

## F. FINDING—INADEQUATE CONTROLS ON DISSEMINATION AND RETENTION

### MAJOR FINDING

The Committee finds that the product of intelligence investigations has been disseminated without adequate controls. Reports on lawful political activity and law-abiding citizens have been disseminated to agencies having no proper reason to receive them. Information that should have been discarded, purged, or sealed, including the product of illegal techniques and overbroad investigations, has been retained and is available for future use.

#### *Subfindings*

(a) Agencies have volunteered massive amounts of irrelevant information to other officials and agencies and have responded unquestioningly in some instances to requests for data without assuring that the information would be used for a lawful purpose.

(b) Excessive dissemination has sometimes contributed to the inefficiency of the intelligence process itself.

(c) Under the federal employee security program, unnecessary information about the political beliefs and associations of prospective government employees has been disseminated.

(d) The FBI, which has been the "clearinghouse" for all domestic intelligence data, maintains in readily accessible files sensitive and derogatory personal information not relevant to any investigation, as well as information which was improperly or illegally obtained.

#### *Elaboration of Findings*

The adverse effects on privacy of the Overbreadth of domestic intelligence collection and of the use of Intrusive Techniques have been magnified many times over by the dissemination practices of the collecting agencies. Information which should not have been gathered in the first place has gone beyond the initial agency to numerous other agencies and officials, thus compounding the original intrusion. The amount disseminated within the Executive branch has often been so voluminous as to make it difficult to separate useful data from worthless detail.

The Committee's finding on Political Abuse describes dissemination of intelligence for the political advantage of high officials or the self-interest of an agency. The problems of excessive dissemination, however, include more than political use. Dissemination has not been confined to what is appropriate for law enforcement or other proper government purposes. Rather, any information which could have been conceived to be useful was passed on, and doubts were generally resolved in favor of dissemination. Until recently, none of the standards for the exchange of data among agencies has taken privacy interests into account. The same failure to consider privacy interests

has characterized the retention of data by the original collecting agency.

*Subfinding (a)*

Agencies have volunteered massive amounts of irrelevant information to other officials and agencies and have responded unquestioningly in some instances to requests for data without assuring that the information would be used for a lawful purpose.

The following examples illustrate the extent of dissemination:

—FBI reports on dissident Americans flowed to the CIA at a rate as high as 1,000 a month. CIA officials regarded any names in these reports as a standing requirement from the FBI for information about those persons.<sup>1</sup>

—In 1967 the Internal Security Division of the Justice Department was receiving 150 reports and memoranda a day from the FBI on “organizations and individuals engaged in agitational activity of one kind or another.”<sup>2</sup>

—Attorney General Ramsey Clark could not “keep up with” the volume of FBI memoranda coming into him and to the Assistant Attorneys General on the 700,000 FBI investigations per year.<sup>3</sup>

—The Justice Department’s IDIU sent its computer list of 10,000 to 12,000 American dissidents to the CIA’s Operation CHAOS (which apparently found it useless) and to the Special Service Staff of the Internal Revenue Service (which did use it as part of its program of tax investigations).<sup>4</sup>

—In fiscal year 1974 alone, the FBI, the Civil Service Commission, and military intelligence received over 367,000 requests for “national agency checks,” or name checks of their files, on prospective federal government employees.<sup>5</sup>

The information disseminated to other agencies has often been considered useless by the recipients. FBI officials have said they received “very little in the way of good product” from the National Security Agency’s interception of the international communications of Americans.<sup>6</sup> FBI officials also considered most of the material on “the domestic scene” sent to them from the CIA mail opening project to be irrelevant “junk.”<sup>6a</sup> The Secret Service destroyed over ninety percent of the information disseminated to it by the FBI without ever putting it in its own intelligence files.<sup>7</sup> Defense Department directives require the destruction of a great deal of information it receives from the FBI about civilians considered “threatening” to the military, including reports on civilian “subversion.”<sup>8</sup>

Sometimes dissemination has become almost an end in itself. The FBI would often anticipate what it considered to be the needs of other

<sup>1</sup> Richard Ober testimony, 10/28/75, pp. 67, 68.

