III. FINDINGS

The Committee makes seven major findings. Each finding is accompanied by subfindings and by an elaboration which draws upon the evidentiary record set forth in our historical narrative (Part II herein) and in the thirteen detailed reports which will be published as supplements to this volume. We have sought to analyze in our findings characteristics shared by intelligence programs, practices which involved abuses, and general problems in the system which led to those abuses.

The findings treat the following themes that run through the facts revealed by our investigation of domestic intelligence activity: (A) Violating and Ignoring the Law; (B) Overbreadth of Domestic Intelligence Activity; (C) Excessive Use of Intrusive Techniques; (D) Using Covert Action to Disrupt and Discredit Domestic Groups; (E) Political Abuse of Intelligence Information; (F) Inadequate Controls on Dissemination and Retention; (G) Deficiencies in Control and Accountability.

Viewed separately, each finding demonstrates a serious problem in the conduct and control of domestic intelligence operations. Taken together, they make a compelling case for the necessity of change. Our recommendations (in Part IV) flow from this analysis and propose changes which the Committee believes to be appropriate in light of the record.

A. VIOLATING AND IGNORING THE LAW

Major Finding

The Committee finds that the domestic activities of the intelligence community at times violated specific statutory prohibitions and infringed the constitutional rights of American citizens.[1] The legal questions involved in intelligence programs were often not considered. On other occasions, they were intentionally disregarded in the belief that because the programs served the "national security" the law did not apply. While intelligence officers on occasion failed to disclose to their superiors programs which were illegal or of questionable legality, the Committee finds that the most serious breaches of duty were those of senior officials, who were responsible for controlling intelligence activities and generally failed to assure compliance with the law.

Subfindings

(a) In its attempt to implement instructions to protect the security of the United States, the intelligence community engaged in some ac-

[1] This section discusses the legal issues raised by particular programs and activities only; a discussion of the aggregate effect upon constitutional rights of all domestic surveillance practices is at p. 290 of the Conclusions section.

tivities which violated statutory law and the constitutional rights of American citizens.

(b) Legal issues were often overlooked by many of the intelligence officers who directed these operations. Some held a pragmatic view of intelligence activities that did not regularly attach sufficient significance to questions of legality. The question raised was usually not whether a particular program was legal or ethical, but whether it worked.

(c) On some occasions when agency officials did assume, or were told, that a program was illegal, they still permitted it to continue. They justified their conduct in some cases on the ground that the failure of "the enemy" to play by the rules granted them the right to do likewise, and in other cases on the ground that the "national security" permitted programs that would otherwise be illegal.

(d) Internal recognition of the illegality or the questionable legality of many of these activities frequently led to a tightening of security rather than to their termination. Partly to avoid exposure and a public "flap," knowledge of these programs was tightly held within the agencies, special filing procedures were used, and "cover stories" were devised.

(e) On occasion, intelligence agencies failed to disclose candidly their programs and practices to their own General Counsels, and to Attorneys General, Presidents, and Congress.

(f) The internal inspection mechanisms of the CIA and the FBI did not keep—and, in the case of the FBI, were not designed to keep—the activities of those agencies within legal bounds. Their primary concern was efficiency, not legality or propriety.

(g) When senior administration officials with a duty to control domestic intelligence activities knew, or had a basis for suspecting, that questionable activities had occurred, they often responded with silence or approval. In certain cases, they were presented with a partial description of a program but did not ask for details, thereby abdicating their responsibility. In other cases, they were fully aware of the nature of the practice and implicitly or explicitly approved it.

Elaboration of findings

The elaboration which follows details the general finding of the Committee that inattention to—and disregard of—legal issues was an all too common occurrence in the intelligence community. While this section focuses on the actions and attitudes of intelligence officials and certain high policy officials, the Committee recognizes that a pattern of lawless activity does not result from the deeds of a single stratum of the government or of a few individuals alone. The implementation and continuation of illegal and questionable programs would not have been possible without the cooperation or tacit approval of people at all levels within and above the intelligence community, through many successive administrations.

The agents in the field, for their part, rarely questioned the orders they received. Their often uncertain knowledge of the law, coupled with the natural desire to please one's superiors and with simple bureaucratic momentum, clearly contributed to their willingness to participate in illegal and questionable programs. The absence of any prosecutions for law violations by intelligence agents inevitably af-

fected their attitudes as well. Under pressure from above to accomplish their assigned tasks, and without the realistic threat of prosecution to remind them of their legal obligations, it is understandable that these agents frequently acted without concern for issues of law and at times assumed that normal legal restraints and prohibitions did not apply to their activities.

Significantly, those officials at the highest levels of government, who had a duty to control the activities of the intelligence community, sometimes set in motion the very forces that permitted lawlessness to occur—even if every act committed by intelligence agencies was not known to them. By demanding results without carefully limiting the means by which the results were achieved; by over-emphasizing the threats to national security without ensuring sensitivity to the rights of American citizens; and by propounding concepts such as the right of the "sovereign" to break the law, ultimate responsibility for the consequent climate of permissiveness should be placed at their door.[2]

Subfinding (a)

In its attempt to implement instructions to protect the security of the United States, the intelligence community engaged in some activities which violated statutory law and the constitutional rights of American citizens.

From 1940 to 1973, the CIA and the FBI engaged in twelve covert mail opening programs in violation of Sections 1701–1703 of Title 18 of the United States Code which prohibit the obstruction, interception, or opening of mail. Both of these agencies also engaged in warrantless "surreptitious entries"—break-ins—against American citizens within the United States in apparent violation of state laws prohibiting trespass and burglary. Section 605 of the Federal Communications Act of 1934 was violated by NSA's program for obtaining millions of telegrams of Americans unrelated to foreign targets and by the Army Security Agency's interception of domestic radio communications.

All of these activities, as well as the FBI's use of electronic surveillance without a substantial national security predicate, also infringed the rights of countless Americans under the Fourth Amendment protection "against unreasonable searches and seizures."

The abusive techniques used by the FBI in COINTELPRO from 1956 to 1971 included violations of both federal and state statutes prohibiting mail fraud, wire fraud, incitement to violence, sending obscene material through the mail, and extortion. More fundamentally, the harassment of innocent citizens engaged in lawful forms of political expression did serious injury to the First Amendment guarantee of freedom of speech and the right of the people to assemble peaceably and to petition the government for a redress of grievances. The Bureau's maintenance of the Security Index, which targeted thousands of American citizens for detention in the event of national emergency, clearly overstepped the permissible bounds established by Congress in the Emergency Detention Act of 1950 and represented, in contravention of the Act, a potential general suspension of the privilege

[2] The accountability of senior administration officials is noted here to place the details which follow in their proper context, and is developed at greater length in Finding G, p. 265.

of the writ of habeas corpus secured by Article I, Section 9, of the Constitution.

A distressing number of the programs and techniques developed by the intelligence community involved transgressions against human decency that were no less serious than any technical violations of law. Some of the most fundamental values of this society were threatened by activities such as the smear campaign against Dr. Martin Luther King, Jr., the testing of dangerous drugs on unsuspecting American citizens, the dissemination of information about the sex lives, drinking habits, and marital problems of electronic surveillance targets, and the COINTELPRO attempts to turn dissident organizations against one another and to destroy marriages.

Subfinding (b)

Legal issues were often overlooked by many of the intelligence officers who directed these operations. Some held a pragmatic view of intelligence activities that did not regularly attach sufficient significance to questions of legality. The question raised was usually not whether a particular program was legal or ethical, but whether it worked.

Legal issues were clearly not a primary consideration—if they were a consideration at all—in many of the programs and techniques of the intelligence community. When the former head of the FBI's Racial Intelligence Section was asked whether anybody in the FBI at any time during the 15-year course of COINTELPRO discussed its constitutionality or legal authority, for example, he replied: "No, we never gave it a thought." [3] This attitude is echoed by other Bureau officials in connection with other programs. The former Section Chief of one of the FBI's Counterintelligence sections, and the former Assistant Director of the Bureau's Domestic Intelligence Division both testified that legal considerations were simply not raised in policy decisions concerning the FBI's mail opening programs.[4] Similarly, when the FBI was presented with the opportunity to assume responsibility for the CIA's New York mail opening operation, legal factors played no role in the Bureau's refusal; rather, the opportunity was declined simply because of the attendant expense, manpower requirements, and security problems.[5]

One of the most abusive of all FBI programs was its attempt to discredit Dr. Martin Luther King, Jr. Yet former FBI Assistant Director William C. Sullivan testified that he "never heard anyone raise the question of legality or constitutionality, never." [6]

Former Director of Central Intelligence Richard Helms testified publicly that he never seriously questioned the legal status of the twenty-year CIA New York mail opening project because he assumed his predecessor, Allen Dulles, had "made his legal peace with [it]." [7]

[3] George C. Moore testimony, 11/3/75, p. 83.

[4] Branigan testimony, 10/9/75, pp. 13, 139, 140; Wannall testimony, 10/24/75, Hearings, Vol. 4, p. 149.

[5] Branigan, 10/9/75, p. 89.

