

# THE USE OF INFORMANTS IN FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

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# THE USE OF INFORMANTS IN FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

## I. INTRODUCTION AND SUMMARY

The dangers to a free society that are implicit in the use of secret intelligence informers have long been recognized. In his *Constitutional History of England*, written in the mid-19th century, Sir Thomas May observed:

Men may be without restraints upon their liberty; they may pass to and fro at pleasure: but if their steps are tracked by spies and informers, their words noted down for crimination, their associates watched as conspirators—who shall say that they are free? <sup>1</sup>

May pointed to the use of informers by “continental despotisms,” noting that “the freedom of a country may be measured by its immunity from this baleful agency.” <sup>2</sup>

On the other hand, law enforcement officials see informants <sup>3</sup> as a highly effective technique—one justified by the public’s interest in the detection of crime and the prosecution of criminals. FBI officials testified to the Committee that informants “provide one of the best and most complete forms of coverage” in their investigations. <sup>4</sup> Former Attorney General Katzenbach testified that the use of intelligence informants in the mid-1960s to infiltrate the Ku Klux Klan—a technique urged upon the FBI by President Johnson, Attorney General Robert Kennedy, and Mr. Katzenbach—was a principal factor in stopping repeated acts of criminal violence.

This Appendix, pursuant to the Committee’s mandate under Senate Resolution 21, focuses on the use of informants in FBI intelligence investigations who are recruited, paid and directed by Bureau Special Agents. The Committee did not examine the use of informants in FBI criminal investigations nor did the Committee examine instances of the “walk-in” who volunteers information to the FBI on a one-time basis. As discussed in more detail below, paid and directed intelligence informants are extensively used in FBI domestic intelligence investigations of groups and individuals. These intelligence informants are the subject of this Appendix.

The use of informants to collect intelligence on Americans is not confined to the FBI. The Committee also examined the use of intelli-

<sup>1</sup> T. May, *Constitutional History of England* (1863), p. 275.

<sup>2</sup> *Id.*

<sup>3</sup> The term “informant” is used throughout the remainder of this report. That is the term employed in the statute which provides that appropriations for the Department of Justice are available for payment of “informants,” 28 U.S.C. § 524, and is also the term which the FBI employs in its directives.

<sup>4</sup> Memorandum from the FBI to Senate Select Committee, 11/25/75, Exhibit 33, Hearings, Vol. 6, p. 444.

gence informants by other governmental agencies. In the late 1960s, informants and undercover agents were used by the CIA and Army Intelligence to secretly penetrate domestic groups. In 1968, about 1500 Army intelligence agents were engaged in monitoring and penetrating civilian activity in the United States; although a 1971 Defense Department directive now generally limits the military's collection of information about private groups and individuals, the directive permits the military to secretly penetrate civilian groups where approved by the Defense Department. See the Appendices on *Improper Surveillance of Private Citizens by the Military* and *CIA Intelligence Activities Regarding Americans*. In addition, the Internal Revenue Service uses informants for intelligence purposes. See the IRS Report: p. 863, "Selective Enforcement for Non-Tax Purposes."

#### A. Summary of Facts

##### 1. The Extensive Use of Intelligence Informants

The paid and directed informant is the most extensively used technique in FBI domestic intelligence investigations. Informants were used in 85 percent of the domestic intelligence investigations analyzed in a recent study by the General Accounting Office.<sup>5</sup> By comparison, electronic surveillance was used in only 5 percent of the cases studied. The FBI places strong emphasis on informant coverage in intelligence investigations, instructing agents to "develop reliable informants at all levels and in all segments" of groups under investigation.<sup>6</sup>

The Committee's investigation revealed that the FBI was using more than 1,500 domestic intelligence informants as of June 30, 1975.<sup>7</sup>

The FBI budget for Fiscal Year 1976 programmed a total of \$7,401,000 for the intelligence informant program, more than twice the amount allocated for the organized crime informant program.<sup>8</sup>

The number of intelligence informants has been substantially larger in previous years because of the "Ghetto Informant Program," which at its height comprised over 7,000 informants. The FBI began the Ghetto Informant Program in 1967 in the context of the urban riots and violence of the mid-1960's, and in response to instructions from the White House and the Attorney General. Although "ghetto" informants were initially used as "listening posts" to provide information on the planning or organizing of riots and civil disturbances, many were eventually given specific assignments to attend public meetings of "extremists" and to identify bookstores and others distributing "extremist literature". The FBI terminated the program in 1973 after sharp debate within the Bureau over the program's effectiveness and the propriety of the listening post concept.

Generally, there are two types of intelligence informants: those the FBI first recruits and then inserts into investigated group under investigation, and those who are already members of such a group and are "turned" or recruited as FBI informants.

<sup>5</sup> General Accounting Office, *Domestic Intelligence Operations of the FBI* (2/24/76).

<sup>6</sup> FBI Manual of Instructions Section 87 B(6), hereinafter cited as "FBI, MOI".

<sup>7</sup> FBI Memorandum to Senate Select Committee, 11/28/75.

<sup>8</sup> Memorandum, "FBI overall Intelligence Program FY 1977 compared to FY 1976." The intelligence informant program includes payments to informants for services and expenses as well as FBI personnel and support costs and overhead.

In addition to paid and directed informants, the FBI uses "confidential sources," defined in the FBI Manual of Instructions as persons who furnish the FBI information available to them through their position, such as "bankers, telephone company employees, and landlords."<sup>9</sup> Confidential sources were used in 50 percent of the cases analyzed by the GAO, ranking behind informants and local law enforcement officials as the third most used techniques in intelligence cases. As of June 1975, there were 1,254 confidential sources approved by FBI headquarters for domestic intelligence purposes.<sup>9a</sup>

## *2. The Unpublished Standards for the Use of Intelligence Informants.*

The standards for the use of intelligence informants are contained in internal FBI directives that are not available to the public.

The FBI Manual of Instructions sets few limits on the scope of intelligence informant reporting. The Manual proscribes only the reporting of communications between an attorney and client, legal "defense plans or strategy," "employer-employee relationships" (where an informant is connected with a labor union), and "legitimate institution or campus activities" in schools.<sup>10</sup> The Manual contains no standard limiting an informant's reporting to information relating to the commission of criminal offenses or even to violent or potentially violent activity. In fact, intelligence informants report on virtually every aspect of a group's activity serving, in the words of both FBI officials and an informant, as a "vacuum cleaner" of information.<sup>11</sup>

FBI officials recognized this broad scope of informant reporting as a problem area, pointing out that it produces "too much information" in FBI files.<sup>11a</sup> They expressed their belief that an informant should report to some degree the lawful aspects of a group's activity in order to permit an accurate picture to be drawn. But they did recognize the need "to narrow down" informant reporting from its present broad scope.<sup>12</sup>

The Manual does not set independent standards which must be supported by facts before an organization can be the subject of informant coverage. Once the criteria for opening a regular intelligence investigation are met, and the case is opened, informants can be used without any restrictions.<sup>12a</sup> There is no specific determination made as to whether the substantial intrusion represented by informant coverage is justified by the government's interest in obtaining information. There is nothing that requires that a determination be made of whether less intrusive means will adequately serve the government's interest. There is also no requirement that the decisions of FBI officials to use informants be reviewed by anyone outside the Bureau. In

<sup>9</sup> FBI, MOI Sec. 107, A (4).

<sup>9a</sup> FBI deposition, 2/10/76, p. 12.

<sup>10</sup> FBI, MOI, Secs. 107 D (2d), U (1b).

<sup>11</sup> James Adams testimony 12/2/75, Hearings, Vol. 6, p. 135; Mary Jo Cook testimony 12/2/75, Hearings, Vol. 6, p. 111.

<sup>11a</sup> Adams, 12/2/75, Hearings, Vol. 6, p. 135.

<sup>12</sup> Adams, 12/2/75, Hearings, Vol. 6, p. 135.

<sup>12a</sup> Under a Manual provision adopted in 1973, established informants may supply information in a preliminary investigation, but new informants may not be recruited. (FBI, MOI, Sec. 87, B (4c).) The Attorney General's draft guidelines for domestic intelligence investigation similarly provide that only established informants may be used in preliminary investigations. (*Draft Guidelines for Domestic Security Investigations*, 12/9/75, Sec. II (E) (G).)

short, intelligence informant coverage has not been subject to the standards which govern the use of other intrusive techniques such as wiretapping or other forms of electronic surveillance. (Compare the requirements for use of electronic surveillance and wiretaps discussed in "Intelligence Activities and the Rights of Americans"; Part IV.)

*B. Policy and Constitutional Issues Raised by the Use of Intelligence Informants*

The use of informants and confidential sources in intelligence investigations of domestic groups and citizens can raise important policy and Constitutional issues. Unlike investigations of specific criminal activity, intelligence investigations frequently have involved continuous surveillance across a broad spectrum of activity. Where "intelligence" rather than evidence of particular criminal activity is collected, informants and confidential sources give the FBI a large amount of information dealing with the lawful political and personal activity of citizens. Former FBI informants infiltrated into organizations testified that they reported "any and everything" they saw or heard pertaining to the group's members,<sup>13</sup> and that they took membership lists, financial data, and other records and gave them to the FBI. This testimony was confirmed by the FBI agents to whom they reported. As one agent testified, his informant "told me everything she knew" about the political organization she infiltrated.<sup>14</sup>

Under the Bill of Rights, particularly the First and Fourth Amendments, our Constitution protects freedom of speech and political association and the right to be secure against unreasonable searches and seizures.

In the light of the protections guaranteed by our Constitution, the use of informants for intelligence purposes raises three principal issues:

(1) The first issue concerns whether informants should be used at all in intelligence investigations,<sup>15</sup> and, if so, under what circumstances. The use of informants in the investigation of groups and individuals involved in political activity may chill the exercise of First Amendment rights. For example, citizens interested in attending a meeting of a political group either to join or to express support for a lawful interest they share with the group, may be deterred by the fear that their attendance would mark them as a member in an informant's eyes. They may fear an informant's report will prevent their gaining a job requiring a security clearance, even though in fact they supported no unlawful activity. Although citizens may not know that a secret informant is reporting on a particular group, the mere existence of the FBI intelligence informant system can be sufficient to cause them to curtail their exercise of First Amendment rights for fear they will be reported to the FBI.

(2) The second issue concerns the scope of an informant's reporting. Should an informant report only indications of criminal or violent activity, or should he report all aspects of a group's activity and the

<sup>13</sup> Rowe, 12/2/75, Hearings, Vol. 6, p. 116, Cook, 12/2/75, Hearings, vol. 6, p. 111.

<sup>14</sup> Special Agent, 11/20/75, p. 55.

<sup>15</sup> This Report focuses solely on the informant technique as used in intelligence investigations. It does not address the question of whether intelligence investigations are themselves consistent with Constitutional guarantees and sound law enforcement policy or can be made so by appropriate standards and controls. See the Committee's Report on Domestic Intelligence and the Findings, Conclusions and Recommendations in that Report.

personal lives of individuals in the interest of intelligence? In this connection, there is the further question of whether an informant should be permitted to take the confidential records and documents of a group or individual (such as membership lists or financial data) and give them to the FBI, when the Government cannot properly obtain them through statutory disclosure requirement, subpoena, or search warrant.

(3) Finally, there is the issue of an informant's conduct and behavior. The Committee heard testimony on the difficulties inherent in an informant reporting on violent and criminal activity. To be in a position to report, the informant may have to participate in the unlawful activity to some degree. As one FBI handling agent testified of an informant in a violence-prone element of the Ku Klux Klan, "he couldn't be an angel and be a good informant."<sup>16</sup> Where such an informant is paid and directed by the FBI, the Government may be placed in the at least unseemly posture of involvement through its agents in the activity it is seeking to prevent. At the extreme, the Government's informant may be held to have acted as an agent provocateur, that is, an agent of the Government who has provoked illegal or violent activity.

### *C. The Lack of Judicial Treatment of Intelligence Informant Issues*

These issues have rarely been before the courts. This is in part due to the nature of secret intelligence informant activity. Members of a group will seldom learn that an FBI intelligence informant has been in their midst or has copied their records for the FBI because intelligence investigations almost invariably do not result in prosecutions.<sup>17</sup> Without knowledge of an informant's activity and in the absence of a prosecution, a group or its members will not come before a court to raise Constitutional objections. Consequently, there are few court decisions and those that do exist usually concern criminal, rather than intelligence informants. In *Hoffa v. United States*,<sup>18</sup> a criminal case involving charges of bribing a jury, the Supreme Court held that an informant's testimony concerning a defendant's conversations could not be considered the product of a search where the defendant had consented to the presence of the individual who served as an informant. The facts did not, however, present the issue of whether an inform-

<sup>16</sup> Special Agent, 11/21/75, p. 12.

<sup>17</sup> Only 16 of the domestic intelligence cases reviewed by the General Accounting Office—or less than 3 percent—were referred to a U.S. attorney or to local authorities for possible prosecution. Of the 16 referrals for criminal violations, only 7 were prosecuted. (GAO Study, p. 33)

Even where there are grounds for prosecution in a domestic intelligence case, such as acts of violence, the decision may be made to forego prosecution rather than surface an informant. The informant's continued reporting from within an organization may be deemed more valuable than a particular prosecution. This in turn may lead to the use of illegitimate action to prevent violence, such as that employed in the FBI's "COINTELPRO" operation. (See COINTELPRO Report.)

<sup>18</sup> 385 U.S. 293 (1966). The *Hoffa* court stated: "The risk of . . . being betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessary assume whenever we speak." In another criminal case, *Lewis v. United States*, 385 U.S. 206 (1966), the Court, in declining to rule that the use of undercover agents is unconstitutional *per se*, stated: "In the detection of many types of crime, the Government is entitled to use decoys and to conceal the identity of its agents."

ant's surreptitious taking of documents for the Government constituted an unlawful search.

The Select Committee's investigation has revealed for the first time the extremely broad scope of FBI intelligence informant surveillance and reporting. The Supreme Court has yet to be presented with the types of factual situations—such as intensive informant coverage of lawful political activity and personal matters—which may produce the chilling of rights guaranteed by the First Amendment. Moreover, apart from particular cases which may come before a court, the overall effect on the exercise of First Amendment rights in the society at large may be very great where it is known that a large-scale intelligence informant system is operating. No court has seen the overall pattern of FBI intelligence informant coverage of citizens and groups. Consequently, courts have been unable to assess the full impact of the informant system on the exercise of constitutionally protected rights.