<sup>2</sup> Memorandum from Kevin Maroney, et al, to Attorney General Ramsey Clark, 12/6/67.

<sup>3</sup> Clark, 12/3/75, Hearings, Vol. 6, p. 249. This statistic refers to criminal investigations as well as intelligence investigations.

<sup>4</sup> See Part II, pp. 80, 95.

<sup>5</sup> Statement of Attorney General Edward H. Levi before House Judiciary Committee, February 1975.

<sup>6</sup> W. R. Wannall testimony, 10/3/75, p. 13.

<sup>6a</sup> W. A. Branigan testimony, 10/24/75, Hearings, Vol. 4, p. 168.

<sup>7</sup> GAO Report, p. 125.

<sup>8</sup> DOD Directive 5200.27, 3/1/71.

"appropriate agencies."<sup>9</sup> The Bureau has disseminated data to military intelligence agencies, regardless of whether or not there was likely to be serious violence requiring the dispatch of troops; the Bureau also disseminated information when there was no connection between the subject of the report and any military personnel or facility.<sup>11</sup> Consequently, the computerized and non-computerized domestic intelligence data banks compiled by the Continental Army Command cited the FBI as "data source" for about 80 percent of the information where a source was identified.<sup>11</sup>

FBI dissemination to the military has shown how information can get into the hands of agencies which have no proper reason to receive it.<sup>12</sup>

The FBI disseminated a large volume of information on domestic political activities to the CIA, thus providing a substantial part of the data for the CIAOS program.<sup>13</sup> Much of this information was also furnished to the State Department.<sup>14</sup> The FBI sometimes disseminated reports to the CIA and the State Department if the subject matter involved public discussion of national security policy and possible "subversive" influence.<sup>15</sup>

The FBI was also the largest source of political targets for tax investigations by the Special Service Staff of the Internal Revenue Service. While still in its formative days, SSS was placed on the FBI's distribution list in response to a request from an Assistant IRS Commissioner for information regarding:

various organizations of predominantly dissident or extremist nature and/or people prominently identified with those organizations.<sup>16</sup>

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<sup>9</sup> For example, in 1966 before the FBI had received any specific instructions from the Attorney General to gather civil disturbance intelligence, Bureau Headquarters advised all Field Offices that "national, state, and local" government officials "rely on us" for information "so they can take appropriate action to avert disastrous outbreaks." Thus, FBI offices were told to "intensify and expand" their "coverage" of demonstrations opposing "United States foreign policy in Vietnam" or "protests involving racial issues," in order to insure that "advance signs" of violence could be "disseminated to appropriate authorities." (SAC Letter 66-27, 5/2/66)

<sup>10</sup> These policies were part of the formal obligation of the FBI under the 1949 Delimitation Agreement with military intelligence. The Agreement itself required the FBI to keep military intelligence agencies advised of the activities of "civilian groups" classed as "subversive." (Delimitation Agreement, 2/23/49.) And a Supplementary Agreement said, "Where there is doubt as to whether or not one of the other agencies is interested in information collected, it should be transmitted to the other agency." (Supplemental Agreement No. 1 to the Delimitation Agreement, 6/2/49.)

<sup>11</sup> "Military Surveillance of Civilian Politics," Report of the Senate Subcommittee on Constitutional Rights (1973), p. 72.

<sup>12</sup> The Agreements between the FBI and military intelligence have not been revised to take account of the restrictions on Army surveillance imposed by the Department of Defense in 1971. See DOD Directive 5200.27, 3/1/71.

<sup>13</sup> Richard Ober, 10/28/75, pp. 67, 68.

<sup>14</sup> The FBI Manual stated that information concerning "proposed travel abroad" by domestic "subversives" was to be furnished to the CIA and the State Department, and Bureau Field Offices were told to recommend the "extent of foreign investigation" required. (FBI Manual of Instructions, Section 87, p. 33a, revised 4/15/63.)

<sup>15</sup> For example, Reports on the ABM debate discussed on pp. 257-258.