[6] William C. Sullivan testimony, 11/1/75, pp. 49, 50.

[7] Richard Helms, 10/22/75, Hearings, Vol. 4, p. 94. This testimony is partially contradicted, however, by the fact that in 1970 Helms signed the Huston Report, in which "covert mail coverage"—defined as mail opening—was specifically described as illegal. (Special Report, June 1970, p. 30.)

". . . [F]rom time to time," he said, "the Agency got useful information out of it," [8] so he permitted it to continue throughout his seven-year tenure as Director.

The Huston Plan that was prepared for President Richard Nixon in June 1970 constituted a virtual charter for the use of intrusive and illegal techniques against American dissidents as well as foreign agents. Its principal author has testified, however, that during the drafting sessions with representatives of the FBI, CIA, NSA, and Defense Intelligence Agency, no one ever objected to any of the recommendations on the grounds that they involved illegal acts, nor was the legality or constitutionality of any of the recommendations ever discussed.[9]

William C. Sullivan, who participated in the drafting of the Huston Plan and served on the United States Intelligence Board and as FBI Assistant Director for Intelligence for 10 years, stated that in his entire experience in the intelligence community he never heard legal issues raised at all:

> We never gave any thought to this realm of reasoning, because we were just naturally pragmatists. The one thing we were concerned about was this: Will this course of action work, will it get us what we want, will we reach the objective that we desire to reach? As far as legality is concerned, morals, or ethics, [it] was never raised by myself or anybody else . . . I think this suggests really in government that we are amoral. In government—I am not speaking for everybody—the general atmosphere is one of amorality.[10]

Subfinding (c)

On some occasions when agency officials did assume, or were told, that a program was illegal, they still permitted it to continue. They justified their conduct in some cases on the ground that the failure of "the enemy" to play by the rules granted them the right to do likewise, and in other cases on the ground that the "national security" permitted programs that would otherwise be illegal.

Even when agency officials recognized certain programs or techniques to be illegal, they sometimes advocated their implementation or permitted them to continue nonetheless.

This point is illustrated by a passage in a 1954 memorandum from an FBI Assistant Director to J. Edgar Hoover, which recommended that an electronic listening device be planted in the hotel room of a suspected Communist sympathizer: "Although such an installation will not be legal, it is believed that the intelligence information to be obtained will make such an installation necessary and desirable." [11] Hoover approved the installation.[12]

More than a decade later, a memorandum was sent to Director Hoover which described the current FBI policy and procedures for "black bag jobs" (warrantless break-ins for purposes other than microphone installation). This memorandum read in part:

[8] Helms, 10/22/75, Hearings, Vol. 4, p. 103.
[9] Huston, 9/23/75, Hearings, Vol. 2, p. 21.
[10] Sullivan, 11/1/75, pp. 92, 93.
[11] Memorandum from Mr. Boardman to the Director, FBI, 4/30/54.
[12] Ibid.

> Such a technique involves trespass and is clearly illegal; therefore, it would be impossible to obtain any legal sanction for it. Despite this, "black bag" jobs have been used because they represent an invaluable technique in combatting subversive activities . . . aimed directly at undermining and destroying our nation.[13]

In other words, breaking the law, was seen as useful in combating those who threatened the legal fabric of society. Although Hoover terminated the general use of "black bag jobs" in July 1966, they were employed on a large scale before that time and have been used in isolated instances since then.

Another example of disregard for the law is found in a 1969 memorandum from William C. Sullivan to Director Hoover. In June of that year, Sullivan was requested by the Director, apparently at the urging of White House officials to travel to France for the purpose of electronically monitoring the conversations of journalist Joseph Kraft.[14] With the cooperation of local authorities, Sullivan was able to have a microphone installed in Kraft's hotel room, and informed Hoover of his success. "Parenthetically," he wrote in his letter to the Director, "I might add that such a cover is regarded as illegal." [15]

The attitude that legal standards and issues of privacy can be overridden by other factors is further reflected in a memorandum written by Richard Helms in connection with the testing of dangerous drugs on unsuspecting American citizens in 1963. Mr. Helms wrote the Deputy Director of Central Intelligence:

> While I share your uneasiness and distaste for any program which tends to intrude on an individual's private and legal prerogatives, I believe it is necessary that the Agency maintain a central role in this activity, keep current on enemy capabilities in the manipulation of human behavior, and maintain an offensive capability. I, therefore, recommend your approval for continuation of this testimony program . . .[15a]

The history of the CIA's New York mail opening program is replete with examples of conscious contravention of the law. The original proposal for large-scale mail opening in 1955, for instance, explicitly recognized that "[t]here is no overt, authorized or legal censorship or monitoring of first class mails which enter, depart or transit the United States at the present time." [16] A 1962 memorandum on the project noted that its exposure could "give rise to grave charges of criminal misuse of the mails by Government agencies" and that "existing Federal statutes preclude the concoction of any legal excuse for the violation . . ." [17] And again in 1963, a CIA officer wrote: "There is no legal basis for monitoring postal communications in the United States except during time of war or national emergency . . ." [18]

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[13] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66.
[14] Report of the House Judiciary Committee, 8/20/74, p. 150.
[15] Memorandum from William C. Sullivan to J. Edgar Hoover, 6/30/69.
[15a] Memorandum from Richard Helms to the Deputy Director of Central Intelligence, 12/17/63.
[16] Blind memorandum, 11/7/55.
[17] Memorandum from Deputy Chief, Counterintelligence Staff, to Director, Office of Security, 2/1/62.
[18] Memorandum from Chief, CI/Project to Chief, Division, 9/26/63.

Both the former Chief of the Counterintelligence Staff and the former Director of Security—who were in charge of the New York project—testified that they believed it to be illegal.[19] One Inspector General who reviewed the project in 1969 also flatly stated: "[O]f course, we knew that this was illegal. . . . [E]verybody knew that it was [illegal]. . . ." [20]

In spite of the general recognition of its illegality, the New York mail opening project continued for a total of 20 years and was not terminated until 1973, when the Watergate-created political climate had increased the risks of exposure.[21]

With the full knowledge of J. Edgar Hoover, moreover, the FBI continued to receive the fruits of this project for three years after the FBI Director informed the President of the United States that "the FBI is opposed to implementing any covert mail coverage because it is clearly illegal . . ." [22] The Bureau's own mail opening programs had been terminated in 1966, but it continued intentionally and knowingly to benefit from the illegal acts of the CIA until 1973.

The Huston Plan is another disturbing reminder of the fact that intelligence programs and techniques may be advocated and authorized with the knowledge that they are illegal. At least two of the options that were presented to President Nixon were described as unlawful on the face of the Report. Of "covert mail coverage" (mail opening) it was written that "[t]his coverage, not having the sanction of law, runs the risk of any illicit act magnified by the involvement of a Government agency." [23] The Report also noted that surreptitious entry "involves illegal entry and trespass." [24] Thus, the intelligence community presented the nation's highest executive official with the option of approving courses of action described as illegal. The fact that President Nixon did authorize them, even if only for five days, is more disquieting still.[25]

When President Nixon eventually revoked his approval of the Huston Plan, the intelligence community nevertheless proceeded to initiate some programs suggested in the Plan. Intelligence agencies also continued to employ techniques recommended in the Plan, such as mail opening which had been used previously without presidential approval.[26]

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[19] Angleton, 9/24/75, Hearings, Vol. 2, p. 61; Howard Osborn, deposition, 8/28/75, p. 90.

[20] Gordon Stewart, 9/30/75, p. 28.

[21] See e.g., Howard Osborn deposition, 8/28/75. p. 89.

[22] Special Report, June 1970, p. 31.

[23] Special Report, June 1970, p. 30.

[24] Special Report, June 1970, p. 32.

[25] President Nixon stated that he approved these activities in part because they "had been found to be effective." (Response of Richard M. Nixon to Senate Select Committee Interrogatory 19, 3/9/76, p. 13.)

[26] For a description of the techniques which continued or were subsequently instituted, see pp. 115–116.

A memorandum from John Dean to John Mitchell suggests that, after President Nixon's revocation of approval for the Huston Plan, the White House itself supported the continued pursuit of some of the objectives of the Huston Plan. Through an interagency unit known as the Intelligence Evaluation Committee. (Memorandum from John Dean to the Attorney General, 9/18/70.) In this memorandum, Dean suggested the creation of such a unit for "both operational and evaluation purposes." He wrote in part:

"[T]he unit can serve to make appropriate recommendations for the type of intelligence that should be immediately pursued by the various agencies. In

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The recent history of Army intelligence provides an additional example of continuing an activity described as illegal. Beginning in 1967, the Army Security Agency monitored the radio communications of amateur radio operators in this country to determine if dissident elements planned disruptive activity at particular demonstrations and events. Because Army officials questioned whether such monitoring was legal under Section 605 of the Federal Communications Act of 1934, they requested a legal opinion from the Federal Communications Commission. At a meeting held in August 1968, the FCC advised the Army that such monitoring was illegal under the Act. FCC representatives also stated that the matter had been raised with Attorney General Ramsey Clark and that he had disapproved the program.[27] The FCC agreed, however, to submit a written reply to the Army, stating only that it could not "provide a positive answer to the Army's proposal." [28]

Despite having been told that their monitoring activity was illegal, and that the Attorney General himself disapproved it, the Army Security Agency continued to monitor the radio communications of American citizens for another two years.[29]

Several factors may explain the intelligence community's frequent disregard of legal issues.

