

b. Bugging, Mail Opening, and Surreptitious Entry.

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

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

Furthermore, the installation of microphone surveillance (“bugs”), either with or without trespass, was exempt from the procedure for Attorney General approval of wiretaps. Justice Department records indicate that no Attorney General formally considered the question of microphone surveillance involving trespass, except on a hypothetical basis, until 1952.⁷⁹

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

1. Main Developments of the 1946–1963 Period

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

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

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

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

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

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

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

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

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

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

a. Domestic Intelligence Authority

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

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

b. Scope of Domestic Intelligence

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

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

c. Accountability and Control

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

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

“cover” and used intrusive techniques affecting the rights of Americans.

d. Intrusive Techniques

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

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

e. Domestic Covert Action

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

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

2. Domestic Intelligence Authority

a. Anti-Communist Consensus

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

⁸¹ The Court held that the grave and probable danger posed by the Communist Party justified this restriction on free speech under the First Amendment: “The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The Federal Employee Loyalty-Security Program

(1) *Origins of the Program.*—President Truman established a federal employee loyalty program in 1947.⁸⁸ Its basic features were retained in the federal employee security program authorized by President Eisenhower in public Executive Order 10450, which, with some modifications, still applies today.⁸⁹

Although it had a much broader reach, the program originated out of well-founded concern that Soviet intelligence was then using the Communist Party as a vehicle for the recruitment of espionage agents.⁹⁰ President Truman appointed a Temporary 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."⁹² Consequently, the Executive Order included, as an indica-

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

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

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

⁹⁰ A report by a Canadian Royal Commission in June 1946 greatly influenced United States government policy. The Royal Commission stated that "a number of young Canadians, public servants and others, who begin with a desire to advance causes which they consider worthy, have been induced into joining study groups of the Communist Party. They are persuaded to keep this adherence secret. They have been led step by step along the 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.

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

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

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

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

No organizations were formally added to the Attorney General's list after 1955.⁹⁸ However, the FBI's "name check" reports on prospective employees were never limited to information about listed organizations. The broad standards for placing a group on the Attorney General's list were used to evaluate an employee's background, regardless of whether or not he was a member of a group on the list.⁹⁹ If a "name check" uncovered information about a prospective employee's association with a group which *might* come within those standards, the

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

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

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

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

⁹⁷ The FBI official in charge of the Internal Security Section of the 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. 48-49 for discussion of the FBI's COMINFIL program.

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

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

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

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

Director Hoover had objected that President Truman's order did not give the FBI 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's Truman's prediction was correct. His budget request of \$16 million for Civil Service and \$8.7 million for the FBI to conduct loyalty investigations was revised by Congress to allocate \$7.4 million to the FBI and only \$3 million to Civil Service.¹⁰⁹ The issue was finally resolved to the FBI's satisfaction when the President issued a statement declaring that there were "to be no exceptions" to the rule that the FBI would make all loyalty investigations.¹¹⁰

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

¹⁰¹ Executive Order 10450, section 8(d).

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

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

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

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

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

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

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

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

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

c. Executive Directives: Lack of Guidance and Controls

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

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

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

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

In 1950, after the outbreak of the Korean war and in the midst of Congressional consideration of new internal security legislation, Director Hoover recommended that Attorney General J. Howard McGrath¹¹⁴ and the NSC draft a statement which President Truman issued in July 1950 providing that the FBI:

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

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

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

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

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

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

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

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

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

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

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

3. *Scope of Domestic Intelligence*

a. *"Subversive Activities"*

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

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

¹¹⁶ See footnotes 19 and 22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹²⁵ 1960 FBI Manual Section 87, p. 5.

¹²⁶ 1960 FBI Manual Section 87, p. 5.

tion under the Smith Act. But no prosecutions were initiated under the Act after 1957.¹²⁷ The Justice Department advised the FBI in 1956 that such a prosecution required "an actual plan for a violent revolution."¹²⁸ The Department's position in 1960 was that "incitement to action in the foreseeable future" was needed.¹²⁹ Despite the strict requirements for prosecution, the FBI continued to investigate "subversive" organizations "from an intelligence viewpoint" to appraise their "strength" and "dangerousness."¹³⁰

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

- Political activities
- Legislative activities
- Domestic administration issues
- Negro question
- Youth matters
- Women's matters
- Farmers' Matters
- Cultural activities
- Veterans' matters
- Religion
- Education
- Industry¹³²

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

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

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

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

¹³⁰ 1960 FBI Manual Section 87, p. 5.