<sup>16</sup> Memorandum from D. W. Bacon to Director, FBI, 8/8/69.

The FBI, perceiving that SSS would "deal a blow to dissident elements,"<sup>17</sup> decided to supply reports relating to this broad category of individuals and organizations.

The FBI did not select the reports it forwarded on the basis of the presence of a probable tax violation, but on the basis of the political and ideological criteria IRS had supplied; yet the furnishing of the report resulted in establishment of an SSS file and, subject to resource limitations, to a review of possible tax liability.<sup>18</sup> Among the other lists of "extremists," "subversives" and dissidents SSS received was a list of 2,300 organizations the FBI categorized as "Old Left," "New Left," and "Right Wing."<sup>19</sup>

One reason for the Bureau's widespread dissemination of intelligence throughout the Executive branch was recalled by a former FBI official. In the late 1940s a sensitive espionage case involved a high government official. At that time the FBI held such information "very tightly," as it had during World War II. However, one item of information that "became rather significant" had allegedly "not been disseminated to the White House or the Secretary of State."

Mr. Hoover was criticized for that, and frankly, he never forgot it. From then on, you might say, the policy was disseminate, disseminate, disseminate.<sup>20</sup>

This testimony illustrates the dilemma of an agency which was blamed for inadequate dissemination, but never criticized for too much dissemination. In practice, this dilemma was resolved by passing on any information "which in any way even remotely suggested that there was a responsibility for another agency."<sup>21</sup>

The following are examples of excessive dissemination, drawn from a random sample of materials in FBI headquarters files:

—In 1969 the FBI disseminated to Army and Air Force intelligence, Secret Service, and the IDIU a report on a Black Student Union; the report which discussed "a tea" sponsored by the group to develop faculty-student "dialogue" as a junior college and the plans of the college to establish a course on "The History of the American Negro." There was no indication of violence whatsoever. Dissemination to the military intelligence agencies and Secret Service took place both at the field level and at headquarters in Washington, D.C. The information came from college officials.<sup>22</sup>

—In 1970 the FBI disseminated to military intelligence and the Secret Service (both locally and at Headquarters), as well as to the Justice Department (IDIU, Internal Security Division, and Civil Rights Division) a report received from a local police intelligence unit on the picketing of a local Industries of the Blind plant by "blind black workers" who were on strike. The sixteen-page report included a copy of a handbill distributed at a United Church of Christ announce-

<sup>17</sup> FBI memorandum from D. J. Brennan, Jr., to W. C. Sullivan, 8/15/69.

<sup>18</sup> SSS Bi-weekly Reports, 6/15/70; from Donald Bacon, 9/15/75 pp. 91-05.

<sup>19</sup> SSS Bi-weekly Report, 8/29/69.

<sup>20</sup> Former FBI liaison with CIA deposition, 9/22/75, pp. 16-17.

<sup>21</sup> Former FBI liaison with CIA deposition, 9/22/75, pp. 16-17; memorandum from Attorney General Tom Clark to J. Edgar Hoover, 12/5/47.

<sup>22</sup> Memorandum from Tampa Field Office to FBI Headquarters, 5/29/69.

ing a meeting at the church to support the strike, as well as copies of "leaflets that had been distributed by the blind workers." The only hint of violence in this report was the opinion of a local police intelligence officer that "young black militants," who supported the strike by urging blacks to boycott white-owned stores in the community, might cause "confrontations that might result in violence."<sup>23</sup>

—The FBI dissiminated a report on Dr. Carl McIntyre's American Christian Action Council to the Secret Service in 1972. The cover memorandum to Secret Service indicated that the group fell within the category of the FBI-Secret Service agreement described as "potentially dangerous because of background, emotional instability or activity in groups engaged in activities inimical to U.S." The report itself reflected no "activities inimical to" the country, but only plans to hold peaceful demonstrations. The report also discussed policies and activities of the group unrelated to demonstrations, including plans to enter lawsuits in "school busing" cases, opposition to "Nixon's China trip" and support for a constitutional amendment for "public school prayer." This data came from a Bureau informant.<sup>24</sup>

