless surveillance "only when it is shown that its subjects are the active, conscious agents of foreign powers;" and this standard "is applied with particular stringency where the subjects are American citizens or permanent resident aliens." (Justice Department memorandum from Ron Carr, Special Assistant to the Attorney General, to Mike Shaheen, Counsel on Professional Responsibility, 2/26/76.)

673 In May 1975, for the first time in American history, the Department of Justice publicly asserted the power of the Executive Branch to conduct warrantless surreptitious entries unconnected with the use of electronic surveillance. This occurred in a letter to the United States Court of Appeals for the District of Columbia concerning an appeal by John Ehrlichman. Ehrlichman was appealing a conviction arising from the break-in at the office of Daniel Ellsberg's psychiatrist after publication of the "Pentagon Papers" in 1971.

The Justice Department's position was that "warrantless searches involving physical entries into private premises" can be "lawful under the Fourth Amendment" if they are "very carefully controlled:"

"There must be solid reason to believe that foreign espionage or intelligence is involved. In addition, the intrusion into any zone of expected privacy must be kept to the minimum and there must be personal authorization by the President or the Attorney General." (Letter from John C. Kenney, Acting Assistant Attorney General, to Hugh E. Cline, Clerk of the United States Court of Appeals for the District of Columbia, 5/9/75.)

674 Rockefeller Commission Report.

675 Levi, 12/11/75, Hearings, Vol. 6, pp. 316-317.

676 Levi. 11/6/75, Hearings, Vol. 5, p. 90.

677 Executive Order 11509, 2/19/76.

678 Attorney General's Guidelines, "Domestic Security Investigations", "Whitehouse Personnel Security and Background Investigations", and "Reporting on Civil Disorders and Demonstrations Involving a Federal Interest", 3/10/76.

679 S. 3197, introduced 3/23/76.

680 The major questions posed by the President's Executive Order and the Attorney General's guidelines for the FBI are discussed in the recommendation section of this report, as are the problems with the national security electronic surveillance bill.

681 Levi Testimony, 12/11/75, Hearings, Vol. 6, p. 345.

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