

THE DEVELOPMENT OF FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

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THE DEVELOPMENT OF FBI DOMESTIC INTELLIGENCE INVESTIGATIONS

I. INTRODUCTION

During the past forty years, FBI intelligence investigations have been one of the federal government's main resources for the protection of domestic security. The executive branch, not the Congress, too, the initiative in 1936 to establish the Bureau's intelligence structure. Until this Committee's investigation, there has never been a substantial inquiry by the Congress into the policies and practices of the FBI and the executive for the conduct of domestic intelligence investigations. The purpose of this report is to set forth chronologically the development of these policies and practices, as shown by the materials obtained by the Committee from the FBI and the Justice Department.

A. Scope of the Report

There are several major limits on the scope of this report and of the inquiry it represents. Since it spans sixty years of American history, the report does not purport to be an exhaustive discussion of all the outside events which were the setting for policy decisions and the development of Bureau programs. Nor does this report touch on many of the most controversial cases in the FBI's past, such as the Hiss and Rosenberg cases, which have recently been the subject of extensive historical reconsideration on the basis of materials made public under the Freedom of Information Act. Rather, the narrative which follows concentrates on the Bureau's general policies and formal programs, with specific illustrations of what appear to be typical applications of these investigative standards.¹

Furthermore, the Committee has not attempted to secure from the FBI and the Justice Department an exhaustive compilation of all policy materials relating to domestic intelligence over the entire period since 1936. For example, the Committee has reviewed all versions of the FBI Manual Sections pertaining to intelligence only as far back as 1960. The same cut-off date was used in the Committee's requests for such basic policy documents as the "SAC Letters" (regular instructions to the Special Agents in Charge of all FBI field offices from Bureau headquarters) and memoranda recording decisions of the FBI's Executive Conference (composed of all Bureau executives at the level of Assistant Director and above). However, substantial information about pre-1960 intelligence policies was obtained in con-

¹ Separate Committee Reports deal with the most intrusive investigative techniques (Electronic Surveillance, Surreptitious Entry, Mail Opening, and Informants), FBI programs going beyond investigation to the disruption of targeted groups and individuals (COINTELPRO), and one specific case study combining all types of Bureau operations (Dr. Martin Luther King, Jr.).

nection with the Committee's review of the FBI's Security Index and related programs going back to 1939. Other materials on the FBI's overall policy mandate from the President were located in the various Presidential libraries; and the Bureau volunteered to the Committee an extensive collection of documents on its operations as part of an analysis of the origins of its legal authority to conduct domestic intelligence investigations.²

The most significant omission from this report is the FBI's foreign counterintelligence policies. While they are mentioned from time to time as part of the larger context for the Bureau's intelligence operations as a whole, they are not considered in the same depth as FBI domestic intelligence investigations not directed specifically at the activities of hostile foreign intelligence services in this country.³

Nevertheless, it is essential to examine the nature of foreign counterintelligence investigations in order to understand the origins of FBI domestic intelligence. Counterintelligence investigations are a necessary response to the threat of espionage and related hostile intelligence activities of foreign governments. Foreign espionage is a tangible and obvious danger; and clandestine investigations of foreign agents are a minimal intrusion upon the rights of Americans (even if some foreign agents are citizens). The crimes a foreign agent may commit on behalf of his principal are extraordinarily serious, for they may result in disclosure of the nation's most sensitive defense information to a foreign adversary. The positive foreign intelligence by-product of counterintelligence may have great significance, since it can alert the United States to impending hostilities and provide information about the larger intentions and objectives of other nations.

Before World War II the governments of Nazi Germany, Japan, and the Soviet Union mounted intelligence efforts directed at the United States. While their extent was not fully known at the time, there were sufficient indications as early as the mid-1930s. Given the international climate and the activities of German and Soviet officials in the United States, there was every reason to believe that this country needed a counterintelligence capability to identify and possibly disrupt the work of hostile intelligence services.

From today's perspective it is harder to understand the nature of the domestic threats to security which, along with foreign espionage, were the reasons for establishing the FBI's intelligence program in the 1930s. President Roosevelt and the Congress were not just concerned about spies and foreign agents in the pre-World War II period. They saw a threat which combined both foreign and domestic elements, and FBI intelligence was assigned to deal with it. Only by a closer examination of the historical record can this assignment be fully explained. Factors of political belief and association, group membership and nationality affiliation, became the criteria for intelligence investigations

² FBI Intelligence Division, Position Paper on Jurisdiction, 2/13/75; FBI Intelligence Division, *An Analysis of FBI Domestic Security Intelligence Investigations: Authority, Official Attitudes, and Activities in Historical Perspective*, 10/28/75.

³ A separate Committee report considers the subject of foreign counterintelligence as it relates to both the FBI and U.S. foreign and military intelligence agencies.

before the war; and they continued to be used through the Cold War period to the 1960s and early 1970s.

Therefore, this report describes how the policy assumptions behind FBI domestic intelligence were established in 1930s and 1940s and became unquestioned dogma as the years went by. In the 1960s, new and unexpected events occurred which did not fit these established concepts. There was no longer a consensus among Americans as to the nature of government's proper response to home-grown dissidents who might engage in violence as a form of political protest, to racist groups using force to deprive others of their civil rights, to civil disorders growing out of minority frustrations, or to large-scale protest demonstrations. Presidents and Attorneys General turned to the FBI for intelligence about these matters without adequate controls. The resulting confusion and mistakes of the past ten years called into question some of the fundamental assumptions underlying the FBI intelligence programs of the previous three decades.

B. Issues Presented

Domestic intelligence investigations involve much more than the neutral collection of information. Intelligence-gathering is a *process* including many kinds of activity. The ordinary means of collecting information inevitably has an adverse impact on the rights of individuals. The recruitment of informants paid to supply information about their acquaintances is a fundamental tool of intelligence. By arranging for what is in effect a government agent to intrude into the private relationships among people, the FBI substantially interferes with free association.⁴ Moreover, like all investigations, intelligence collection involves extensive interviews with the subjects of investigation, their friends, employers, neighbors, school officials, sources of credit, and anyone else who may know something about their background and activities. The interview is not a neutral event. The way a person is looked upon by those around him can be significantly affected when they know he is someone "of interest" to the government.

These consequences are the necessary price of investigations of crime, and they may be justified to satisfy other compelling governmental interests. But FBI domestic intelligence gathering has gone far beyond criminal investigation and, in many instances, beyond a reasonable definition of compelling necessity. No act of Congress has supplied clear legal standards against which to measure the propriety of domestic intelligence investigations. Instead, the executive branch has been on its own with vague legal concepts of "emergency power" or "war power" or other imprecise doctrines of inherent presidential authority. These problems have been compounded by practices of secrecy. Congress was often not informed or did not seek information. Even within the executive branch, the FBI assumed it had a general mandate and thus frequently did not advise its superiors of specific policies. The judiciary had no role at all because clandestine investigations did not lead to prosecutions.⁵

⁴ See Committee Report on FBI Informants.

⁵ Instead, the investigations often led to covert actions to disrupt and discredit the targets. (See Committee Report on COINTELPRO.)

The FBI's experience in the conduct of domestic intelligence investigations over the past forty years, as it is set forth in this report, argues strongly for discarding outdated ideas and striking a new balance between security and liberty. The dangers of domestic intelligence are real, not imaginary. They underscore the need to circumscribe carefully any intelligence operations carried out by the federal government within the United States or against Americans anywhere else in the world. Equally important, they demonstrate the need for Congress to assert its lawmaking power, for the executive to abandon inflated doctrines of presidential authority, and for an end to the excessive secrecy which destroys the effectiveness of the rule of law.

II. HISTORICAL ANTECEDENTS—WORLD WAR I, THE "RED SCARE," AND ATTORNEY GENERAL HARLAN FISKE STONE'S REFORMS

A. *Pre-World War I Programs*

The first federal domestic intelligence programs originated shortly before the United States entered World War I in 1917. The initial threat perceived by federal officials was the activity of German agents, including sabotage and espionage directed at the United States in the period before America entered the war. Although the neutrality laws were on the books, no federal statute made espionage or sabotage a crime. Attorney General Thomas W. Gregory proposed such legislation in 1916, but Congress took no action before American entry into the war. Nonetheless, the Executive Branch went ahead with development of a domestic security intelligence capability.

Several federal agencies expanded their operations. The Secret Service, which was established in the Treasury Department to investigate counterfeiting in 1865, had served as the main civilian intelligence agency during the Spanish-American War. With \$50,000 in War Department funds, the Secret Service had organized an emergency auxiliary force to track down Spanish spies, placed hundreds of civilians under surveillance, and asked the Army to arrest a number of alleged spies.⁶ After the assassination of President McKinley by an anarchist in 1901, the Secret Service was authorized to protect the President. Its agents were also assigned to the Justice Department as investigators until 1908 when Congress forbade the practice. In 1915 Secretary of State William Jennings Bryan decided that German diplomats should be investigated for possible espionage, and he requested and received President Wilson's permission to use the Secret Service.⁷

The military had performed extensive security intelligence functions during the Civil War, although operations were largely delegated to commanders in the field. When the military discontinued its surveillance program after the Civil War, Allan Pinkerton who had worked for the War Department under President Lincoln founded a private detective agency. The Pinkerton agency and other private detective forces served both government and private employers in later years, frequently to spy upon labor organizing activities.⁸ In

⁶ Joan M. Jensen, *Military Surveillance of Civilians in America*, (Morristown, N.J.: General Learning Press 1975), p. 5.

⁷ Joan M. Jensen, *The Price of Vigilance* (Chicago: Rand McNally, 1968), p. 12.

⁸ Jensen, *Military Surveillance*, pp. 4-5.

the years immediately before American entry into World War I, military intelligence lacked the resources to engage in intelligence operations. Therefore, preparation for war rested largely with the Secret Service and its main competitor, the Justice Department's Bureau of Investigation.

The Justice Department's investigative authority stemmed from an appropriations statute first enacted in 1871, allowing the Attorney General to expend funds for "the detection and prosecution of crimes against the United States."⁹ The Attorney General initially employed several permanent investigators and supplemented them with either private detectives or Secret Service agents. When Congress prohibited such use of Secret Service personnel in 1908, Attorney General Charles J. Bonaparte issued an order authorizing creation of the Bureau of Investigation. There was no formal Congressional authorization for the Bureau, but once it was established its appropriations were regularly approved by Congress. Members of the House Appropriations Committee debated with Attorney General Bonaparte over the need for safeguards against abuse by the new Bureau. Bonaparte emphasized, "The Attorney General knows, or ought to know, at all times what they are doing." Some Congressmen thought more limits were needed, but nothing was done to circumscribe the Bureau's powers.¹⁰

Passage of the Mann Act and other federal statutes prohibiting interstate traffic in stolen goods, obscene materials, and prizefight films soon expanded the criminal investigative responsibilities of the Justice Department and its Bureau of Investigation.

By 1916 Attorney General Gregory had expanded the Bureau's personnel from 100 to 300 agents, primarily to investigate possible violations of the neutrality laws. The Attorney General objected to the Secret Service's investigations of activities which did not involve actual violations of federal laws. However, when President Wilson and Secretary of State Robert Lansing expressed continued interest in such investigations, Attorney General Gregory went to Congress for an amendment to the Justice Department's appropriations statute which would allow the Bureau to do what the Secret Service had already begun doing. With the agreement of the State Department, the statute was revised to permit the Attorney General to appoint officials not only to detect federal crimes, but also "to conduct such other investigations regarding official matters under the control of the Department of Justice or the Department of State, as may be directed by the Attorney General."¹¹ This amendment to the appropriations statute was intended to be an indirect form of authorization for investigations by the Bureau of investigations, although a State Department request was seen as a prerequisite for such inquiries.¹²

Under the direction of A. Bruce Bielaski, the Bureau concentrated at first on investigations of potential enemy aliens in the United

⁹ 41st Cong., Sess. III, Ch. 14.

¹⁰ Max Lowenthal, *The Federal Bureau of Investigation*, (New York: Harcourt Brace Jovanovich, 1950), pp. 10-13.

¹¹ 28 U.S.C. 533 (3).

¹² Jensen, *The Price of Vigilance*, 15; Homer Cummings and Carl McFarland, *Federal Justice* (New York: MacMillan Co., 1937), pp. 415-416.

States. According to the authoritative history of the Justice Department,

The Bureau of Investigation made an index of aliens under suspicion. At the end of March 1917, just before the entrance of the United States into the war, the chief of the Bureau submitted a list of five classes of persons. One class, ninety-eight in number, should be arrested immediately on declaration of war. One hundred and forty should be required to give bond. Five hundred and seventy-four were strongly suspected. Five hundred and eighty-nine had not been fully cleared of suspicion. Three hundred and sixty-seven had been cleared of specific offenses. Others, after investigation, had been eliminated from the lists.¹³

Theoretically, the threat of dangerous aliens was the responsibility of the Immigration Bureau in the Labor Department. As early as 1903 Congress had enacted legislation requiring the deportation within three years of entry of persons holding anarchistic beliefs or advocating "the overthrow by force or violence of the Government of the United States."¹⁴ In early 1917 the immigration laws were amended to eliminate the three-year limit and require deportation of any alien "found advocating or teaching the unlawful destruction of property . . . or the overthrow by force or violence of the Government of the United States."¹⁵ Nevertheless, the Immigration Bureau lacked the men, ability, and time to conduct the kind of investigations contemplated by the statute.¹⁶

As the United States entered World War I, domestic security investigations were the province of two competing civilian agencies—the Secret Service and the Bureau of Investigation—soon to be joined by military intelligence and an extensive private intelligence network called the American Protective League.

B. Domestic Intelligence in World War I

Shortly after the declaration of war, Congress considerably strengthened the legal basis for federal investigations by enacting the Espionage Act of 1917, the Selective Service and Training Act, and other statutes designed to use criminal sanctions to assist the war effort. But Congress did not clarify the jurisdiction of the various civilian and military intelligence agencies. The Secretary of War established a Military Intelligence Section under Colonel Ralph Van Deman, who immediately began training intelligence officers and organizing civilian volunteers to protect defense plants. By the end of 1917 the MIS had branch offices throughout the United States to conduct investigations of military personnel and civilians working for the War Department. MIS agents cooperated with British intelligence in Mexico, with their joint efforts leading to the arrest of a German espionage agent during the war.¹⁷

¹³ Cummings and McFarland, *Federal Justice*, p. 416.

¹⁴ 33 U.S. Statutes at Large 1214.

¹⁵ 39 U.S. Statutes at Large 889.

¹⁶ William Preston, *Aliens and Dissenters* (Cambridge: Harvard University Press, 1963), p. 84.

¹⁷ Jensen, *The Price of Vigilance*, pp. 118–119.