Some intelligence officials expressed the view that the legal and ethical restraints that applied to the rest of society simply did not apply to intelligence activities. This concept is reflected in a 1959 memorandum on the Army's covert drug testing program: "In intelligence, the stakes involved and the interest of national security may permit a more tolerant interpretation of moral-ethical values . . ." [30]

As William C. Sullivan also pointed out, many intelligence officers had been imbued with a "war psychology." "Legality was not questioned," he said, "it was not an issue." [31] In war, one simply did what

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regard to this . . . point, I believe we agreed that it would be inappropriate to have any blanket removal of restrictions; rather, the most appropriate procedure would be to decide on the type of intelligence we need, based on an assessment of the recommendations of this unit, and then to proceed to remove the restraints as necessary to obtain such intelligence." (Dean memorandum, 9/18/70.)

[27] Memorandum for the record by Army Assistant Chief of Staff for Intelligence, 8/16/68; Staff summary of Sol Lindenbaum (former Executive Assistant to the Attorney General) interview, 5/8/75.

[28] Memorandum for the record by Army Assistant Chief of Staff for Intelligence, 8/16/68.

[29] The Army's general domestic surveillance program provides an example of evasion of a departmental order which had been issued out of concern with legal issues. The practice of collecting vast amounts of information on American citizens was terminated in 1971, when new Department of Defense restrictions came into effect calling for the destruction of all files on "unaffiliated" persons and organizations. Rather than destroying the files, however, several Army intelligence units simply turned their intelligence files on dissident individual and groups over to local police authorities; and one Air Force counterintelligence unit in San Diego began to create new files the next year. (Hearings before Subcommittee on Constitutional Rights, Committee on the Judiciary, U.S. Senate, 92nd Congress, 1st session, 1971, p. 1297; "Ex-FBI Aid Accused in Police Spy Hearings," *Chicago Tribune*, 6/21/75, p. 3.)

[30] USAINTC Staff Study: Material Testing Program EA 1729, 10/15/59.

[31] Sullivan attributes much of this attitude to the molding influence of World War II upon young intelligence agents who later rose to positions of influence in

one was "expected to do as a soldier." [32] "It was my assumption," said one FBI official connected with the Bureau's mail opening programs, "that what we were doing was justified by what we had to do." [33] Since the "enemy" did not play by the rules, moreover, intelligence officials often believed they could not afford to do so either.[34]

One FBI intelligence officer appeared to attribute the disregard of the law in the Bureau's COINTELPRO operations to simple restlessness on the part of "action-oriented" FBI agents. George C. Moore, the Racial Intelligence Section Chief, testified that:

> . . . the FBI's counterintelligence program came up because if you have anything in the FBI, you have an action-oriented group of people who see something happening and want to do something to take its place.[36]

Others in the intelligence community have contended that questionable and illegal acts were justified by a law higher than the United States Code or the Constitution. An FBI Counterintelligence Section Chief, for example, stated the following reason for believing in the necessity of techniques such as mail opening:

> The greater good, the national security, this is correct. This is what I believed in. Why I thought these programs were good, it was that the national security required this, this is correct.[37]

Similarly, when intelligence officials secured the cooperation of telegraph company executives for Project SHAMROCK, in which NSA received millions of copies of international telegraph messages without the sender's knowledge, they assured the executives that they would not be subjected to criminal liability because the project was "in the highest interests of the nation." [38]

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the intelligence community. (Sullivan, 11/1/75, pp. 94–95.) Disregard of the "niceties of law," he stated, continued after the war had ended:

"Along came the Cold War. We pursued the same course in the Korean War, and the Cold War continued, then the Vietnam War. We never freed ourselves from that psychology that we were indoctrinated with, right after Pearl Harbor, you see. I think this accounts for the fact that nobody seemed to be concerned about raising the question is this lawful, is this legal, is this ethical? It was just like a soldier in the battlefield. When he shot down an enemy he did not ask himself is this legal or lawful, is it ethical? It is what he was expected to do as a soldier."

"We did what we were expected to do. It became part of our thinking, a part of our personality." (Sullivan, 11/1/75, pp. 95, 96.)

Unfortunately, it made too little difference whether the "enemy" was a foreign spy, a civil rights leader, or a Vietnam protester.

[32] Sullivan, 11/1/75, p. 96.

[33] Branigan, 10/9/75, p. 41.

[34] Staff summary of William C. Sullivan interview, 6/10/75.

[36] Moore deposition, 11/3/75, p. 79.

[37] Branigan deposition, 1/9/75, p. 41. Richard Helms referred to another kind of "greater good" when asked to speculate about the possible motivation of a CIA scientist who did not heed President Nixon's directive to destroy all biological and chemical toxins. Noting that the scientist might have "had thoughts about immunization . . . or treatment of disease where [the toxin he had developed] might be useful," Helms said that the retention of this biological agent could be explained as "yielding to that human impulse of the greater good." (Richard Helms testimony, 9/15/75, p. 96.)

[38] Robert Andrews testimony 9/23/75, p. 34; See NSA Report: "SHAMROCK." By cooperating with the Government in SHAMROCK, executives of three companies chose to ignore the advice of their respective legal counsels who had recom-

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Perhaps the most novel reason for advocating illegal action was proffered by Tom Charles Huston. Huston explained that he believed the real threat to internal security was potential repression by right-wing forces within the United States. He argued that the "New Left" was capable of producing a climate of fear that would bring forth every repressive demagogue in the country. Huston believed that the intelligence professionals, if given the chance, could protect the people from the latent forces of repression by monitoring the New Left, including by illegal means.[39] Illegal action directed against the New Left, in other words, should be used by the Government to forestall potential repression by the Right.

In attempting to explain why illegal activities were advocated and defended, the impact of the attitudes and actions of government officials in supervisory positions—Presidents, Cabinet officers, and Congressmen—should not be discounted. Their occasional endorsement of such activities, as well as the atmosphere of permissiveness created by their emphasis on national security and their demands for results, clearly contributed to the notion that strict adherence to the law was unimportant. So, too, did the concept, propounded by some senior officials, that a "sovereign" president may authorize violations of the law.

Whatever the reasons, however, it is clear that a number of intelligence officers acted in knowing contravention of the law.

Subfinding (d)

Internal recognition of the illegality or questionable legality of many of these activities frequently led to a tightening of security rather than to their termination. Partly to avoid exposure and a public "flap," knowledge of these programs was tightly held within the agencies, special filing procedures were used, and "cover stories" were devised.

When intelligence agencies realized that certain programs and techniques were of questionable legality, they frequently took special security precautions to avoid public exposure, criticism, and embarrassment. The CIA's study of student unrest throughout the world in the late 1960s, for example, included a section on student dissent in the United States, an area that was clearly outside the Agency's statutory charter. DCI's Hichard Helms urged the President's national security advisor, Henry Kissinger, to treat it with extreme sensivity in light of the acknowledged jurisdictional violation:

> "Herewith is a survey of student dissidence world-wide as requested by the President. In an effort to round out our discussion of this subject, we have included a section on American students. This is an area not within the charter of this Agency, so I need not emphasize how extremely sensitive this makes the paper. Should anyone learn of its existence, it would prove most embarrassing for all concerned." [40]

Concern for the FBI's public image prompted security measures which protected numerous questionable activities. For example, in

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mended against participation because they considered the program to be in violation of the law and FCC regulations. (Memorandum for the record, Armed Forces Security Agency, Subject: SHAMROCK Operation, 8/25/50.)

[39] Tom Charles Huston deposition, 5/22/75, p. 43; Staff Summary of Tom Charles Huston interview, 5/22/75.

[40] Letter from Richard Helms to Henry Kissinger, 2/18/69.

approving or denying COINTELPRO proposals, many of which were clearly illegal, a main consideration was preventing "embarrassment to the Bureau."[41] A characteristic caution to FBI agents appears in the letter which initiated the COINTELPRO against "Black Nationalists":

> You are also cautioned that the nature of this new endeavor is such that under no circumstances should the existence of the program be made known outside the Bureau and appropriate within-office security should be afforded to sensitive operations and techniques considered under the program.

Examples of attention to such security are that anonymous letters had to be written on commercially purchased stationery; newsmen had to be so completely trustworthy that they were guaranteed not to reveal the Bureau's interest; and inquiries of law enforcement officials had to be made under the pretext of a criminal investigation.

A similar preoccupation with security measures for improper activities affected both the NSA and the Army Security Agency.