A U.S. Army surveillance system was challenged on First Amendment grounds in *Laird v. Tatum*, but the Court described the information gathered in that case as “nothing more than a good newspaper reporter would be able to gather by attendance at public meetings and the clipping of articles from publications available on any newsstand.”<sup>19</sup>

In a more recent case, the California Supreme Court held that secret surveillance of classes and group meetings at a university through the use of undercover agents was “likely to pose a substantial restraint upon the exercise of First Amendment rights.”<sup>20</sup> Citing a number of U.S. Supreme Court opinions, the California Supreme Court stated in its unanimous decision:

In view of this significant potential chilling effect, the challenged surveillance activities can only be sustained if [the Government] can demonstrate a “compelling” state interest which justifies the resultant deterrence of First Amendment rights and which cannot be served by alternative means less intrusive on fundamental rights.<sup>21</sup>

<sup>19</sup> In a 5-4 decision, the Court held only that a complaint that First Amendment rights were chilled by “the mere existence, without more” of an Army intelligence activity alleged to be broader than necessary did not present a justiciable controversy in Federal court. Because the complaint failed to allege more specific harm than mere subjection to governmental scrutiny, it failed to state a Federal claim. 408 U.S. 1, 9 (1972)

However, Justice Marshall, sitting as a Circuit Justice, held that a Federal claim under the First Amendment was stated in *Socialist Workers Party v. Attorney General*, 419 U.S. 1315 (1974). There, Justice Marshall found that allegations of a “chilling effect” on First Amendment rights were sufficiently specific to satisfy jurisdictional requirements where it was complained that FBI informants were to monitor a public meeting of the Socialist Workers Party. The complaint stated that FBI informant coverage would have the concrete effect of dissuading delegates from participating in the convention and lead to possible loss of employment for those identified by the informants as attending. Although Justice Marshall refused to grant an injunction against the use of informants at the convention, he did prohibit the Government from transmitting any information obtained at the convention to nongovernmental entities and left to a trial on the merits the question of whether the claimed “chill” was substantial enough to justify permanent injunctive and monetary relief.

<sup>20</sup> *White v. Davis*, 533 Pac. Rep. 2d, 222, 232 (California Supreme Court, 1975).

<sup>21</sup> 533 Pac. Rep. 2d, at 232.



#### *D. The Scope of the Committee's Investigation*

Before turning to the discussion below, two points as to the Committee's investigation must be noted.

First, in recognition of the sensitive nature of the informant technique, including the risk of exposure or physical harm to present and former informants, the Committee worked out procedures with the cooperation of the Attorney General and the FBI to protect the integrity of the FBI's operations while assuring the Committee's ability to conduct a thorough investigation. For example, while materials on full FBI intelligence investigations were examined, including informant reports on target groups and particular incidents, the names and identities of informants were not revealed unless they had previously been made public through court proceedings or the informant's own choice.

Second, as noted above, the Committee's investigation focused on the use of FBI-paid and directed intelligence informants and FBI-approved confidential sources, not criminal informants, one-time "walk-ins" or citizens who provide information to FBI Special Agents on their own initiative. In short, the Committee's investigation dealt not with the citizen's right to communicate with a law enforcement agency, but with a specific and substantial government intelligence program employing individuals who are paid and directed by the FBI Intelligence Division. It is in this sense that the discussion that follows uses the term "intelligence informant."

The discussion below is in two parts. To illustrate the nature of the intelligence informant technique, Part One examines the case histories of two former FBI intelligence informants. Part One also sets out eleven additional examples of informant coverage in domestic intelligence investigations and describes the "Ghetto Informant Program," conducted from 1967 to 1973, as well as other past FBI informant programs directed towards specific concerns.

Part Two discusses the size and scope of the FBI intelligence informant program and the standards that exist for the use of intelligence informants.

## II. THE NATURE OF THE INTELLIGENCE INFORMANT TECHNIQUE

### *A. Case Histories of Particular Informants*

To provide an understanding of the intelligence informant technique, two case studies are presented. The first case study involves a former FBI "subversive" informant in the Vietnam Veterans Against the War, Mary Jo Cook. The second case study involves a former FBI "extremist" informant in the Ku Klux Klan, Gary Rowe. Before turning to those cases, the FBI's definitions of subversive and extremist informants are set forth below.

*Subversive Informants.*—The FBI classifies its paid and directed intelligence informants into two categories, "subversive" and "extremist," corresponding to the two types of domestic intelligence investiga-

tions. "Subversive"<sup>22</sup> informants are those used in the investigation of "subversive activities," defined in Section 87 of the FBI Manual as "activities aimed at overthrowing, destroying, or undermining the Government of the United States or any of its political subdivisions" by illegal means.<sup>23</sup> Section 87 has been applied to the activities of the Communist Party and a wide variety of other organizations which the FBI believes have revolutionary characteristics. During the Vietnam War, investigations of individuals labeled "Key Activists" were conducted under Section 87, in which informant coverage was stressed. For example, in January 1968, instructions went out to ten major field offices to designate certain persons as "Key Activists." They were defined as "individuals in the Students for a Democratic Society and the anti-Vietnam war groups [who] are extremely active and most vocal in their statements denouncing the United States and calling for civil disobedience and other forms of unlawful and disruptive acts."<sup>24</sup> There was to be "an intensive investigation" of each "key activist":

Because of their leadership and prominence in the "new left" movement, as well as the growing militancy of this movement, each office must maintain high-level informant coverage on these individuals so that the Bureau is kept abreast of their day-to-day activities as well as the organizations they are affiliated with, to develop information regarding their sources of funds, foreign contacts, and future plans.<sup>25</sup>

*Extremist Informants.*—"Extremist" informants<sup>25a</sup> are those used in the investigation of "extremist" activities, defined in Section 122 of the FBI Manual in the same way as subversive activities but also including "denying the rights of individuals under the Constitution."<sup>26</sup> In practice, "extremist" investigations have concerned violence-prone groups composed of members of one or another race. Section 122 is intended to cover what the Bureau calls "White Hate"

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<sup>22</sup> A subversive informant (sometimes referred to as an "internal security" informant), is defined in the FBI Manual as:

"Individual actively engaged in obtaining furnishing current information on security or intelligence matters exclusively for Bureau whose identity must be protected. Such person should be member or attend meetings of subversive organization, or be in such position relative to subversive organization that he is able to provide current information of value. (FBI, MOI, Sec. 107, I, A(1).)"

<sup>23</sup> FBI, MOI, Sec. 87.A(4).

<sup>24</sup> Memorandum from FBI Headquarters to all SAC's, 1/30/68.

<sup>25</sup> *Ibid.*

<sup>25a</sup> An extremist informant is defined in the FBI Manual as:

"An individual whose identity must be protected and who is actively engaged in obtaining and furnishing current information on extremist matters exclusively to the Bureau. Extremist informants include any individual:

"a. Who is a member of or attends meetings of an extremist group (white, black, or Indian) which has a propensity for violence or which strives to deny individuals certain constitutional rights through the use of force, violence, or intimidation;

"b. Who is in a position to obtain and provide current information of value concerning such organizations;

"c. Or who furnishes information on extremists who may or may not be members of extremist groups but are engaged in planning or carrying out any type of guerrilla warfare against established institutions, which may be in violation of local, state, or Federal laws." (FBI, MOI, Sec. 130, A(1).)

<sup>26</sup> FBI, MOI, Sec. 122 A(1-e).

groups, such as the Ku Klux Klan, and "Black Nationalist Hate" groups, such as the Black Panther Party and the Nation of Islam. It also applies to some American Indian groups such as the American Indian Movement, as well as a variety of terrorist organizations engaged in "urban guerrilla warfare."<sup>27</sup>

In the case of organizations of blacks, informant coverage in Section 122 investigations extended beyond the Black Panthers. In the fall of 1970, the FBI decided to include "every Black Student Union and similar group regardless of their past or present involvement in disorders."<sup>28</sup> The initial proposal for informant coverage called for "preliminary inquiry through established sources and informants to determine background, aims and purposes, leaders and Key Activists."<sup>29</sup> It was estimated this would cause FBI field offices to open 4,000 cases on both groups and individuals. The subsequent instructions to the field offices stressed the need to investigate Black Student Unions and similar groups and to "target informants and sources to develop information regarding these groups on a continuing basis . . . and to develop such coverage where none exists."<sup>30</sup>

The case histories illustrating the activity of FBI's subversive and extremist intelligence informants are presented below.

*1. Mary Jo Cook—FBI Informant in the Vietnam Veterans Against the War*

In June 1973, Mary Jo Cook was recruited by the FBI field office in Buffalo, New York to serve as a paid and directed informant in the Buffalo chapter of the Vietnam Veterans Against the War (VVAW).<sup>31</sup>

a. *Background.*—The FBI made limited investigations in 1967 and 1968 to determine if the Communist Party or other "subversive" elements were directing or controlling the VVAW but concluded that there was no such outside influence.<sup>32</sup>

In August 1971, a full investigation of the VVAW was opened on the basis of reports that Communist youth groups were infiltrating the VVAW and the alleged involvement of some VVAW members in illegal demonstrations; militant antiwar activity by the VVAW, including reported links with foreign elements, was also a basis for the full investigation.<sup>33</sup> FBI concern centered on the national office

<sup>27</sup> FBI, MOI, Sec. 22(A).

<sup>28</sup> Memorandum of the Executives Conference 10/29/70.

<sup>29</sup> *Id.*

<sup>30</sup> Memorandum from FBI Headquarters to all SACs, 11/4/70.

<sup>31</sup> Cook, 12/2/75, Hearings, Vol. 6 p. 112.

<sup>32</sup> FBI Memorandum to Senate Select Committee, 12/2/75; Hearings, Vol. 6, Exhibit 72.

<sup>33</sup> In a Memorandum to the Committee, the FBI described the basis for the opening of the full investigation as follows:

"[In August 1971] information from a variety of sources dictated the need to determine the extent of control over VVAW by subversive groups and/or violence-prone elements in the antiwar movement. Sources had provided information that VVAW was stockpiling weapons, VVAW had been in contact with North Vietnam officials in Paris, France, VVAW was receiving funds from former CPUSA members and VVAW was aiding and financing U.S. military deserters. Additionally, information had been received that some individual chapters throughout the country had been infiltrated by the youth groups of the CPUSA and the SWP. A trend of increased militancy developed within the VVAW and the possibilities of violence escalated within the organization. During December 1971, VVAW members forcibly and illegally occupied or sur-

(Continued)

of the VVAW, which the FBI saw as adopting Marxist-Leninist doctrine and anti-imperialist positions.

The FBI's investigation of local VVAW chapters was, in part, designed to determine the extent to which they were following the position of the VVAW national office or were being infiltrated by Communist elements.<sup>34</sup>

b. *Cook's Instructions*.—From her initial meeting with the FBI agent who recruited her, Cook understood that she was to serve as both a reporter of information and a moderating force in the VVAW. Cook testified that she understood she was to act as "a voice of reason . . . a guiding force in the organization and keep things calm, cool and collected."<sup>35</sup> Cook testified:

The major understanding that I got from the meeting was that VVAW-WSO was an organization primarily of veterans who were possible victims of manipulation. They had been through the Vietnam War. They had legitimate readjustment needs, and the Bureau was afraid that they could become violent or could become manipulated in a cause or social concern, and they wanted me to go in there and participate in the organization and make sure that the veterans didn't get "ripped off".<sup>36</sup>

Cook's handling agent similarly testified that one of the main purposes of placing Cook in the VVAW chapter was to neutralize any violence or illegal activities, as well as to report them.<sup>37</sup>

c. *The Scope of Cook's Reporting*.—As to her reporting function, Cook testified that she was to report virtually everything about the VVAW and its members. She stated that:

. . . I was to go to meetings, write up reports . . . on what happened, who was there . . . to try to totally identify the background of every person there, what their relationships were, who they were living with, who they were sleeping with, to try to get some sense of the local structure and the local relationships among the people in the organization.<sup>38</sup>

The FBI Special Agent to whom Cook reported similarly testified as to the broad scope of Cook's reporting: "She told me everything she knew about the Buffalo chapter of the VVAW."<sup>39</sup>

To obtain the type of information desired by the FBI, Cook testified that she took a leadership role in the VVAW. The FBI asked her to go to as many regional and national meetings of the VVAW as possible to "get a good sense of how the local chapter fit in [the] national organization".<sup>40</sup> Cook stated "it was a very democratic proc-

(Continued)

rounded public buildings and national monuments in New York City, Philadelphia, Austin, Texas, and Washington, D.C." FBI Memorandum to Senate Select Committee, 12/2/75, pp. 2-3; Hearings, Vol. 6, Exhibit 72.

<sup>34</sup> Adams, 12/2/75, Hearings, p. 135. Cook had expressed an interest in being an FBI informant to a close friend who was an informant with the VVAW for the FBI. Cook's friend put her in touch with an FBI agent. (Cook, 12/2/75, Hearings, p. 110.)

<sup>35</sup> Cook, 12/2/75, Hearings, p. 110, 111.

<sup>36</sup> *Ibid.*

<sup>37</sup> Special Agent, 11/20/75, p. 47.

<sup>38</sup> Cook, 12/2/75, Hearings, p. 111.

<sup>39</sup> Special Agent, 11/20/75, p. 55.

<sup>40</sup> Cook, 12/2/75, Hearings, p. 121.

ess [in the VVAW] so that there was no way that I could . . . fulfill the request of the FBI . . . without actually becoming elected leadership in the chapter".<sup>41</sup>

The scope of Cook's intelligence reporting, including identities of individuals, personal matters, and lawful political activity, is illustrated by the following FBI summaries<sup>42</sup> of two reports given the FBI by Cook:

*Report No. 1*

Report concerns a meeting of the VVAW/WSO Women's Group held November 5, 1973, in Buffalo, New York. Nine women attended, all named in the report. One woman had been the girlfriend of an individual named in the report who was associated with the Martin Sostre Defense Committee and lived with him for a while. Report concluded with plans for a men's group meeting to be held later.

*Report No. 2*

Report concerns a meeting of the VVAW/WSO Steering Committee held 11/10/73. Five identified individuals were present. There was a discussion of finances and some displeasure at the financial record system. Plans for a benefit at a bar were discussed. Information was presented concerning a newsletter to be mailed out which will discuss the VVAW/WSO's position on amnesty, the upgrading of discharges, information about a strike at a Buffalo firm.

Some objections were raised concerning the wording of some VVAW/WSO objectives.

Plans for a future coalition meeting organized by two individuals were discussed, the same coalition that worked on the Impeach Nixon rally.

Matters concerning possible new members and/or attendees at future meetings were discussed. Plans for a VVAW/WSO team on a television sports quiz show were discussed.