—In 1966 the FBI disseminated to the Army, Navy, and Air Force intelligence divisions, to the Secret Service (locally and at Headquarters), to the Justice Department and to the State Department a ten-page report on a "Free University." The report described in detail the courses offered, including such subjects as "Modern Film," "Workshop on Art and Values," "Contemporary Music," "Poetry Now," and "Autobiography and the Image of Self." Over thirty "associates" were listed by name, although only one was identified as having "subversive connections" (and his course had been "dropped because not enough students had registered.") Others were identified as "involved in Vietnam protest activities" or as being known to officials of a nearby established university as "problem people." The information came from several FBI informants and a confidential source.<sup>25</sup>

—In 1966 the FBI disseminated to "appropriate federal and local authorities," including military intelligence, Secret Service, the Department of State and Justice, and a campus security officers (who was a former FBI agent) a report on a group formed for "discussion on Vietnam." The "controlling influence" on the organization was said to be "the local Friends Meeting." Only one person characterized as "subversive" was active in the group. The report was devoted to describing a "speak out" demonstration attended by approximately 300 persons on a university campus. The gathering was entirely peaceful and included "speakers who supported U.S. policies in Viet Nam." The data came from two Bureau informants.<sup>26</sup>

—In 1969 the FBI disseminated reports to the White House, the CIA, the State Department, the three military intelligence agencies, Secret Service, the IDIU, the Attorney General, the Deputy Attorney General, and the Internal Security and Civil Rights Divisions on a meeting sponsored by a coalition of citizens concerned about the Anti-

<sup>23</sup> Memorandum from Charlotte Field Office to FBI Headquarters, 12/10/70.

<sup>24</sup> Letter from Acting Director, FBI, to Director, United States Secret Service, 5/25/72.

<sup>25</sup> Memorandum from Detroit Field Office, to FBI Headquarters, 4/15/66.

<sup>26</sup> Memorandum from Springfield Field Office to FBI Headquarters, 7/5/66.

Ballistic Missile. The only indication of "subversive" influence was that one woman married to a Communist was assisting in publicity work for the meeting. The reports described (from reliable FBI sources) the speakers, pro and con, including prominent scientists, academics, and a Defense Department spokesman.<sup>27</sup>

—In 1974 the FBI disseminated to the State Department, the Defense Intelligence Agency, the Secret Service, the Internal Security Division, and the Civil Disturbance Unit (formerly IDIU), extensive reports on a national conference on amnesty for war resisters. One of the participants had "recently organized [a] nonviolent protest demonstration" during a visit by President Ford, two others were identified as draft evaders, and the Vietnam Veterans Against the War were active at the conference. But the report went much further to describe—based on information from FBI informants—the activities of religious, civil liberties, and student groups, as well as "families of men killed in Vietnam" and congressional staff aides.<sup>28</sup>

—In 1974 the FBI disseminated a report on a peaceful vigil in the vicinity of the Soviet Embassy in support of the rights of Soviet Jews, not just to the Secret Service and the Justice Department's Civil Disturbance Unit, but also to the CIA and the State Department.<sup>29</sup>

—In 1972 the FBI disseminated a report to the CIA, Army and Navy intelligence, and an un-named "U.S. Government agency which conducts security-type investigations" in West Germany (apparently a military intelligence agency). The latter agency had asked the Bureau for information about an antiwar reservist group and a project to furnish "legal advice to GI's and veterans." The report described not only the reservists group, but also "a group dedicated to giving free legal aid to servicemen" and "an antiwar political group" which endorsed "political candidates for office who have a solid peace position and a favorable chance of being elected." The three groups "planned to share offices." This data came from a Bureau informant.<sup>30</sup>

The FBI does have an obligation to disseminate to local law enforcement agencies information about crimes within their jurisdiction. Nevertheless, there has been improper dissemination to local police under at least two Bureau programs. Such dissemination occurred under COINTELPRO, as part of the FBI's effort to discredit individuals or disrupt groups.<sup>31</sup> Others were in response to local police requests for "public source" information relating to "subversive matters."<sup>32</sup> Experienced police officials confirmed that the term

<sup>27</sup> Memorandum from Washington Field Office to FBI Headquarters, 5/28/69; memorandum from Alexandria Field Office to FBI Headquarters, 6/3/69.