NSA's guidelines for its watch list activity provided that NSA's name should not be on any of the disseminated watch list material involving Americans. The aim was to "restrict the knowledge that such information is being collected and processed" by NSA.[43]

The Army Security Agency's radio monitoring activity, which continued even after the Army was told that the FCC and the Attorney General regarded it as illegal, also had to be conducted in secrecy if a public outcry was to be avoided. When Army officials decided to permit radio monitoring in connection with the military's Civil Disturbance Collection Plan, their instruction provided that all ASA personnel had to be "disguised" either in civilian clothes or as members of regular military units.[44]

The perceived illegality—and consequent "flap potential"—of the CIA's New York mail opening project led Agency officials to formulate a drastic strategy to follow in the event of public exposure. A review of the project by the Inspector General's Office in the early 1960s concluded that it would be desirable to fabricate a "cover story." A formal recommendation was therefore made that "[a]n emergency plan and cover story be prepared for the possibility that the operation might be blown."[45] In response to this recommendation, the Deputy Chief of the Counterintelligence Staff agreed that "a 'flap' will put us 'out of business' immediately and may give rise to grave charges of criminal misuse of the mails by government agencies," but he argued:

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[41] See COINTELPRO Report: Sec. V, "Outside the Bureau" memorandum; from FBI Headquarters to all SAC's, 8/25/67.

[43] Buffham, 9/12/75, p. 20; MINARET Charter, 7/1/69.

At other times, however, NSA's special security measures were applied to protect documents which concerned far more than NSA. Thus, at Richard Helms suggestion, Huston Plan working papers and documents were all stamped with legends designed to protect NSA's lawful communications activity, although only a small portion of the documents actually concerned NSA. (Unaddressed memorandum, Subject: "Interagency Committee on Intelligence, Working Subcommittee, Minutes of the First Meeting," 6/10/70.)

[44] Department of Army Message to Subordinate Commands, 3/31/68.

[45] CIA memorandum, Subject: Inspector General's Survey of the Office of Security, Annex II, undated.

> Since no good purpose can be served by an official admission of the violation, and existing Federal statutes preclude the concoction of any legal excuse for the violation, it must be recognized that no cover story is available to any Government Agency. Therefore, it is important that all Federal law enforcement and US Intelligence Agencies vigorously deny any association, direct or indirect, with any such activity as charged. . . . Unless the charge is supported by the presentation of interior items from the Project, it should be relatively easy to "hush up" the entire affair, or to explain that it consists of legal mail cover activities conducted by the Post Office at the request of authorized Federal agencies. Under the most unfavorable circumstances . . . it might be necessary after the matter has cooled off during an extended period of investigation, to find a scapegoat to blame for unauthorized tampering with the mails. Such cases by their very nature do not have much appeal to the imagination of the public, and this would be an effective way to resolve the initial charge of censorship of the mails.[46]

This strategy of complete denial and transferring blame to a scapegoat was approved by the Director of Security in February 1962.[47]

Another extreme example of a security measure that was adopted because of the threat that illegal activity might be exposed was the outright destruction of files.

The FBI developed a special filing system—or, more accurately, a destruction system—for memoranda written about illegal techniques, such as break-ins,[48] and highly questionable operations, such as the microphone surveillance of Joseph Kraft.[49] Under this system—which was referred to as the "DO NOT FILE" procedure—authorizing documents and other memoranda were filed in special safes at headquarters and field offices until the next annual inspection by the Inspection Division, at which time they were to be systematically destroyed.[50]

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[46] Memorandum from Deputy Chief, CI Staff, to Director Office of Security, 2/1/62.

[47] Memorandum from Sheffield Edwards, Director of Security, to Deputy Director for Support, 2/21/62.

[48] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66. The same document that describes the application of the "DO NOT FILE" procedure to "black bag jobs" also notes that before a break-in could be approved within the FBI, the Special Agent in Charge of the field office had to assure headquarters that it could be accomplished without "embarrassment to the Bureau." (Sullivan memorandum, 7/19/66.)

An isolated instance of file destruction apparently occurred in the Los Angeles office of the Internal Revenue Service in December 1974, at a time when Congressional investigation of the intelligence agencies was imminent. This office had collected large amounts of essentially political information regarding black militants and political activists. In violation of internal document destruction procedures the files were destroyed prior to their proposed review by IRS authorities. See IRS Report; Sec. IV. "The Information Gathering and Retrieval System"; Staff Summary of interview with Chief, IRS Division, Los Angeles, 8/1/75.

[49] For example, letters from W. C. Sullivan to J. Edgar Hoover, 6/30/69, 7/2/69, 7/3/69, 7/7/69. These letters were sent to Hoover from Paris, where Sullivan coordinated the Kraft surveillance. All of them bear the notation "DO NOT FILE."

[50] Memorandum from W. C. Sullivan to C. D. DeLoach, 7/19/66.

Subfinding (e)

On occasion, intelligence agencies failed to disclose candidly programs and practices to their own General Counsels, and to Attorney Generals, Presidents, and Congress.

(i) Concealment from Executive Branch Officials

Intelligence officers frequently concealed or misrepresented illegal activities to their own General Counsel and superiors within and outside the agencies in order to protect these activities from exposure.

For example, during the entire 20-year history of the CIA's mail opening project, the Agency's General Counsel was never informed of its existence. According to one Agency official, this knowledge was purposefully kept from him. Former Inspector General Gordon Stewart testified:

> Well, I am sure that it was held back from [the General Counsel] on purpose. An operation of this sort in the CIA is run—if it is closely held, it is run by those people immediately concerned, and to the extent that it is really possible, according to the practices that we had in the fifties and sixties, those persons not immediately concerned were supposed to be ignorant of it.[51]

The evidence also indicates that two Directors of Central Intelligence under whom the New York mail operations continued—John McCone and Admiral Raborn—were never informed of its existence.[52] In 1954, Postmaster General Arthur Summerfield was informed that the CIA operated a mail cover project in New York, but he was not told that the Agency opened or intended to open any mail.[53] In 1965, the CIA briefly considered informing Postmaster General John A. Gronouski about the project when its existence was felt to be jeopardized by a congressional subcommittee that was investigating the use of mail covers and other investigative techniques by federal agencies. According to an internal memorandum, however, the idea was quickly rejected "in view of various statements by Gronouski before this subcommittee." [54] Since Gronouski had agreed with the subcommittee that tighter administrative controls on mail covers were necessary and generally supported the principle of the sanctity of the mail, it is reasonable to infer that CIA officials assumed he would not be sympathetic to the technique of mail opening.[55]

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[51] Gordon Stewart, 9/30/75, p. 29.

[52] McCone, 10/9/75, pp. 3–4; Angleton, 9/17/75, p. 20; Osborn, 10/21/75; Hearings, Vol. 4, p. 38.

[53] Memorandum from Richard Helms to Director of Security, 5/17/74; Helms, 10/22/75, Hearings, Vol. 4, p. 84. By the CIA's own account, moreover, at most only three Cabinet-level officials may have been told about the mail opening aspects of this project. Each of these three—Postmasters General J. Edward Day and Winton M. Blount, and Attorney General John Mitchell—dispute the Agency's claim. (Day, 10/22/75, Hearings, Vol. 4, p. 45; Blount, 10/22/75, Hearings, Vol. 4, p. 47; Mitchell, 10/2/75, pp. 13–14.)

[54] Blind memorandum from "CIA Officer," 4/23/65.

[55] *Ibid.* Mr. Gronouski testified as follows about the CIA's successful attempt to keep knowledge of the New York project from him:

"When this news [about CIA mail opening] broke [in 1975], I thought it was incredible that a person in a top position of responsibility in Government in an agency should have something of this sort that is very illegal going on within his own agency and did not know about it. It is not that I did not try to know about these things. I think it is incumbent upon anybody at the top office to try to know everything that goes on in his organization." (Gronouski, 10/22/75, Hearings, Vol. 4 p. 44.)

The only claim that any President may have known about the project was made by Richard Helms, who testified that "there was a possibility" that he "mentioned" it to President Lyndon Johnson in 1967 or 1968.[56] No documentary evidence is available that either supports or refutes this statement. During the preparation of the Huston Plan, neither CIA nor FBI representatives informed Tom Charles Huston, President Nixon's representative, that the mail opening project existed. The final interagency report on the Huston Plan signed by Richard Helms and J. Edgar Hoover, was sent to the President with the statement, contrary to fact, that all mail opening programs by federal agencies had been discontinued.[57]

In connection with another CIA mail opening project, middle-level Agency officials apparently did not even tell their own superiors within the CIA that they intended to open mail, as opposed to merely inspecting envelope exteriors. The ranking officials testified that they approved the project believing it to be a mail cover program only.[58] No Cabinet officials or President knew of this project and the approval of the Deputy Chief Postal Inspector (for what he also believed to be a mail cover operation) was secured through conscious deception.[59]

A pattern of concealment was repeated by the FBI in their mail opening programs. There is no claim by the Bureau that any Postmaster General, Attorney General, or President was ever advised of the true nature and scope of its mail projects. One FBI official testified that it was an unofficial Bureau policy not to inform postal officials with whom they dealt of the actual intention of FBI agents in receiving the mail, and there is no indication that this policy was ever violated.[60] At one point in 1965, Assistant Director Alan Belmont and Inspector Donald Moore apparently informed Attorney General Nicholas deB. Katzenbach that FBI agents received custody of the mail in connection with espionage cases on some occasions.[61] But Moore testified that the Attorney General was not told that mail was actually opened. When asked if he felt any need to hold back from Katzenbach the fact of mail openings as opposed to the fact that Bureau agents received direct access to the mail, Moore replied:

> It is perhaps difficult to answer. Perhaps I could liken it to . . . a defector in place in the KGB. You don't want to tell anybody his name, the location, the title, or anything like that. Not that you don't trust them completely, but the fact

[56] Helms, 10/23/75, pp. 28, 30–31.