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

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

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

¹³⁴ Annual Report for 1958, p. 338.

¹³⁵ Annual Report for 1964, p. 375.

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

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

(4) *Exaggeration of Communist Influence.*—The FBI and the Justice Department justified the continuation of COMINFIL investigations, despite the Communist Party’s steady decline in the fifties and early 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.

¹³⁷ Annual Report for 1955, p. 195.

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

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

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

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

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

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

¹⁴³ 1960 FBI Manual Section 122, p. 1.

¹⁴⁴ SAC Letter No. 63-27, 6/11/63.

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

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

¹⁴⁷ 1960 FBI Manual Section 122, pp. 5-6.

¹⁴⁸ 1960 FBI Manual Section 122, pp. 5-6.

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

c. FBI Political Intelligence for the White House

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

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

Letters discussing Communist "influence" provided a considerable amount of extraneous information about the legislative process, including lobbying activities in support of civil rights legislation¹⁵⁷ 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

¹⁵⁰ See p. 37 for discussion of White House wiretap requests in 1945-1948.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The pattern continued during the Kennedy administration. A summary of material in FBI files on a prominent entertainer was volunteered to Attorney General Kennedy because Hoover thought it "may be of interest."¹⁷² Attorney General Kennedy sent to the President an FBI memorandum on the purely personal life of Dr. Martin Luther King, Jr.¹⁷³ Director Hoover supplied Attorney General Kennedy with background information on a woman who told an Italian newspaper that she had once been engaged to marry President Kennedy¹⁷⁴ 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

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

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

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

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

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

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

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

¹⁷⁰ Requests under the Roosevelt and Truman administrations, including wire-tap requests, are discussed at pp. 33 and 37.

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

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

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

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

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

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

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

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

d. IRS Investigations of Political Organizations

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

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

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

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

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

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

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

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

¹⁸¹ Leon Green testimony, 9/12/75, pp. 6-8.

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

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

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

4. *Accountability and Control*

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

a. *The Emergency Detention Act*

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Withholding Information

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

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

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

In 1955, the FBI tightened formal standards for the Security Index, reducing its size from 26,174 to 12,870 by 1958.¹⁹⁴ However, there is no indication that the FBI told the Department that it kept the names of persons taken off the Security Index on a Communist Index, because the Bureau believed such persons remained "potential threats."^{194a} The secret Communist Index was renamed the Reserve Index in 1960 and expanded to include "influential" persons deemed likely to "aid subversive elements" in an emergency because of their "subversive associations and ideology." Such individuals fell under the following categories:

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

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

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

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

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

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

^{194a} Memorandum from A. H. Belmont to L. V. Boardman, 1/14/55.

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

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

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

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

c. CIA Domestic Activity

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

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

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

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

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

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

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

Agency's subsequent domestic activity. A restriction against "police, law enforcement or internal security functions" first appeared in President Truman's order establishing the Central Intelligence Group in 1946.²⁰¹

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

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

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

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

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

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

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

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

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

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

²⁰⁴ 93 Cong. Rec. 9430 (1947).

²⁰⁵ 50 U.S.C. 403 (d) (3).

²⁰⁶ See pp. 102-103.

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

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

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

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

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

5. *Intrusive Techniques*

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

a. Communications Interception: CIA and NSA

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

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

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

²¹⁰ CIA Inspector General's Report, 1963.

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

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

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

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

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

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

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

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

The CIA sought no outside authorization before instituting its mail opening program. Several Post Office officials were misled into believing that the CIA's request for access to the mail only involved 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

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

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

²¹⁸ Abernathy memorandum, 8/21/61.