A major expansion of federal intelligence activity took place with the formation of the American Protective League, which worked directly with the Bureau of Investigation and military intelligence. A recent FBI study recounts how the added burdens of wartime work led to the creation of the League:

To respond to the problem, Attorney General Thomas W. Gregory and then Bureau Chief A. Bruce Bielaski, conceived what they felt might suffice to answer the problem. The American Protective League (APL) composed of well-meaning private individuals, was formed as a citizens auxiliary to "assist" the Bureau of Investigation. In addition to the authorized auxiliary, ad hoc groups took it upon themselves to "investigate" what they felt were un-American activities. Though the intentions of both groups were undoubtedly patriotic and in some instances beneficial, the overall result was the denial of constitutional safeguards and administrative confusion. To see the problem, one need only consider the mass deprivation of rights incident to the deserter and selective service violator raids in New York and New Jersey in 1918, wherein 35 Agents assisted by 2,000 APL operatives 2,350 military personnel, and several hundred police rounded up some 50,000 men without warrants of sufficient probable cause for arrest. Of the 50,000 arrestees, approximately 1,500 were inducted into the military service and 15,000 were referred to draft boards.¹⁸

The FBI study also cites the recollections of an Agent of the Bureau of Investigation during World War I regarding the duplication of effort:

How did we function with relation to other agencies, both federal and state? In answering this query, I might say that while our relationship with the Army and Navy Departments, was extremely cordial at all times, nevertheless there was at all times an enormous overlapping of investigative activities among the various agencies charged with winning the war. There were probably seven or eight such active organizations operating at full force during war days and it was not an uncommon experience for an Agent of this Bureau to call upon an individual in the course of his investigation, to find out that six or seven other government agencies had been around to interview the party about the same matter.¹⁹

The Secret Service opposed the utilization of American Protective League volunteers and recommended, through Treasury Secretary McAdoo, establishment of a centralized body to coordinate domestic intelligence work. The Treasury Department's proposal was rejected in early 1918, because of the objections of Colonel Van Deman, Bureau

¹⁸ FBI Intelligence Division—*An Analysis of FBI Domestic Security Intelligence Investigations: Authority, Official Attitudes, and Activities in Historical Perspective*, 10/28/75.

¹⁹ Memorandum of F. X. O'Donnell, 10/24/38.

Chief Bielaski, and the Attorney General's Special Assistant for war matters, John Lord O'Brien. Thereafter the role of the Secret Service in intelligence operations diminished in importance.²⁰

During World War I the threat to the nation's security and the war effort was perceived by both government and private intelligence agencies as extending far beyond activities of enemy agents. Criticism of the war, opposition to the draft, expression of pro-German or pacifist sympathies, and militant labor organizing efforts were all considered dangerous and targeted for investigation and often prosecution under federal or state statutes. The federal Espionage Act forbade making false statements with intent to interfere with the success of military, attempting to cause insubordination, and obstructing recruitment of troops.²¹ With little guidance from the Attorney General, the United States Attorneys across the country brought nearly 2,000 prosecutions under the Espionage Act for disloyal utterances.²² Not until the last month of the war did Attorney General Gregory require federal prosecutors to obtain approval from Washington before bringing Espionage Act prosecutions. John Lord O'Brien, the Attorney General's Special Assistant, recalled "the immense pressure brought to bear throughout the war upon the Department of Justice in all parts of the country for indiscriminate prosecution demanded in behalf of a policy of wholesale repression and restraint of public opinion."²³

In addition to providing information for Espionage Act prosecutions intelligence operations laid the foundation for the arrest and internment of enemy aliens. About 6,300 aliens were arrested, of which some 2,300 were turned over to military authorities for internment and the remainder released or placed on parole.²⁴

C. The Post-War "Red Scare" and the "Palmer Raids"

The end of the war in 1918 did not bring about the termination of domestic intelligence operations. The Bureau of Investigation shifted its attention from critics of the war to the activities of radical and anarchist groups. The new threat was dramatized vividly by a series of terrorist bombings in 1919, including an explosion on the doorstep of Attorney General A. Mitchell Palmer's residence. Congress resounded with calls for action, although the applicable provisions of the Espionage Act had expired at the end of the war and no new federal criminal statute was enacted to replace it. Instead, state statutes and the deportation provisions of the Immigration Act became the basis for the federal response.

Attorney General Palmer authorized two major revisions in Justice Department intelligence operations in 1919. First, he established a General Intelligence Division in the Justice Department, headed by J. Edgar Hoover, who had served during the war as head of the Department's program for compiling information on enemy aliens. At the

²⁰ Jensen, *The Price of Vigilance*, pp. 102-103.

²¹ Act of June 15, 1917, Title I, Section 3.

²² The Supreme Court upheld such convictions in *Schenck v. U.S.*, 249 U.S. 47 (1919) and *Abrams v. U.S.*, 250 U.S. 616 (1919).

²³ Zechariah Chafee, *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), p. 69.

²⁴ Cummings and McFarland, *Federal Justice*, p. 427.

same time, Palmer appointed William J. Flynn, former head of the Secret Service, as Director of the Bureau of Investigation.

Less than two weeks after the GID was established, Flynn ordered a major expansion of Bureau investigations "of anarchistic and similar classes, Bolshevism, and kindred agitations advocating change in the present form of government by force or violence, the promotion of sedition and revolution, bomb throwing, and similar activities." Since the only available federal law was the deportation statute, Flynn stressed that the investigations "should be particularly directed to persons not citizens of the United States." Nevertheless, he also directed Bureau agents to "make full investigations of similar activities of citizens of the United States with a view to securing evidence which may be of use in prosecutions under the present existing state or federal laws or under legislation of that nature *which may hereinafter be enacted*." (Emphasis supplied.) The instructions discussed the provisions of the recent amendments to the Immigration Act, which expanded the grounds for deportation to include membership in revolutionary organizations as well as individual advocacy of violent overthrow of the government.²⁵ Director Flynn concluded by urging Bureau agents to "constantly keep in mind the necessity of preserving the cover of our confidential informants."²⁶

The results of these investigations were reported to the Department's General Intelligence Division for analysis and evaluation. Overall direction of the work of the GID under Hoover and the Bureau under Flynn was placed in the hands of an Assistant Attorney General, Francis P. Garvan, who had been a division chief in the New York district attorney's office before the war.²⁷

Historians have documented fully the tremendous pressures placed on Attorney General Palmer, not just by his subordinates, but by public opinion, other members of President Wilson's cabinet, and the Congress to act decisively against the radical threat in 1919. For example, Secretary of State Lansing declared in a private memorandum written in July, "It is no time to temporize or compromise; no time to be timid or undecided; no time to remain passive. We are face to face with an inveterate enemy of the present social order." The Senate unanimously passed a resolution demanding that Palmer inform it whether he had yet begun legal proceedings against those who preached anarchy and sedition. According to his biographer, after passage of the Senate resolution Palmer decided that the "very liberal" provisions of the Bill of Rights were expendable and that in a time of emergency there were "no limits" on the power of the government "other than the extent of the emergency."²⁸

The principal result of the Justice Department's intelligence activities, in coordination with Immigration Bureau investigations, was the infamous "Palmer raids" on the night of January 2, 1920. Bureau of

²⁵ Act of October 16, 1918.

²⁶ Confidential Memorandum to all Special Agents and Employees, 8/12/19.

²⁷ Coben, *A. Mitchell Palmer* (New York, Columbia University Press, 1963), pp. 130, 207.

²⁸ Coben, *A. Mitchell Palmer*, pp. 210, 215-216; see also Preston, *Aliens and Dissenters*, chs. 7-8; Chafee, *Free Speech in the United States*, ch. 5; Robert K. Murray, *Red Scare: A Study in National Hysteria* (Minneapolis: U. of Minnesota Press, 1955).

Investigation and Immigration Bureau agents in thirty-three cities rounded up some ten thousand persons believed to be members of the Communist and Communist Labor Parties, including many citizens and many individuals not members of either party. A summary of the abuses of due process of law incident to the raids includes "indiscriminate arrests of the innocent with the guilty, unlawful seizures by federal detectives, intimidating preliminary interrogations of aliens held incommunicado, highhanded levying of excessive bail, and denial of counsel."²⁹ Apart from the unavoidable administrative confusion in such a large-scale operation, these abuses have been attributed to several crucial decisions by federal officials.

The first was Director Flynn's instruction to Bureau agents that, in order to preserve "the cover of our confidential informants," they should "in no case . . . rely upon the testimony of such cover informants during deportation proceedings."³⁰ Consequently, Flynn's assistant, Frank Burke, advised the Immigration Bureau that informants should not be called as witnesses and that immigration inspectors should "make an effort to obtain from the subject a statement as to his affiliations." The success of eliciting incriminating admissions depended, in turn, upon decisions which made possible the prolonged detention and interrogation of arrested persons without access to counsel. In previous deportation proceedings, defense attorneys had urged aliens to remain silent. Therefore, it was necessary to amend the immigration regulation which allowed "attorneys employed by arrested persons to participate in the conduct of hearings from their very commencement."³¹ The head of the Justice Department's General Intelligence Division, J. Edgar Hoover, reiterated this request for a modification of immigration procedures.³² Three days before the raids the regulation was revised to permit hearings to begin without the presence of counsel.

Another barrier to effective interrogation was the alien's right to bail. Three weeks after the round-up, J. Edgar Hoover advised the Immigration Bureau that to allow aliens out on bail to see their lawyers "defeats the ends of justice" and made the revision of immigration regulations "virtually of no value."³³ Hoover later told immigration officials that since the purpose of the raids was to suppress agitation, he could not see the sense in letting radicals spread their propaganda while out on bail.³⁴ He also urged the Immigration Bureau to hold all aliens against whom there was no proof on the chance that evidence might be uncovered at some future date "in other sections of the country."³⁵ However, despite the Justice Department's pleas, the Secretary of Labor ordered a return to previous policies after the raids,

²⁹ Preston, *Aliens and Dissenters*, p. 221.

³⁰ Confidential Memorandum, 8/12/19.

³¹ Memorandum from Burke to Caminetti, 11/19/19, cited in Preston, *Aliens and Dissenters*, pp. 216-217.

³² Memorandum from Hoover to Caminetti, 12/17/19, cited in Coben, A. Mitchell Palmer, p. 223.

³³ Memorandum from Hoover to Caminetti, 1/22/20, cited in Preston, *Aliens and Dissenters*, p. 219.

³⁴ Memorandum from Hoover to Caminetti, 3/16/20, cited in Preston, *Aliens and Dissenters*, p. 219.

³⁵ Memorandum from Hoover to Caminetti, 2/2/20; 4/6/20, cited in Preston, *Aliens and Dissenters*, p. 224.

once again allowing detained aliens access to legal counsel and admission to bail if hearings were delayed.³⁶

An advantage of the amended Immigration Act had been that aliens could be deported simply for membership in a revolutionary group, without any evidence of their individual activity. J. Edgar Hoover urged literal application of the law to all members regardless of the individual's intent or the circumstances involved in his joining the organization.³⁷ Nevertheless, the Labor Department refused to deport automatically every Communist Party alien, instead adopting a policy of differentiating between "conscious" and "unconscious" membership, declining to deport those whose membership in the Socialist Party had been transferred to the Communist Party without the member's knowledge and those whose cases were based on self-incrimination without counsel or illegally seized membership records. Assistant Secretary of Labor Louis F. Post, who strongly opposed the Justice Department's position, also defied Congressional threats of impeachment in his vigorous defense of due process of law.³⁸

During the months following the "Palmer raids", a group of distinguished lawyers and law professors prepared a report denouncing the violation of law by the Justice Department. They included Dean Roscoe Pound, Felix Frankfurter, and Zechariah Chafee, Jr. of the Harvard Law School, Ernst Freund of the University of Chicago Law School, and other eminent lawyers and legal scholars. The committee found federal agents guilty of using third-degree tortures, making illegal searches and arrests, using *agents provocateurs*, and forcing aliens to incriminate themselves. Its report described federal intelligence operations in the following terms:

We do not question the right of the Department of Justice to use its agents in the Bureau of Investigation to ascertain when the law is being violated. But the American people have never tolerated the use of undercover provocative agents or "agents provocateurs" such as have been familiar in old Russia or Spain. Such agents have been introduced by the Department of Justice into radical movements, have reached positions of influence therein, have occupied themselves with informing upon or instigating acts which might be declared criminal, and at the express direction of Washington have brought about meetings of radicals in order to make possible wholesale arrests at such meetings.³⁹

The initial reaction of the head of the Justice Department's General Intelligence Division to such criticism was to search the files, including military intelligence files, for evidence that critics had radical associations or beliefs.⁴⁰

³⁶ Preston, *Aliens and Dissenters*, p. 222.

³⁷ Memorandum from Hoover to Caminetti, 3/16/20, cited in Preston, *Aliens and Dissenters*, p. 223.

³⁸ Preston, *Aliens and Dissenters*, pp. 223-224; see Louis F. Post, *The Deportations Delirium of Nineteen-Twenty* (Chicago: Kerr, 1923).

³⁹ National Popular Government League, *Report Upon the Illegal Practices of the United States Department of Justice*, May 1920.

⁴⁰ Memorandum from J. Edgar Hoover to General Churchill, 1/23/20; 5/13/20, cited in Preston, *Aliens and Dissenters*, p. 225.

The work of the General Intelligence Division was summarized by J. Edgar Hoover in a report prepared later in 1920. Even though federal criminal statutes were "inadequate to properly handle the radical situation," Hoover stressed the "need in the absence of legislation to enable the federal government adequately to defend and protect itself and its institutions [from] not only aliens within the borders of the United States, but also American citizens who are engaged in unlawful agitation." Therefore, in addition to providing intelligence for use in the deportation of aliens, the GID supplied information to state authorities for the prosecution of American citizens under the broader state sedition laws.

The GID also had expanded "to cover more general intelligence work, including not only the radical activities in the United States and abroad, but also the studying of matters of an international nature, as well as economic and industrial disturbances incident thereto." Hoover described the GID's relationship to the Bureau of Investigation:

While the General Intelligence Division has not participated in the investigations of the overt acts of radicals in the United States, its solo function being that of collecting evidence and preparing the same for proper presentation to the necessary authorities, it has however by a careful review system of the reports received from the field agents of the Bureau of Investigation, kept in close and intimate touch with the detail of the investigative work.

The GID developed an elaborate system for recording the results of Bureau surveillance:

In order that the information which was obtained upon the radical movements might be readily accessible for use by the persons charged with the supervision of these investigations and prosecutions, there has been established as a part of this division a card index system, numbering over 150,000 cards, giving detailed data not only upon individual agitators connected with the radical movement, but also upon organizations, associations, societies, publications and social conditions existing in certain localities. This card index makes it possible to determine and ascertain in a few moments the numerous ramifications of individuals connected with the radical movement and their activities in the United States, thus facilitating the investigations considerably. It is so classified that a card for a particular city will show the various organizations existing in that city, together with their membership rolls and the names of the officers thereof.