[57] Special Report, p. 29. Richard Helms testified as follows about this inaccurate statement:

". . . the only explanation I have for it was that this applied entirely to the FBI and had nothing to do with the CIA, that we never advertised to this Committee or told this Committee that this mail operation was going on, and there was no intention of attesting to a lie. . . ."

"And if I signed this thing, then maybe I didn't read it carefully enough."

"There was no intention to mislead or lie to the President." (Helms, 10/22/75, Hearings Vol. 4, p. 95).

[58] Howard Osborn, 8/28/75, pp. 58, 59; Thomas Karamessines, 10/8/75, p. 12; Richard Helms, 9/10/75, p. 127.

[59] For example, Chief, Security Support Division memorandum, 12/24/74; Memorandum from C/TSD/CCG/CRB to the file, 3/26/69; memorandum from C/TSD/CCG/CRB to the file, 9/15/69.

[60] Donald E. Moore, 10/1/75, p. 79.

[61] Moore, 10/1/75, p. 31; Katzenbach, 12/3/75, Hearings, vol. 6, pp. 204, 205.

> is that any time one additional person becomes aware of it, there is a potential for the information to . . . go further.[62]

Another Bureau agent speculated that the Attorney General was not told because mail opening "was not legal, as far as I knew." [63]

Similarly, there is no indication that the FBI ever informed any Attorney General about its use of "black bag jobs" (illegal break-ins for purposes other than microphone installations); the full scope of its activities in COINTELPRO; or its submission of names for inclusion on either the CIA's "Watch List" for mail opening or, before 1973, on the NSA's "Watch List" for electronic monitoring of international communications.[64]

After J. Edgar Hoover disregarded Attorney General Biddle's 1943 order to terminate the Custodial Detention List by merely changing its name to the Security Index moreover, Bureau headquarters instructed the field officers that the new list should be kept "strictly confidential" and that it should never be mentioned in FBI reports or "discussed with agencies or individuals outside the Bureau" except for military intelligence agencies. For several years thereafter, the Attorney General and the Justice Department were not informed of the FBI's decision.[65]

An incident which occurred in 1967 in connection with the Bureau's COINTELPRO operations is particularly illustrative of the lengths to which intelligence agencies would go to protect illegal programs from scrutiny by executive branch officers outside the intelligence community. As one phase of its disruption of the United Klans of America, the Bureau sent a letter to Klan officers purportedly prepared by the highly secret "National Intelligence Committee" (NIC) of the Klan.[66] The fake letter purported to fire the North Carolina Grand Dragon for personal misconduct and misfeasance in office, and to suspend Imperial Wizard Robert Shelton for his failure to remove the Grand Dragon. Shelton complained to the FBI and the Post Office about this apparent violation of the mail fraud statutes—without realizing that the Bureau had in fact sent the letter.[67] The Bureau, after solemnly assuring Shelton that his complaint was not within the FBI's jurisdiction, approached the Chief Postal Inspector's office in Washington to determine what action the Post Office planned to take regarding Shelton's allegation. The FBI was advised that the matter had been referred to the Justice Department's Criminal Division.[68] At no time did the Bureau inform either the Post Office or the Justice Department that FBI agents had authored the letter. When no investigation was deemed to be warranted by the Criminal Division, FBI Headquarters directed the Bureau's Charlotte, North Carolina office to prepare a second phony NIC letter to send to Klan officials.[69] This

[62] Moore 10/1/75, p. 48. See Mail Report: Sec. IV, "Nature and Value of the Product Received."

[63] FBI agent testimony, 10/10/75, p. 30.

[64] See NSA Report: Sec. II, "Summary of NSA Watch List Activity."

[65] Memorandum from J. Edgar Hoover to FBI Field Offices, 8/14/43.

[66] Memorandum from Atlanta Field Office to FBI Headquarters, 6/7/67.

[67] Memorandum from Birmingham Field Office to FBI Headquarters, 6/14/67.

[68] Postal officials told Bureau liaison that since Shelton's allegations "appear to involve an internal struggle for control of Ku Klux Klan activities in North Carolina and since the evidence of mail fraud was somewhat tenuous in nature, the Post Office did not contemplate any investigation." (Memorandum from Special Agent to D. J. Brennan, 7/11/67.) Had the FBI informed the Post Office that Bureau agents had written the letter, it would have been apparent that Shelton's allegations were not based on an "internal struggle" within the KKK.

[69] Memorandum from FBI Headquarters to Charlotte Field Office, 8/21/67.

letter was not mailed, however, because the Charlotte office proposed and implemented a different idea—the formation of an FBI-controlled alternative Klan organization, which eventually attracted 250 members.[70]

The Huston Plan itself was prepared without the knowledge of the Attorney General. Neither the Attorney General nor anyone in his office was invited to the drafting sessions at Langley or consulted during the proceedings. Huston testified that it never occurred to him to confer with the Attorney General before making the recommendations in the Report, in part because the plan was seen as an intelligence matter to be handled by the intelligence agency directors.[71]

Similarly, the CIA's General Counsel was not included or consulted in the formulation of the Huston Plan. As James Angleton testified, "the custom and usage was not to deal with the General Counsel, as a rule, until there were some troubles. He was not a part of the process of project approval." [73]

(ii) Concealment from Congress

At times, knowledge of illegal programs and techniques has been concealed from Congress as well as executive branch officials. On two occasions, for example, officials of the Army Security Agency ordered its units—in apparent violation of that Agency's jurisdiction—to conduct general searches of the radio spectrum without regard to the source or subject matter of the transmissions. ASA did not report these incidents to ranking Army officials, even when specifically asked to do so as part of the Army's preparation for the hearings of the Senate Subcommittee on Constitutional Rights in 1971.[74]

Events surrounding the 1965 and 1966 investigation by Senator Edward Long of Missouri into federal agencies' use of mail covers and other investigative techniques clearly showed the desire on the part of CIA and FBI officials to protect their programs from congressional review.[75] Fearing that the New York mail opening program might be discovered by this subcommittee, the CIA considered suspending the operation until the investigation had been completed. An internal CIA memorandum dated April 23, 1965, reads in part:

> Mr. Karamessines [Assistant Deputy Director for Plans] felt that the dangers inherent in Long's subcommittee activi-

[70] Memorandum from Charlotte Field Office to FBI Headquarters 8/22/67.

[71] Huston, 9/23/75, Hearings, Vol. 2, p. 24.

When J. Edgar Hoover informed Attorney General John Mitchell about the Report on July 27, 1970, Mitchell objected to its proposals and influenced the President to withdraw his original approval.

According to John Mitchell, he believed that the proposals "were inimical to the best interests of the country and certainly should not be something that the President of the United States should be approving." (John Mitchell testimony, 10/24/75, Hearings, Vol. 4, p. 23.)

[73] James Angleton, 9/24/75, Hearings, Vol. 2, p. 77.

[74] See Military Surveillance Report: Sec. I, "Improper Surveillance of Private Citizens by the Military"; Inspector General Report, Department of the Army, 1/3/72.

[75] The Johnson Administration itself attempted to restrict the Long Subcommittee's investigation into national security matters, although there is no indication that this attempt was motivated by a desire to protect illegal activities. (E.g., Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65; memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/2/65.)

> ties to the security of the Project's operations in New York should be thoroughly studied in order that a determination can be made as to whether these operations should be partially or fully suspended until the subcommittee's investigations are completed.[76]

When it was learned that Chief Postal Inspector Henry Montague had been contacted about the Long investigation and believed that it would "soon cool off", however, it was decided to continue the operation without suspension.[77]

The FBI was also concerned that the subcommittee might expose its mail opening programs. Bureau memoranda indicate that the FBI intended to "warn the Long Committee away from those areas which would be injurious to the national defense." [78] J. Edgar Hoover personally contacted the Chairman of the Senate Judiciary Committee,[79] and urged him "to see Long not later than Wednesday morning to caution him that [the Chief Counsel] must not go into the kind of question he made of Chief Inspector Montague of the Post Office Department" [80]—questioning that had threatened to reveal the FBI's mail project the previous week.[81]

When the Long subcommittee began to investigate electronic surveillance practices several months later, Bureau officials convinced Senator Edward Long that there was no need to pursue such an investigation since, they said, the FBI's operations were tightly controlled and properly implemented.[82] According to Bureau documents, FBI agents wrote a press release for the Senator from Missouri, with his approval, that stated his subcommittee had

> conducted exhaustive research into the activities, procedures, and techniques of this agency [and] based upon careful study . . . we are fully satisfied that the FBI has not participated in highhanded or uncontrolled usage of wiretaps, microphones, or other electronic equipment.[83]

Not only was this release written by the FBI itself, it was misleading. The "exhaustive research" apparently consisted of a ninety-minute briefing by FBI officials describing their electronic surveillance practices; neither the Senator nor the public learned of the instances of improper electronic surveillances that had been conducted by the FBI.[84] When Senator Edward Long later asked certain FBI officials to testify about the Bureau's electronic surveillance policy before the Subcommittee, they refused, arguing: ". . . to put an FBI witness on the

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[76] Blind memorandum from "CIA Officer," 4/23/65.