One member raised four criticisms of the VVAW/WSO, all listed. One member wrote a regional newsletter.

d. *Cook's Taking of VVAW Documents.*—Besides reporting in detail on VVAW members and meetings, Cook also took VVAW documents and gave them to the FBI.<sup>43</sup> For example, Cook testified that she gave the FBI VVAW mailing lists, thus providing the FBI with the names of many individuals outside of the smaller number of people who attended VVAW meetings.<sup>44</sup>

In addition to the mailing lists which Cook gave to the FBI, she also took a number of other VVAW documents, including papers re-

<sup>41</sup> *Ibid.*

<sup>42</sup> The Committee had full access at FBI Headquarters to the reports of the intelligence informants whose cases were examined. In view of the FBI's position that delivery to the Committee of these reports would endanger the security of the FBI's relations with present informants, it was agreed that FBI Special Agents would prepare summaries of those informant reports to be referred to at the public hearings or in the Committee's Report. The Committee staff verified these summaries for accuracy and completeness against the full informant reports.

<sup>43</sup> Cook, 12/2/75, Hearings, p. 112.

<sup>44</sup> *Ibid.*

lating to legal defense matters. As Cook's FBI handling agent testified:

She brought back several things . . . various position papers taken by various legal defense groups, general statements of . . . the VVAW, legal thoughts on various trials, the Gainesville (Florida) 8 . . . the Camden (New Jersey) 9 . . . various documents from all of these groups.<sup>44a</sup>

Cook also gave the FBI a confidential legal manual prepared by VVAW attorneys as a guide for legal defense strategy and methods should VVAW members be arrested in demonstrations or other political activity.<sup>45</sup> As discussed in more detail below, the FBI Manual provides that legal defense matters are not to be reported by informants. However, the FBI interprets this provision as prohibiting only the reporting of privileged attorney-client communications or legal defense matters in connection with a specific trial. Since the VVAW legal manual was intended for general use, rather than in connection with a particular case, the FBI considered that the VVAW manual did not fall within the prohibition.

*e. Reporting on Non-VVAW Groups and Individuals.*—In addition to reporting on the VVAW itself, Cook also reported on those individuals and groups who worked on political issues in conjunction with the VVAW:

Senator HART: . . . did you report also on groups and individuals outside the [VVAW], such as other peace groups or individuals who were opposed to the war whom you came in contact with because they were cooperating with the [VVAW] in connection with protest demonstrations and petitions?

Ms. Cook: . . . I ended up reporting on groups like the United Church of Christ, American Civil Liberties Union, the National Lawyers Guild, liberal church organizations [which] quite often went into coalition with the [VVAW].<sup>45a</sup>

As a result of this broad reporting scope, Cook estimated that she identified as many as 1,000 people to the FBI in the 18 months she worked as an informant.<sup>46</sup> Cook estimated that sixty to seventy percent of these 1,000 people were nonveterans who had participated with the VVAW in various political efforts.<sup>47</sup>

In November 1974, Cook quit her work as an informant because of her belief that the VVAW was engaged in lawful political activity and her conclusion that she could not in conscience inform on its members and others working with them.<sup>48</sup> Cook concluded that the Buffalo VVAW Chapter was working towards ending the involvement of U.S. in Vietnam, amnesty for draft resisters, upgrading military discharges, and better health and drug treatment for Vietnam veterans.<sup>49</sup>

<sup>44a</sup> Special Agent 11/20/75, pp. 15–16.

<sup>45</sup> Cook deposition, 11/14/75, p. 36.

<sup>45a</sup> Cook, 12/2/75, Hearings, p. 119.

<sup>46</sup> Cook, 12/2/75, Hearings, p. 112.

<sup>47</sup> Cook, 12/2/75, Hearings, p. 120.

<sup>48</sup> Cook, 12/2/75, Hearings, pp. 112–114.

<sup>49</sup> Cook, 12/2/75, Hearings, p. 119.

Cook testified:

. . . I started talking with the FBI about all of the contradictions that I was starting to see. I didn't understand what my involvement was anymore . . . I didn't see the reason for my continuance . . . [I said to the FBI] these people don't need me functioning in their midst, and if you can't give me assurances that the information that I am giving you, which you seem to strip the context away from isn't going to be used against these people, then I cannot continue . . . and they could not give me any assurance that this information would not be used against people. . . .<sup>50</sup>

2. *Gary Rowe—FBI Informant in the Ku Klux Klan*

Gary Rowe worked as an FBI informant in the Birmingham, Alabama chapter of the Ku Klux Klan from 1959 until March 1965, when he surfaced to testify as an eyewitness to the killing of a civil rights worker, Mrs. Viola Liuzzo, by Klan members.<sup>51</sup>

Rowe's activity as an FBI informant illustrates the distinction between an informant's reporting of information relating to violence or criminal activity and the reporting of general intelligence. On the one hand, Rowe provided the FBI with a great deal of information on Klan violence and criminal activity. At the same time, however, Rowe reported virtually every aspect of Klan activity, regardless of its relation to actual or potential violence or criminal offenses. In addition, on a number of occasions Rowe participated in Klan violence in order to be in a position to report its occurrence to the FBI. Consequently, even though Rowe was able to report significant violence and criminal activity, his case highlights two principal issues: 1) the question of overbreadth in intelligence informant reporting, and 2) the government's participation or unseemly involvement through its paid and directed informants in the violent or criminal activity it is investigating.

a. *The Use of Intelligence Informants to Report Klan Violence and Criminal Activity.*—In testimony before the Committee, former Attorney General Nicholas Katzenbach emphasized the violent acts committed by some Ku Klux Klan members in the South during the years Rowe was an FBI informant:

The central point of . . . my testimony is that some Klan members in those states, using the Klan as a vehicle, were engaged in repeated acts of criminal violence. It had nothing to do with preaching a social point of view: it had to do with proven acts of violence.<sup>52</sup>

<sup>50</sup> Cook, 12/2/75, Hearings, pp. 112–113. In 1974, investigations of a number of VVAW chapters were closed. The FBI Memorandum to the Committee stated: "In 1974, FBI field offices were instructed to analyze the chapters and regions in their respective territories. If the local organization did not subscribe to the policies of the National Office and were not Marxist-Leninist groups advocating the overthrow of the Government, the investigation of the local organization was to be terminated. . . . Many of the investigations of the various chapters were closed, not because they were no longer active, but because of their apparent failure to follow the Marxist-Leninist revolutionary posture of the National Office." (FBI Memorandum to Select Committee, 2/2/76, p. 5; Cook, Hearings, Exhibit 72.)

<sup>51</sup> Rowe, 12/2/75, Hearings, Vol. 6, p. 115.

<sup>52</sup> Katzenbach Testimony, 12/3/75, Hearings, Vol. 6, p. 207.

Katzenbach stated that to deal with the problem of Klan violence, Attorney General Robert Kennedy had suggested to President Johnson an intensified use of FBI informants in the Klan, along the lines employed by the FBI against Communist groups. Katzenbach quoted from a letter Robert Kennedy had sent to the President in mid-1964 just prior to the murders of three civil rights workers in Mississippi:

The unique difficulty as it seems to me to be presented by the situation in Mississippi (which is duplicated in parts of Alabama and Louisiana at least) is in gathering information on fundamentally lawless activities which have the sanction of local law enforcement agencies, political officials and a substantial segment of the white population. The techniques followed in the use of specially trained, special assignment agents in the infiltration of Communist groups should be of value. If you approve, it might be desirable to take up with the Bureau the possibility of developing a similar effort to meet this new problem.<sup>53</sup>

And Katzenbach pointed out that informants were critical to the solution of the murders of the three civil rights workers: "That case could not have been solved without acquiring informants who were highly placed members of the Klan."<sup>54</sup>

Katzenbach emphasized his view that the use of FBI informants in the Klan should be viewed as a criminal investigation technique, pointing out that, in the case of the Klan, "these techniques were designed to deter violence—to prevent murder, bombings, and beatings. In my judgment, they were successful."<sup>55</sup> At the same time, he indicated the disruptive results that "an effective informant program"<sup>56</sup> may produce. He stated:

It is true that the FBI program with respect to the Klan made extensive use of informers. That is true of virtually every criminal investigation with which I am familiar. In an effort to detect, prevent, and prosecute acts of violence, President Johnson, Attorney General Kennedy, Mr. Allen Dulles, myself and others urged the Bureau to develop an effective informant program, similar to that which they had developed with respect to the Communist Party. It is true that these techniques did in fact disrupt Klan activities, sowed deep mistrust among the Klan members, and made Klan members aware of the extensive informant system of the FBI and the fact that they were under constant observation.<sup>57</sup>

Rowe played a critical role in the solution of the murder of Mrs. Viola Liuzzo. Owing to his close relationship to Klan leaders, Rowe was asked to accompany several Klansmen in an unspecified mission against those participating in a civil rights march in Alabama in March, 1965. Rowe reported this invitation to his FBI handling agent, who told him to go and report what occurred.<sup>57a</sup> As a result, Rowe

<sup>53</sup> *Ibid.*, p. 214.

<sup>54</sup> *Ibid.*, p. 215.

<sup>55</sup> *Ibid.*, p. 207.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>57a</sup> Rowe deposition, 10/17/75, pp. 32-33.



was an eyewitness to the murder of Mrs. Liuzzo, and reported the crime to the FBI within hours of its occurrence. Subsequently, Rowe's testimony was a critical element in the ultimate conviction of the Klansmen responsible for the killing.<sup>58</sup>

b. *The Scope of Rowe's Reporting.*—Rowe's assignment, according to the FBI Special Agent who recruited him<sup>59</sup> and served as his first handling agent, was

to gather information as to members, leaders, because I did not know who they were, if he could get the number of Klaverns . . . in the Birmingham area, and just keep in touch with me as to the activities that occurred. That was his initial instruction.

I wanted information that would be of assistance to make a determination as to the violent nature of the organization. This would be, violations of civil rights, things of this nature . . . you certainly can't get it on the outside.<sup>60</sup>

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<sup>58</sup> The murder of Mrs. Liuzzo took place in 1965; from the outset of his informant activity in 1961, Rowe provided the FBI with a great deal of information on planned and actual violence by the Klan throughout his years as an informant. (Rowe, 12/2/75, Vol. 6, pp. 117–118; Adams, 12/2/75, Vol. 6, 142–143). Only rarely, however, did Rowe's information lead to the prevention of violence or arrests of Klan members.

There were several reasons for this, including the difficulty of relying on local police to enforce the law against the Klan in the early 1960's, the failure of the Federal Government to initially mobilize its own resources, and the role of the FBI as an investigative rather than police organization.

Former Attorney General Katzenbach pointed out that, at the outset of the 1960s, when Rowe began his work as an informant, "neither the [Justice] Department nor the Bureau fully appreciated the significance or indeed the genesis of the repeated acts of violence and bloodshed" committed by the Klan and that Federal efforts against Klan violence "did not crystallize" until the murder in June 1964 of three civil rights workers in Mississippi. (Katzenbach, 12/3/75, Hearings, Vol. 6, pp. 213–214) and FBI Deputy Director Adams testified:

"We do not have police powers like the United States Marshalls do . . . We are the investigative agency of the Department of Justice and during these times the Department of Justice had us maintain the role of an investigative agency. We were to furnish the information, to the local police, who had an obligation to act. We furnished it to the Department of Justice." (Adams, 12/2/75, Vol. 6, pp. 142–143.)

Katzenbach and Adams pointed out that in the early 1960s, local police in parts of the South refused to act on information the FBI provided about Klan violence. Katzenbach testified:

" . . . because local law enforcement organizations—the traditional first line of defense against—(and the Bureau's primary source of information about) such violence—were infiltrated by the very persons who were responsible for much of the violence, the net effect was that there was in many sections of the South a total absence of any law enforcement whatsoever." (Katzenbach, 12/3/75, Hearings, Vol. 6, pp. 213–214.)

<sup>59</sup> Rowe was not a member of the Klan or sympathetic with Klan objectives when he was recruited to serve as an informant. In his initial interviews with the FBI Special Agent who recruited him, Rowe indicated "he was not in favor of the things the Klan did". (Special Agent No. 1, 11/19/75, p. 7.) Rowe had previously served in the United States Marine Corps, enlisting at the age of 14. (Rowe, 12/2/75, Hearings, Vol. 6, p. 115.) During his initial talks with the FBI, Rowe stated he wanted to work in law enforcement and to serve his country; the FBI told Rowe that to serve as an FBI informant in the Klan would enable him to do both of these things. (Special Agent No. 1, 11/19/75, p. 6.)

<sup>60</sup> Special Agent No. 1, 11/19/75, p. 8.

In practice, Rowe testified that he reported to the FBI "any and everything that I observed or heard pertaining to any Klansmen."<sup>61</sup> This broad scope of Rowe's reporting was confirmed by the FBI agents to whom he reported. As one agent testified:

... he furnished us information on the meetings and the thoughts and feelings, intentions and ambitions, as best he knew them, of other members of the Klan, both the rank and file and the leadership.<sup>62</sup> Special Agent No. 3, 11/21/75, p. 7.

According to another of Rowe's FBI handling agents, Rowe's mission was "total reporting," including membership lists, financial matters, and political positions, as well as Klan violence.<sup>63</sup> Rowe also testified that, in line with his "total reporting" instructions he reported intimate details of the personal lives of Klan members.<sup>64</sup>

Rowe was able to give the FBI extensive information about Klan membership as a result of his position in the "Klan Bureau of Investigation," the Klan's security and investigative arm.<sup>65</sup> Rowe did most of the investigation of prospective members in the Birmingham area, and would regularly make their applications available to his FBI handling agent, who would copy the applications before returning them to Rowe.<sup>66</sup>

In addition, Rowe took Klan membership lists and gave them to the FBI. Rowe's handling agent testified as to the way such lists were taken:

I remember one evening during the course of a meeting that was going on ... he called my home and said I will meet you in a half an hour ... I have a complete list of everybody that I have just taken out of the files, but I have to have it back within such a length of time.

Well, naturally I left home and met him and had the list duplicated forthwith, and back in his possession and back in the files with nobody suspecting.<sup>67</sup>

Rowe also reported on political matters relating to the Klan.<sup>68</sup> During a campaign for mayor in Birmingham, Rowe was instructed to attend public political meetings to assess the candidates' position on integration, and to identify Klan members present and the extent to which they were actively engaged in the campaign.<sup>69</sup> Rowe also reported on "National Conventions" of the Klan, closed meetings at which officers were elected and Klan positions determined.<sup>70</sup>

<sup>61</sup> Rowe, 12/2/75, Vol 6, p. 116.

<sup>62</sup> Special Agent No. 3, 11/21/75, p. 7.

<sup>63</sup> Special Agent No. 2, 11/21/75, p. 4. Rowe also carried out certain activities designed to disrupt the Klan. In early 1964, Rowe testified, his FBI handling agent told him of the "COINTEL" or counterintelligence program of the FBI against the Klan. (See COINTELPRO Report). In connection with the COINTEL program, Rowe sought to disrupt the campaign of a Klansman who was a candidate for city police commissioner by spreading innuendo that the Klansman was a homosexual. (Rowe Deposition, 10/17/75, pp. 14-15.) Rowe also testified that he was instructed to plant stories calculated to cause divorces and marital problems among Klansmen. (*Ibid.*, p. 17)

<sup>64</sup> Rowe, 12/2/75, Hearings, Vol. 6, p. 116.