The report said little about any tangible accomplishments in the prevention of terrorist violence or the apprehension of persons responsible for specific acts of violence. Instead, groups and individuals were characterized as having "dedicated themselves to the carrying out of anarchistic ideas and tactics"; as "urging the workers to rise up against the Government of the United States"; as having "openly advocated the overthrow of constitutions, governments and churches"; as being "the cause of a considerable amount of the industrial and economic unrest"; as "openly urging the workers to engage in armed

revolt"; as being "pledged to the tactics of force and violence"; as being "affiliated with the III International formed at Moscow" and under "party discipline regulated by Lenin and Trotsky"; and as "propagandists" appealing directly to "the negro" for support in the revolutionary movement.

The only references to particular illegal acts were that one group had participated in an "outlawed strike" against the railroads, that one anarchist group member had assassinated the king of Italy, and that Communists had smuggled diamonds into the United States to finance propaganda. The head of the GID did not claim to have identified terrorists whose bombings had aroused public furor. Instead, Hoover reported that the mass arrests and deportations "had resulted in the wrecking of the communist parties in this country" and that "the radical press, which prior to January 2nd had been so flagrantly attacking the Government of the United States and advocating its overthrow by force and violence, ceased its pernicious activities." State sedition prosecutions had served to protect "against the agitation of persons having for their intent and purpose the overthrow of the Government of the United States." Finally, the GID's work had "enabled the government to study the situation from a more intelligence and broader viewpoint."⁴¹

Parallel to the Justice Department and Immigration Bureau operations, military intelligence continued its wartime surveillance into the post-war era. After a temporary cut-back in early 1919, the Military Intelligence Division resumed investigations aimed at strikes, labor unrest, radicals, and the foreign language press. The American Protective League disbanded, but its former members still served as volunteer agents for military intelligence as well as for the Bureau of Investigation. While the military did not play a significant role in the "Palmer raids," troops were called upon in 1919 to control race riots in several cities and to maintain order during a steel strike in Gary, Indiana, where the city was placed under "modified martial law." Following the 1920 round-up of aliens, J. Edgar Hoover arranged for mutual cooperation between the GID and military intelligence. Reports from the Bureau of Investigation would be shared with the military, and investigations conducted at military request. In return, military intelligence agreed to provide Hoover with information from foreign sources, since the State Department had refused to do so and Hoover was prohibited from having agents or informants outside the United States.⁴²

The domestic intelligence structure as finally established in 1920 remained essentially intact until Attorney General Harlan Fiske Stone took office in 1924. Under the Harding Administration and Attorney General Harry Daugherty, the GID was made a part of the Bureau of Investigation under Director William J. Burns, with J. Edgar Hoover becoming an Assistant Director of the Bureau. Although the deportation program was strictly limited by Labor Department policies, the Bureau still supplied results of its surveillance operations to state authorities for the prosecution of Communists.⁴³ Hoover also

⁴¹ Memorandum from J. Edgar Hoover, re: General Intelligence Division, 10/5/20.

⁴² Jensen, *Military Surveillance*, pp. 18-22.

⁴³ Don Whitehead, *The FBI Story* (New York, Random House, 1956), pp. 61-62.

prepared a lengthy report for the Secretary of State on Communist activities in the United States. The State Department submitted the information to the Senate to back up its opposition to a resolution to grant diplomatic recognition to the Soviet Union.⁴⁴ During this period, the Bureau spelled out its domestic intelligence activities in annual reports to Congress, including summaries of investigative findings on the role of Communists in education, athletic clubs, publications, labor unions, women's groups, and Negro groups. Radical propaganda was "being spread in the churches, schools and colleges throughout the country." The Bureau also told Congress that it was furnishing information for prosecutions under state laws punishing "criminal syndicalism and anarchy."⁴⁵

D. Attorney General Stone's Reforms

In April, 1924, a new Attorney General took charge of a scandal-ridden Department of Justice. Harlan Fiske Stone, former Dean of the Columbia Law School, had been appointed by President Calvin Coolidge to replace the late President Warren Harding's political crony Harry Daugherty. Stone confronted more than simply corruption in the Justice Department when he took office. The Department's Bureau of Investigation had become a secret political police force. As Stone recalled later, "The organization was lawless, maintaining many activities which were without any authority in federal statutes, and engaging in many practices which were brutal and tyrannical in the extreme."⁴⁶ Attorney General Stone asked for the resignation of the Bureau Director William J. Burns, former head of the Burns Detective Agency, and directed that the activities of the Bureau "be limited strictly to investigations of violations of law, under my direction or under the direction of an Assistant Attorney General regularly conducting the work of the Department of Justice." Stone also ordered a review of the entire personnel of the Bureau, the removal of "those who are incompetent and unreliable," and the future selection of "men of known good character and ability, giving preference to men who have had some legal training."⁴⁷ The Attorney General chose the young career Bureau official, J. Edgar Hoover, as Acting Director to implement these reforms, largely because of Hoover's reputation within the Justice Department as an honest and efficient administrator.⁴⁸

A principal problem Stone faced was the Bureau's domestic intelligence operation. He was vividly aware of the violations of individual rights committed in the name of domestic security at the time of the 1920 "Palmer raids." He had joined a committee of protest against Attorney General Palmer's round-up of radical aliens for deportation and had urged a Congressional investigation. When a Senate Judiciary Subcommittee began hearings in 1921, its first order of business was a

⁴⁴ FBI, *Digested History*, 2/1/40.

⁴⁵ Lowenthal, *The Federal Bureau of Investigation*, pp. 273-279.

⁴⁶ Alpheus Thomas Mason, *Harlan Fiske Stone: Pillar of the Law*, (New York, Viking, 1956), pp. 149-151.

⁴⁷ Memorandum From Attorney General Stone to J. Edgar Hoover, 5/13/24, cited in Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 151.

⁴⁸ Mason, *Harlan Fiske Stone: Pillar of the Law*, pp. 150-152; Donald Johnson, *The Challenge to American Freedoms: World War I and the Rise of the American Civil Liberties Union* (U. of Kentucky Press, 1963), p. 174.

letter from Stone calling for "a thoroughgoing investigation of the conduct of the Department of Justice in connection with the deportation cases."⁴⁹

In considering J. Edgar Hoover for the position of permanent Director of the Bureau of Investigation, Attorney General Stone was aware that he had played a major role in the "Palmer raids" as head of the Justice Department's General Intelligence Division. Roger Baldwin of the American Civil Liberties Union told Stone that he was skeptical of Hoover's ability to reform the Bureau. With the Attorney General's knowledge, Baldwin met with Hoover to discuss the future of the Bureau. Hoover assured Baldwin that he had played an "unwilling part" in the activities of Palmer, Daugherty, and Burns. He said he regretted their tactics but had not been in a position to do anything about them. He intended to help Stone build an efficient law enforcement agency, employing law school graduates, severing connections with private detective agencies, and not issuing propaganda. Most important from the American Civil Liberties Union's point of view, the Bureau's "radical division" would be disbanded. Baldwin wrote Stone, "I think we were wrong in our estimate of his attitude," and announced to the press that the ACLU believed the Justice Department's "red-hunting" days were over.⁵⁰

When Attorney General Stone arrived in 1924, he requested a review of the applicability of the federal criminal statutes to Communist activities in the United States. Various patriotic organizations had urged that Communists be prosecuted under the federal seditious conspiracy law, but the courts had ruled that this Civil War statute required proof of a definite plan to use force against the government.⁵¹ Justice Department lawyers also rejected prosecution under the Logan Act, enacted in the 1790s to punish hostile communications between American citizens and a foreign government.⁵² These conclusions buttressed the Attorney General's decision to abolish the Bureau's domestic intelligence operations, although Stone told Roger Baldwin of the ACLU that he had no authority to destroy the Bureau's intelligence files, without an Act of Congress.⁵³

Attorney General Stone may also have contemplated the possibility of future investigations under Congress' prewar revision of the Justice Department appropriations statute. He asked Acting Director Hoover whether the Bureau would have the authority to investigate Soviet and Communist activities within the United States for the State Department in connection with the question of recognition of the Soviet government. Hoover replied that the appropriations act did allow such investigations, upon formal request by the Secretary of State and approval of the Attorney General. The Acting Director stressed that such investigations "should be conducted on an entirely different line than previously conducted by the Bureau of Investigation" and

⁴⁹ Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 113. See *Charges of Illegal Practices of the Department of Justice*, Hearings before the Senate Committee on the Judiciary, 66th Cong. 3rd Sess. (1921).

⁵⁰ Johnson, *The Challenge to American Freedoms*, pp. 174-175.

⁵¹ *Baldwin v. Franks*, 120 U.S. 678.

⁵² Memorandum from Earl J. Davis to the Attorney General, 6/10/24, cited in Preston, *Aliens and Dissenters*, pp. 241-242.

⁵³ Memorandum from Roger Baldwin, 8/7/24, cited in Preston, *Aliens and Dissenters*, p. 243.

that there should be no publicity "because any publicity would materially hamper the obtaining of successful results."⁵⁴

After 1924, the Bureau of Investigation continued to receive information volunteered to it about Communist activities, and Bureau field offices were ordered to forward such data to headquarters. But the Bureau made "no investigations of such activities, inasmuch as it does not appear that there is any violation of a Federal Penal Statute involved."⁵⁵ Military intelligence officers still had a duty, under an Army emergency plan, to gather information "with reference to the economical, industrial and radical conditions, to observe incidents and events that may develop into strikes, riots, or other disorders, and to investigate and report upon the industrial and radical situation." However, by 1925 the military lacked adequate personnel and requested the Bureau of Investigation to provide information on "radical conditions."⁵⁶ J. Edgar Hoover replied that the Bureau had discontinued "general investigations into radical activities," but would communicate to the military any information received from specific investigations of federal violations "which may appear to be of interest" to the military.⁵⁷

Despite the curtailment of federal intelligence operations, it would be misleading to say that domestic intelligence activity ceased in the United States after 1924. The efforts of state and local authorities to investigate possible violations of state sedition laws continued in many parts of the country. Moreover, private industry engaged the services of detectives and informers to conduct surveillance of labor organizing activities. These industrial espionage programs reached their peak in the early 1930s. A Senate committee investigation in 1936 exposed these tactics and influenced at least one private detective firm, the Pinkerton Agency, to discontinue its anti-labor spying. The Senate inquiry documented the efficient techniques developed by labor spies for destroying unions. They wreaked havoc on union locals, generating mistrust, inciting violence, and reporting the identities of union members to hostile employers.⁵⁸

On one major occasion early in the Depression, military intelligence was reactivated temporarily. Army Chief of Staff Douglas MacArthur ordered corps area commanders in mid-1931 to submit reports on subversive activities in their areas. When the "bonus marchers" began arriving in Washington in 1932 to demand veteran benefits, military intelligence agents investigated Communist influence with the help of American Legion officials, reserve officers, and other volunteers. Military intelligence reports exaggerating the threat of "insurrectionists" among the veteran protesters contributed to the decision to use troops in a mass assault to clear the demonstrators out of Washington. Criticism of this operation led military authorities to instruct that intelligence officers be more discreet although they continued to gather intelligence on civilian groups.⁵⁹

⁵⁴ Memorandum from Hoover to the Attorney General, 12/13/24.

⁵⁵ Memorandum from Hoover to Ridgeley, 5/14/25.

⁵⁶ Memorandum from Colonel Reeves, Office of the Chief of Staff, to Hoover, 9/29/25.

⁵⁷ Memorandum from Hoover to Colonel Reeves, 10/7/25.

⁵⁸ U.S. Senate, Committee on Education and Labor, *Industrial Espionage*, 75th Cong., 2d Sess. (1937), cited Jerold Auerbach, *Labor and Liberty: The LaFollette Committee and the New Deal* (Indianapolis: Bobbs-Merrill, 1966), p. 98.

⁵⁹ Jensen, *Military Surveillance*, pp. 23-24.

Therefore, while Attorney General Stone had stopped the Justice Department's intelligence efforts in 1924, safeguards did not exist against state, private or military intelligence operations. Moreover, the Bureau of Investigation retained its massive domestic intelligence files from the 1916-1924 period, as well as the vague legal authority under the appropriations act to conduct investigations going beyond the detection of federal crimes if a future Attorney General and Secretary of State should direct it to do so. Nevertheless, when Congressman Hamilton Fish and members of a Special House Committee to Investigate Communist Activities in the United States proposed legislation authorizing the Bureau of Investigation to investigate "Communist and revolutionary activity" in 1931, Director Hoover opposed it. He told Congressman Fish that it would be better to enact a criminal statute and not expand the Bureau's power beyond criminal investigation, especially since the Bureau had "never been established by legislation" and operated "solely on an appropriation bill."⁶⁰ Hoover advised the Attorney General a year later,

The work of the Bureau of Investigation at this time is . . . of an open character not in any manner subject to criticism, and the operations of the Bureau of Investigation may be given the closest scrutiny at all times. . . . The conditions will materially differ were the Bureau to embark upon a policy of investigative activity into conditions which, from a federal standpoint, have not been declared illegal and in connection with which no prosecution might be instituted. The Department and the Bureau would undoubtedly be subject to charges in the matter of alleged secret and undesirable methods . . . as well as to allegations involving charges of the use of "Agents Provocateur."

Hoover assumed that the Immigration Bureau with jurisdiction to deport Communist aliens conducted such investigation and, if it did not, "would be subject to criticism for its laxity along these lines." Thus, the Director's position was not based on opposition to the idea of domestic intelligence itself, but rather on his concern for possible criticism of the Bureau if it were to resume "undercover" activities which would be necessary "to secure a foothold in Communistic inner circles" and "to keep fully informed as to changing policies and secret propaganda on the part of Communists."⁶¹

III. THE ESTABLISHMENT OF A PERMANENT DOMESTIC INTELLIGENCE STRUCTURE, 1936-1945

Perhaps it is a universal truth that the loss of liberty at home is to be charged to provisions against danger real or pretended from abroad.

—James Madison, Letter to
Thomas Jefferson, May 13, 1798

Since 1936 the Federal Bureau of Investigation has been the primary civilian agency charged with domestic intelligence responsibil-

⁶⁰ Memorandum of telephone call between J. Edgar Hoover and Congressman Fish, January 19, 1931.

⁶¹ Memorandum from Hoover to the Attorney General, 1/2/32.

ities. However, the origins of this assignment have been clouded because the memoranda recording President Franklin Roosevelt's first instructions have not previously been made public. These and other directives of the President were described generally in the authorized history of the FBI.⁶² But the full texts and other materials shed more light on the circumstances for and consequences of Roosevelt's decisions. The basic orders and agreements governing the relations between the FBI and the military intelligence agencies have also been kept confidential until recent years.⁶³ Although President Roosevelt's 1940 directive authorizing warrantless wiretapping by the FBI for national security purposes has long been a matter of record, the FBI's practices for breaking-and-entering and clandestine mail opening were closely held secrets. The scope of prewar domestic intelligence and the joint plans of the FBI and the Justice Department for compiling a Custodial Detention List of American citizens have never been publicly examined.