[77] Ibid.

[78] Memorandum from A. H. Belmont to Mr. Tolson, 2/27/65.

[79] Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach, 3/1/65.

[80] Memorandum from J. Edgar Hoover to Messrs. Tolson, Belmont, Gale, Rosen, Sullivan, and DeLoach 3/1/65.

[81] Mail Report Part IV, Sec. VII, "Concern with Exposure." At the time of his testimony before the Long Subcommittee, Chief Postal Inspector Montague knew of ongoing FBI projects in which Bureau agents received custody of the mail, but he was apparently unaware that these projects involved mail openings.

[82] For example, Memorandum from C. D. DeLoach to Mr. Tolson, 1/10/66.

[83] Memorandum from M. A. Jones to Mr. Wick, Attachment, 1/11/66.

[84] See pp. 62–65, 105, 205–206 for a description of some of these improper surveillances.

stand would be an attempt to open a Pandora's box, insofar as our enemies in the press were concerned. . . ." [85]

After the press release had been delivered to Senator Long and the refusal to testify had been accepted, one FBI official wrote to the Associate Director that while some problems still existed, "we have neutralized the threat of being embarrassed by the Long Subcommittee . . ." [86]

Subfinding (f)

The internal inspection mechanisms of the CIA and the FBI did not keep—and, in the case of the FBI, were not designed to keep—the activities of those agencies within legal bounds. Their primary concern was efficiency, not legality or propriety.

The internal inspection mechanisms of the CIA and the FBI were ineffective in ensuring that the activities of these agencies were kept within legal bounds. This failure was sometimes due to structural deficiencies which kept knowledge of questionable programs tightly compartmented and shielded from those who could evaluate their legality.

As noted above, for example, the CIA's General Counsel was not informed about either the New York mail opening project or CIA's participation in the Huston Plan deliberations. The role of the CIA's General Counsel was essentially a passive one; he did not initiate inquiries but responded to requests from other Agency components. As James Angleton stated, the General Counsel was not a part of the normal project approval process and generally was not consulted until "something was going wrong." [87]

When the General Counsel was consulted, he often exerted a positive influence on the conduct of CIA activities. For example, the CIA stopped monitoring telephone calls to and from Latin America after the General Counsel issued an opinion describing the telephone intercepts as illegal.[88] But internal CIA regulations have never required employees who know of illegal, improper, or questionable activities to report them to the General Counsel; rather, employes with such knowledge are instructed to inform either the Director of Central Intelligence or the Inspector General. The Director and the Inspector General may refer the matter to the General Counsel but until recently they were not obligated to do so.[88a] As Richard Helms stated, "Sometimes we did [consult the General Counsel]; sometimes we did not. I think the record on that is rather spotty, quite frankly." [89]

Indeed, the record suggests that those programs that were most questionable—such as the New York mail opening project and Project CHAOS—were not referred to the General Counsel because they were

[85] Memorandum from C. D. DeLoach to Mr. Tolson, 1/21/66.

[86] DeLoach memorandum, 1/21/66. This incident also illustrates that Congress has at times permitted itself to be "neutralized." The general reluctance of Congress to discharge its responsibilities toward intelligence agencies is discussed at pp. 277–281.

[87] James Angleton, 9/17/75, p. 48.

[88] Memorandum from Lawrence Houston to Acting Chief, Division D, 1/29/73.

[88a] Proposed regulations drafted in response to Executive Order 11905 (March 1976) require the Inspector General to refer "all legal matters" to the Office of General Counsel. (Draft Reg. HR 1-3.)

[89] Helms deposition, 9/10/75, p. 59.

considered extremely sensitive.[90] Even when questionable activities were called to the attention of the General Counsel, moreover, the internal Agency regulations did not guarantee him unrestricted access to all relevant information. Thus, the General Counsel was not in a position to conduct a complete evaluation of the propriety of particular programs.

Part of the failure of internal inspection to terminate improper programs and practices may be attributed to the fact that the primary focus of the CIA's Office of the Inspector General and the FBI's Inspection Division has been on efficiency and effectiveness rather than on propriety.

The CIA's Inspector General is charged with the responsibility, among other matters, of investigating activities which might be construed as "illegal, improper, and outside the CIA's legislative charter." [91] In at least one case, the Inspector General did force the suspension of a suspect activity: the surreptitious administration of LSD to unwitting, non-volunteer, human subjects which was suspended in 1963.[92] An earlier Inspector General's review of the larger, more general program for the testing of behavorial control agents, however, had labeled that program "unethical and illegal" and it nonetheless continued for another seven years.[93] In general, as the Rockefeller Commission pointed out, "the focus of the Inspector General component reviews was on operational effectiveness. Examination of the legality or propriety of CIA activities was not normally a primary concern." [94] Two separate reviews of the New York mail opening projects by the Inspector General's office, for example, considered issues of administration and security at length but did not even mention legal considerations.[95]

Internal inspection at the FBI has traditionally not encompassed legal or ethical questions at all. According to W. Mark Felt, the Assistant FBI Director in charge of the Inspection Division from 1964 to 1971, his job was to ensure that Bureau programs were being operated efficiently, not constitutionally: "There was no instruction to me," he stated, "nor do I believe there is any instruction in the Inspector's manuals, that inspectors should be on the alert to see that constitutional values are being protected." [96] He could not recall any program which was terminated because it might have been violating someone's civil rights.[97]

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[90] Gordon Stewart deposition, 4/30/75, p. 29; Rockeller Commission Report, p. 146; Report on the Offices of the General Counsel and Inspector General: The General Counsel's Responsibilities, 9/30/75, p. 29.

[91] Regulation HR 7-1a(6).

[92] Memorandum for the Record by J. S. Earman, Inspector General, 11/29/63; Memorandum from Helms to DCI, 11/9/64.

[93] 1957 I.G. Inspection of the Technical Services Division.

[94] Rockefeller Commission Report, 6/6/75, p. 89.

[95] Memorandum from L. K. White, Deputy Director for Support, to Acting Inspector General, Attachment, 3/9/62; blind memorandum, undated (1969). The Inspector General under whose auspices the second review was conducted stated "[O]f course we knew that this was illegal," but he believed that it was "unnecessary" to raise the matter of its illegality with Director Helms "since everybody knew that it was [illegal] and it didn't seem . . . that I would be telling Mr. Helms anything that he didn't know." (Gordon Stewart, 9/30/75, p. 32.) p. 32.)

[96] W. Mark Felt testimony, 2/3/75, p. 65.

[97] Felt, 2/3/75, p. 57.

A number of questionable FBI programs were apparently never inspected. Felt could recall no inspection, for instance, of either the FBI mail opening programs or the Bureau's participation in the CIA's New York mail opening project.[98] Even when improper programs were inspected, the Inspection Division did not attempt to exercise oversight in the sense of looking for wrongdoing. Its responsibility was simply to ensure that FBI policy, as defined by J. Edgar Hoover was effectively implemented and not to question the propriety of the policy.[99] Thus, Felt testified that if, in the course of an inspection of a field office, he discovered a microphone surveillance on Martin Luther King, Jr., the only questions he would ask were whether it had been approved by the Director and whether the procedures had been properly followed.[100]

When Felt was asked whether the Inspection Division conducted any investigation into the propriety of COINTELPRO, the following exchange ensued:

> Mr. FELT. Not into the propriety.
>
> Q. So in the case of COINTELPRO, as in the case of NSA interceptions, your job as Inspector was to determine whether the program was being pursued effectively as opposed to whether it was proper?
>
> Mr. FELT. Right, with this exception, that in any of these situations, Counterintelligence Program or whatever, it very frequently happened that the inspectors, in reviewing the files, would direct that a certain investigation be discontinued, that it was not productive, or that there was some reason that it be discontinued.
>
> But I don't recall any cases being discontinued in the Counterintelligence program.[101]

As a result of this role definition, the Inspection Division became an active participant in some of the most questionable FBI programs For example, it was responsible for reviewing on an annual basis all memoranda relating to illegal break-ins prior to their destruction under the "DO NOT FILE" procedure.