<sup>65</sup> Rowe, 12/2/75, Vol. 6, p. 116.

<sup>66</sup> Rowe Deposition, 10/17/75, p. 21.

<sup>67</sup> Special Agent No. 1, 11/19/75, p. 10-11.

<sup>68</sup> Rowe, 12/2/75, Hearings, Vol. 6, p. 116; Special Agent No. 2, 11/21/75, p. 4.

<sup>69</sup> Rowe, 12/2/75, Hearings, Vol. 6, p. 116; Rowe deposition, 10/17/75, p. 11.

<sup>70</sup> Rowe deposition, 10/17/75, p. 23.

In addition to Klan activities, Rowe reported on the activities of other organizations to the FBI. As a member of the "Klan Bureau of investigation," Rowe was instructed by the Klan to attend and report on meetings of civil rights groups. Rowe gave the information he developed on these civil rights organizations to the FBI as well, even though this fell outside the area of reporting on Klan activities.<sup>71</sup>

c. *The Issue of Participation in Criminal or Violent Activity.*—In addition to general intelligence, Rowe was particularly instructed to report any instances of planned or actual violence by the Klan.<sup>72</sup> Merely attending Klan meetings as an ordinary member did not put Rowe in a position to observe the planning for, or occasion of violence, by the Klan.<sup>73</sup> As Rowe's FBI handling agent testified, "to gather information [on violence] you have to be there."<sup>74</sup>

Consequently, the FBI instructed Rowe to join a smaller group of Klan members, a so-called "Action Group", which conducted violent acts against blacks and civil rights workers.<sup>75</sup>

At the outset, Rowe's handling agent had instructed him that "under no conditions should I participate in any violence whatsoever."<sup>76</sup> Although these instructions continued to be formally reiterated to Rowe, Rowe and his FBI handling agents understood that for Rowe to be able to report Klan violence, he would have to be present for—and at times might be involved in—that violence.

Rowe testified as to a number of instances where he and other Klansmen had "beaten people severely, had boarded buses and kicked people off; had went in restaurants and beaten them with blackjacks, chains, pistols."<sup>77</sup>

For example, on one occasion, Rowe gave the FBI advance warning that Klan members were planning to assault and beat blacks attending a country fair. His FBI handling agent instructed him "to go and see what happened."<sup>78</sup> To accomplish this, Rowe accompanied the Klansmen to the fair, where, to preserve his cover, he participated in the resulting violence.<sup>79</sup> On another occasion, Rowe's throat was cut while he was participating with other Klansmen in large-scale violence against Freedom Riders at the Birmingham bus depot in May, 1961.<sup>80</sup>

Rowe described how he and other Klansmen used "baseball bats, clubs, chains, and pistols" in attacking the Freedom Riders (Rowe, 12/2/75, p. 1867). Rowe recalled that, when he asked why there was no apparent action on his reports of the impending violence, his FBI handling agent told him "who the hell are we going to report it to? . . . the [Birmingham] police department helped set [the violence] up.

<sup>71</sup> Rowe, 12/2/75, Hearings, p. 116.

<sup>72</sup> Special Agent No. 1, 11/19/75, p. 8; Rowe, Hearings, 12/2/75, p. 116.

<sup>73</sup> Rowe, 12/2/75, Hearings, p. 116–117.

<sup>74</sup> Special Agent No. 1, 11/19/75, p. 4.

<sup>75</sup> Adams, 12/2/75, Hearings, p. 144; Rowe, 12/2/75, Hearings, p. 116–117.

<sup>76</sup> Rowe, 12/2/75, Hearings, p. 116; Special Agent No. 1, 11/19/75, p. 9. Rowe's first FBI handling agent testified:

"My specific instructions to [Rowe] were that he was not to be involved in any violence. He was not to be involved in any criminal activity, that if he was involved in any such activity, that I nor anyone else would come to his rescue." (Special Agent No. 1, 11/19/75, p. 9).

<sup>77</sup> Rowe deposition, 10/17/75, p. 12.

<sup>78</sup> Rowe, 12/2/75, Hearings, p. 117.

<sup>79</sup> *Ibid.*

<sup>80</sup> Rowe, 12/2/75, Hearings, p. 118.

We are an investigating agency not an enforcement agency. All we do is gather information."<sup>81</sup>

The resulting dilemma was described by one of Rowe's FBI handling Agents:

... it is kind of difficult to tell him that we would like you to be there on deck, observing, be able to give us information and still keep yourself detached and uninvolved and clean, and that was the problem that we constantly had.

... I'm sure he was present many, many times, when he participated in things, and I'm sure he reported them at that time, but we certainly cautioned him against that.<sup>82</sup>

Although Rowe's participation in Klan violence was practically an inherent feature of his informant's role, the FBI took particular care in at least one instance that Rowe did not suggest or lead violent activity. In April 1964, several years after Rowe joined the Klan "Action Group," the Birmingham Field Office reported that Rowe had become an Action Group squad leader. Bureau Headquarters ordered that Rowe resign this leadership position or be discontinued as an informant.<sup>83</sup> The Bureau further advised the Field Office:

in those cases where you have an informant who is a member of a violent squad . . . you should insure that the informant understands he is not to direct, lead, or instigate any acts of violence.<sup>84</sup>

Nevertheless, even these instructions did not extend to ruling out Rowe's participation in violence, but rather only leading or directing violent acts. The essential characteristic of Rowe's status was expressed by the following testimony of his FBI handling agent:

If he happened to be with some Klansman and they decided to do something, he couldn't be an angel and be a good informant.<sup>85</sup>

### *B. Examples of Intelligence Informant Coverage of Groups Subject to Intelligence Investigations*

In addition to the case histories of the informants described above, the nature of the intelligence informant technique can also be illustrated by other examples of informant coverage in domestic intelligence investigations. The cases of informant coverage set out below indicate the types of information intelligence informants produce for FBI files.

In summary, these cases further demonstrate the extremely broad scope of informant reporting, including both lawful political activity and details of the personal lives of citizens. For example, informants

<sup>81</sup> Rowe, 12/2/75, Hearings, p. 118. . . . The reasons for the lack of response by the FBI and the Federal Government to Klan violence at the outset of the 1960s have been described above. The 1961 violence at the Birmingham bus depot did lead to a decision by the Kennedy Administration to send U.S. marshals to Alabama to protect the Freedom Riders as they proceeded to other cities. (Adams, 12/2/75, Hearings, p. 142-143.)

<sup>82</sup> Special Agent No. 3, 11/21/75, pp. 16-17.

<sup>83</sup> Memorandum from FBI Headquarters to Birmingham Field Office 4/17/64.

<sup>84</sup> Memorandum from FBI Headquarters to Birmingham Field Office 5/4/64.

<sup>85</sup> Special Agent No. 3, 11/21/75, p. 12.

in the Women's Liberation Movement (Case No. 9, below) reported the identities of women who belonged to Women's Liberation groups at several Midwest universities, and statements made by women concerning the personal reasons that motivated them to participate in the Women's Movement. Informant coverage of lawful political activity is also shown in Case No. 1 which involved a public meeting held by a citizens group to debate the merits of developing a certain U.S. missile. Several cases presented below involve instances where informants in violence-prone groups provided information that led to arrests and prosecutions or the prevention of violence. (See Case Nos. 3, 6, and 8 below.) The Socialist Workers Party (Case No. 10, below) is an example of informant coverage and intelligence surveillance that continued uninterrupted for many years, despite the fact that for more than three decades the group has committed no criminal acts.<sup>86</sup>

Case No. 1—*Citizens Panel on the Merits of an Anti-Ballistic Missile System (1969)*

An FBI informant and two FBI confidential sources reported on a meeting of a Washington, D.C., group that expressed concern about the development of the Anti-Ballistic Missile System (ABM) in the late 1960s.<sup>87</sup> The meeting was targeted for informant coverage because the *Daily World*, a communist newspaper, had commented on the formation of the group.<sup>88</sup> The informant reported on plans for the meeting which was to be held in a high school auditorium where the merits of development of the ABM would be debated, and on publicity materials distributed at churches and schools. The informant also reported that the speakers for the debate would include, on the "pro side," a Defense Department official and a Defense Department consultant and on the "con side" a political science professor and a well-known scientist.<sup>89</sup> A confidential FBI source reported on the past and present residence of the person who had applied to rent the auditorium and on his current position in the military. Another confidential source informed the FBI of the anti-Vietnam war and anti-ABM articles being distributed at the meeting.<sup>90</sup> The informant and source reports on plans for the meeting and on the meeting itself were disseminated by teletype to the White House, the Vice President, the Attorney General, the Secret Service, the State Department, the CIA, and various military intelligence agencies.<sup>91</sup> A subsequent report described plans for a similar meeting in the District of Columbia and included the names of prominent D.C. politicians who planned to attend.<sup>92</sup>

<sup>86</sup> Shackelford, 2/2/76, p. 89.

<sup>87</sup> Adams, 12/2/75, Hearings, p. 137.

<sup>88</sup> Adams, 12/2/75, Hearings, p. 138.

<sup>89</sup> Memorandum from Alexandria Field Office to Washington Field Office 6/3/69.

<sup>90</sup> Memorandum from Alexandria Field Office to FBI Headquarters, 6/5/69.

<sup>91</sup> Memorandum from Alexandria Field Office to FBI Headquarters 6/3/69. With respect to this intelligence investigation, FBI Deputy Associate Director Adams testified that, due to the notice in the *Daily World* communist newspaper, the FBI "took a quick look" at the group, and "the case apparently was opened on May 28, 1969, and closed June 5 saying there was no problem with this organization." (Adams, 12/2/75, Hearings, p. 138.)

<sup>92</sup> Memorandum from Alexandria Field Office to FBI Headquarters, 6/5/69.

Case No. 2—*Dr. Carl McIntyre's American Christian Action Council (1971)*

An FBI confidential source and an informant reported information about the formation of this group by Dr. McIntyre. The group was established to act as a counter to various liberal groups and to the "Clergy and Laymen Concerned about Vietnam". The initial report from a confidential source mentioned plans to picket NBC-TV studios in Philadelphia, Baltimore and Washington, D.C., and named all the members of the Board of Directors.<sup>93</sup> Subsequent reports from an informant described the group's plans to oppose the President's trip to China and to support prayer in the public schools.<sup>93a</sup> The informant also reported on the group's convention held jointly with Dr. McIntyre's missionary group and on plans for the group's future organization and activities.<sup>94</sup>

Case No. 3—*Detroit Black Panther Party 1970*

An FBI extremist informant involved in an intelligence investigation of the Detroit Black Panther Party, (BPP) furnished advance information regarding a planned ambush of Detroit police officers which enabled the Detroit Police Department to take action to prevent injury or death to the officers. The information led to the arrest of eight persons and the seizure of a cache of weapons. The informant also furnished information resulting in the location and confiscation by Bureau agents of approximately fifty sticks of dynamite available to BPP, which likely resulted in saving of lives and preventing property damage.<sup>95</sup>

On June 20, 1970, the informant furnished the names of three BPP members who were supposed to carry out the ambush on June 27, 1970 and reported that others whose identity he did not know would also be involved. This information was furnished to the Detroit Police Department who in turn monitored the ambush site. On June 27, 1970, the informant advised that the planned ambush of police officers would definitely take place that night, shortly after midnight. On June 28, 1970, two Detroit police officers, while patrolling on the east side of Detroit a few minutes after midnight, were fired upon by snipers.

Immediately after the shooting, Detroit police officers arrested the three individuals identified by the informant and charged them with assault with intent to commit murder. In addition, three other individuals were arrested in connection with this shooting. A cache of weapons and ammunition was recovered from the residence of one of those arrested.<sup>96</sup>

On July 25, 1970, the informant advised that a member of the Detroit National Committee to Combat Fascism, and another individual, whom he believed to be a member of the White Panther Party, stole some dynamite on or about July 11, 1970. The informant was directed to ascertain the location of this dynamite. He later determined that it had been stored at the farm of the second individual's mother. The inform-

<sup>93</sup> Memorandum from Washington Field Office to FBI Headquarters, 5/19/71.

<sup>93a</sup> Memorandum from Tampa Field Office to FBI Headquarters, 5/19/72.

<sup>94</sup> *Ibid.*

<sup>95</sup> Joseph Deegan testimony, 2/13/76, p. 54.

<sup>96</sup> FBI Response to Select Committee Request for Documents.

ant further advised that the mother did not share her son's radical views and had no knowledge that the dynamite was on her farm. On September 16, 1970, the mother gave Bureau agents permission to search her property. Approximately fifty sticks of dynamite were discovered.<sup>97</sup>

Case No. 4—*National Conference on Amnesty (1974)*

Several FBI informants provided information on a national conference held to support amnesty for veterans of the Vietnam war. The FBI targeted the conference for informant coverage because of other informant reports that the Vietnam Veterans Against the War were instrumental in organizing the conference and might attempt to take it over.<sup>98</sup> The informant's reports identified the various church and civil liberties groups who sponsored and organized the conference, as well as the participation of a draft evader and several "subversives."<sup>99</sup> The reports described the topics for workshops at the conference, and the organization of a steering committee which would include delegates from families of men killed in Vietnam and Congressional staff aides.<sup>100</sup>

Case No. 5—*Public Meeting Opposing U.S. Involvement in Vietnam War (1966)*

Informants were used extensively in FBI investigations of possible Communist links to the antiwar movement. An example is the FBI's coverage of various antiwar teach-ins and conferences sponsored by the Universities Committee on Problems of War and Peace. A forty-one page report from the Philadelphia office—based on coverage by thirteen informants and confidential sources—described in detail a "public hearing on Vietnam."<sup>101</sup> A Communist Party official had "urged all CP members" in the area to attend, and one of the organizers was alleged to have been a Communist in the early 1950's. Upon receipt from an informant of a list of the speakers, the FBI culled its files for data on their backgrounds. One was described by a source as a Young Socialist Alliance "sympathizer." Another was a conscientious objector to military service. A third had contributed \$5,000 to the National Committee to Abolish the House Committee on Un-American Activities. A speaker representing the W.E.B. DuBois Club was identified as a Communist.<sup>102</sup> The FBI covered the meeting with an informant who reported practically verbatim the remarks of all the speakers, including the following:

the Chairman of the Philadelphia Ethical Society  
a representative of the American Civil Liberties Union  
a representative of the United Electrical Workers  
a spokesman for the Young Americans for Freedom  
a member of the staff of the "Catholic Worker"

<sup>97</sup> *Ibid.*

<sup>98</sup> Wannall, 12/2/75, p. 139-140.

<sup>99</sup> Memorandum from Louisville Field Office to FBI Headquarters, 11/21/74.