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

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

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

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

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

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

²²⁵ Helms, 10/22/75, Hearings, Vol. 4, pp. 87-89.

b. FBI Covert Techniques

(1) *Electronic Surveillance.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No permanent records were kept for approvals of "black bag jobs," or surreptitious entries conducted for purposes other than installing a "bug." The FBI has described the procedure for authorization of surreptitious entries as requiring the approval of Director Hoover or his Assistant Clyde Tolson. The authorizing memorandum was filed in the Assistant Director's office under a "Do Not File" procedure, and there-

²³³ In the course of an investigation, authorized by Attorney General Kennedy, into lobbying efforts on behalf of a foreign country regarding sugar quota legislation, the FBI determined that Congressman Harold D. Cooley, chairman of the House Agriculture Committee, planned to meet with representatives of a foreign country in a hotel room. (FBI memorandum, 2/15/61; Memorandum from W. R. Wannall to W. C. Sullivan, 12/22/66.)

At the instruction of Director Hoover, the Bureau installed a microphone in the hotel room to record this meeting. (FBI memorandum, 2/15/61; Memorandum from D. E. Moore to A. H. Belmont, 2/16/61.) The results of the meeting were subsequently disseminated to the Attorney General. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 2/18/61.)

A 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 an hour or two before the meeting actually occurred—Director Hoover spoke with Attorney General Kennedy and, according to Hoover's contemporaneous memorandum, advised him that the Cooley meeting was to take place that day and that "we are trying to cover" it. (Memorandum from J. Edgar Hoover to Messrs. Tolson, Parsons, Mohr, Belmont, and DeLoach, 2/17/61.)

²³⁴ According to records compiled by the FBI, there was FBI microphone surveillance of one "black separatist group" in 1960; one "black separatist group" and one "black separatist group functionary" in 1961; two "black separatist groups," one "black separatist group functionary," and one "(white) racist organization" in 1962; and two "black separatist groups" and one "black separatist group functionary" in 1963. (Memorandum from FBI to Select Committee, 10/23/75.)

²³⁵ The Select Committee has determined that the FBI, on at least one occasion, maintained no records of the approval of a microphone surveillance authorized by an Assistant Director. (FBI Memorandum, 1/30/75, Subject: Special Squad at Democratic National Convention, Atlantic City, New Jersey, 8/22-28/64.)

²³⁶ Memorandum from the FBI to the Senate Select Committee, 10/17/75. This memorandum also states that, on the basis of the recollections of agents and a review of headquarters files, the FBI has "been able to identify" the following number of "surreptitious entries for microphone installations" in "internal security, intelligence, and counterintelligence" investigations: 1960: 49; 1961: 63; 1962: 75; 1963: 79; and the following number of such entries "in criminal investigations" (as opposed to intelligence): 1960: 11; 1961: 69; 1962: 106; 1963: 84.

after destroyed. In the field office, the Special Agent in Charge maintained a record of approval in his office safe. At the next yearly field office inspection, an Inspector would review these records to ensure that the SAC had secured FBI headquarters approval in conducting surreptitious 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

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 E. 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 Wamall, FBI Intelligence Division, 10/24/75, Hearings, vol. 4, pp. 148-49.

²⁴⁰ Memorandum from San Francisco field office to FBI Headquarters, 3/11/60.

²⁴¹ Memorandum from S. B. Donahoe to W. C. Sullivan, 9/15/61; Memorandum from San Francisco field office to FBI headquarters, 7/28/61.

²⁴² Letter from Attorney General Clark to President Truman, 7/17/46.

A wiretap on an official of the Nation of Islam, originally authorized by Attorney General Herbert Brownell in 1957, continued thereafter without re-authorization until 1965.²⁴³ Attorney General Robert Kennedy approved FBI requests for wiretaps on an Alabama Klan leader in 1963²⁴⁴ 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

²⁴³ Memorandum from Hoover to Brownell, 12/31/56.

²⁴⁴ Memorandum from Hoover to Kennedy, 10/9/63.

²⁴⁵ Memorandum from Hoover to Kennedy, 4/1/64.

²⁴⁶ Memorandum from Hoover to Kennedy, 2/24/64.

²⁴⁷ See Findings C and G and Committee Report on the FBI and Dr. Martin Luther King, Jr.