<sup>28</sup> Memorandum from Louisville Field Office to FBI Headquarters, 11/14/74, 11/15/74, 11/20/74.

<sup>29</sup> Memorandum from Washington Field Office to FBI Headquarters, 6/28/74.

<sup>30</sup> Memorandum from Legal Attache, Bonn, to FBI Headquarters, 1/11/72; memorandum from Boston Field Office to FBI Headquarters, 5/4/72.

<sup>31</sup> See COINTELPRO report: Sec. IV, for examples of FBI dissemination to local police of data on trivial offenses for the purpose of disruption.

<sup>32</sup> The FBI responds to such requests with "a blind memorandum" upon the condition that the Bureau's "identity as source of the information must be kept strictly confidential." Bureau regulations do not link this procedure to any specific criminal law enforcement function. (FBI Manual of Rules and Regulations, Part II, Section 5, p. 7.)

"subversive" is so broad that it inevitably leads to dissemination about political beliefs.<sup>33</sup>

Other executive agencies have also engaged in excessive dissemination. The Justice Department's Inter-Division Information Unit (IDIU) sent its computerized data to the CIA, in order that the CIA could check its records on foreign travel of American dissidents.<sup>34</sup> The IDIU sent the same material to the Internal Revenue Service's Special Service Staff, which used the information as part of its program for initiating tax audits.<sup>35</sup> The Internal Revenue Service itself disseminated tax returns or related tax information to the CIA, the FBI, and the Justice Department's Internal Security Division (which also made requests on behalf of the FBI), without ascertaining whether there was a proper basis for the request or the purpose for which the information would be used.<sup>36</sup>

### *Subfinding (b)*

Excessive dissemination has sometimes contributed to the inefficiency of the intelligence process itself.

The dissemination of large amounts of relatively useless or totally irrelevant information has reduced the efficiency of the intelligence process. It has made it difficult for decision-makers to weigh the importance of reports.<sup>37</sup> Agencies such as the FBI have collected intelligence, not because of its own needs or desires, or because it had been requested to do so, but because the data was assumed to be of value to someone else. Units established to screen and evaluate intelligence have encouraged, rather than reduced, further dissemination.

In some instances the FBI has disseminated information to local police in a manner that was counterproductive to effective law enforcement. One former police chief has described how the Bureau, under "pressure" from the White House to prepare for a specific demonstration, "passed on information in such a way that it was totally useless" because it was not "evaluated" and thus exaggerated the dangers.<sup>38</sup> The need for prior evaluation of the significance of raw intelligence has not been fully recognized in the Bureau's policy for dissemination of data on protest demonstrations.<sup>39</sup>

<sup>33</sup> Testimony of James F. Ahern (former New Haven police chief), Robert diGrazia (Boston chief of police), and Patrick V. Murphy (former New York police commissioner and President of the Police Foundation), 1/20/76, p. 44. These experienced law enforcement officials stated that local police do not need information from the FBI about "political beliefs."

<sup>34</sup> See CHAOS Report: Section III.

<sup>35</sup> See IRS Report: Section, "SSS."

<sup>36</sup> See IRS Report: Section, "Dissemination."

<sup>37</sup> On at least one occasion, Justice Department officials expressed concern that they had received a report from the FBI on an incident and then a second report from Army intelligence which appeared to confirm the Bureau's information, but the Army's report turned out to have been based on the FBI's information. This led to a Justice Department request that the Army "screen" its intelligence and send "only key items." (Memorandum for the Record General Counsel Robert E. Jordan to Under Secretary of the Army David McGiffert, 1/10/68.)

<sup>38</sup> Ahern, 1/20/76, p. 4.