<sup>100</sup> *Ibid.*

<sup>101</sup> Memorandum from Philadelphia Field Office to FBI Headquarters, 3/22/66.

<sup>102</sup> *Ibid.*

- a minister of the African Methodist Episcopal Church
- a minister of the Episcopal Church
- a representative of the Philadelphia Area Committee to End the War in Vietnam
- a Professor of Industrial Economics at Columbia University
- a representative of the Inter-University Committee for Debate on Foreign Policy
- a member of Women's Strike for Peace who had traveled to North Vietnam
- a member of Women's International League for Peace and Freedom who had visited South Vietnam
- a chaplain from Rutgers University
- a professor of political science from Villanova University
- another member of Young Americans for Freedom
- the former Charge d'Affaires in the South Vietnamese Embassy<sup>103</sup>

This informant's report was so extensive as to be the equivalent of a tape recording, although the FBI report does not indicate that the informant was "wired." Another informant reported the remarks of the following additional participants:

- an official of the Committee for a Sane Nuclear Policy
- a minister of the Church of the Brethren
- a Unitarian minister
- a representative of United World Federalists
- a member of Students for a Democratic Society
- a member of the Socialist Workers Party
- a spokesman for the W. E. B. DuBois Clubs<sup>104</sup>

The report was prepared as a Letterhead Memorandum with fourteen copies for possible dissemination by the FBI to other Executive Branch agencies. Copies were disseminated to military intelligence agencies, the State Department, and the Internal Security and Civil Rights Divisions of the Justice Department.<sup>105</sup>

#### Case No. 6—*Black Nationalist Group (1968)*

On July 22, 1968, in connection with an intelligence investigation of a Cleveland black nationalist group called "New Libya," an extremist informant reported that a cache of rifles and automatic weapons was in the hands of group members. The informant was later able to determine where these weapons were located and that the group was formulating plans for disturbances in Cleveland and other cities. On July 23, 1968, a racial disturbance broke out in Cleveland triggered by the Black Libya group. The riot lasted three days and resulted in a number of police and civilian deaths. The informant's information was relayed to appropriate agencies prior to the outburst of violence.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.



The informant's advance reports were instrumental in successful prosecutions on first degree murder charges against "New Libya" members.<sup>106</sup>

Case No. 7—*Investigation of "Free Universities" (1966)*

The FBI used informants in investigations of "Free Universities" in proximity to college campuses to determine whether they were connected with "subversive" groups. For example, when an article appeared in a Detroit newspaper stating that a "Free University" was being formed in Ann Arbor, Michigan, and that it was "anti-institutional," FBI Headquarters instructed the Detroit field office to "ascertain through established sources [i.e., informants already in place] the origin of this group and the identity of the individuals who are responsible for the formation of the group and whether any of these individuals have subversive backgrounds."<sup>107</sup> A note on the instruction pointed out that even if there was no specific prior indication of Communist involvement, established informants were to be used in investigations of such "free universities":

Several "Free Universities" have been formed in large cities recently by the Communist Party and other subversive groups. We are therefore conducting discreet investigations through established sources regarding all such "Free Universities" that come to the Bureau's attention to determine whether they are in any way connected with subversive groups.<sup>108</sup>

Based on the reports of five informants and confidential sources, the field office prepared a ten-page letterhead memorandum describing in detail the formation, curriculum content, and associates of the group—including several members of Students for a Democratic Society and the Socialist Workers Party.<sup>109</sup> Although no further investigation was recommended, the report was disseminated to local military intelligence and Secret Service offices, military intelligence and Secret Service headquarters in Washington, the State Department, and Internal Security Division of the Justice Department.<sup>110</sup>

Case No. 8—*Washington, D.C. Black Panther Party (1970–1971)*

An informant of the Richmond FBI Field Office reported a conspiracy by leaders of the Washington, D.C., Chapter of the Black Panther Party (BPP) and leaders of the Richmond Information Center (RIC), an affiliate of the BPP, to steal and transport weapons from Richmond, Virginia, to Washington, D.C. Five persons were ultimately indicted by a federal grand jury. A subsequent trial resulted in the conviction of four of the individuals.

On May 14, 1970, the informant reported that in Richmond, Virginia, a leader of the Black Panther Party asked a leader of the

<sup>106</sup> FBI Memorandum in Response to Select Committee Request.

<sup>107</sup> Memorandum from FBI Headquarters to Detroit Field Office, 2/17/66.

<sup>108</sup> *Ibid.*

<sup>109</sup> Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

<sup>110</sup> Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

Richmond Information Center if he was in a position to obtain guns for the Washington BPP chapter.<sup>111</sup> FBI investigation failed to develop any further information regarding guns. However, on January 8, 1971, a recently developed informant advised that around April 1970 four individuals from the Richmond area had burglarized a private residence. Seven weapons were stolen during the burglary. The informant advised that on November 3, 1970, the guns were then transported from the Richmond area to Washington, D.C., by rented automobile.<sup>112</sup>

Case No. 9—*Women's Liberation Movement (1969)*

Informants were a principal source of information in the FBI's investigation of the Women's Liberation Movement. For example, in the spring of 1969, the New York field office drew largely on informant reporting to describe the Movement's basic philosophy and to report particular meetings in the New York area. In describing one such meeting, the report stated:

On [ ] 69, informant, who has furnished reliable information in the past, advised that a WLM meeting was held on [ ] 69, at [ ] New York City. Each woman at this meeting stated why she had come to the meeting and how she felt oppressed, sexually or otherwise.

According to this informant, these women are mostly concerned with liberating women from this "oppressive society." They are mostly against marriage, children, and other states of oppression caused by men. Few of them, according to the informant, have had political backgrounds. The informant stated that a mailing list was passed around at this meeting for WLM and the "Red Stockings," another women's group.<sup>113</sup>

Similarly, the Kansas City Field Office used informant reports to describe the extent of Women's Liberation Movement activity and to identify individual members at three universities in the Field Office territory: the University of Missouri at Kansas City, the University of Missouri at Columbia, and the University of Kansas at Lawrence. The level of detail as to personal identities of persons participating in the Women's Movement at University of Missouri, Kansas City, is illustrated by the following passage from the Field Office Report:

[informant] indicates members of Women's Liberation Movement campus group who are now enrolled as students at University of Missouri, Kansas City, are [five names deleted]. Of these five, [informant] said [names deleted] are indicated to be at least potential "New Left Radicals." [Informant] noted that [names deleted], not currently students on the UMKC campus, are reportedly roommates at . . . Kansas City.<sup>114</sup>

<sup>111</sup> Memorandum from Alexandria Field Office to FBI Headquarters, 5/22/70.

<sup>112</sup> *Ibid.*

<sup>113</sup> Memorandum from New York Field Office to FBI Headquarters, 5/28/69, p. 2.

<sup>114</sup> Memorandum from Kansas City Field Office to FBI Headquarters, 10/20/70.

Case No. 10—*Socialist Workers Party (1940 to date)*

FBI informants are operating within the Socialist Workers Party (SWP) as part of the FBI's long-term intelligence investigation of the SWP.<sup>115</sup> Informants report the political positions taken by the SWP with respect to such issues as the "Vietnam War," "racial matters," "U.S. involvement in Angola," "food prices," and any SWP efforts to support a non-SWP candidate for political office.<sup>116</sup> To enable the FBI to develop background information on SWP leaders, informants report certain personal aspects of their lives, such as marital status.<sup>117</sup> The informants also report on SWP cooperation with other groups who are not the subject of separate intelligence investigations.<sup>118</sup>

The intelligence investigation of the SWP began in 1940 as a result of the SWP's description of itself as a Marxist-Leninist "combat" organization which foresaw the inevitability or desirability of violence should revolutionary conditions arise in the United States.<sup>119</sup> The FBI conceded, however, that since shortly after its formation the SWP has not committed any violent acts, nor have its expressions "constituted an indictable incitement to violence."<sup>120</sup> Nevertheless, the FBI's intelligence investigation of the SWP—and the use of informants against the party and its members—has continued from 1940 to the present day.

Case No. 11—*Ku Klux Klan*

As part of its COINTEL Program of using covert action against domestic groups,<sup>121</sup> the FBI assisted an informant in the Ku Klux Klan in his efforts to set-up a new state-wide Klan organization independent of the regular Klan. The FBI saw the formation of a rival group as an opportunity to promote dissension in the regular Klan both at the state and national levels. In approving the operation, FBI headquarters stated its belief that "if a death-dealing blow can be dealt to the [state Klan], the entire Klan organization in the United States will collapse."<sup>122</sup> The FBI indicated that if the new Klan organization was "successful in obtaining a sizable following," it would be "controlled" by the FBI "through our informant."<sup>123</sup>

<sup>115</sup> Shackelford, 2/2/76, p. 89.

<sup>116</sup> *Ibid.*, p. 91.

<sup>117</sup> *Ibid.*, p. 90.

<sup>118</sup> *Ibid.*, p. 92.

<sup>119</sup> *Ibid.*, pp. 88-89.

<sup>120</sup> *Ibid.*, p. 89. In 1942, the conviction a year earlier of 18 SWP members for violation of the Smith Act was upheld on appeal. *Dunne v. United States*, 138 F.2d 137 (8th Cir. 1943), cert den. 320 U.S. 790 (1943). In upholding the conviction, however, the appellate court relied on a precedent which has since been expressly repudiated by the Supreme Court. In *Dennis v. United States*, 341 U.S. 494 (1951) the Supreme Court abandoned the "bad tendency" standard followed by the appellate court in *Dunne* in favor of a standard whereby speech must present a grave and probable danger of bringing about a prohibited act before a conviction may be sustained.

<sup>121</sup> For a full treatment of the FBI's COINTEL (counterintelligence) program, which involved covert actions against groups and individuals, see COINTELPRO Report.

<sup>122</sup> Brennan to Sullivan [date deleted for security reasons].

<sup>123</sup> Memorandum from field office to FBI Headquarters [date deleted for security reasons].

Two years after the formation of the new Klan group, a status report by the FBI Field Office described the operation as "successful" in capitalizing on the opportunity to "further disrupt [the regular Klan] and to entice members of the regular Klan into the new Klan organization. At that time, the new Klan group had issued several dozen charters (although in many instances no chapter was in fact organized) and included nearly 200 members. The report stated further that the new Klan organization would be phased out when it had "done its ultimate damage to the regular Klan."<sup>124</sup>

The Committee's investigation revealed that this tactic risked increasing violence and racial tension. The Director of the State Bureau of Investigation testified that there were dangerous confrontations between the two Klan groups. He testified as to one such occasion "in which the two groups met in force, and both elements had . . . guns, including shotguns . . . they were physically armed and facing each other."<sup>124a</sup> The FBI informant in the rival Klan group also called for violence against blacks. The State Bureau of Investigation Director further testified that he witnessed the FBI informant address a Klan rally attended by several thousand persons and heard the informant state: "We are going to have peace and order in America if we have to kill every Negro."<sup>124b</sup>

### *C. Special FBI Informant Programs*

In addition to the use of informants in particular domestic intelligence investigations of groups or individuals, the FBI has conducted special programs to develop informants for general reporting purposes. These were (1) the Ghetto Informant Program (1967-1973); (2) the development of informants in defense industrial facilities under the Plant Informant Program (1940-1969) and (3) the American Legion Contact Program (1940-1954). These programs are outlined below.

#### *1. The Ghetto Informant Program*

This program was begun in 1967 to develop informants who would provide general intelligence on the potential for violence and civil unrest in black urban areas.<sup>125</sup> In July 1973, after considerable debate within the FBI over the program's propriety, value, and cost, the program was terminated by Director Kelley, with instructions to field offices that ghetto informants were to be either included in the regular FBI informant categories (subversive, extremist or criminal) or discontinued.<sup>126</sup>

As of September 1972, there were 7,402 ghetto informants. Figures for previous years were: 1971-6,301; 1970-5,178; 1969-4,067.<sup>127</sup>

FBI officials saw the Ghetto Informant Program as their response to the possibility that the urban riots and violence that occurred in the summer of 1967 might be repeated and the express desire of White House and Justice Department officials for advance warnings.<sup>128</sup> In

<sup>124</sup> Memorandum from field office to FBI Headquarters [date deleted for security reasons].

<sup>124a</sup> Deposition of Director, State Bureau of Investigation, 4/1/76, p. 36.

<sup>124b</sup> *Ibid.*, p. 52.

<sup>125</sup> Memorandum from Moore to Sullivan, 10/11/67; memoranda from FBI Headquarters to all SACs, 10/17/67.

<sup>126</sup> Memorandum from FBI Headquarters to all SACs, 7/31/73.

<sup>127</sup> FBI Memoranda in Response to Select Committee Request, 8/20/74.

<sup>128</sup> Memorandum from Moore to Sullivan, 10/11/67.

September 1967 Attorney General Ramsey Clark wrote to FBI Director Hoover:

There persists . . . a widespread belief that there is more organized activity in the riots than we presently know about. We must recognize, I believe, that this is a relatively new area of investigation and intelligence reporting for the FBI and the Department of Justice. We have not heretofore had to deal with the possibility of an organized pattern of violence, constituting a violation of federal law, by a group of persons who make the urban ghetto their base of operation and whose activities may not have been regularly monitored by existing intelligence sources.

In these circumstances, *we must make certain that every attempt is being made to get all information bearing upon these problems; to take every step possible to determine whether the rioting is pre-planned or organized; and, if so, to determine the identity of the people and interests involved; and to deter this activity by prompt and vigorous legal action.*

As a part of the broad investigation which must necessarily be conducted . . . *sources or informants in black nationalist organizations, SNCC and other less publicized groups should be developed and expanded to determine the size and purpose of these groups and their relationship to other groups, and also to determine the whereabouts of persons who might be involved in instigating riot activity in violation of federal law.*<sup>129</sup> [Emphasis added.]

In announcing the program to FBI Field Offices, Director Hoover stated that "it is imperative and essential that the Bureau learn of any indications of advance planning or organized conspiracy on the part of individuals or organizations in connection with riots and civil disturbances."<sup>130</sup>

As originally conceived, a "ghetto informant" was to act as a "listening post" rather than an informant who actively sought information or who infiltrated particular groups.<sup>131</sup> The FBI defined a ghetto informant as "an individual who lives or works in a ghetto area and has access to information regarding the racial situation and racial activities in his area which he furnishes to the Bureau on a confidential basis."<sup>132</sup> A 1972 Inspection Division memorandum noted that the concept of a ghetto informant "includes the proprietor of a candy store or barber-shop" in an urban ghetto area.<sup>133</sup>

At the outset of the program, ghetto informants, in contrast to regular subversive or extremist informants, were not given specific assignments or directed to infiltrate groups. As the program developed, however, this changed. A Bureau document described this change:

The "listening post" concept was expanded and ghetto informants are now utilized to attend public meetings held by extremists, to identify extremists passing through or locating

<sup>129</sup> Memorandum from Attorney General Ramsey Clark to Director, FBI, 9/14/67.