A. The 1936 Roosevelt Directive

In August 1936, President Roosevelt issued the first of a series of instructions establishing the basic domestic intelligence structure and policies for the federal government. The President used his executive authority to determine which of the several competing civilian agencies of the government would carry out domestic intelligence investigations, to set up machinery for coordination between military intelligence and the FBI, and to lay down the general objectives of domestic intelligence going beyond criminal investigation. From the beginning Roosevelt "desired the matter to be handled quite confidentially."⁶⁴ When Attorney General Homer Cummings submitted to the President a joint FBI-military plan for domestic intelligence in 1938, he advised that additional legislation was not required and that the plan "should be handled in strictest confidence." The Attorney General enclosed a memorandum prepared by FBI Director J. Edgar Hoover which stated:

In considering the steps to be taken for the expansion of the present structure of intelligence work, it is believed imperative that it be proceeded with, with the utmost degree of secrecy in order to avoid criticism or objections which might be raised to such an expansion by either ill-informed persons or individuals having some ulterior motive. . . . Consequently, it would seem undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counterespionage drive of any great magnitude.⁶⁵

⁶² Whitehead, *The FBI Story*, pp. 157 ff.

⁶³ The 1949 delimitations agreement between the FBI and the military intelligence agencies was released by the Justice Department in 1974, but an earlier agreement has not previously been published. See *Domestic Intelligence Operations for Internal Security Purposes*, Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3369-3383.

⁶⁴ Confidential Memorandum by J. Edgar Hoover, 8/25/36.

⁶⁵ Letter from Attorney General Homer Cummings to President Roosevelt and enclosure, 10/20/38.

Thus, the President's orders were kept secret, and Congress was deliberately excluded from the policymaking progress until after war broke out in Europe in 1939. Possibly if President Roosevelt had gone to Congress with a proposal for domestic intelligence in 1936 or 1938, legislation might not have been enacted and the nation's security could have been jeopardized. Perhaps a public announcement of the President's actions would have put the nation's potential adversaries on notice of his intentions. But these benefits must be weighed against the cost to constitutional government of unilateral executive actions directly affecting the rights of citizens.

There were legitimate grounds for concern about the need for domestic intelligence by 1936. Two years earlier the President had ordered the FBI to conduct a more limited intelligence investigation of "the activity of the Nazi movement in this country." The FBI, in cooperation with the Secret Service and the Immigration Bureau, conducted a one-time investigation, described by FBI Director Hoover as "a so-called intelligence investigation." It concentrated on "the Nazi group, with particular reference to the antiracial activities and any anti-American activities having any possible connection with official representatives of the German government in the United States."⁶⁶

In January 1936, the Secretary of War advised the Attorney General that there was "definite indication" of foreign espionage in the United States and that in an emergency "some organizations . . . would probably attempt to cripple our war effort through sabotage." He urged the Justice Department to establish "a counterespionage service among civilians to prevent foreign espionage in the United States and to collect information so that in case of an emergency any persons intending to cripple our war effort by means of espionage or sabotage may be taken into custody."⁶⁷ In addition to these foreign-related dangers, President Roosevelt was alerted to right-wing domestic threats. The FBI Director met with retired General Smedley Butler and reported to Roosevelt on "the effort of Father Coughlin to have General Butler lead an expedition to Mexico."⁶⁸

The nature of the President's interest is also reflected in the information FBI Director Hoover provided at their crucial meeting in August 1936. Except for a reference to Hoover's previous report on Father Coughlin and General Butler, it dealt exclusively with Communist activities. According to the FBI Director, the West Coast longshoremen's union headed by Harry Bridges "was practically controlled by Communists," the Communists "had very definite plans to get control of" the United Mine Workers union led by John L. Lewis, and the

⁶⁶ Memorandum from J. Edgar Hoover to Mr. Cowley, 5/10/34.

⁶⁷ Letter from Secretary of War George H. Dern to Attorney General Homer Cummings 1/6/36. Attorney General Cummings discussed the matter with Secretary Dern, although he gained the impression that "there was no particular urgency." Memorandum from Attorney General Homer Cummings to J. Edgar Hoover, 2/19/38.

⁶⁸ Confidential memorandum by J. Edgar Hoover, 8/24/36. General Butler also recounted attempts by right-wing elements to persuade him to join plans for an anti-New Deal "coup" to a congressional committee. Arthur M. Schlesinger, Jr., *The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), pp. 82-85.

Newspaper Guild had "strong Communist leanings." Director Hoover's memorandum of his conversation with the President continued:

I told him that my information was that the Communists had planned to get control of these three groups and by doing so they would be able at any time to paralyze the country in that they stop all shipping in and out through the Bridges organization; stop the operation of industry through the Mining Union of Lewis; and stop publication of any newspapers of the country through the Newspaper Guild.

I also related to him the activities which have recently occurred with Governmental service inspired by Communists, particularly in some of the Departments and in the National Labor Relations Board.

I likewise informed him that I had received information to the effect that the Communist Internationale in Moscow had recently issued instructions for all Communists to vote for President Roosevelt and against Governor Landon because of the fact that Governor Landon is opposed to class warfare.

This memorandum indicates that the FBI was already gathering domestic intelligence about Communist activities inside and outside the government. After hearing Director Hoover's report, President Roosevelt expressed a desire for more systematic intelligence about "subversive activities in the United States, particularly Fascism and Communism." He wanted "a broad picture of the general movement and its activities as may affect the economic and political life of the country as a whole."⁶⁹ Whether or not the FBI Director exaggerated the threat, no President could afford to ignore such dire warnings without some further investigation.

President Roosevelt clearly understood that Communist and Fascist activities were an international problem tied to potentially hostile foreign governments. At Hoover's suggestion, Secretary of State Cordell Hull met with the President and the FBI Director to review the situation. Hoover's memorandum of this meeting stated:

The President pointed out that both of these movements were international in scope and that Communism particularly was directed from Moscow, and that there had been certain indications that Oumanski, attached to the Russian Soviet Embassy, was a leading figure in some of the activities in this country, so consequently, it was a matter which fell within the scope of foreign affairs over which the State Department would have a right to request an inquiry to be made.

President Roosevelt and Secretary Hull also considered "the making of a protest, either formally or informally, to the Russian Government relative to its interference with affairs in this country."⁷⁰ Thus, it was the international character of Communism and Fascism that

⁶⁹ Hoover memorandum, 8/24/36.

⁷⁰ Hoover memorandum, 8/25/36.

both justified the Secretary of State's request and underlay the President's desire for domestic intelligence.⁷¹

B. The Original Legal Authority for Domestic Intelligence

Despite its secrecy, President Roosevelt's initial request for domestic intelligence investigations did have a degree of statutory authorization. The provision in the Justice Department appropriations statute enacted before World War I allowed the Attorney General to direct the FBI to conduct investigations for the State Department. However, it became clear by 1938 that these investigations would not be terminated; and the President ceased relying on the procedure for State Department request by mid-1939. Presidential directives issued in 1939 attempted to link domestic intelligence to the investigation of espionage and sabotage, even though the FBI's actual mandate extended beyond the investigation of violations of law to encompass "subversive activities" generally and "counterespionage" operations. These directives created legal confusion which has persisted until the present day. There was no attempt to clarify what domestic intelligence functions were authorized by statute and what functions were based on an implicit claim of inherent presidential power.

J. Edgar Hoover was particularly sensitive to this issue, since Attorney General Stone had ordered that the activities of the Bureau "be limited strictly to investigations of violations of law."⁷² President Roosevelt sought to breach that line in 1936. His desire for "a broad picture" of the effects of Communism and Fascism on "the economic and political life of the country as a whole" went far beyond the investigation of violations of law. Nevertheless, Director Hoover advised Roosevelt that there was statutory authority for this type of investigation. Hoover told him that the FBI appropriation contained "a provision that it might investigate any matters referred to it by the Department of State and that if the State Department should ask for us to conduct such an investigation we could do so under our present authority in the appropriation already granted."⁷³ The President, in turn, told Secretary Hull that the FBI could make "a survey" of Communist and Fascist activities because "under the Appropriation Act this Bureau would have authority to make such investigation if asked to do so by the Secretary of State."⁷⁴

⁷¹ Recently, FBI officials have differed in their interpretations of these events. An FBI study in 1972 concluded that "the concern for national security was related to two international movements" in the pre-World War II period and that "there was no national concern for indigenous anarchists or other groups designing to overthrow the Government." FBI Memorandum, *Scope of FBI Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations*, 7/31/72. However, a later study contends that the Secretary of State's request was a device to satisfy the provisions of the FBI appropriations statute and did not set "jurisdictional limits." The State Department's involvement "did not serve in some way to limit the scope of investigation to foreign or foreign-controlled activities to the exclusion of domestic." FBI Intelligence Division, *An Analysis of FBI Domestic Security Investigations*, 10/28/75. Except for the reference to General Butler and Father Coughlin, FBI records pertaining to the origins and implementation of President Roosevelt's order tend to support the former position.

⁷² Memorandum from Attorney General Harlan F. Stone to J. Edgar Hoover, Acting Director of the Bureau of Investigation, 5/13/24.

⁷³ Hoover memorandum, 8/24/36.

⁷⁴ Hoover memorandum, 8/25/36.

Director Hoover's reliance on the specific provision of the appropriations statute meant that FBI domestic intelligence was not initiated solely through an exercise of the President's independent constitutional power. In fact, Attorney General Stone had been aware of the implications of this provision in 1924.⁷⁵ Although there is no record that Attorney General Stone ever approved this type of inquiry, he clearly contemplated the possibility of at least a closed-end investigation for the State Department.

Thus, in compliance with Hoover's wishes, Secretary Hull "asked that the investigation be made," and the President asked Hoover to "speak to the Attorney General."⁷⁶ The FBI Director's memorandum of his conversation with Attorney General Cummings stated:

In talking with the Attorney General today concerning the radical situation, I informed him of the conference which I had with the President on September 1, 1936 [sic], at which time the Secretary of State, at the President's suggestion, requested of me, the representative of the Department of Justice, to have investigation made of the subversive activities in this country, including communism and fascism. I transmitted this request to the Attorney General, and the Attorney General verbally directed me to proceed with this investigation and to coordinate, as the President suggested, information upon these matters in the possession of the Military Intelligence Division, the Naval Intelligence Division, and the State Department. This, therefore, is the authority upon which to proceed in the conduct of this investigation, which should, of course, be handled in a most discreet and confidential manner.⁷⁷

These memoranda indicate clearly that Director Hoover was relying on the specific provisions of the appropriations statute. He followed almost to the letter the steps he had described to Attorney General Stone in 1924 as the necessary prerequisites for an investigation of Communist activities.

C. The FBI Intelligence Program, 1936-1938

Instructions were issued to FBI agents immediately after Director Hoover's meetings with the President and the Secretary of State. FBI field offices were ordered "to obtain from all possible sources information concerning subversive activities being conducted in the United States by Communists, Fascists, representatives or advocates of other organizations or groups advocating the overthrow or replacement of the Government of the United States by illegal methods."⁷⁸ Theoretically, this directive included purely domestic matters besides the international Communist and Fascist movements. There is no indication, however, that the President or the Attorney General were advised of this order; and the communications between the FBI Director and his superiors made no mention of advocacy of overthrow

⁷⁵ Memorandum from J. Edgar Hoover to Attorney General Harlan F. Stone, 12/13/24.

⁷⁶ Hoover memorandum, 8/25/36.

⁷⁷ Memorandum from Hoover to Tamm, Strictly Confidential, 9/10/36.

⁷⁸ Memorandum from Hoover to Field Offices, 9/5/36.

of the government. Instead, the terms used in 1936 were "general intelligence" and "subversive activities."

Following the Hoover-Roosevelt meetings, FBI officials also began developing a systematic organization for intelligence information "concerning subversive activities." The following general classifications were adopted:

- Maritime Industry
- Activities in Government Affairs
- Activities in the Steel Industry
- Activities in the Coal Industry
- Activities in the Newspaper Field
- Activities in the Clothing, Garment and Fur Industries
- General Strike Activities
- Activities in the Armed Forces of the United States
- Activities in Educational Institutions
- General Activities—Communist Party and Affiliated Organizations
- Activities of the Fascists
- Anti-Fascists Movements
- Activities in Organized Labor Organizations

Steps were also taken to determine whether certain individuals were "available for service in the capacity of an informant," "to index the material previously submitted," and to "prepare memoranda dealing individually with those persons whose names appear prominently at the present time in the subversive circles." The Director was to receive daily memoranda on "major developments in any field" of subversive activities.⁷⁹

The President's instructions had dealt with relations between the FBI and other federal agencies. At his initial meeting with Hoover, the President said that the Secret Service "had assured him that they had informants in every Communist group," but Roosevelt believed this "was solely for the purpose of getting any information upon plots upon his life." He told Hoover that the Secret Service "was not to be brought in on this investigation as they should confine themselves strictly to the matter of protecting his life and the survey which he desired to have made was on a much broader field." In addition, the President suggested that Hoover "endeavor to coordinate any investigation along similar lines which might be made by the Military or Naval Intelligence Services."⁸⁰ The Director told his subordinates that he had advised the Attorney General that he would "coordinate, as the President suggested, information upon these matters in the possession of the Military Intelligence Division, the Naval Intelligence Division, and the State Department."⁸¹

The FBI and military intelligence proceeded along these lines in 1937-1938. The President designated Attorney General Cummings "as Chairman of a Committee to inquire into the so-called espionage situation" in October 1938, and to report on the need for "an additional appropriation for domestic intelligence." The Attorney General

⁷⁹ Memorandum from E. A. Tamm to Hoover, 8/28/36.

⁸⁰ Hoover memorandum, 8/24/36.

⁸¹ Memorandum from Hoover to Tamm, 9/10/36.

advised the President that a "well defined system" was functioning, made up of the FBI, the Military Intelligence Division, and the Office of Naval Intelligence, whose heads were "in frequent contact and are operating in harmony." He recommended that the appropriations be increased by \$35,000 each for MID and ONI and by \$300,000 for the FBI. He also submitted a plan prepared by Director Hoover in consultation with the military agencies. He observed that "no additional legislation to accomplish the general objectives seems to be required" and that "the matter should be handled in strictest confidence."⁸²

The FBI Director's memorandum spelled out the reasons why legislation was considered undesirable. Hoover believed the FBI's expansion could "be covered" by the language in the appropriations statute relating to "other investigations" conducted for the State Department:⁸³

Under this provision investigations have been conducted in years past for the State Department of matters which do not in themselves constitute a specific violation of a Federal Criminal Statute, such as subversive activities. Consequently, this provision is believed to be sufficiently broad to cover any expansion of the present intelligence and counter-espionage work which it may be deemed necessary to carry on. . . .