²⁴⁸ Memorandum from R. D. Cotter to W. C. Sullivan, 12/15/66. On the same day, and without specific authorization from the Attorney General, the FBI placed a wiretap on Norman's residence. Attorney General Kennedy was informed of the wiretap two days later, and approved it the following day. (Memorandum from J. Edgar Hoover to Attorney General Kennedy, 6/29/61.) The tap continued for four days until Norman went on vacation. (Memorandum from S. B. Donahoe to W. C. Sullivan, 7/3/61.) At no time did this or any other aspect of the FBI's investigation produce any evidence that Norman had actually obtained classified information. An FBI summary stated: "The majority of those interviewed thought a competent, well-informed reporter could have written the article without having reviewed or received classified information." (Memorandum from Cotter to Sullivan, 12/15/66.)

²⁴⁹ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/27/62.

²⁵⁰ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/31/62. The tap on the secretary lasted three weeks, and the tap on Baldwin a month. Memoranda from W. R. Wannall to W. C. Sullivan, 8/13/62 and 8/28/62.

²⁵¹ Unaddressed memorandum from A. H. Belmont, 1/9/63.

it was terminated.²⁵² It appears that only oral authorization was obtained for 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

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. Wannall 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 payoffs, they did reveal that possibly unlawful influence was again being exerted by the foreign government, and internal Bureau permission was obtained to continue them for sixty days beyond the initial thirty-day period. (Memorandum from W. R. Wannall to W. C. Sullivan, 8/16/62.)

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

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

6. Domestic Covert Action

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

a. COINTELPRO: Communist Party

The COINTELPRO program, authorized by Director Hoover against the Communist Party in 1956, had its roots in two lines of Bureau policy going back to the 1940s. The first was the accepted FBI

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.)

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

²⁶⁷ Testimony of William C. Sullivan, Assistant Director for the Domestic Intelligence Division (1961-1970) and Assistant to the Director (1970-1971), 11/1/75, pp. 42-43.

²⁶⁸ Memorandum from A. H. Belmont to L. V. Boardman, 8/28/56.

²⁶⁹ Memorandum from D. M. Ladd to J. Edgar Hoover, 2/27/46. According to this memorandum the underlying reason for such Bureau propaganda was to anticipate and counteract the "flood of propaganda from Leftist and so-called Liberal sources" which would "be encountered in the event of extensive arrests of Communists" if war with the Soviet Union broke out.

²⁷⁰ Belmont to Boardman, 8/28/56.

²⁷¹ A Bureau monograph in mid-1955 "measured" the Communist Party threat as:

"Influence over the masses, ability to create controversy leading to confusion and disunity, penetration of specific channels in American life where public opinion is molded, and espionage and sabotage *potential*." [Emphasis supplied.] (Letter from J. Edgar Hoover to Dillon Anderson, Special Assistant to the President, 7/29/55, and enclosed FBI monograph, "The Menace of Communism in the United States Today," pp. iv-v.)

The FBI official who served as Director Hoover's liaison with the CIA in the 1950s stated that "the Communist Party provided a pool of talent for the Soviet [intelligence] services" in the "30s and into the 40s." During that period the Soviets recruited agents "from the Party" to penetrate "the U.S. Government" and "scientific circles." He added, however, that "primarily because of the action and counter-action taken by the FBI during the late 40s, the Soviet services changed their tactics and considerably reduced any programs or projects designed to recruit CP members, realizing or assuming that they were getting heavy attention from the Bureau." (Testimony of former FBI liaison with CIA, 9/22/75, p. 32.)

²⁷² Belmont to Boardman, 8/28/65.

²⁷³ Belmont to Boardman, 9/5/56; memorandum from FBI headquarters to SAC, New York, 9/6/56.

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

b. Early Expansion of COINTELPRO

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

This marked the beginning of the progression from targeting Communist Party members, to those allegedly under Communist "influence," to persons taking positions supported by the Communists. For example, in 1964 targets under the Communist Party COINTELPRO label included a group with some Communist participants urging increased employment of minorities²⁷⁷ 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.

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

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

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

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

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

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

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

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