<sup>130</sup> Memorandum from FBI Headquarters to all SACs, 10/17/67, p. 8.

<sup>131</sup> Memorandum from Moore to Miller, 9/8/72.

<sup>132</sup> Memorandum from Moore to Brennan, 10/27/70.

<sup>133</sup> Memorandum from Inspection Division, 11/24/72.

in the ghetto area, to identify purveyors of extremist literature as well as given specific assignments where appropriate.<sup>134</sup>

In addition to specific assignments to report indications of potential violence, ghetto informants were focused on "Afro-American type bookstores." A Philadelphia Field Office directive to Special Agents listed the following such assignment as suitable for ghetto informants: "Visit Afro-America-type bookstores for the purpose of determining if militant extremist literature is available therein and, if so to identify the owners, operators, and clientele of such stores."<sup>135</sup>

The "listening post" concept of the Ghetto Informant Program became the subject of sharp debate within the FBI in 1972. The FBI Inspection Division criticized the program for counting a ghetto informant's report that there was no indication of civil unrest in his area as "positive" information. The Inspection Division observed that "negative information is not counted as positive information in any other informant program."<sup>136</sup> The Inspection Division further stated:

Some Ghetto Informants have in the past furnished information in extremist or criminal matters. This has been recognized as a by-product of the Ghetto Informant Program. A more meaningful approach to this whole problem might be to concentrate more heavily in ghetto areas to develop proven Security, Extremist, Revolutionary Activities, and Criminal Informants upon whom we can then rely to keep us advised of civil disturbance plans as a steady by-product to the information they are regularly furnishing on domestic intelligence or criminal matters.<sup>137</sup>

The Inspection Division further noted that there might be "justifiable apprehension" outside the FBI regarding the "listening post" concept.

... we have some concern of justifiable apprehension that might be expressed by the Congress or the public if this program were to be described in terms out of context with our real intentions. We could fully defend informants providing us regularly with information directly related to our jurisdictional responsibilities and using them for "by-product" information on civil unrest. It would be much more difficult to defend establishment of ghetto or urban listening posts all over the country with a possible by-product of information directly within our jurisdiction.<sup>137a</sup>

The Inspection Division concluded that ghetto informants who had proven to be productive informants "should be converted to the appropriate substantive informant program to which their services relate."<sup>138</sup>

On July 31, 1973, Director Kelley terminated the Ghetto Informant Program, eliminating the category of "ghetto informant" and instructing that "no individual will be operated as an [extremist inform-

<sup>134</sup> Memorandum from Moore to Miller, 9/27/72.

<sup>135</sup> SAC memorandum, 8/12/68, re: Racial Informants.

<sup>136</sup> Memorandum from Inspection Division, 11/24/72.

<sup>137</sup> *Ibid.*

<sup>137a</sup> *Ibid.*

<sup>138</sup> *Ibid.*

ant] solely because he is in a 'listening post' position."<sup>139</sup> Under the revised extremist informant program, extremist activity and potential violence were to be monitored through regular extremist informants.

### *2. The Plant Informant Program (1940-1969)*

This program developed out of discussions in October, 1938 among the Army, Navy, and FBI as to which entity would have responsibility for the security of defense industries against espionage and sabotage.<sup>140</sup> As a result of these discussions, it was decided that the FBI would assume the responsibility.

The program was begun in September 1940, when FBI Field Offices were instructed to develop confidential sources in defense plants identified to the FBI on lists submitted by the Army and Navy.<sup>141</sup> By September, 1942, there were 23,746 such confidential sources in 3,879 defense plants.<sup>142</sup>

The program was cut back sharply after World War II, but continued in existence until its termination in March, 1969.<sup>143</sup> Generally, the confidential sources in the program were used as a point of contact and potential source of information in investigations of suspected espionage matters.<sup>144</sup>

### *3. The American Legion Contact Program (1940-1954)*

This program arose out of a proposal submitted by the American Legion to the Attorney General in 1939. When World War II broke out in Europe, the American Legion submitted to the Attorney General a proposal to use its local posts to investigate and report indications of subversive or espionage activity.<sup>145</sup> The Attorney General turned down the proposal but referred it to the FBI for comment. The FBI came forward with an alternative plan, which in essence called for the use of local American Legion post members as potential "confidential sources" in their communities.<sup>146</sup> After background checks, such sources were to be used to provide information without payment on domestic security matters.<sup>147</sup> The FBI proposal was approved by the Attorney General and the American Legion in November 1940.<sup>148</sup> The program was terminated on August 17, 1954. FBI Field Offices however were instructed to maintain contact with American Legion officials in their areas.<sup>149</sup>

## *D. The Use of Informants at Colleges and Universities*

### *1. Present FBI Policy*

In the course of its domestic intelligence investigations, the FBI regularly uses students, teachers and school officials at colleges and universities as informants and confidential sources.

<sup>139</sup> Memorandum from FBI Headquarters to all SACs, 7/31/73.

<sup>140</sup> FBI deposition, 2/10/76, p. 22.

<sup>141</sup> Memorandum from FBI Headquarters to all SACs, 9/23/40.

<sup>142</sup> *Ibid.*, p. 24.

<sup>143</sup> Memorandum from FBI Headquarters to all SACs, 3/25/69.

<sup>144</sup> FBI deposition, 2/10/76, p. 23.

<sup>145</sup> *Ibid.*, p. 20.

<sup>146</sup> *Ibid.*, p. 20. As discussed in greater detail at p. 260 below, confidential sources are defined by the FBI manual as individuals who furnish information "available to them through their employment or position in the community."

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*, p. 21.

<sup>149</sup> Memorandum from FBI Headquarters to all SACs, 8/17/54.

Under present FBI policy, there are two measures that apply solely to the use of campus informants. Students under 18 years of age may not be used as informants in other than "highly unusual circumstances" and justification for their use must be submitted to Bureau Headquarters.<sup>150</sup> Second, student informants and confidential sources are requested to sign a statement that they are "voluntarily" submitting information because of their "concern over individuals and groups that may be inimical to interests of U.S. Government".<sup>151</sup> The statement also provides that the student informant or source "understands [the] FBI has no interest in legitimate institution or campus activities." <sup>151a</sup> However, the Manual does not further explain or specify the distinction between relevant matters in intelligence investigations and such "legitimate activity."

The FBI Manual emphasizes that, despite these two measures requiring "care" in the use of campus informants, FBI Field Offices must have "well-planned [informant] coverage" at colleges and universities. The Manual provides:

Each office must have continuous and well-planned program to obtain necessary coverage at institutions of learning so that Bureau can fulfill its obligations. Care with which this must be done in no way lessens responsibility of each field office to have proper coverage.<sup>152</sup>

## *2. The Background to Present Policy*

FBI policy on the use of informants and sources at colleges and universities underwent a number of changes between 1965 and 1970, the period of campus unrest. In 1967 as a result of the Katzenbach Report on CIA involvement with student groups, FBI Director Hoover cut back sharply on the use of campus informants, imposing a number of restrictions on their use. Later, despite strong pressure from the Justice Department for more intelligence on campus groups, Hoover initially refused to relax these restrictions. Gradually, however, the restrictions were lifted and indeed in September 1970 the age limit for campus informants (and all informants) was lowered from 21 to 18.

The development of FBI policy on campus informants in the critical period 1965-1970 is reviewed below.

a. *Initial Guidelines for Use of Campus Informants.*—FBI field offices had been instructed as early as 1965 to intensify their investigation of "subversive activity" among student groups.<sup>153</sup> In 1967, however, the FBI became concerned that its intelligence activity on college campuses might be exposed by the controversy over CIA links with the National Student Association.<sup>154</sup> Therefore, field offices were

<sup>150</sup> FBI, MOI Sec. 107 U (1) (a).

<sup>151</sup> FBI, MOI Sec. 107 U (1) (b).

<sup>151a</sup> *Ibid.*

<sup>152</sup> FBI, MOI Sec. 107, U (3).

<sup>153</sup> SAC Letter No. 65-44, 8/17/65.

<sup>154</sup> Referring to the exposure of CIA involvement with the National Student Association, the FBI informed its field offices:

"It is possible that this current controversy could focus attention on the Bureau's investigation of student groups on college campuses." (SAC Letter No. 67-13, 2/21/67.)



advised to conduct campus investigations in a "most discreet and circumspect" manner:

You should . . . bear in mind that in our continuing investigations to keep abreast of subversive influence on campus groups, in discharging our responsibilities in the internal security field, such investigations should be conducted in a most discreet and circumspect manner. Good judgment and common sense must prevail so that the Bureau is not compromised or placed in an embarrassing position.<sup>155</sup>

Field offices were reminded that existing FBI policy required approval from headquarters before investigating individuals or groups "connected with an institution of learning," before interviewing students or faculty members, and before developing a student or faculty member "as an informant source." These interviews or contacts were also to "be made away from the campus."<sup>156</sup>

b. *The 1967 Restrictions.*—When the Katzenbach Committee issued its report on CIA involvement with student groups, FBI Director Hoover canceled all outstanding authorizations "to contact students, graduate students, and professors of educational institutions in security matters . . . [including] established sources, informants, and other sources." Field Offices were instructed to request new authority from FBI headquarters "where contacts with such individuals are particularly important and necessary."<sup>157</sup>

Shortly after the 1967 cutback in campus coverage, however, the FBI formally characterized the Students for a Democratic Society for the first time, stressing its "subversive" connections. As intelligence investigations of SDS chapters expanded, FBI officials realized that the restrictions on campus contacts "impose problems for the field."<sup>158</sup>

Field Offices were advised to stress "the development of noncampus informants and sources" to maintain intelligence coverage of "subversive" activity at educational institutions.<sup>159</sup> Shortly thereafter, the restriction was lifted for contacts on campuses with "established sources functioning in an administrative capacity such as a Registrar, Director of Admissions, Dean of Men, Dean of Women and Security Officer, and their subordinates." Headquarters approval, however, was still required to contact students or professors.<sup>160</sup>

C. *Hoover's Resistance to New Pressure for Relaxed Restrictions on Campus Informants.*—The urban riots of the summer of 1967 greatly intensified FBI domestic intelligence operations. Equally important, the Detroit and Newark riots brought other agencies of the Federal Government into the picture. A Presidential Commission was established to study civil disorders and the Attorney General reexamined statutes on sedition, conspiracy and insurrection. Consequently, the Internal Security Division asked the FBI:

<sup>155</sup> SAC Letter No. 67-13, 2/21/67.

<sup>156</sup> SAC Letter No. 67-13, 2/21/67.

<sup>157</sup> SAC Letter No. 67-20, 4/7/67.

<sup>158</sup> SAC Letter No. 67-24, 5/2/67.

<sup>159</sup> SAC Letter No. 67-24, 5/2/67.

<sup>160</sup> SAC Letter No. 67-29, 5/24/67.

to furnish us with the names of any individuals who appear at more than one campus either before, during, or after any active disorder or riot and the identities of those persons from outside the campus who might be instigators of these incidents.<sup>161</sup>

The FBI was asked to use not only its "existing sources," but also "any other source you may be able to develop . . ." <sup>162</sup>

Despite the pressure for greater intelligence about campus groups, Director Hoover decided "that additional student informants cannot be developed."<sup>163</sup> Nevertheless, the FBI field offices were instructed to intensify their efforts: "It is . . . recognized that with the graduation of senior classes, you will lose a certain percentage of your existing student informant coverage. This decreasing percent of coverage will not be accepted as an excuse for not developing the necessary information."<sup>164</sup>

One way to achieve this result without the FBI itself recruiting additional student informants was to have local police do so. Thus, when field officers were reminded of the need for gathering intelligence so that the Justice Department could be provided "data regarding developing situations having a potential for violence," FBI Headquarters stressed the need for "in-depth liaison with local law enforcement agencies."<sup>165</sup>

In September 1969, the restriction on recruitment of new campus informants was finally relaxed, although field officers were still forbidden to develop informants under the age of 21. Procedures were instituted, however, "for tight controls and great selectivity in this most sensitive area". Field offices were given the following instruction:

Upon initial contact with a potential student informant or source, informant or source should be requested to execute brief signed written statement for the field file to the effect that such individual has voluntarily furnished information to the FBI because of his concern of [sic] individuals and groups acting against the interests of his government and that he understands that the FBI is not interested in the legitimate activities of educational institutions.

Field offices were also to submit quarterly reports assessing the productivity of each student informant so as "to justify the continued utilization of the source."<sup>166</sup>

d. *The Huston Plan's Recommendation for Expanded Campus Informant Coverage.*—FBI Intelligence Division officials were greatly dissatisfied with these restrictions, particularly the age restriction on

<sup>161</sup> Memorandum from Assistant Attorney General J. Walter Yeagley to the Director FBI, 3/3/69.

<sup>162</sup> *Ibid.*

<sup>163</sup> SAC Letter No. 69-16, 3/11/69.

<sup>164</sup> *Ibid.*

<sup>165</sup> SAC Letter 69-44, 8/19/69. Local police use of intelligence undercover agents in college classrooms in California was held by the California Supreme Court to likely "pose a substantial restraint upon the exercise of First Amendment rights." (*White v. Davis*, 533 Pac Rep. 2d., 222, 232. California Supreme Court, 1975.)

<sup>166</sup> SAC Letter No. 69-55, 9/26/69.

students informants.<sup>167</sup> This dissatisfaction surfaced in June 1970 as the Intelligence Community developed recommendations (the "Huston Plan") for President Nixon for the relaxing of restrictions on domestic intelligence operations.<sup>168</sup> Among other items, the Huston Plan recommended to the President:

Present restrictions should be relaxed to permit expanded coverage of violence-prone campus and student-related groups.<sup>169</sup>

Over Hoover's specific objection, this recommendation had also been contained as an option in the earlier Special Report of the intelligence agencies which led to the Huston Plan. In the Special Report, Hoover noted his objection in the following words:

The FBI is opposed to removing any present controls and restrictions relating to the development of campus sources. To do so would severely jeopardize its investigations and could result in charges that investigative agencies are interfering with academic freedom.<sup>170</sup>

e. *The Removal of the Age Restriction.*—Despite Hoover's recorded opposition in June 1970 to expanded campus informer coverage and President Nixon's ultimate decision not to implement the Huston Plan, in September 1970 the FBI lifted the principal restriction on campus informant use. On September 15, 1970, the FBI authorized its field offices "to develop student security and racial informants who are 18 years of age or older."<sup>171</sup> FBI Headquarters pointed out to the field that the removal of the age restriction presented the field "with a tremendous opportunity to expand your coverage."<sup>172</sup>

The expanded campus coverage called for by FBI Headquarters was quickly implemented at the Field Office level as part of the FBI's effort to have New Left campus groups think "there is an FBI agent behind every mailbox."<sup>173</sup> On September 16, 1970—the day following the Headquarters letter lifting the age restriction—the Philadelphia Field Office for example, advised its agents:

The Director has okayed PSI's [potential security informants] and SI's [security informants] age 18 to 21. We have been blocked off from the critical age group in the past. Let us take advantage of this opportunity.<sup>174</sup>

<sup>167</sup> Special Report of the Interagency Committee on Intelligence (Ad Hoc), the "Huston Plan," 6/70, (Hearings, Vol. 2, Exhibit No. 1.) p. 34.