<sup>39</sup> The FBI had adhered across-the-board to the position that its reports do not contain "conclusions," and Bureau rules have permitted the dissemination of data from "sources known to be unreliable" so long as "good judgment" is used. It has been up to the recipient agencies "to intelligently evaluate the information" on the basis of "descriptive information" about the Bureau's sources. (FBI Man-

The impediments to accurate intelligence collection have been augmented by the dissemination practices of some local law enforcement agencies. An example is the report on the Chicago Police Department's Security Section, which has been described as having passed "inherently inaccurate and distortive data" to federal intelligence agencies.<sup>40</sup> The General Accounting Office has confirmed that this is a general problem.<sup>41</sup> While the Committee has not examined local law enforcement intelligence, the dissemination practices of such agencies require as much careful control as federal agencies.<sup>42</sup>

The assumption that some other agency might need information has not only produced excessive dissemination, but has also served as a specific rationale for collection of intelligence that was not otherwise within an agency's jurisdiction. The best example is the FBI's collection of intelligence on "general racial matters" for the military.<sup>43</sup>

One of the ironies in the recent history of domestic intelligence was that the Justice Department's IDIU, which was set up to collate and evaluate the massive amounts of data flowing to the Justice Department from the FBI, contributed to even more extensive collection and dissemination.<sup>44</sup> The IDIU encouraged numerous federal agencies

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ual of Rules and Regulations, Part II, Section 5) Thus the FBI has not adequately distinguished between situations where evaluation is or is not necessary. More than just "descriptive information" about FBI sources is needed to help recipients of data on possible violent protest demonstration understand the likelihood of actual disorders.

<sup>40</sup> See Part II, p. 78.

<sup>41</sup> The GAO has ranked the types of sources of information relied upon by the FBI in beginning domestic intelligence investigations according to whether the data initially supplied were "hard," "medium," or "soft." According to the GAO, police and other state and local agencies were found to have provided the lowest proportion of "hard" information and the highest proportion of "soft" information. (GAO Report, p. 106).

<sup>42</sup> Two major cities have made efforts recently to establish standards for police intelligence activities. (Los Angeles Police Department, Public Disorder Intelligence Division: Standards and Procedures, 4/10/75; New York City Police Department, Procedures: Public Security Activities of the Intelligence Division, House Internal Security Committee, Hearings, Domestic Intelligence Operations for Internal Security Purposes, 1974.)

<sup>43</sup> The FBI Manual cited the needs of the military as a basis for its intelligence-gathering on "general racial matters." The Manual stated that the Bureau did not itself have "investigative jurisdiction over such general racial matters," but that its "intelligence function" included advising "appropriate Government agencies" of information about "proposed or actual activities of individuals, officials, committees, legislatures, organizations, etc., in the racial field." The Manual based "Federal jurisdiction" on the military's responsibility:

"Insofar as Federal jurisdiction in general racial matters is concerned, U.S. Army regulations place responsibility upon the Army to keep advised of any developments of a civil disturbance nature which may require the rendering of assistance to civil authorities or the intervention of federal troops. OSI (Air Force) and ONI (Navy) have a collateral responsibility under Army in such matters and copies of pertinent documents disseminated to Army concerning such matters should be furnished to OSI and ONI." (1960 FBI Manual Section 122, pp. 5-6)

<sup>44</sup> For example, in addition to containing the names of known activists, the IDIU printouts supplied to IRS's SSS also contained the names of many prominent citizens whom the Justice Department thought could be of assistance in quelling a civil disturbance in a particular locality should one occur. SSS personnel were unaware that the IDIU printout contained the names of these persons and established files indiscriminately on them.



(including many without regular investigative functions) to disseminate information to it about "organizations and individuals" who might "instigate" or "prevent" civil disorders.<sup>45</sup>

*Subfunding (c)*

Under the federal employee security program, unnecessary information about the political beliefs and associations of prospective government employees has been disseminated.

For nearly thirty years the federal employee security program has required a "national agency check" of the files of several government agencies, including the FBI, the Civil Service Commission, and military intelligence, on prospective employees.<sup>46</sup> Although there was often no information to report, federal agencies received "name check" reports on all candidates for employment. This appears to have been the single largest source of regular dissemination of data in intelligence files.