In considering the steps to be taken for the expansion of the present structure of intelligence work, it is believed imperative that it be proceeded with, with the utmost degree of secrecy in order to avoid criticism or objections which might be raised to such an expansion by either ill-informed persons or individuals having some ulterior motive. The word 'espionage' has long been a word that has been repugnant to the American people and it is believed that the structure which is already in existence is much broader than espionage or counterespionage, but covers in a true sense real intelligence values to the three services interested, namely, the Navy, the Army, and Justice. Consequently, it would seem undesirable to seek any special legislation which would draw attention to the fact that it was proposed to develop a special counter-espionage drive of any great magnitude.⁸⁴

Hoover noted that Army and Navy Intelligence did not need additional legislation "since their activities . . . are limited to matters concerning their respective services."

The FBI Director reviewed the current and proposed future operations of each of the three intelligence agencies. The FBI had set up a General Intelligence Section to investigate and correlate information dealing with "activities of either a subversive or a so-called intelligence type." Each FBI field office had "developed contacts with various persons in professional, business, and law enforcement fields" to obtain this information. The following was a break-down of the subject matter in the Intelligence Section files: "Maritime; government; industry

⁸² Letter from Cummings to the President, 10/20/38.

⁸³ 28 U.S.C. 533 (3).

⁸⁴ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

(steel, automobile, coal, mining, and miscellaneous); general strikes; armed forces; educational institutions; Fascist; Nazi; organized labor; Negroes; youth; strikes; newspaper field; and miscellaneous." All information "of a subversive or general intelligence character pertaining to any of the above" was reviewed and filed at FBI headquarters, with index cards on individuals which made it possible to identify the persons "engaged in any particular activity, either in any section of the country or in a particular industry or movement." This index then included "approximately 2500 names . . . of the various types of individuals engaged in activities of Communism, Nazism, and various types of foreign espionage." In addition, the FBI had "developed a rather extensive library of general intelligence matters, including sixty-five daily, weekly, and monthly publications, as well as many pamphlets and volumes dealing with general intelligence activities." From both investigative sources and research, the FBI from time to time prepared "charts . . . to show the growth and extent of certain activities."⁸⁵

The Office of Naval Intelligence and the Military Intelligence Division were concerned with "subversive activities that undermine the loyalty and efficiency" of Army and Navy personnel or civilians involved in military construction and maintenance; with sabotage of military facilities or of "agencies contributing to the efficiency" of the military; and with "spy activities that may result in divulgence of information to foreign countries or to persons when such divulgence is contrary to the interests of our national defense." However, MID and ONI lacked trained investigators, and they relied on the FBI "to conduct investigative activity in strictly civilian matters of a domestic character." The three agencies exchanged information of interest to one another, both in the field and at headquarters in Washington.

For the future, all three agencies agreed that other federal agencies should be excluded from intelligence work since others were "less interested in matters of general intelligence and counter-intelligence" and because "the more circumscribed this program is, the more effective it will be and the less danger there is of its becoming a matter of general public knowledge." The FBI hoped to expand its personnel so that it could assign an agent specializing in intelligence to each of its forty-five field offices and could reopen offices in Hawaii, Alaska, and Puerto Rico. Additional funds would also be used to expand FBI facilities for "specialized training in general intelligence work."⁸⁶

Director Hoover met with the President in November 1938 and learned that he had instructed the Budget Bureau "to include in the Appropriations estimate \$50,000 for Military Intelligence, \$50,000 for Naval Intelligence and \$150,000 for the Federal Bureau of Investigation to handle counter-espionage activities." The President also said "that he had approved the plan which [Hoover] had prepared and which had been sent to him by the Attorney General," except for the revised budget figures.⁸⁷

⁸⁵ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

⁸⁶ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

⁸⁷ Confidential memorandum, by J. Edgar Hoover, 11/7/38.

D. FBI Intelligence Authority and "Subversion"

There is no evidence that either the Congress in 1916 or Attorney General Stone in 1924 intended the provision of the appropriations statute to authorize the establishment of a permanent domestic intelligence structure. Yet Director Hoover advised the Attorney General and the President in 1938 that the statute was "sufficiently broad to cover any expansion of the present intelligence and counter-espionage work which it may be deemed necessary to carry on."⁸⁸ Because of their reluctance to seek new legislation in order to keep the program secret, Attorney General Cummings and President Roosevelt did not question the FBI Director's interpretation. Nevertheless, the President's approval of Director Hoover's 1938 plan for joint FBI-military domestic intelligence was a substantial exercise of independent presidential power.

The precise nature of FBI authority to investigate "subversion" became confusing in 1938-1939. Despite the references in Director Hoover's 1938 memorandum to "subversion," Attorney General Cummings cited only the President's interest in the "so-called espionage situation."^{88a} Cummings' successors, Attorney General Frank Murphy, appears to have abandoned the term "subversive activities."⁸⁹ Moreover, when Director Hoover provided Attorney General Murphy a copy of his 1938 plan, he described it (without mentioning "subversion") as a program "intended to ascertain the identity of persons engaged in espionage, counter-espionage, and sabotage of a nature not within the specific provisions of prevailing statutes."⁹⁰

Moreover, a shift away from the authority of the appropriations provision, which was linked to the State Department's request, became necessary in 1939 when the FBI resisted an attempt by the State Department to coordinate domestic intelligence investigations. Director Hoover urged Attorney General Frank Murphy in March 1939 to discuss the situation with the President and persuade him to "take appropriate action with reference to other governmental agencies, including the State Department, which are attempting to literally chisel into this type of work. . . ." The Director acknowledged that the FBI required "the specific authorization of the State Department" where the subject of an investigation "enjoys any diplomatic status," but he knew of "no instance in connection with the handling of the

⁸⁸ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

^{88a} Letter from Cummings to the President, 10/20/38.

⁸⁹ On 2/7/39, the Assistant to the Attorney General wrote letters to the Secret Service, the Bureau of Internal Revenue, the Narcotics Bureau, the Customs Service, the Coast Guard, and the Postal Inspection Service stating that the FBI and military intelligence had "undertaken activities to investigate matters relating to espionage and subversive activities." (Letter from J. B. Keenan, Assistant to the Attorney General, to F. J. Wilson, Chief, Secret Service, 2/7/39.) A letter from Attorney General Murphy to the Secretary of the Treasury shortly thereafter also referred to "subversive activities." (Letter from Attorney General Murphy to the Secretary of the Treasury, 2/16/39.) However, a similar letter two days later referred only to matters "involving espionage, counterespionage, and sabotage," without mentioning "subversive activities." (Letter from Attorney General Murphy to the Secretary of the Treasury, 2/18/39.) Attorney General Murphy had abandoned this reference, although there is no record of any reasons for doing so.

⁹⁰ Memorandum from J. Edgar Hoover to Attorney General Murphy, 3/16/39.

espionage work in which the State Department has had any occasion to be in any manner or degree dissatisfied with or apprehensive of the action taken by Bureau agents."⁹¹

Director Hoover was also concerned that the State Department would allow other Federal investigative agencies, including the Secret Service and other Treasury Department units, to conduct domestic intelligence investigations.⁹² The FBI cited the following example in communications to the Attorney General in 1939:

On the West Coast recently a representative of the Alcohol Tax Unit of the Treasury Department endeavored to induce a Corps Area Intelligence Officer of the War Department to utilize the services of that agency in the handling of all investigations involving espionage, counter-espionage, and sabotage....

A case was recently brought to the Bureau's attention in which a complaint involving potential espionage in a middle western state was referred through routine channels of a Treasury Department investigative agency and delayed in such a manner before reference ultimately in Washington to the office of Military Intelligence and then to the Federal Bureau of Investigation, that a period of some six weeks elapsed. . . .⁹³

During a recent investigation . . . an attorney and Commander of the American Legion Post . . . disclosed that a Committee of that Post of the American Legion is conducting an investigation relating to un-American activities on behalf of the Operator in Charge of the Secret Service, New York City.⁹⁴

Consequently, at the FBI Director's request, the Justice Department asked the Secret Service, the Bureau of Internal Revenue, the Narcotics Bureau, the Customs Service, the Coast Guard, and the Post Office Department to instruct their personnel that information "relating to espionage and subversive activities" should be promptly forwarded to the FBI.⁹⁵

The Justice Department letter did not solve the problem, mainly because of the State Department's continued intervention. Director Hoover advised Attorney General Frank Murphy "that the Treasury Department and the State Department were reluctant to concede jurisdiction" to the FBI and that a conference had been held in the office of an Assistant Secretary of State "at which time subtle protests against the handling of cases of this type in the Justice Department were uttered." Hoover protested this "continual bickering" among Departments, especially "in view of the serious world conditions which are hourly growing more alarming."⁹⁶

⁹¹ Memorandum from Hoover to Murphy, 3/16/39.

⁹² Memorandum from J. Edgar Hoover to Alexander Holtzoff, Special Assistant to the Attorney General, 1/18/39.

⁹³ Memorandum from Hoover to Murphy, 3/16/39.

⁹⁴ Memorandum from Hoover to the Acting Assistant to the Attorney General, 5/5/39.

⁹⁵ Letter of J. B. Keenan, Assistant to the Attorney General, 2/7/39. (Compare the similar letter from Attorney General Murphy, omitting the term "subversive activities," at p. 401, note 93.)

⁹⁶ Memorandum from Hoover to the Attorney General, 3/16/39.

Two months later the problem remained unresolved. Assistant Secretary of State George S. Messersmith took on the role of "coordinator" of a committee composed of representatives of the War, Navy, Treasury, Post Office, and Justice Departments. The FBI Director learned that under the proposed procedures, any agency receiving information would refer it to the State Department which, after analysis, would transmit the data to that agency which it believed should conduct the substantive investigation. FBI and Justice Department officials prepared a memorandum for possible presentation to the President, pointing out the disadvantages of this procedure:

The inter-departmental committee by its operations of necessity causes delay which may be fatal to a successful investigation. It also results in a duplication of investigative effort . . . because of the lack of knowledge of one agency that another agency is working upon the same investigation. The State department coordinator is not in a position to evaluate properly the respective investigative ability of the representatives of particular departments in a manner comparable to that which the men actually in charge of an investigative agency may evaluate the proper merit of his own men.⁹⁷

Endorsing this view, Attorney General Murphy wrote the President to urge abandonment of this interdepartmental committee and "a concentration of investigation of all espionage, counterespionage, and sabotage matters" in the FBI, the G-2 section of the War Department, and the Office of Naval Intelligence. The directors of these agencies would "function as a committee for the purpose of coordinating the activities of their subordinates." To buttress his recommendation, the Attorney General pointed out that the FBI and military intelligence:

. . . have not only gathered a tremendous reservoir of information concerning foreign agencies operating in the United States, but have also perfected methods of investigation and have developed channels for the exchange of information, which are both efficient and so mobile and elastic as to permit prompt expansion in the event of an emergency.

Murphy stressed that the FBI was "a highly skilled investigative force supported by the resources of an exceedingly efficient, well equipped, and adequately manned technical laboratory and identification division." This identification data related "to more than ten million persons, including a very large number of individuals of foreign extraction." The Attorney General added, "As a result of an exchange of data between the Departments of Justice, War and Navy, comprehensive indices have been prepared."⁹⁸

President Roosevelt agreed to the Attorney General's proposal and sent a confidential directive drafted by FBI and Justice Department officials to the heads of the relevant departments. This June 1939 directive was the closest thing to a formal charter for FBI and military domestic intelligence. It read as follows:

⁹⁷ Memorandum from E. A. Tamm to Hoover, 5/31/39.

⁹⁸ Letter from Murphy to the President, 6/17/39.

It is my desire that the investigation of all espionage, counterespionage, and sabotage matters be controlled and handled by the Federal Bureau of Investigation of the Department of Justice, the Military Intelligence Division of the War Department, and the Office of Naval Intelligence in the Navy Department. The directors of these three agencies are to function as a committee to coordinate their activities.

No investigations should be conducted by any investigative agency of the Government into matters involving actually *or potentially* any espionage, counterespionage, or sabotage, except by the three agencies mentioned above.

I shall be glad if you will instruct the heads of all other investigative agencies than the three named, to refer immediately to the nearest office of the Federal Bureau of Investigation any data, information, or material that may come to their notice bearing directly *or indirectly* on espionage, counterespionage, or sabotage.⁹⁹ [Emphasis added.]

The legal implications of this directive are clouded by its failure to use the term "subversive activities" and its references instead to *potential* espionage or sabotage and to information bearing *indirectly* on espionage or sabotage. This language may have been an effort by the Justice Department and the FBI to deal with the problem of legal authority posed by the break with the State Department. Since the FBI no longer wanted to base its domestic intelligence investigations on State Department requests, some other way had to be found to retain a semblance of congressional authorization. Yet the scope of the FBI's assignment made this a troublesome point. In 1936, President Roosevelt had wanted intelligence about Communist and Fascist activities generally, not just data bearing on potential espionage or sabotage; and the 1938 plan provided for the FBI to investigate "activities of either a subversive or a so-called intelligence type."¹⁰⁰ There is no indication that the President's June 1939 directive had the intent or effect of limiting domestic intelligence to the investigation of violations of law.

Consistent with the FBI Director's earlier desires, these arrangements were kept secret until September 1939 when war broke out in Europe. At that time Director Hoover decided that secrecy created more problems than it solved, especially with regard to the activities of local law enforcement. He learned that the New York City Police Department had "created a special sabotage squad of fifty detectives . . . and that this squad will be augmented in the rather near future to comprise 150 men." There had been "considerable publicity"

⁹⁹ Confidential Memorandum of the President, 6/26/39. President Roosevelt also dictated a separate additional memorandum for Secretary Hull which read, in part, "This does not mean that the intelligence work of the State Department should cease in any way. It should be carried on as heretofore but the directors of the three agencies should be constantly kept in touch by the State Department with the work it is doing." (Memorandum from the President to the Secretary of State, 6/26/39.)

¹⁰⁰ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

with the result that private citizens were likely to transmit information concerning sabotage "to the New York City Police Department rather than to the FBI." Calling this development to the attention of the Attorney General, the Director strongly urged that the President "issue a statement or request addressed to all police officials in the United States" asking them to turn over to the FBI "any information obtained pertaining to espionage, counterespionage, sabotage, and neutrality regulations."¹⁰¹

A document to this effect was immediately drafted in the Attorney General's office and dispatched by messenger to the White House with a note from the Attorney General suggesting that it be issued in the form of "a public statement."¹⁰² In recording his discussion that day with the Attorney General's assistant, Alexander Holtzoff, FBI official E. A. Tamm referred to the statement as "an Executive Order". Tamm also talked with the Attorney General regarding "the order":

Mr. Murphy stated that when he was preparing this he tried to make it as strong as possible. He requested that I relay this to Mr. Hoover as soon as possible and stated he knew the Director would be very glad to hear this. Mr. Murphy stated he prepared this on the basis of the memorandum which the Director forwarded to him.¹⁰³

The President's statement (or order or Executive Order) read as follows:

The Attorney General has been requested by me to instruct the Federal Bureau of Investigation of the Department of Justice to take charge of investigative work in matters relating to espionage, sabotage, and violations of the neutrality regulations.