Improper programs and techniques in the FBI were protected not only by the Inspection Division's perception of its function, but also by the maxim that FBI agents should never "embarrass the Bureau." This standard, which served as a shield to outside scrutiny, was explicitly reflected in the FBI Manual:

> Any investigation necessary to develop complete essential facts regarding any allegation against Bureau employees must be instituted promptly, and every logical lead which will establish the true facts should be completely run out *unless such action would embarrass the Bureau* . . . in which event the Bureau will weigh the facts, along with the recommendations of the division head. [Emphasis added.][102]

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[98] Felt, 2/3/75, pp. 54, 55.
[99] Felt, 2/3/75, pp. 59–60.
[100] Felt, 2/3/75, p. 60.
[101] Felt, 2/3/75, pp. 56, 57.
[102] When asked about this *Manual* provision, Attorney General Edward Levi stated:

"I do believe . . . some further explanation is in order. First, the Bureau informs me that the provision has not been interpreted to mean that an investiga-

Such an instruction, coupled with the Inspection Division's inattention to the law, could only inhibit or prevent the termination and exposure of illegal practices.

Subfinding (g)

When senior administration officials with a duty to control domestic intelligence activities knew, or had a basis for suspecting, that questionable activities had occurred, they often responded with silence or approval. In certain cases, they were presented with a partial description of a program but did not ask for details, thereby abdicating their responsibility. In other cases, they were fully aware of the nature of the practice and implicitly or explicitly approved it.

On several occasions, senior administration officials with a duty to control domestic intelligence activities were supplied with partial details about questionable or illegal programs but they did not ask for additional information and the programs continued.

Sometimes the failure to probe further stemmed from the administration official's assumption that an intelligence agency would not engage in lawless conduct. Former Chief Postal Inspector Henry Montague, for example, was aware that the FBI received custody of the mail in connection with several of its mail opening programs—indeed, he had approved such custody in one case—but he testified that he believed these were mail cover operations only.[103] Montague stated that he did not ask FBI officials if the Bureau opened mail because he:

> never thought that would be necessary. . . . I trusted them the same as I would another [Postal] Inspector. I would never feel that I would have to tell a Postal person that you cannot open mail. By the same token, I would not consider it necessary to emphasize it to any great degree with the FBI.[104]

A former FBI official has also testified, as noted above, that he informed Attorney General Katzenbach about selected aspects of the FBI mail opening programs. This official did not tell Katzenbach that mail was actually opened, but he testified that he "pointed out [to the Attorney General] that we do receive mail from the Post Office in certain sensitive areas."[105] While Katzenbach stated that he never knew mail was opened or that the FBI gained access to mail on a regular basis in large-scale operations,[106] the former Attorney

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tion should not take place and that 'any interpretation that an investigation would not be instituted because of the possibility of embarrassment to the Bureau was never intended and, in fact, has never been the policy of this Bureau.' I am told that 'what was intended to be conveyed was that in such eventuality FBI Headquarters desired to be advised of the matter before investigation is instituted so that Headquarters would be on notice and could direct the inquiry, if necessary.' "

"Second, the manual provision dates back to March 30, 1955."

"Third, I am informed by the Bureau that 'immediate steps are being taken to remove that phraseology from our Manual of Rules and Regulations.' "

(Letter from Attorney General Levi to Senator Richard Schweiker, 11/10/75.)

[103] Henry Montague testimony, 10/2/75, pp. 55, 71.

[104] Henry Montague, 10/2/75, pp. 15–16.

[105] Donald Moore, 10/1/75, p. 31.

[106] Nicholas Katzenbach, 10/11/75, p. 35.

General acknowledged that he did learn that "in some cases the outside of mail might have been examined or even photographed by persons other than Post Office employees".[107] However, neither at this time nor at any other time did the Justice Department make any inquiry to determine the full scope of the FBI mail operations.

Similarly, former Attorneys General Nicholas Katzenbach and Ramsey Clark testified that they were familiar with the FBI's efforts to disrupt the Ku Klux Klan through regular investigative techniques but said they were unaware of the offensive tactics that occurred in COINTELPRO. Katzenbach said he did not believe it necessary to explore possible irregularities since "[i]t never occurred to me that the Bureau would engage in the sort of sustained improper activity which it apparently did."[108]

Both Robert Kennedy and Nicholas Katzenbach were also aware of some aspects of the FBI's investigation of Dr. Martin Luther King, Jr., yet neither ascertained the full details of the Bureau's campaign to discredit the civil rights leader. Kennedy intensified the original "communist influence" investigation in October 1963 by authorizing wiretaps on King's home and office telephones.[109] Kennedy requested that an evaluation of the results be submitted to him in thirty days in order to determine whether or not to maintain the taps, but the evaluation was never delivered to him and he did not insist on it.[110] Since he never ordered the termination of the wiretap, the Bureau could, and did, install additional wiretaps on King by invoking the original authorization.[111] According to Bureau memoranda apparently initialled by Attorney General Katzenbach, Katzenbach received after the fact notification in 1965 that three bugs had been planted in Dr. King's hotel rooms.[112] A transmittal memorandum written by

[107] Katzenbach statement, 12/3/75, Hearings, Vol. 6, p. 205.

[108] Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 207; Ramsey Clark, 12/3/75; Hearings, Vol. 6 p. 235; Katzenbach's and Clark's knowledge of disruptive operations is discussed at greater length in Finding G: "Deficiences in Control and Accountability" p. 265.

[109] Memorandum from J. Edgar Hoover to the Attorney General, 10/7/63; memorandum from J. Edgar Hoover to the Attorney General, 10/18/63.

[110] Memorandum from C. A. Evans to Mr. Belmont 10/21/63.

In May 1961, Robert Kennedy also became aware of the CIA's use of organized crime figures in connection with "clandestine efforts" against the Cuban government. (Memorandum from J. Edgar Hoover to the Attorney General, 5/22/61.) But he did not instruct the CIA to terminate its involvement with underworld figures either at that time or in May 1962, when he learned at a briefing by CIA officials that an assassination attempt had occurred. According to the CIA's General Counsel, who participated in the 1962 briefing, Kennedy only said, ". . . if we were going to get involved with Mafia personnel again he wanted to be informed first." (Lawrence Houston deposition, 6/2/75, p. 14.)

The CIA's use of underworld figures clearly posed problems for the FBI's ongoing investigation of organized crime in the United States, which had in large part been initiated by Attorney General Kennedy himself. (Senate Select Committee, "Alleged Assassination Plots Involving Foreign Leaders," pp. 125–129.)

[111] The FBI instituted additional wiretaps on King on four separate occasions between 1964 and 1965. Since Justice Department policy before March 1965 imposed no limit on the duration of wiretaps and they were approved by the Attorney General, the Bureau claimed that the King taps were justified as a continuation of the tap originally authorized by Kennedy in October 1963. (For example, memorandum from FBI Headquarters to Atlanta Field Office, 4/19/65; Martin Luther King Report: Sec. IC, "Wiretap Surveillance of Dr. King and the SCLC."

[112] Katzenbach's initials appear on memoranda addressed to the Attorney General advising him of these bugs, but he cannot recall seeing or initialing them.

Katzenbach also indicates that he may have instructed the FBI to be "very cautious" in conducting these surveillances.[113] There is no indication, however, that he requested further details about any of them or prohibited the FBI from future use of this technique against Dr. King.

While there is no evidence that the full extent of the FBI's campaign to discredit Dr. King was authorized by or known to anyone outside of the Bureau, there is evidence that officials responsible for supervising the FBI received indications that some such efforts were being undertaken. For example, former Attorney General Katzenbach and former Assistant Attorney General Burke Marshall both testified that in late 1964 they learned that the Bureau had offered tape recordings of Dr. King to certain newsmen in Washington, D.C. They further stated that they informed President Johnson of the FBI's offers.[114] The Committee has discovered no evidence, however, that the President or Justice Department officials made any further effort to halt the discrediting campaign at this time or at any other time; indeed, the Bureau's campaign continued for several years after this incident.

On some occasions, administration officials did not request further details about intelligence programs because they simply did not want to know. Former Postmaster General J. Edward Day testified that when Allen Dulles and Richard Helms spoke to him about a CIA project in 1961, he interrupted them before they could tell him the purpose of their visit (which Helms said was to say mail was being opened). Day stated:

> . . . Mr. Dulles, after some preliminary visiting and so on, said that he wanted to tell me something very secret, and I said, "Do I have to know about it?" And he said, "No."
>
> I said, "My experience is that where there is something that is very secret, it is likely to leak out, and anybody that knew about it is likely to be suspected of having been part of leaking it out, so I would rather not know anything about it."
>
> What additional things were said in connection with him building up to that, I don't know. But I am sure . . . that I was not told anything about opening mail." [115]

By his own account, therefore, Mr. Day did not learn the true nature of this project because he "would rather not know anything about it." Although rarely expressed in such unequivocal terms, this attitude appears to have been all too common among senior government officials.

(Memoranda from J. Edgar Hoover to the Attorney General, 5/17/65, 10/19/65, 12/1/65; Katzenbach, 12/1/75. Hearings, Vol. 6, p. 211, p. 46.) He stated, however, that if he had read these documents, he would have "done something about it." (Katzenbach, Hearings, Vol. 6, p. 230.)