These name check reports have provided information from intelligence files not only about possible criminal activity or personal weaknesses of the individual, but also about lawful political activity and association. Until recently the Executive Order on employee security required reports on any "association" with a person or group supporting "subversive" views. These reports have been required for every federal employee, regardless of whether he or she holds a sensitive position or has access to classified information.<sup>47</sup>

It has been the policy of the FBI, and presumably other agencies as well, to disseminate via name check reports any information in its files—no matter how old or how unreliable—which might relate to the standards of the Executive Order.<sup>48</sup> The current criteria have been substantially narrowed: the basic standards for reporting are group membership and potential criminal conduct.<sup>49</sup> However, the Justice Department has advised the FBI that "it is not possible to set definite parameters" for organizations and that the Bureau should include those with a "potential" for meeting the criteria.<sup>50</sup> The FBI does not determine whether or not the information it furnishes is decisive under these standards. Departmental instructions state:

It is not the Bureau's responsibility to determine whether the information is or is not of importance to the particular

<sup>45</sup> Attorney General Clark to Maroney, et al, 11/9/67.

<sup>46</sup> Executive Order 10450, Section 3(a). For a discussion of the origins and application of this order, pp. 42–44.

<sup>47</sup> Executive Order 10450, Section 8(a) (5).

<sup>48</sup> Memorandum from FBI to Senate Select Committee, 3/3/76.

<sup>49</sup> The current criteria are: "Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means." (Executive Order 11785, Section 3, June 4, 1974.) This order also abolished the "Attorney General's list."

<sup>50</sup> Memorandum from Assistant Attorney General Glen E. Pommerening to FBI Director Clarence Kelley, 11/1/74.

agency in the carrying out of its current activities and responsibilities and whether or not any action is taken by the department or agency is not, of course, a principal concern of the Bureau.<sup>51</sup>

The FBI itself has expressed misgivings about the breadth of its responsibilities under the employee security program. It has continued to seek "clarification" from the Justice Department, and it has pointed out that there have been no "adverse actions" taken against current or prospective Federal employees under the loyalty and security provisions of the Executive Order "for several years." This has been due to the fact "that difficulties of proof imposed by the courts in loyalty and security cases have proved almost insurmountable."<sup>52</sup>

The employee security program has served an essential function in full background investigation and name checks for those having access to classified information. But its extension to vaguely-defined "subversives" in nonsensitive positions has gone beyond the Government's proper need for information on the suitability of persons for employment.<sup>53</sup>

#### *Subfinding (d)*

The FBI, which has been the "clearinghouse" for all domestic intelligence data, maintains in readily accessible files sensitive and derogatory personal information not relevant to any investigation, as well as information which was improperly or illegally obtained.

In recent years, the Secret Service, military intelligence, and other agencies have instituted significant programs for the destruction or purging of useless information.<sup>54</sup> However, the FBI has retained its vast general files, accumulated over the years under its duty to serve as a "clearinghouse" for domestic intelligence data.<sup>55</sup> There are over 6,500,000 files at FBI headquarters; and the data is retrievable through a general index consisting of over 58,000,000 index cards. Each Bureau Field Office has substantial additional information in its files. Domestic intelligence information included in the general index is described by the FBI as:

associates and relatives of the subject; members of organizations under investigation or determined to be possible subver-

<sup>51</sup> Letter from Attorney General Tom Clark to J. Edgar Hoover, 12/5/47. The FBI advises that it considers this directive still to be in effect. (Memorandum from FBI to Select Committee, 3/3/76.)

<sup>52</sup> Letter from Kelley to Pommerening, 12/11/74. The FBI has advised that federal employees are now evaluated according to "suitability" rather than "loyalty and security" criteria. (Memorandum from FBI to Select Committee, 3/3/76.)

<sup>53</sup> According to a 1974 Bureau memorandum and a confirming Justice Department memorandum, the purpose is to provide "information concerning possible subversive infiltration into the Executive Branch of Government." (Kelley to Pommerening, 8/14/74; Pommerening to Kelley, 8/26/74.) As indicated in the Committee's finding on overbreadth, the concept "subversion" is so vague and flexible as to invite excesses.

