

II. THE GROWTH OF DOMESTIC INTELLIGENCE: 1936 TO 1976

A. SUMMARY

1. *The Lesson: History Repeats Itself*

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

2. *The Pattern: Broadening Through Time*

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

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

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

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

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

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

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

3. Three Periods of Growth for Domestic Intelligence

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

a. 1936-1945

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

b. 1946-1963

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

c. 1964-1976

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