<sup>168</sup> See the Detailed Report on the Huston Plan.

<sup>169</sup> Huston Plan, p. 36.

<sup>170</sup> Huston Plan, p. 36.

<sup>171</sup> SAC Letter 70-48, 9/15/70.

<sup>172</sup> SAC Letter 70-48, 9/15/70.

<sup>173</sup> Memorandum from Philadelphia Field Office, to FBI Headquarters, 9/16/70. The Philadelphia Field Office pointed out that on September 10 and 11, 1970, a conference at FBI Headquarters on the New Left had reached a consensus that FBI interviews with persons on campuses might result in identification of new campus informants and "will further serve to get the point across there is an FBI agent behind every mailbox." (*Ibid.*)

<sup>174</sup> *Ibid.*

## III. THE INTELLIGENCE INFORMANT PROGRAM—SIZE, SCOPE AND STANDARDS

*A. The Number of Intelligence Informants*

As of June 30, 1975, the FBI was using over 1,500 domestic intelligence informants.<sup>175</sup> There were 1,040 FBI regular informants approved by Bureau Headquarters (another 554 were in probationary status pending establishment of their reliability).<sup>176</sup> The FBI programmed a total of \$7,401,000 for its intelligence informants program in Fiscal Year 1976. This amount is more than double the amount the FBI programmed for its organized crime informant program in 1976.<sup>177</sup>

In addition to paid and directed informants, the FBI uses confidential and panel sources in its intelligence investigations. Confidential sources are defined by the FBI as individuals who furnish the FBI information available to them through their employment or position in the community.<sup>178</sup> The FBI Manual cites as examples of confidential sources "bankers, telephone company employees, and landlords."<sup>179</sup>

In practice, FBI Field Offices designate individuals as confidential sources who are logical and convenient points of contact and information. The source then becomes a matter of administrative record and is available to all agents in the Field Office, minimizing the need for an agent to start from scratch in selecting persons to interview when the need arises.<sup>180</sup> Confidential sources are not usually informed that they have been so designated, nor are they usually paid for any information they provide.<sup>181</sup> As of June 1975, there were 605 confidential extremist sources, and 649 confidential subversive sources. (By comparison, in 1973 there were 837 confidential sources and, in 1972, 684 confidential subversive sources.)<sup>181a</sup>

Panel sources are defined as individuals who are not involved in an investigated group but who "will attend its public gatherings on behalf of FBI for intelligence purposes or as potential witnesses."<sup>181b</sup> Panel sources were first developed to meet the need for witnesses in the course of Smith Act trials of Communist Party members in the 1950s. In those trials, it was necessary to prove, for example, simple facts as to the existence of the Communist Party, the dates and places of public meetings held by the Party, and similar matters. To avoid surfacing

<sup>175</sup> Memorandum from the FBI to the Senate Select Committee, 11/28/75.

<sup>176</sup> By comparison, in 1971 the FBI had 1,731 regular informants, nearly 700 more than in 1975, and, as of 1972, 7,482 informants in the Ghetto Informant Program. The decline since 1971 in the number of regular informants is largely attributable to the decline in dissident political activity with the end of the Vietnam War and the institution of somewhat stricter standards for the opening or continuation of domestic intelligence investigations. As discussed above, the Ghetto Informant Program was discontinued in 1973.

<sup>177</sup> FBI, Overall Intelligence Program, FY 1977 Budget Compared to FY 1976. The cost of the intelligence informant program comprises payments to informants and FBI personnel, and overhead costs.

<sup>178</sup> FBI, MOI Sec. 107, A (4).

<sup>179</sup> FBI, MOI Sec. 107, A (4).

<sup>180</sup> FBI deposition, 2/10/76, p. 13.

<sup>181</sup> FBI deposition, 2/10/76, pp. 10-12.

<sup>181a</sup> *Ibid.*

<sup>181b</sup> FBI, MOI, Sec. 107, A.

regular informants within the Party to establish such facts, panel sources were developed. Panel sources are used for similar purposes today.<sup>182</sup> As of 1975, there were approximately 200 panel sources.<sup>183</sup>

As discussed in more detail above, there were 7,482 informants in the Ghetto Informant Program in 1972, the year before its termination.

### *B. The FBI Administrative System for Intelligence Informants*

The FBI administers its intelligence informants through a centralized system from Bureau Headquarters. FBI Special Agents may not operate or pay informants and sources without approval of FBI Headquarters or the Special Agent in charge of a Field Office. FBI Headquarters approval is required to designate an individual as a potential subversive informant.<sup>184</sup>

All potential informants are subjected to a background check. Military records, police files, and employment and credit history are typical items reviewed.<sup>185</sup> The results of this background investigation are submitted to Bureau Headquarters. Potential extremist informants may be operated on the personal authority of the Special Agent in Charge at the Field Office level, unless the individual is in a sensitive position where his disclosure as an informant "could cause inordinate concern to the Bureau," is a member of or may soon join an extremist organization, or has a criminal or other unsavory background.<sup>186</sup> In such instances, FBI Headquarters' authority must be obtained, along with a statement outlining the intended use of the informant.<sup>187</sup>

Although titled "potential" informants, such individuals nevertheless provide the FBI with intelligence information during this initial stage and are paid for what they supply.<sup>188</sup>

Special Agents in Charge may pay an informant up to \$400 on their own authority;<sup>189</sup> after that amount has been expended Bureau Headquarters authorization is required for any additional payments.<sup>190</sup> Although there is no formal ceiling on payments for services (i.e., information provided) FBI informants average approximately \$100 a month, with the most valuable and productive informants, such as Rowe and Cook, earning in the range of \$300-\$400 monthly.<sup>191</sup>

FBI Headquarters approval is required to raise both potential subversive and extremist informants to regular informant status. The request must be initialed by the Field Office SAC or his Deputy.<sup>192</sup>

In addition, every six months FBI Headquarters reviews a completed form on each informant submitted by the Field Office. The form summarizes the informant's activities, his pay, the type of information supplied (including the percentage verified from other sources) and an assessment of his value. On the basis of this report, and a

<sup>182</sup> FBI deposition, 2/10/76, pp. 16-17.

<sup>183</sup> *Ibid.*

<sup>184</sup> FBI, MOI Sec. 107, D(1).

<sup>185</sup> FBI, MOI, Sec. 107.C.

<sup>186</sup> FBI, MOI, Sec. 130, C(1 and 2).

<sup>187</sup> FBI, MOI, Secs. 107, C; 103, D(1).

<sup>188</sup> FBI, MOI, Sec. 107, D(5).

<sup>189</sup> FBI, MOI, Sec. 107, I(2a).

<sup>190</sup> FBI, MOI, Sec. 107, L(3).

<sup>191</sup> FBI deposition, 2/10/75, p. 6; Cook, 12/2/75, Hearings, Vol. 6, p. 12.

<sup>192</sup> FBI, MOI, Sec. 106, D(10).

comparison of the informant's information with that of others in similar circumstances, a monthly payment limit is established for the next six-month period.<sup>193</sup>

There are periodic reviews of informant activities in addition to those described above. The FBI Manual provides that every sixty days the SAC or his deputy are to review each informant's file.<sup>194</sup> In addition, the Inspection Division reviews informant files during its annual inspections of each Field Office.<sup>195</sup>

To operate confidential and panel sources, FBI Headquarters approval is also required. Background investigations are also performed on these sources and the results submitted to Bureau Headquarters.<sup>196</sup>

Each informant is assigned a "handling agent," an FBI Special Agent who is in contact with the informant on a regular basis, receives the informant's information, and pays him, usually on a monthly basis. The Manual provides that the handling agent "should not only collect information, but direct the informant, be aware of his activities, and maintain such close a relationship that he knows informant's attitude towards the Bureau."<sup>197</sup>

The FBI Manual contains detailed provisions for the correction of false information.<sup>197a</sup> If it is learned an informant has given false information, "all communications which have been disseminated to (FBI HQs), other Bureau offices and to outside agencies must be corrected."<sup>198</sup> In addition, corrective letters are to be written to amend any reports which contain the incorrect information. Moreover, a control file is to be established and a letter to FBI HQs must be sent which is to be used "to check all pertinent Bureau files to see that necessary corrective action has been taken."<sup>199</sup>

The Manual also provides that informants must submit written reports or sign transcriptions of their oral reports.<sup>199a</sup> A limited exception to this rule exists for extremist informants who may submit oral reports in cases of imminent violence.<sup>199b</sup>

### *C. Standards for the Use of Intelligence Informants*

There are three types of standards for intelligence informants. These are (a) the criteria that govern the decision to use informants against groups and individuals; (b) the limits that are set on the type of information an informant may report to the FBI; and (c) the limits that are placed on an informant's conduct.

At present, the standards for intelligence informants are contained in internal FBI directives. There are no statutes or published government regulations to govern the use of intelligence informants.

<sup>193</sup> FBI, MOI, Sec. 107, L(3).

<sup>194</sup> Letter from the FBI to the Senate Select Committee, 12/2/75, Hearings, Vol. 6, Exhibit 33.

<sup>195</sup> *Ibid.*

<sup>196</sup> FBI, MOI Secs. 107, R(5), S(2)

<sup>197</sup> FBI, MOI Secs. 107, R(5), S(2).

<sup>197a</sup> The process for verifying any informant's information is a continuous one in which the Handling Agent cross checks an informant's reports through other sources and separate investigation. Memorandum from the FBI to the Senate Select Committee, 12/2/75, p. 4.)

<sup>198</sup> FBI, MOI Sec. 107, Q(4).

<sup>199</sup> FBI, MOI Sec. 107, Q(9).

<sup>199a</sup> FBI, MOI Sec. 107(G), 130(M)

<sup>199b</sup> FBI, MOI Sec. 130(M-1d)

Unlike wiretap and electronic surveillance, which are subject to an elaborate system of review and approval by the Department of Justice and the courts, there is no review outside the FBI of decisions on intelligence informants. Thus, decisions as to intelligence informant coverage—e.g., the number of informants to be used in an investigation, the scope and duration of their reporting—are made exclusively by FBI officials. In addition, since the standards for informant use are in internal FBI directives, it is also within the discretion of FBI officials to change these standards.

### *1. Criteria for the Decision to Use Informants*

Under the FBI Manual, once a full intelligence investigation of a group or individual is opened, informants can be used without limitation. In a preliminary investigation, established informants may supply information, but new informants may not be recruited.<sup>200</sup>

Since September 1973, the FBI has distinguished between full intelligence investigations and preliminary ones, and has imposed differing limitations on the length, scope, and sources of information for preliminary investigations. A preliminary investigation may be undertaken when the subject's involvement in subversive or extremist activities is questionable or unclear to further define his involvement and to determine whether a statutory basis exists for a full investigation. A preliminary investigation is supposed to be confined to a review of public source documents, record checks, and established sources and informants. The General Accounting Office Study on FBI domestic intelligence operations found, however, that in practice, FBI Field Offices have not adequately distinguished between the two types of investigations.<sup>201</sup> In particular, the GAO found that the limits on the use of informants in preliminary investigations was subject to varying interpretations and loose observance. The GAO Study stated:

Although the Manual of Instructions confines the scope of preliminaries to the use of established sources, our review of the cases showed that the 10 field offices generally used the same sources in the preliminary cases as full-scale cases.

Most of the field offices interpreted "established sources" broadly and did not believe the type of investigation placed restrictions on who was contacted. An "established source" was generally described by the field offices as being any source previously used by the Bureau. In addition, some field offices indicated that information could come from whatever source—established or otherwise—which is necessary to establish a subject's identity and subversive or extremist affiliation.<sup>202</sup>

Under current standards, full domestic intelligence investigations may be opened on groups and individuals—and thus informants may be recruited and targeted against them—if (1) they have, or allegedly

<sup>200</sup> FBI, MOI Sec. 87, (F).

<sup>201</sup> GAO Study, p. 27.

<sup>202</sup> GAO Study, pp. 113-114.

have, violated certain statutes;<sup>203</sup> (2) they are “engaged in activities which *may* result in” a violation of these statutes, (3) they *advocate* activities which *may* result in a violation of these statutes.<sup>204</sup>

Informants may also infiltrate groups who are not the subject of intelligence investigations under certain circumstances. The FBI Manual provides that if a group which is the subject of a subversive investigation is seeking “to systematically infiltrate and control” another group, an intelligence investigation of the infiltration (as opposed to the second group itself) may be opened.<sup>205</sup> Informants may join or participate in the activities of the second group if requested by the first group.

In addition, subversive investigations under Section 87 of the FBI Manual examine any significant connections or cooperation between a group under investigation and any other groups.<sup>206</sup>

Thus, under this standard, informants in the group under investigation may report on those who happen to work with the group or its members under investigation, even if the cooperation involves lawful activity.

In summary, the scope of informant coverage may extend to (1) groups that are the subject of intelligence investigations; (2) groups which an investigated group is attempting to infiltrate or control; and (3) groups having “significant connections,” or which cooperate with investigated groups.

## *2. Limits on the Information an Informant May Report*

There are few limits on the information an informant may report to the FBI. The FBI Manual does not limit an intelligence informant's reporting to information relating to the planning or commission of criminal offenses or violence. As indicated by the case histories examined earlier, informants are expected to report virtually everything they observe regarding a group or individual's activity to fulfill their intelligence purpose.

One rationale for this unlimited reporting was expressed by FBI officials in their testimony to the Committee. In response to a question as to the desirability of limiting an informant's reporting to information pertaining to violence or criminal activity, Deputy Associate Director Adams stated:

Here is the problem that you have with that. When you're looking at an organization, do you report only the violent

<sup>203</sup> For subversive intelligence investigations, the principal statutes are 18 U.S.C. 2383-85 relating to rebellion or insurrection, seditious conspiracy, and advocating the overthrow of the government. The same statutes are involved in extremist investigations as well as the Civil Rights Act, 18 U.S.C. 241.

<sup>204</sup> FBI Manual of Instruction, Section 87, A.(1)(4); Section 122, A.(1)(2). Section 87, A.(1) dealing with subversive investigations, provides, for example: “Investigations conducted under this section are to be directed to the gathering of material pertinent to a determination whether or not the subject has violated, or is engaged in activities which *may* result in a violation of [certain statutes] or in fulfillment of Departmental instructions.” [Emphasis added.]