<sup>54</sup> Secret Service practices are described in *Review of Secret Service Protective Measures*, Hearings before the Senate Committee on Appropriations, 94th Cong., 1st Sess. (1975), p. 16. Destruction of Army intelligence files is discussed in Report on Military Surveillance.

<sup>55</sup> For a discussion of the origins of this function, see p. 23.

sive; individuals contributing funds to subversive-type activity; subversive or seditious publications; writers of articles in subversive or seditious publications; bookstores specializing in subversive-type publications and related types of information.<sup>56</sup>

The Committee has found that there are massive amounts of irrelevant and trivial information in these files.<sup>57</sup> The FBI has kept such data in its filing system on the theory that they might be useful someday in the future to solve crimes, for employee background checks, to evaluate the reliability of the source, or to "answer questions or challenges" about the Bureau's conduct.<sup>58</sup>

The FBI has recently issued instructions to its Field Offices to take greater care in recording domestic intelligence information in its files. They are to exercise "judgment" as to whether or not the activity is "pertinent" to the Bureau's "legitimate investigative interest."<sup>59</sup> Nevertheless, current policies still allow the indexing of the names of persons who are not the subject of investigation but just attend meetings of a group under investigation.<sup>60</sup>

<sup>56</sup> Memorandum from FBI to Senate Select Committee, 5/22/75.

<sup>57</sup> Current FBI policies modify past practice with respect to the indexing of unsolicited allegations, including those of "a personal nature," not requiring "investigative action." The Bureau no longer includes in its name index the name of the person about whom the information is volunteered where the Bureau has "no legitimate investigative interest." In the case of an unsolicited letter, for example, the name of the sender only is included in the index. The letter itself is also retained so the FBI "can retrieve" it via the index reference to the sender "should an occasion arise in the future when we need to refer back to it." (Memorandum from FBI Headquarters to all SACs, 11/10/75.)

<sup>58</sup> Memorandum from FBI to Select Committee, 7/21/75. This memorandum states that the Bureau has adopted, under regulations of the National Archives, a program for destroying files which "no longer have contemporary value." The FBI has not included within this program most of the investigative and intelligence information in its files dating back as far as 1939.

<sup>59</sup> Memorandum from FBI Headquarters to all SACs, 1/27/76. The Field Offices were given the following specific guidance:

"For example, the statement of a local leader of the Ku Klux Klan in which he advocates regular attendance at church would be merely an exercise of his right to free speech and, hence, maintenance of such a record would be prohibited. On the other hand, should this same individual stand up before a gathering and advocate the use of violence in furthering the organization's objectives, this obviously would be pertinent to our investigation."

Bureau headquarters recognized that these were "extreme" examples and that "problems" were created in "those instances which are in the middle and which are not so clear." Thus, FBI agents were encouraged to consult Headquarters "to resolve any question concerning a specific problem."

<sup>60</sup> One Field Office has described regular Bureau procedures as follows:

"[Our] informants, after attending meetings of these organizations [under investigation], usually submit reports in which they describe briefly the activities and discussions which took place as well as listing those members and non-members in attendance at such meetings. Copies of these informant reports are disseminated to various individuals' files *and the names of those in attendance where no individuals file exists, are indexed to the organization's file.*" (Memorandum from SAC to FBI Headquarters, 12/1/75). [Emphasis added.]

FBI headquarters did not indicate that this practice was outside the "scope" of authorized "law enforcement activity." It is considered "pertinent" to the investigation "to maintain records concerning membership, public utterings, and/or other activities" of an organization under investigation. (Memorandum from FBI Headquarters to all SACs, 1/27/76.)

Finally, there is information in FBI files which was collected by illegal or improper means. It ranges from the fruits of warrantless electronic surveillance, mail openings, and surreptitious entries, to the results of sweeping intelligence investigations which collected data about the lawful political activities and personal lives of Americans. Where such intelligence remain in the name-indexed files, it can be retrieved and disseminated along with other information, thus continuing indefinitely the potential for compounding the initial intrusion into constitutionally protected areas.