[113] A transmittal slip, which the FBI claims had been attached to the 12/1/65 memorandum, notes that "these are particularly delicate surveillances" and that "we should be very cautious in terms of the non-FBI people who may from time to time necessarily be involved in some aspect of installation." (Memorandum from Nicholas Katzenbach to J. Edgar Hoover, 12/10/65.) This message is signed by Katzenbach, but he testified that he is unsure it related to the King surveillances. (Katzenbach, 12/3/75, Hearings, Vol. 6, p. 229.)

[114] Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210; Burke Marshall testimony, 3/3/76, pp. 39–43.

[115] J. Edward Day testimony, 10/22/75, Hearings, Vol. 4, p. 45.

Even when administration officials were fully apprised of the illegal or questionable nature of certain programs and techniques, they sometimes permitted them to continue. An example of acquiescence is presented in the case of William Cotter, a former Chief Postal Inspector who knew that the CIA opened mail in connection with its New York project but took no direct action to terminate the project for a period of four years.[116] Cotter had learned of this project in his capacity as a CIA official in the mid-1950's and he knew that it was continuing when he was sworn in as Chief Postal Inspector in April 1969.[117] Because the primary responsibility of his position was to insure the sanctity of the mails, he was understandably "very, very uncomfortable with [knowledge of the New York] project,"[118] but he felt constrained by the letter and spirit of the secrecy oath which he had signed when he left the CIA in 1969 "attesting to the fact that I would not divulge secret information that came into my possession during the time that I was with the CIA."[119] Cotter stated: "After coming from eighteen years in the CIA, I was hypersensitive, perhaps, to the protection of what I believed to be a most sensitive project . . ."[120] For several years, he placed the dictate of the secrecy oath above that of the law he was charged with enforcing.

Former White House adviser John Ehrlichman also stated that he learned of a program of intercepting mail between the United States and Communist countries "because I had seen reports that cited those kinds of sources in connection with this, the bombings, the dissident activities."[121] Yet he cannot recall any White House inquiry that was made into such a program nor can he recall raising the matter with the President.[122]

When President Nixon learned of the illegal techniques that were recommended in the Huston Plan, he initially endorsed, rather than disavowed them. The former President stated that "[t]o the extent that I reviewed the Special Report of Interagency Committee on Intelligence, I would have been informed that certain recommendations or decisions set forth in that report were, or might be construed to be, illegal."[123] He nonetheless approved them, in part because they represented an efficient method of intelligence collection. As President Nixon explained, "[M]y approval was based largely on the fact that the procedures were consistent with those employed by prior administrations and had been found to be effective by the intelligence agencies."[124]

Mr. Nixon also apparently relied on the theory that a "sovereign" President can authorize the violation of criminal laws in the name of "national security" when the President, in his sole discretion, deems it appropriate. He recently stated:

[116] In 1973, however, Mr. Cotter was instrumental in effecting the termination of the CIA's New York project. (Cotter, 8/7/75, p. 45.)
[117] Cotter, 8/7/75, p. 45.
[118] Ibid.
[119] Cotter 10/22/75, Hearings, Vol. 4, p. 74.
[120] Ibid.
[121] John Erlichman testimony, President's Commission on CIA Activities Within the United States, 4/17/75, p. 98.
[122] Erlichman testimony, President's Commission on CIA Activities Within the United States, 4/17/75, p. 98.
[123] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 23, 3/9/76, p. 13.
[124] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 19, 3/9/76, p. 13.

> It is quite obvious that there are certain inherently governmental actions which if undertaken by the sovereign in protection of the interest of the nation's security are lawful but which if undertaken by private persons are not. . . .
>
> . . . [I]t is naive to attempt to categorize activities a President might authorize as "legal" or "illegal" without reference to the circumstances under which he concludes that the activity is necessary. . . .
>
> In short, there have been—and will be in the future—circumstances in which Presidents may lawfully authorize actions in the interests of the security of this country, which if undertaken by other persons, or even by the President under different circumstances, would be illegal.[125]

As the former President described this doctrine, it could apply not only to actions taken openly, which are subject to later challenge by Congress and the courts, but also to actions such as those recommended in the Huston Plan, which are covertly endorsed and implemented. The dangers inherent in this theory are clear, for it permits a President to create exceptions to normal legal restraints and prohibitions, without review by a neutral authority and without objective standards to guide him.[126] The Huston Plan itself serves as a reminder of these dangers.

Significantly, President Nixon's revocation of approval for the Huston Plan was based on the possibility of "media criticism" if the use of these techniques was revealed. The former President stated:

> Mr. Mitchell informed me that it was Director Hoover's opinion that initiating a program which would permit several government intelligence agencies to utilize the investigative techniques outlined in the Committee's report would significantly increase the possibility of their public disclosure. Mr. Mitchell explained to me that Mr. Hoover believed that although each of the intelligence gathering methods outlined in the Committee's recommendations had been utilized by one or more previous Administrations, their sensitivity would likely generate media criticism if they were employed. Mr. Mitchell further informed me that it was his opinion that the risk of disclosure of the possible illegal actions, such as unauthorized entry into foreign embassies to install a microphone transmitter, was greater than the possible benefit to be derived. Based upon this conversation with Attorney General Mitchell, I decided to revoke the approval originally extended to the Committee's recommendations.[127]

In more than one instance, administration officials outside the intelligence community have specifically requested intelligence agencies to undertake questionable actions. NSA's program of monitoring telephonic communications between New York City and a city in South America, for example, was undertaken at the specific request of the Bureau of Narcotics and Dangerous Drugs, a law enforcement agency.

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[125] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 34, 3/9/76, pp. 16–17.

[126] President Ford has recently rejected this doctrine of Presidential power.

[127] Answer of Richard M. Nixon to Senate Select Committee Interrogatory 17, 3/9/76, pp. 11–12.

BNDD officials had been concerned about drug deals that were apparently arranged in calls from public telephones in New York to South America, but they felt that they could not legally wiretap these telephone booths.[128] In order to avoid tapping a limited number of phones in New York, BNDD submitted the names of 450 American citizens for inclusion in NSA's Watch List, and requested NSA to monitor a communications link between New York and South America which necessitated the interception of thousands of international telephone calls.[129]

The legal limitations on domestic wiretapping apparently did not concern certain officials in the White House or Attorneys General who requested the FBI to do their bidding. In some instances, they specifically requested the FBI to institute wiretaps on American citizens with no substantial national security predicate for doing so.[130]

On occasion, Attorneys General have also encouraged the FBI to circumvent the will of both Congress and the Supreme Court. As noted above, after Congress passed the Emergency Detention Act of 1950 to regulate the FBI program for listing people to be detained in case of war or other emergency, Justice Department officials concluded that its procedural safeguards and substantive standards were "unworkable". Attorney General J. Howard McGrath instructed the FBI to disregard the statute and "proceed with the [Security Index] program as previously outlined." [131] Two subsequent Attorneys General—James McGranery and Herbert Brownell—endorsed the decision to ignore the Emergency Detention Act.[132]

In 1954, the Supreme Court denounced the use of microphone surveillances by local police in criminal cases; [133] the fact that a microphone had been installed in a defendant's bedroom particularly outraged the court. Within weeks of this decision, however, Attorney General Herbert Brownell reversed the existing Justice Department policy prohibiting trespassory microphone installations by the FBI, and gave the Bureau sweeping new authority to engage in bugging for intelligence purposes—even when it meant planting microphones in bedrooms.[134] Brownell wrote J. Edgar Hoover:

> Obviously, the installation of a microphone in a bedroom or in some comparably intimate location should be avoided whenever possible. It may appear, however, that important intelligence or evidence relating to matters connected with the national security can only be obtained by the installation of a microphone in such a location. . . .
>
> . . . I recognize that for the FBI to fulfill its important intelligence function, considerations of internal security and the national safety are paramount and, therefore, may compel the unrestricted use of this technique in the national interest.[135]

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[128] Milton Iredell, 9/18/75, p. 99.
[129] Memorandum from Ingersoll to Gayler, 4/10/70.
[130] See Findings, "Political Abuse" and "Intrusive Techniques" for examples.
[131] Memorandum from A. H. Belmont to D. M. Ladd, 10/15/52.
[132] 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.
[133] *Irvine* v. *California*, 347 U.S. 128 (1954).
[134] Memorandum from the Attorney General to the Director, FBI, 5/20/54.
[135] Memorandum from the Attorney General to the Director, FBI, 5/20/54.

Brownell did not even require the Bureau to seek the Attorney General's prior approval for microphone installations in particular cases.[136] In the face of the *Irvine* decision, therefore, he gave the FBI authority to bug whomever it wished wherever it wished in cases that the Bureau—and not the Attorney General—determined were "in the national interest."

In short, disregard of the law by intelligence officers was seldom corrected, and sometimes encouraged or facilitated, by officials outside the agencies. Whether by inaction or direct participation, these administration officials contributed to the perception that legal restraints did not apply to intelligence activities.

[136] Ibid.