This task must be conducted in a comprehensive and effective manner on a national basis, and all information must be carefully sifted out and correlated in order to avoid confusion and irresponsibility.

To this end I request all police officers, sheriffs, and other law enforcement officers in the United States promptly to turn over to the nearest representative of the Federal Bureau of Investigation any information obtained by them relating to espionage, counterespionage, sabotage, subversive activities and violations of the neutrality laws.¹⁰⁴

The statement was widely reported in the press, along with the following remarks by Attorney General Murphy at a news conference held the same day:

Foreign agents and those engaged in espionage will no longer find this country a happy hunting ground for their

¹⁰¹ Memorandum from Hoover to the Attorney General, 9/6/39.

¹⁰² Letter from Murphy to the President, 9/6/39.

¹⁰³ E. A. Tamm, Memoranda for the File, 9/6/39, 11:34 a.m., 12:47 p.m., 2:30 p.m., 6:20 p.m. This memorandum indicates Tamm was told that the President's statement would declare that the FBI was authorized to investigate "subversive activities." There is no explanation for the disparity between this message and the President's actual statement.

¹⁰⁴ Statement of the President, 9/6/39.

activities. There will be no repetition of the confusion and laxity and indifference of twenty years ago.

We have opened many new FBI offices throughout the land. Our men are well prepared and well trained. At the same time, if you want this work done in a reasonable and responsible way it must not turn into a witch hunt. We must do no wrong to any man.

Your government asks you to cooperate with it. You can turn in any information to the nearest local representative of the Federal Bureau of Investigation.¹⁰⁵

Three weeks later Murphy reiterated that the government would "not act on the basis of hysteria." He added, "Twenty years ago inhuman and cruel things were done in the name of justice; sometimes vigilantes and others took over the work. We do not want such things done today, for the work has now been localized in the FBI."¹⁰⁶

Two days after issuing the FBI statement, President Roosevelt proclaimed a national emergency "in connection with and to the extent necessary for the proper observance, safeguarding, and enforcing of the neutrality of the United States and the strengthening of our national defense within the limits of peacetime authorizations." The proclamation added, "Specific directions and authorizations will be given from time to time for carrying out these two purposes."¹⁰⁷

Thereupon, he issued an Executive Order directing the Attorney General to "increase the personnel of the Federal Bureau of Investigation, Department of Justice, in such number, not exceeding 150, as he shall find necessary for the proper performance of the additional duties imposed upon the Department of Justice in connection with the national emergency."¹⁰⁸ President Roosevelt told a press conference that the purpose of this order expanding the government's investigative personnel was to protect the country against "some of the things that happened" before World War I:

There was sabotage; there was a great deal of propaganda by both belligerents, and a good many definite plans laid in this country by foreign governments to try to sway American public opinion. . . . It is to guard against that, and against the spread by any foreign nation of propaganda in this country which would tend to be subversive—I believe that is the word—of our form of government.¹⁰⁹

President Roosevelt never formally authorized the FBI or military intelligence to conduct domestic intelligence investigations of "subversive activities," except for his oral instruction in 1936 and 1938. His written directives were limited to investigations of espionage, sabotage, and violations of the neutrality regulations. Nevertheless, the President clearly knew of and approved informally the broad investigations of "subversive activities" carried out by the FBI.

¹⁰⁵ New York Times, 9/7/39, p. 8, col. 1.

¹⁰⁶ New York Times, 10/1/39, p. 38, col. 3.

¹⁰⁷ Proclamation, 9/8/39, 54 Stat. 2643.

¹⁰⁸ Executive Order No. 8247, 9/8/39, cited in letter from Attorney General Murphy to the President, 9/12/39, Roosevelt Library, Official File 14-b, Box 14.

¹⁰⁹ 1939 Public Papers of Franklin D. Roosevelt, pp. 495-496.

President Roosevelt did use the term "subversive activities" in a directive to Attorney General Robert Jackson on wiretapping in 1940. This directive referred to the activities of other nations "engaged in the organization of propaganda of so-called 'fifth columns'" and in "preparation for sabotage." The Attorney General was directed to authorize wiretapping "of persons suspected of subversive activities against the Government of the United States, including suspected spies." The President also instructed that such wiretaps be limited "insofar as possible to aliens."¹¹⁰

With respect to investigations generally, however, the confusion as to precisely what President Roosevelt authorized is indicated by Attorney General Francis Biddle's description of FBI jurisdiction in 1942 and by a new Presidential statement in 1943. Biddle issued a lengthy order defining the duties of the various parts of the Justice Department in September 1942. The pertinent section relating to the FBI stated that it had a duty to "investigate" criminal offenses against the United States and to act as a "clearing house" for the handling of "espionage, sabotage, and other subversive matters."¹¹¹ This latter "clearing-house" function was characterized as a duty to "carry out" the President's directive of September 6, 1939.

Four months later, President Roosevelt renewed his public appeal for "police cooperation" and added a request that "patriotic organizations" cooperate with the FBI. This statement described his September 1939 order as granting "investigative" authority to the FBI and not simply a "clearing-house" function. However, the President defined that authority as limited to "espionage, sabotage, and violation of the neutrality regulations" without any mention of "subversion."¹¹²

The statement was consistent with Attorney General Biddle's internal directive later in 1943 that the Justice Department's "proper function" was "investigating the activities of persons who may have violated the law."¹¹³

A similar problem is involved with the authority for "counterespionage" operations by the FBI and military intelligence. President Roosevelt's confidential order of June 1939 explicitly authorized the FBI and military intelligence to handle counterespionage matters, and the 1938 plan used the terms "counter-espionage" and "counter-intelligence." However, none of the President's public directives formally authorized counterespionage measures going beyond investiga-

¹¹⁰ Confidential memorandum from President Roosevelt to Attorney General Jackson, 5/21/40. In May 1941 the Secretary of War and the Secretary of the Navy urged "a broadening of the investigative responsibility of the Federal Bureau of Investigation in the fields of subversive control of labor." (Memorandum from the Secretary of War and the Secretary of the Navy to the President, 5/29/41.) The President replied that he was sending their letter to the Attorney General with my general approval. (Memorandum from President Roosevelt to the Secretaries of War and Navy, 6/4/41.) Attorney General Biddle's response cited investigations under the recently enacted Smith Act. (Memorandum from Attorney General Biddle to the President, 6/23/41.)

¹¹¹ Attorney General's Order No. 3732, 9/25/42.

¹¹² Statement of the President on "Police Cooperation," 1/8/43. A note in the President's handwriting added that the FBI was to receive information "relating to espionage and related matters."

¹¹³ Memorandum from Attorney General Biddle to Assistant Attorney General Hugh Cox and FBI Director Hoover, 7/16/43.

tion; and the Justice Department's regulations made no reference to this responsibility.

E. Congress and FBI Intelligence

Congress accepted this executive action as a necessary and inevitable measure to cope with the emergency conditions arising from the war in Europe.

In November 1939, FBI Director Hoover linked FBI intelligence to both the President's September 6 statement and his September 8 proclamation and order during testimony on an emergency supplemental appropriation bill. He told the House Appropriations Committee that establishment of a General Intelligence Division "was made necessary by the President's proclamation directing that all complaints of violations of the national defense statutes and proclamations be reported to the Federal Bureau of Investigation." When asked "by what authority" the FBI was expending funds for intelligence work beyond its existing appropriation, Hoover replied, "By authority of the President's proclamation directing the Attorney General to authorize an increase in the staff of the Federal Bureau of Investigation by 150 special agents and such additional clerical personnel and equipment as would be needed."¹¹⁵ The following exchange then took place between Congressman Woodrum and the Director:

Mr. WOODRUM. Will these additional people be kept on through the next fiscal year?

Mr. HOOVER. If the emergency continues.

Mr. WOODRUM. If the emergency does not continue you anticipate the force will be reduced?

Mr. HOOVER. Yes. For instance, we have opened 10 new field offices to conduct this work in various parts of the country. We opened another office in Savannah, one in Baltimore, one at Albany, in manufacturing and shipping centers as well as points wherein huge naval bases are maintained.

Mr. WOODRUM. And if the emergency ceases the need for the additional force will cease?

Mr. HOOVER. Yes.

Director Hoover also pointed out that this expansion would increase the number of FBI agents from 797 to 947.¹¹⁶

In his next appearance before the Appropriations Committee, the Director dropped reference to the President's proclamation of emergency and relied for his "authority" on the "formal statement" of September 6 which he described as "directing that there be coordinated under the Federal Bureau of Investigation all the matters of investigative work relating to espionage, sabotage, and violations of the neutrality regulations, and any other subversive activities."¹¹⁷

Six months later the Director told the Appropriations Committee that the FBI had a National Defense Division to "handle and direct

¹¹⁵ Hoover did not refer to the provision of the appropriations statute linked to the State Department which he had relied upon for authority before 1939.

¹¹⁶ *Emergency Supplemental Appropriation Bill*, 1940, Hearings before the House Committee on Appropriations, 11/30/39, pp. 303-307.

¹¹⁷ *Justice Department Appropriation Bill*, 1941, Hearings before the House Committee on Appropriations, 1/5/40, p. 151.

all investigations dealing with espionage, sabotage, national-defense matters, and violations of the neutrality statutes." He once again cited the President's "order of September 6, 1939," saying that it "directed the Bureau to coordinate the functions on national defense matters in intelligence work."¹¹⁸ In early 1941, Director Hoover had this exchange with members of the Appropriations Committee:

Mr. LUDLOW. At the close of the present emergency, when peace comes, it would mean that such of this emergency work necessarily will be discontinued.

Mr. HOOVER. This is correct.

Mr. TABER. Is your set-up for the national-defense work separate from the other work?

Mr. HOOVER. It is.

Mr. TABER. Is it operated as a separate division?

Mr. HOOVER. Yes. In the field our field offices are under instructions to utilize approximately 50 percent of the personnel on national defense work and the other 50 percent on the regular work.

Mr. TABER. But if some rush comes up, you might have to vary that?

Mr. HOOVER. That is correct.

Mr. TABER. According to the situation.

Mr. HOOVER. According to the emergency that might arise. If the national emergency should terminate, the structure dealing with national defense can immediately be discontinued or very materially curtailed according to the wishes of Congress.

The FBI was seeking a deficiency appropriation for "700 additional field agents, 500 of whom would be used on national defense investigations, and 200 on the investigation of violations of the Selective Service Act."¹¹⁹

The FBI Director's appropriations testimony in 1939 and 1940 spelled out certain aspects of FBI intelligence programs and policies. The Director stated in 1939 that the General Intelligence Division had "compiled extensive indices of individuals, groups, and organizations engaged in . . . subversive activities, in espionage activities, or any activities that are possibly detrimental to the internal security of the United States." Hoover added,

These indexes have been arranged not only alphabetically but also geographically, so that at any time, should we enter into the conflict abroad, we would be able to go into any of these communities and identify individuals and groups who might be a source of grave danger to the security of this country. Their backgrounds and activities are known to the Bureau. These indexes will be extremely important and valuable in grave emergency.

¹¹⁸ *Supplemental National Defense Appropriations, 1941*, Hearings before the House Committee on Appropriations, 6/6/40, p. 180.

¹¹⁹ *First Deficiency Appropriation Bill, 1941*, Hearings before the House Committee on Appropriations, 2/19/41, pp. 179, 188-189.

The FBI had established a translation section "to review various foreign-language material" and a code section for "decoding any messages which we are able to intercept or obtain." With the agreement of military intelligence, the FBI also handled the protection of defense plants and advised industry officials on security measures.¹²⁰ The FBI Director reiterated these points in early 1940, adding that military and naval intelligence were "conducting no investigations in matters other than those connected with the military forces." He described the "general index" as being "available . . . so that in the event of any greater emergency . . . we will be able to locate immediately these various persons who may need to be the subject of further investigation by the Federal authorities."¹²¹ Later in 1940 the Director said that the "general intelligence index" included the names of persons "who may become potential enemies to our internal security, such as known espionage agents, known saboteurs, leading members of the Communist Party, and the bund." The last referred to various pro-Nazi organizations of German-Americans.¹²²

There was one important side effect of the confused legal basis for domestic intelligence. It allowed the Attorney General to deflect criticism of the FBI from another congressional source in 1940. Since the President's formal public directive could be construed as simply designating the FBI to take charge of the investigation of espionage, sabotage, and neutrality violations, Attorney General Robert Jackson was able to respond to criticism from Senator George Norris by declaring:

Mr. Hoover is in agreement with me that the principles which Attorney General Stone laid down in 1924 when the Federal Bureau of Investigation was reorganized and Mr. Hoover appointed as Director are sound, and that the usefulness of the Bureau depends upon a faithful adherence to those limitations.

The Federal Bureau of Investigation will confine its activities to the investigation of violation of Federal statutes, the collecting of evidence in cases in which the United States is or may be a party in interest, and the service of process issued by the courts.¹²³

Attorney General Jackson may have hoped to circumscribe FBI domestic intelligence within these limits, but the program developed in 1936-1939 went far beyond them. Consequently, the Attorney General's statement was at best a misleading description of executive policy.

Congress did have an opportunity in 1940 to enact a basic legislative charter for FBI intelligence. Representative Emmanuel Celler introduced a joint resolution which provided:

That the Federal Bureau of Investigation of the Department of Justice be authorized and directed to conduct investiga-

¹²⁰ 1939 Hearings, pp. 304-305.

¹²¹ January 1940 Hearings, pp. 152-154.

¹²² June 1940 Hearings, p. 181.

¹²³ Letter from Attorney General Robert H. Jackson to Senator George Norris, 86 Cong. Rec. 5642-5643, cited in Max Lowenthal, *The Federal Bureau of Investigation* (New York: Sloane, 1950), p. 445.

tions, subject to the direction of the Attorney General, to ascertain, prevent, and frustrate any interference with the national defense by sabotage, treason, seditious conspiracy (as defined in 18 U.S.C. 6), espionage, violations of the neutrality laws, or in any other manner.

The resolution would have permitted FBI wiretapping for these purposes under the specific authorization of the Attorney General.¹²⁴ The measure was endorsed by Attorney General Robert Jackson, but it was not passed. Consequently, except for the FBI Director's appropriations testimony, Congress played no role in authorizing the establishment of domestic intelligence operations.