The manual further provides that “subversive organization” or “subversive movement” denotes a (FBI, MOI Sec. 107,A(4)) group “which is known to . . . *advocate* subversive activities.” [Emphasis added.] Subversive activities are defined in terms of activities which violate or may violate relevant statutes. (FBI, MOI Sec. 107,A(1).)

<sup>205</sup> FBI, MOI, Sec. 87, B.4.

<sup>206</sup> FBI, MOI Sec. 107,B(3-9)



statements made by the group or do you also show that you may have one or two violent individuals, but you have some of these church groups that were mentioned, and others, that the whole intent of the group is not in violation of the statutes. You have to report the good, the favorable along with the unfavorable, and this is a problem. We wind up with information in our files. We are accused of being vacuum cleaners, and [we] are a vacuum cleaner. If you want to know the real purpose of an organization, do you only report the violent statements made and the fact that it is by a small minority, or do you also show the broad base of the organization and what it really is? <sup>207</sup>

However, FBI officials indicated that new limits on the scope of an informant's reporting were needed. As Adams stated ". . . we have to have guidelines . . . we have to narrow down [informant reporting] because we recognize we do wind up with too much information in our files." <sup>207a</sup>

The FBI Manual does proscribe the reporting of certain types of information. First, informants are not to report certain legal defense information. The Manual states intelligence informants should decline to assist in legal defense matters or to "handle an assignment where such information is readily available." <sup>208</sup> If an informant cannot avoid involvement, his handling agent is to instruct the informant "not to report any information pertaining to defense plans or strategy," <sup>209</sup> The Manual's limitations on legal-related information are as follows:

If an informant is present in conversation between an attorney and individual under criminal indictment, he should immediately leave. If he is unable to do so and inadvertently learns of defense plans or strategy, he is not to report the substance of any conversation to the FBI. Additionally, the informant is not to engage in or report the substance of a conversation with a criminal defendant dealing with the offense for which the defendant is under indictment. <sup>210</sup>

The FBI interprets these provisions as prohibiting only the reporting of privileged attorney-client communications or legal defense matters in connection with a specific proceeding. So-called "standard" legal defense information, such as manuals for general use in legal matters, can be taken by an informant and given to the FBI. The meaning of legal "defense plans or strategy" is not defined in the FBI Manual and can lead to varying interpretations of what can be reported. Thus, as indicated above, Cook's FBI handling agent testified he took from Cook papers discussing legal matters involving the VVAW.

She brought back several things . . . various position papers taken by various legal defense groups, general statements of . . . the VVAW, legal thoughts on various trials, the Gaines-

<sup>207</sup> James Adams testimony, 12/2/75, Hearings, Vol. 6, p. 135.

<sup>207a</sup> *Ibid.*

<sup>208</sup> FBI, MOI Sec. 107, A(12).

<sup>209</sup> *Ibid.*

<sup>210</sup> FBI, MOI Sec. 107, F(12e)

ville (Florida) 8 . . . the Camden (New Jersey) 9. . . Various documents from all of these groups.<sup>211</sup>

Cook also testified that she gave the FBI a confidential legal manual prepared by VVAW attorneys as a guide for legal defense of VVAW members in the event of prosecution for dissident activity.<sup>212</sup> Since this manual did not derive from an attorney-client communication in connection with a specific court proceeding, the FBI considered the VVAW legal defense manual could be taken.

Besides the above limit on legal information, the only other limitations in the FBI Manual on reporting concern informants in labor unions and at colleges and universities. The Manual states that if an informant "is connected in any manner with labor union, inform him that Bureau is not interested in employer-employee relationships as such and is only concerned with obtaining information on infiltration of unions by subversive elements."<sup>213</sup> Similarly, student informants or sources at colleges and universities are to be told that the FBI "has no interest in legitimate institution or campus activities."<sup>214</sup>

### *3. Limits on an Informant's Conduct and Behavior*

The FBI Manual contains provisions dealing with the "direction and control of informants." The Manual states:

Contacting Agent should not only collect information but direct informant, be aware of his activities. . . .

Close control must be exercised over activities of informants to obtain maximum results and prevent any possible embarrassment to Bureau.<sup>215</sup>

The Manual speaks of exercising control in order to obtain "maximum results" and prevent "embarrassment" to the Bureau; it does not, however, contain any guidelines as to the limits on informant conduct with respect to violence or illegal conduct.

The FBI points to the limits on FBI Special Agents as the means by which guidelines for intelligence informants are applied. The FBI memorandum to the Committee states: "Specifically, informant development and handling are extensively discussed in the FBI's training programs and there is no question as to Special Agents being aware that informants cannot be directed to perform a function that the Special Agent may not legally perform."<sup>216</sup> The FBI memorandum also points to the FBI Rules and Regulations which state that FBI employees "must not engage in any investigative activity which could abridge in any way" constitutional rights of citizens.<sup>217</sup>

These limits apply to FBI Agents and employees in their handling of informants. However, the FBI does not consider informants as FBI employees or "undercover agents," and informants are so advised.<sup>218</sup> Thus, these limits are not directly applicable to informants.

<sup>211</sup> Special Agent 11/20/75, pp. 15-16.

<sup>212</sup> Cook deposition, 11/14/75, p. 36.

<sup>213</sup> FBI, MOI Sec. 107D(2d).

<sup>214</sup> FBI, MOI, Sec. 107U(1-b).

<sup>215</sup> Manual, Section 107, F(4) (7).

<sup>216</sup> FBI Memorandum, 2/2/76, p. 3.

<sup>217</sup> *Ibid.*

<sup>218</sup> FBI, MOI Sec. 107,O(7).

On December 23, 1974, FBI Headquarters reiterated the rules for FBI employee conduct by the Director to all FBI Field Offices and further stated: "You are reminded that these instructions relate to informants in the internal security [domestic intelligence] field and no informant should be operated in a manner which would be in contradiction of such instructions."<sup>219</sup> This instruction appears to be the only written provision applying FBI employee conduct standards to informants.<sup>220</sup> Prior to the issuance of this instruction in 1974, there were no formal or specific provisions relating to informant conduct in FBI directives. The resulting effect on FBI agent direction of informants can be illustrated by two additional cases. The first case involved an FBI informant in a group of anti-war protestors. In August 1970, this group broke into the Camden, New Jersey, Draft Board, after several months of planning and preparation. The informant, Robert Hardy, testified that he provided essential direction and materials to the group, making the break-in possible. Hardy testified:

Everything they learned about breaking into a building or climbing a wall or cutting glass or destroying lockers, I taught them. I got sample equipment, the type of windows that we would go through, I picked up off the job and taught them how to cut the glass, how to drill holes in the glass so you cannot hear it and stuff like that, and the FBI supplied me with the equipment needed. The stuff I did not have, the [FBI] got off their own agents.<sup>221</sup>

Second, in late 1966 or early 1967 the FBI Field Office in San Diego, California was approached by one Howard Berry Godfrey. Godfrey testified that he was "approached" by a member of a right-wing paramilitary group to join. The Committee received varying information concerning why Godfrey contacted the FBI and at whose initiative the informant relationship arose.<sup>222</sup> In any event, Godfrey and the FBI entered into a relationship in 1967 by which Godfrey would provide the Bureau information. This relationship was formalized in August of 1967 when Godfrey was officially "approved" by the FBI's Washington Headquarters as an informant.

Godfrey's relationship with the FBI lasted over five years, terminating in November of 1972. Godfrey was paid varying amounts from 1967 through 1970 when he began to receive \$250 per month plus up

<sup>219</sup> Memorandum from FBI Headquarters to all SAC's, 12/23/74.

<sup>220</sup> FBI officials testified, however, that it is unwritten Bureau practice to instruct informants that they are not to engage in violence or unlawful activity and, if they do so, they may be prosecuted. FBI Deputy Associate Director Adams testified:

"... we have informants who have gotten involved in the violation of the law, and we have immediately converted their status from an informant to the subject, and have prosecuted, I would say, offhand ... around 20 informants. ..."

(Adams, 12/2/75, Hearings, Vol. 6, p. 150.)

<sup>221</sup> Hardy testimony, 9/29/75, pp. 16-17.

<sup>222</sup> Staff summary of Howard Berry Godfrey interview, 1/18/76.

to \$100 per month in expenses.<sup>224</sup> He continued at that level until his termination.<sup>225</sup>

Godfrey's case study, albeit dealt with here briefly, illustrated a number of the issues which wove their way through the Committee's inquiry into the FBI's use of informants. The first issue is control over the informant by the Bureau. In accord with FBI procedure, Godfrey always was assigned to a principal case agent. The Committee's investigation determined, however, that the actions of Godfrey and his cohorts in the San Diego area were rife with destruction and violence. There is little evidence, other than Godfrey's less than convincing claims, that he actually prevented any violence or destruction from occurring. As a member of the District Attorney's office told the Committee:

They [the FBI] couldn't control him [Godfrey]. Godfrey's actions went well beyond those which we would allow any informant operating under this office to become involved in.<sup>226</sup>

For a large part of his time as an FBI informant, the responsibility for monitoring Godfrey was in the hands of a single FBI agent. Moreover, under Bureau procedure, the reports of the informant are only sent to Washington every six months. And, the reports in the case of Godfrey were largely "form" type responses, providing an inadequate basis for any reviewing authority in Washington to determine Godfrey's usefulness.

The second overriding issue present in the Godfrey case study was how the Bureau could prevent the informant from actually inciting, encouraging or participating in violence and/or destruction without losing his utility as an informant. Godfrey admits to participating in some violence and destruction and the record suggests that he may have participated in even more than he now admits to.<sup>227</sup>

Examples of the types of actions Godfrey and/or the Secret Army were involved in include firebombing, smashing windows, placing stickers bearing SAO or Minutemen symbols on cars and buildings, propelling lug nuts through windows with sling shots, and breaking and entering.<sup>228</sup>

Upon questioning by the Committee, all FBI agents who dealt with Godfrey testified that while Godfrey was specifically instructed never to engage in illegal acts such as firebombings, etc., they recognized that this was often difficult if not impossible to accomplish. One FBI agent put it this way:

Well, I remember almost on a daily basis, this matter would come up. What can I do such and such. And I've said, well, obviously you can't do that. Stay with them as long as you

<sup>224</sup> It should be noted, however, that Godfrey did not always receive exactly \$250; it often depended upon the degree of his activity.

<sup>225</sup> As earlier referenced, the average FBI informant salary was \$100 per month.

<sup>226</sup> Staff summary of member of San Diego District Attorney's office interview, 1/22/76.

<sup>227</sup> Staff summary of Godfrey interview, 1/18/76.

<sup>228</sup> Indeed, the literature of the Secret Army features a pamphlet which instructs the public in the art of burglary complete with diagrams of "forced entry of building."

can and then find some logical excuse to bow out at the last minute. But he was never asked by me to participate in anything that I would consider illegal or that I think that he would consider illegal and to the best of my recollection, during our association. I can't recall anything specific . . . Now there were occasions when I know that he didn't get out of it. He might have been in one, he had to go and be involved or he would have been out of the group. I really don't remember anything right definite at this time but there were several of those cases, no question about it.<sup>229</sup>

And, Godfrey himself described his instructions as:

Q. Was there ever a conversation in which [you and the FBI agent] decided [that] while you would attempt to stay out of [a violent or destructive activity] if it came down to either getting involved in it, or having to just leave the scene [with] a number of questions [being] asked later, under those circumstances that you would go ahead and do the particular activity?

A. Yes.<sup>230</sup>

The SAO's actions escalated to a level of violence and destruction where Godfrey's name had to be revealed as an FBI informant. Two events precipitated this. The first was the shooting of Paula Tharp, who was in the residence of the San Diego State University professor Peter Bohmer. Briefly, while Godfrey and an SAO associate were "on a surveillance" of Bohmer's residence (instituted by Godfrey), the associate, according to Godfrey, picked up a gun Godfrey had under the seat of his car and fired shots into the Bohmer house, one of which struck Ms. Tharp.<sup>231</sup> Previously the SAO and Godfrey had singled out Professor Bohmer in their literature for special attention:

For any of our readers who may care to look up Red Scum, and say hello, here is some information that may help. His address is 5155 Muir, Ocean Beach, telephone number is 222-7243, he drives a dark blue 1968 VW Sedan, California licence DKY 147. Just to make sure you talk to the right guy here is his description: he has dark brown shoulder length hair, green eyes, weight is about 160 lbs. and he is 5'10" tall. Now in case any of you don't believe in hitting people who wear glasses, to be fair I guess we will have to tell you he wears contact lences. [sic]

The significant factor for the Committee's analysis of FBI informants is that even this shooting incident did not immediately terminate Godfrey as an informant. Rather the FBI records show that Godfrey remained on the Bureau payroll until November, 1972.

<sup>229</sup> Staff summary of FBI Agent #1 interview, 1/22/76, pp. 26-27.

<sup>230</sup> Staff summary of Godfrey interview, 1/18/76, pp. 54-55.

<sup>231</sup> This incident is not only a matter of pending civil litigation but Godfrey's SAO associate was convicted in a criminal trial in San Diego. The details of the shooting are a matter of public record in the trial transcript.

And, it was not until the second major act of destruction that Godfrey was "surfaced" as an informant.<sup>232</sup>

The second major act of destruction which occurred was the bombing of the Guild theatre in San Diego. According to Godfrey, the bombing was perpetrated by his subordinate in the SAO, one William Yakopec.<sup>233</sup> Godfrey participated in the SAO sale of some explosives to Yakopec. Yet, he promptly notified the FBI of Yakopec's alleged involvement in the Guild Theatre bombing. Yakopec, who maintains his innocence, was subsequently indicted and convicted of the bombing offenses in the local courts of San Diego.

Godfrey testified publicly at both the Yakopec and Hoover trials and was thereafter re-located to another part of California and ceased to serve as an FBI informant. Godfrey's use as a Government informant is now in litigation.

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The intelligence informant technique is not a precise instrument. By its very nature, it risks governmental monitoring of Constitutionally-protected activity and the private lives of Americans. Unlike electronic surveillance and wiretaps, there are few standards and no outside review system for the use of intelligence informants. Consequently, the risk of chilling the exercise of First Amendment rights and infringing citizen privacy is increased. In addition, existing guidelines for informant conduct, particularly with respect to their role in violent organizations and FBI use of intelligence informants to obtain the private documents of groups and individuals, need to be clarified and strengthened.

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<sup>232</sup> Godfrey did turn over the weapon to his FBI supervisor after the shooting. The FBI did tell a representative of the San Diego police department that they had an informer who was a witness to the shooting, but neither this information nor the existence of the gun was furnished to the unit of the San Diego Police Department which investigated the Tharp shooting for several months.

<sup>233</sup> Godfrey testified before a San Diego grand jury that Yakopec was a "lieutenant in my—an assistant San Diego County commander."