Instead, Congress enacted two general statutes to deal with "subversive activities". The Smith Act of 1940 made it a federal crime to urge military insubordination or advocate the violent overthrow of the government.¹²⁵ And the Voorhis Act of 1941 required the registration of all "subversive" organizations having foreign links and advocating the violent overthrow of the government.¹²⁶ The Smith Act has been described as containing "the most drastic restrictions on freedom of speech ever enacted in the United States during peace." It was passed with little publicity and only brief floor debate as part of the Alien Registration Act of 1940, which appeared to most observers to deal only with fingerprinting foreigners.¹²⁷

The Smith Act and the Voorhis Act, along with the previously enacted Foreign Agents Registration Act of 1938, offer an insight into the way threats to domestic security were perceived before World War II. The Foreign Agents Registration Act was the product of an investigation of pro-Nazi and Communist activities by the Special House Committee on Un-American Activities headed by Representatives John McCormack and Samuel Dickstein in 1935-1936. The Committee's principal recommendation was legislation requiring the registration of foreign agents disseminating propaganda in the United States.¹²⁸ The Smith Act and the Voorhis Act carried this idea beyond "foreign agents". Thus, the Smith Act has been authoritatively described in the following terms: "From its inception this act was intended to combat and resist the organization of Fascist and Communist groups owing allegiance to foreign governments whose operations and activities were clearly contrary and dangerous to the Government of the United States."¹²⁹

In other words, the danger to domestic security was understood as including American citizens whose political activities might lead them to serve the interests of opposing nations. Attor-

¹²⁴ H.J. Res. 571, 76th Cong., 2d Sess. (1940). See also *Permitting Wire Tapping in Certain Cases*, report to accompany H.J. Res. 571, House Committee on the Judiciary, 76th Cong., 2d Sess. (June 14, 1940).

¹²⁵ 18 U.S.C. 2385, 2387.

¹²⁶ 18 U.S.C. 2386.

¹²⁷ Zechariah Chaffee, Jr., *Free Speech in the United States* (Cambridge: Harvard University Press, 1941), pp. 439-441.

¹²⁸ 22 U.S.C. 611-621. See *Investigation of Nazi and Other Propaganda*, H. Rept. 153 (February 15, 1935).

¹²⁹ *Report of the Commission on Government Security* (1957), p. 621. The Administrative Director of this Commission was D. Milton Ladd, who was Assistant Director for the FBI Intelligence Division during the 1940s and Assistant to the Director in charge of all FBI intelligence and criminal investigations until 1954.

ney General Jackson used the term "Fifth Column" in 1940 to characterize "that portion of our population which is ready to give assistance or encouragement in any form to invading or opposing ideologies." He told a conference of state officials that the FBI's intelligence mission involved "steady surveillance over individuals and groups within the United States who are so sympathetic with the systems or designs of foreign dictators as to make them a likely source of federal law violation."¹³⁰

The assumption that such persons and organizations posed a direct and immediate threat to the nation's security was not seriously questioned, although there was disagreement over the need for criminal prosecution or registration of "subversives" because of their political advocacy. Attorney General Jackson could endorse FBI domestic intelligence *surveillance* at the same time as he warned against *prosecution* of "subversive activity." It was a dangerous concept, Jackson told federal prosecutors, because there were "no definite standards to determine what constitutes a 'subversive activity,' such as we have for murder or larceny." Attorney General Jackson added,

Activities which seem benevolent or helpful to wage earners, persons on relief, or those who are disadvantaged in the struggle for existence may be regarded as "subversive" by those whose property interests might be burdened thereby. Those who are in office are apt to regard as "subversive" the activities of any of those who would bring about a change of administration. Some of our soundest constitutional doctrines were once punished as subversive. We must not forget that it was not so long ago that both the term "Republican" and the term "Democrat" were epithets with sinister meaning to denote persons of radical tendencies that were "subversive" of the order of things then dominant.¹³¹

However, political organizations directly controlled by a potential enemy nation were considered to be different, especially when war was already underway in Europe. Germany and the Soviet Union (who, it should be remembered, were allied by treaty in 1939-1941) directed the international Nazi and Communist movements with well-organized followings in the United States.

In his effort to discourage prosecutions and to persuade the nation that FBI intelligence could handle any threats, Attorney General Jackson failed to acknowledge the risks to individual rights from unregulated federal surveillance. With no clear legislative or executive standards to keep it within the intended bounds, the FBI (and military intelligence in its sphere) had almost complete discretion to decide how far domestic intelligence investigations would extend. Only in retrospect as a Justice of the Supreme Court did Robert Jackson recognize these dangers. Shortly before his death in 1954 he wrote:

I cannot say that our country could have no central police without becoming totalitarian, but I can say with great con-

¹³⁰ *Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense* (August 5-6, 1940).

¹³¹ Robert H. Jackson, "The Federal Prosecutor," *Journal of the American Judicature Society* (June 1940), p. 18.

viction that it cannot become totalitarian without a centralized national police. . . . All that is necessary is to have a national police competent to investigate all manner of offenses, and then, in the parlance of the streets, it will have enough on enough people, *even if it does not elect to prosecute them*, so that it will find no opposition to its policies. Even those who are supposed to supervise it are likely to fear it. I believe that the safeguard of our liberty lies in limiting any national policing or investigative organization, first of all to a small number of strictly federal offenses, and second to *nonpolitical* ones. The fact that we may have confidence in the administration of a federal investigative agency under its existing head does not mean that it may not revert again to the days when the Department of Justice was headed by men to whom the investigative power was a weapon to be used for their own purposes.¹³² [Emphasis added.]

F. The Scope of FBI Domestic Intelligence

A central feature of the FBI domestic intelligence program authorized by President Roosevelt was its broad investigative scope. The breadth of intelligence-gathering most clearly demonstrates why the program could not have been based on any reasonable interpretation of the power to investigate violations of law. The investigations were built upon a theory of "subversive infiltration" which remained an essential part of domestic intelligence thereafter. This theory persisted over the decades in the same way the Roosevelt directives continued in effect as the basis for legal authority. Moreover, there was a direct link between the policy of investigating "subversive" influence and the reliance on inherent executive power. The purpose of such investigations was not to assist in the enforcement of criminal laws, but rather to supply the President and other executive officials with information believed to be of value for making decisions and developing governmental policies. This "pure intelligence" function was precisely what President Roosevelt meant when he asked for "a broad picture" of the impact of Communism and Fascism on American life.

A second purpose for broad domestic intelligence investigations was to compile an extensive body of information for use in the event of an emergency or actual war. This information would supply the basis for taking preventive measures against groups or individuals disposed to interfere with the national defense effort. If such interference might take the form of sabotage or other illegal disruptions of defense production and military discipline, the collection of preventive intelligence was related to law enforcement. But the relationship was often remote and highly speculative, based on political affiliations and group membership rather than any tangible evidence of preparation to commit criminal acts. As the likelihood of American involvement in the war moved closer, preventive intelligence investigations focused on whether individuals should be placed on a Custodial Detention List for possible arrest in case of war. This program

¹³² Robert H. Jackson, *The Supreme Court in the American System of Government* (New York: Harper Torchbook, 1963), pp. 70-71.

was developed jointly by the FBI and a special Justice Department unit in 1940–1941.

These two objectives—“pure intelligence” and preventive intelligence—were closely related to one another. Investigations designed to produce information about subversive infiltration also identified individuals thought potentially dangerous to the country’s security. Likewise, investigations of persons alleged to be security threats contributed to the overall domestic intelligence picture.

Internal FBI instructions described the scope of surveillance in detail. On September 2, 1939, all FBI field offices were ordered to review their files and secure information from “reliable contacts” in order to prepare reports on “persons of German, Italian, and Communist sympathies,” as well as other persons “whose interest may be directed primarily to the interest of some other nation than the United States.” Such information included “a list of the subscribers” and officers of all German and Italian language newspapers in the United States, language newspapers published by the Communist Party or “its affiliated organizations,” and both foreign and English language newspapers “of pronounced or notorious Nationalistic sympathies.” FBI offices were also instructed to identify members of all German and Italian societies, “whether they be of a fraternal character or of some other nature,” and of “any other organization, regardless of nationality, which might have pronounced Nationalistic tendencies.”¹³³

In October 1939 the FBI was investigating the Communist Party and the German American Bund, using such techniques as “the employment of informants,” “research into publications,” “the soliciting and obtaining of assistance and information from political emigres, and organizations which have for their purpose the maintenance of files of information bearing upon this type of study and inquiry,” and “the attendance of mass meetings and public demonstrations.” The compilation of information on other organizations and groups “expressing nationalist leanings” continued pursuant to the September 1939 instructions. In addition, the FBI was conducting “confidential inquiries” regarding “the various so-called radical and fascist organizations in the United States” for the purpose of identifying their “leading personnel, purposes and aims, and the part they are likely to play at a time of national crisis.”¹³⁴

In November 1939, the FBI began preparing a list of specific individuals “on whom information is available indicating strongly that [their] presence at liberty in this country in time of war or national emergency would constitute a menace to the public peace and safety of the United States Government.” The list comprised persons “with strong Nazi tendencies” and “with strong Communist tendencies.” The citizenship status of each individual was determined, and cards prepared summarizing the reasons for placing him on the list.¹³⁵

FBI field offices were instructed to obtain information on such persons from “public and private records, confidential sources of infor-

¹³³ Memorandum from Hoover to Field Offices, 9/2/39.

¹³⁴ Memorandum from Clyde Tolson to Hoover, 10/30/39.

¹³⁵ Memorandum for E. A. Tamm, 11/9/39.

mation, newspaper morgues, public libraries, employment records, school records, et cetera." FBI agents were to keep the purpose of their inquiries "entirely confidential" and to reply to questions by stating as a cover that the investigation was being made in connection with "the Registration Act requiring agents of foreign principals to register with the State Department."¹³⁶ FBI headquarters supervisors divided the list into two categories:

Class #1. Those to be apprehended and interned immediately upon the outbreak of hostilities between the Government of the United States and the Government they serve, support, or owe allegiance to.

Class #2. Those who should be watched carefully at and subsequent to the outbreak of hostilities because their previous activities indicate the possibility but not the probability that they will act in a manner adverse to the best interests of the Government of the United States.¹³⁷

This program was described as a "custodial detention" list in June 1940, and field offices were again instructed to furnish information on persons possessing "Communitic, Fascist, Nazi or other nationalistic background."¹³⁸

The primary subjects of FBI intelligence surveillance under this program in mid-1940 were active Communists (including Communist candidates for public offices, party officers and organizers, speakers at Communist rallies, writers of Communist books or articles, individuals "attending Communitic meetings where revolutionary preachings are given," Communists in strategic operations "or holding any position of potential influence," and Communist agitators who participate "in meetings or demonstrations accompanied by violence"), all members of the German-American Bund and similar organizations, Italian Fascist organizations, and American Fascist groups such as "Silver Shirts, Ku Klux Klan, White Camelia, and similar organizations."¹³⁹ Director Hoover summarized these "subversive activities" in a memorandum to the Justice Department:

the holding of official positions in organizations such as the German-American Bund and Communist groups; the distribution of literature and propaganda favorable to a foreign power and opposed to the American way of life; agitators who are adherents of foreign ideologies who have for their purpose the stirring up of internal strike [sic], class hatreds and the development of activities which in time of war would be a serious handicap in a program of internal security and national defense . . .¹⁴⁰

Director Hoover claimed publicly in 1940 that advocates of foreign "isms" had "succeeded in boring into every phase of American life,

¹³⁶ Memorandum from Hoover to Field Offices, 12/6/39.

¹³⁷ Memorandum for E. A. Tamm, 12/2/39.

¹³⁸ Memorandum from Hoover to Field Offices, 6/15/40.

¹³⁹ Memorandum for the Director, 8/19/40.

¹⁴⁰ Memorandum from Hoover to M. F. McGuire, the Assistant to the Attorney General, 8/21/40.

masquerading behind front organizations.”¹⁴¹ Intelligence about “front” groups was transmitted to the White House. For example, in 1937 the Attorney General had sent an FBI report on a proposed pilgrimage to Washington to urge passage of legislation to benefit American youth. The report stated that the American Youth Congress, which sponsored the pilgrimage, was understood to be strongly Communist.¹⁴² Later reports in 1937 described the Communist Party’s role in plans by the Workers Alliance for nationwide demonstrations protesting the plight of the unemployed, as well as the Alliance’s plans to lobby Congress in support of the federal relief system.¹⁴³

FBI investigations and reports (which went into Justice Department and FBI permanent files) covered entirely lawful domestic political activities. For example, one local group checked by the Bureau was called the League for Fair Play, which furnished “speakers to Rotary and Kiwanis Clubs and to schools and colleges.” The FBI reported in 1941 that:

the organization was formed in 1937, apparently by two Ministers and a businessman for the purpose of furthering fair play, tolerance, adherence to the Constitution, democracy, liberty, justice, understanding and good will among all creeds, races and classes of the United States.

A synopsis of the report stated, “No indications of Communist activities.”¹⁴⁴ In 1944 the FBI prepared a more extensive intelligence report on an active political group, the Independent Voters of Illinois, apparently because it was the target of Communist “infiltration.” The Independent Voters group was reported to have been formed:

for the purpose of developing neighborhood political units to help in the re-election of President Roosevelt and the election of progressive congressmen. Apparently, IVI endorsed or aided Democrats for the most part, although it was stated to be “independent”. It does not appear that it entered its own candidates or that it endorsed any Communists. IVI sought to help elect those candidates who would favor fighting inflation, oppose race and class discrimination, favor international cooperation, support a “full-employment program,” oppose Fascism, etc.¹⁴⁵

Thus, the Bureau gathered data about left-liberal groups in its search for subversive “influence.” At the opposite end of the political spectrum, the activities of numerous right-wing groups like the Christian Front and Christian Mobilizers (followers of Father Coughlin), the American Destiny Party, the American Nationalist Party, and even

¹⁴¹ *Proceedings of the Federal-State Conference on Law Enforcement Problems of National Defense*, 8/5-6/40.

¹⁴² Letter from Attorney General Cummings to the President (and enclosure), 1/30/37. (FDR Library.)

¹⁴³ Letter from Attorney General Cummings to the President (and enclosure) 8/13/37. (FDR Library.)

¹⁴⁴ Report of New York City Field Office, 10/22/41, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/10/47.

¹⁴⁵ Report of Chicago Field Office, 12/29/44, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/9/47.

the less extreme "America First" movement were reported by the FBI.¹⁴⁶

The Bureau even looked into a Bronx, New York, child care center which was "apparently dominated and run" by Communists to determine whether it was being used as a "front" for carrying out the Communist program.¹⁴⁷

One example of the nature of continuing intelligence investigations is the FBI's reports on the NAACP. The Washington, D.C. Field Office opened the case in 1941 because of a request from the Navy Department for an investigation of protests against racial discrimination in the Navy by "fifteen colored mess attendants." FBI agents used an informant to determine the NAACP's "connections with the communist party and other communist controlled organizations."¹⁴⁸

FBI headquarters sent a request to the Oklahoma City Field Office in August 1941 for an investigation of "Communist Party domination" of the NAACP in connection with the development of "Nationalistic Tendency Charts." The field office report concluded, on the basis of an informant's reports, "that there is a strong tendency for the NAACP to steer clear of Communistic activities. Nevertheless, there is a strong movement on the part of the Communists to attempt to dominate this group through an infiltration of Communistic doctrines. Consequently, the activities of the NAACP will be closely observed and scrutinized in the future."¹⁴⁹

FBI informants subsequently reported on NAACP conferences at Hampton, Virginia, in the fall of 1941 and at Los Angeles in the summer of 1942. These investigations were conducted "to follow the activities of the NAACP and determine further the advancement of the Communist group has made into that organization."¹⁵⁰ Similar reports came to headquarters from field offices in Richmond, Virginia; Springfield and Chicago, Illinois; Boston, Massachusetts; Oklahoma City, Oklahoma; Indianapolis, Indiana; Savannah, Georgia; and Louisville, Kentucky, in 1942-1943. Informants were used to report on efforts "to place before the NAACP certain policies or ideas which . . . may be favorable to the Communist Party."¹⁵¹ An informant attended an NAACP convention in South Carolina in June 1943 and reported on his conversations with NAACP counsel Thurgood Marshall. The informant believed that Marshall was "a loyal American" and "would not permit anything radical to be done."¹⁵²

Informants for the Oklahoma City Field Office reported on Communist efforts to "infiltrate" the NAACP and advised that the Communist Party would "be active" at a forthcoming NAACP conference.¹⁵³ On the other hand, an informant for the Chicago office reported "no evidence that there is any Communist infiltration in the Chicago

¹⁴⁶ Justice Department memorandum re Christian Front, 10/28/41.

¹⁴⁷ Report of New York City Field Office, 9/7/45, summarized in Justice Department memorandum from S. Brodie to Assistant Attorney General Quinn, 10/9/47.

¹⁴⁸ Report of Washington, D.C. Field Office, 3/11/41.

¹⁴⁹ Report of Oklahoma City Field Office, 9/19/41.

¹⁵⁰ Report of Los Angeles Field Office, 7/27/42; report of Norfolk, Virginia Field Office, 4/18/42.

¹⁵¹ Report of Louisville, Kentucky Field Office, 2/13/43.

¹⁵² Report of Savannah, Georgia Field Office, 9/9/43.

¹⁵³ Report of Oklahoma City Field Office, 10/29/43.

branch.”¹⁵⁴ And informants for the Detroit office advised that there were “numerous contacts by the CP members and NAACP members, some collaboration on issues which affect negroes, presence of CP members at NAACP meetings, interest of CP in NAACP, but no evidence of CP control.”¹⁵⁵

FBI investigation of the NAACP reflected in these and other reports to headquarters produced massive information in Bureau files about the organization, its members, their legitimate activities to oppose racial discrimination, and internal disputes within some of the chapters. One thirty-five page report contained the names of approximately 250 individuals and groups, all indexed in a table of contents.¹⁵⁶ The reports and their summaries contained little if any information about specific activities or planned activities in violation of federal law.

The scope of the information compiled through these investigations of alleged Communist “infiltration” is indicated by an FBI estimate that by 1944 “almost 1,000,000 people knowingly or unknowingly had been drawn into Communist-Front activity.”¹⁵⁷

G. The Custodial Detention Program

The epitome of preventive intelligence was the Custodial Detention Program established by the FBI and the Justice Department in 1940–1941. It should not be confused with the internment of Japanese-Americans in 1942. Both the FBI and military intelligence opposed the massive infringement of human rights which occurred in 1942 when 112,000 Japanese and Japanese-Americans were placed in detention camps—a decision made by President Roosevelt and ratified by the Congress. The authoritative histories stress the crucial influence of the Army’s Provost Marshal General and his “empire-building” machinations, especially in reaction to a pre-war decision transferring responsibility for alien enemy internment to the Justice Department.¹⁵⁸

The mass detention of American citizens solely on the basis of race was exactly what the Custodial Detention Program was designed to prevent. Its purpose was to enable the government to make individual decisions as to the dangerousness of enemy aliens and citizens who might be arrested in the event of war. Moreover, when the program was implemented after Pearl Harbor, it was limited to dangerous enemy aliens; and the plans for internment of potentially dangerous American citizens were never carried out.

The most significant aspects of the Custodial Detention Program bear upon the relationship between the FBI and the Attorney General. Director Hoover opposed Attorney General Robert Jackson’s attempt in 1940 to require Departmental supervision; and when Attorney General Francis Biddle abolished the Custodial Detention List in 1943, the FBI Director did not comply with his order.

Director Hoover asked Attorney General Jackson in June 1940 for policy guidance “concerning a suspect list of individuals whose

¹⁵⁴ Report of Chicago Field Office, 11/24/43.

¹⁵⁵ Report of Detroit Field Office, 1/15/44.

¹⁵⁶ Report of Detroit Field Office, 1/15/44.

¹⁵⁷ Whitehead, *The FBI Story*, p. 329.

¹⁵⁸ See Roger Daniels, *Concentration Camps USA: Japanese-Americans and World War II* (New York: Holt, Rinehart, and Winston, 1971); Stetson Conn, et al., *The United States Army in World War II: The Western Hemisphere: Guarding the United States and Its Outposts: (1964).*

arrest might be considered necessary in the event the United States becomes involved in war.”¹⁵⁹ Secretary of War Henry L. Stimson advised the Attorney General in August that the War Department had emergency plans providing “for the custody of such alien enemies as may be ordered interned” and suggested that they be discussed between military and Justice Department officials.¹⁶⁰ To deal with these matters, Attorney General Jackson assigned responsibility to the head of a newly created Neutrality Laws Unit in the Justice Department. This Unit was later renamed the Special War Policies Unit and undertook Departmental planning for the war, as well as analysis and evaluation of FBI intelligence reports and the review of names placed on the Custodial Detention List.

The FBI Director initially resisted the plan for Justice Department supervision. He told the head of the Special Unit that the Department’s program created “the very definite possibility of disclosure of certain counter-espionage activities.”¹⁶¹ Hoover added,

The personnel which would handle this work upon the behalf of the Department . . . should be selected with a great deal of care. We in the FBI have endeavored to assure the utmost secrecy and confidential character of our reports and records. To turn over to the Department this great collection of material in toto . . . means that the Department must assume the same responsibility for any leaks or disclosure which might be prejudicial to the continued internal security of our country. Obviously, the identity of many of our confidential informants will become known to such personnel. . . . The life and safety of these informants are at stake if their identities should become known to any outside persons.

Hoover also feared that if the Department took any overt administrative action or prosecution, “the identity of confidential informants now used by the Bureau would become known.” This would “cut off that source of information in so far as continued counter-espionage might be concerned in that case.” He claimed that if the Attorney General approved the plan, it would mean the Justice Department was “ready to abandon its facilities for obtaining information in the subversives field.”¹⁶²

Attorney General Jackson refused to give in to the FBI Director. After five months of negotiation, the FBI was ordered to transmit its “dossiers” to the Justice Department Unit.¹⁶³ To satisfy the FBI’s

¹⁵⁹ Cited in memorandum from J. Edgar Hoover to the Attorney General, 10/16/40.

¹⁶⁰ Memorandum from Stimson to the Attorney General, 8/26/40.

¹⁶¹ It is not clear whether Hoover may have had in mind the secret arrangements with British intelligence established at that time at President Roosevelt’s instructions. These arrangements have recently been made public in a book based on previously classified British records. [William Stevenson, *A man Called Intrepid* (New York: Harcourt Brace Jovanovich, 1976.)].

¹⁶² Memorandum from J. Edgar Hoover to L. M. C. Smith, Chief Neutrality Laws Unit, 11/28/40.

¹⁶³ Memorandum from M. F. McGuire, Assistant to the Attorney General, to J. Edgar Hoover and L. M. C. Smith, 4/21/41.

concerns, the Department agreed that any formal proceeding would be postponed or suspended if the FBI indicated that it "might interfere with sound investigative techniques." The FBI was assured that the plan "does not involve any abandonment by the Department of its present facilities for obtaining information in connection with subversive activities by surveillance or counterespionage." There would be "no public disclosure of any confidential informants . . . without the prior approval of the Bureau."¹⁶⁴ Thus, from 1941 until 1943 the Justice Department had the machinery to oversee at least this aspect of FBI domestic intelligence.

The wartime detention plans envisioned entirely civilian proceedings for arrest of alien enemies following a Presidential proclamation pursuant to statutory provisions, and all warrants would be authorized and issued by the Attorney General.¹⁶⁵ Separate instructions stated that, with respect to American citizens on the list and "not subject to internment," a Departmental committee would consider whether specific persons should be prosecuted under the Smith Act of 1940 "or some other appropriate statute" in the event of war.¹⁶⁶

FBI instructions to the field reiterated the types of organizations whose members should be investigated under the Custodial Detention Program. In addition to the groups listed in 1940, the order included the Socialist Workers Party (Trotskyite), the Proletarian Party, Lovestoneites, "or any of the other Communistic organizations, or . . . their numerous 'front' organizations," as well as persons reported as "pronouncedly pro-Japanese."¹⁶⁷

FBI officials were concerned that the Department plan did not provide sufficiently for action against citizens. In addition to the Smith Act of 1940, FBI officials pointed out to the Department "the possibility of utilizing denaturalization proceedings." At the FBI's request, the Special Departmental Unit prepared "a study of the control of citizens suspected of subversive activities." As later summarized by the FBI, the study stressed:

. . . the great need for a federal overall plan of legislation to control suspected citizens, rather than isolated statutes which would care for particular citizens. . . . It was pointed out that the British system of defense legislation had been to enact a general enabling statute under which the executive authority is permitted to promulgate rules and regulations having the effect of law, and it was suggested that, if this country entered the war, a similar type of statute should be enacted which would enable the President to set up a system of regulations subject to immediate change and addition as the need arose.¹⁶⁸

Attorney General Francis Biddle did not endorse this position. Instead, the Department's Special Unit relied upon recently enacted

¹⁶⁴ Memorandum from M. F. McGuire to J. Edgar Hoover, 4/17/41.

¹⁶⁵ Memorandum from M. F. McGuire to Hoover, 4/17/41.

¹⁶⁶ Memorandum from McGuire to Hoover, and L. M. C. Smith, 4/21/41.

¹⁶⁷ Memorandum from Hoover to Field Offices, 4/30/41.

¹⁶⁸ Memorandum from D. M. Ladd to the Director, 2/27/46.

specific statutes as the basis for its planning. These included the Foreign Agents Registration Act of 1938, the Smith Act of 1940 making it a federal crime to urge military insubordination or advocate the violent overthrow of the government, and the Voorhis Act of 1941 requiring the registration of organizations having foreign ties and advocating the violent overthrow of the government.

Acting at "the post-investigative level," the Special War Policies Unit considered these and other statutes as the basis for coordinating "affirmative action on the internal security front." Its annual report in 1942 stated:

The Unit deals with new forms of political warfare. As part of its equipment, it has engaged analysts with special experience and schooling in the field of political organization and ideologies. The Unit has not only sought to collate information regarding dangerous individuals and organizations; it has sought to bring together a trained staff equipped to understand the methods, beliefs, relationships and subversive techniques of such individuals and organizations for the purposes of initiating appropriate action.¹⁶⁹

During the period 1941-1943 the Special Unit included a Foreign Agents Registration Section, a Sedition Section, an Organizations and Propaganda Analysis Section, and a Subversives Administration composed of a Nazi and Fascist Section and a Communist Section. The Special Unit initiated such wartime measures as the internment of several thousand enemy aliens, the denaturalization of members of the German-American Bund who had become American citizens, sedition prosecutions, exclusion of publications from the mails, and prosecution of foreign propaganda agents. The Unit received and analyzed reports from the FBI, the State Department, the Office of War Information, and the Office of Strategic Services. Attorney General Biddle abolished the Special Unit in July 1943 and transferred its prosecutive functions to the Criminal Division.¹⁷⁰

In 1943, Attorney General Francis Biddle also decided that the Custodial Detention List had outlived its usefulness and that it was based on faulty assumptions. His directive to the FBI and the Departmental Unit stated:

There is no statutory authorization or other present justification for keeping a "custodial detention" list of citizens. The Department fulfills its proper function by investigating the activities of persons who may have violated the law. It is not aided in this work by classifying persons as to dangerousness.

Apart from these general considerations, it is now clear to me that this classification system is inherently unreliable.

¹⁶⁹ Annual Report of the Attorney General for Fiscal Year 1942, p. 209.

¹⁷⁰ Annual Report of the Attorney General for Fiscal Year 1944, pp. 17, 234-247. From 1940 to 1943, a National Defense Section on the Criminal Division had supervised espionage and Selective Service prosecutions. It was renamed the Internal Security Section in 1943.

The evidence used for the purpose of making the classifications was inadequate; the standards applied to the evidence for the purpose of making the classifications were defective; and finally, the notion that it is possible to make a valid determination as to how dangerous a person is in the abstract and without reference to time, environment, and other relevant circumstances, is impractical, unwise, and dangerous.¹⁷¹

Upon receipt of this order, the FBI Director did not abolish the FBI's list. Instead, he changed its name from Custodial Detention List to Security Index.¹⁷² The new index continued to be composed of individuals "who may be dangerous or potentially dangerous to the public safety or internal security of the United States." Instructions to the field stated:

The fact that the Security Index and Security Index Cards are prepared and maintained should be considered strictly confidential, and should at no time be mentioned or alluded to in investigative reports, or discussed with agencies or individuals outside the Bureau other than duly qualified representatives of the Office of Naval Intelligence and the Military Intelligence Division, and then only on a strictly confidential basis.¹⁷³

The Attorney General and the Justice Department were apparently not informed of the FBI's decision to continue the program for dangerousness classification under a different name.

Moreover, FBI investigations did not conform to Attorney General Biddle's statement that the Justice Department's proper function was investigation of "the activities of persons who may have violated the law." The FBI Director's instructions at the end of the war emphasized that the Bureau investigated activities "of prosecutive or intelligence significance."¹⁷⁴ However, towards the end of the war, the FBI did limit substantially its investigation of individual Communists. Orders to the field requiring investigation of every member of the Communist Political Association (as the Party was named in 1943-1945) were modified in 1944, when field offices were instructed to confine their investigations to "key figures in the national or regional units of the CPA." This directive received "widely varying interpretations" in the field, and many offices "continued to open cases on the basis of membership alone." Further instructions in April 1945 stated that investigations were restricted to "key figures" or "potential key figures" rather than on all members as had been the policy before 1944.

¹⁷¹ Memorandum from Attorney General Biddle to Assistant Attorney General Cox and J. Edgar Hoover, Director, FBI, 7/16/43.

¹⁷² Director Hoover interpreted the Attorney General's order as applying only to the list maintained by the Justice Department's special unit. (Memorandum from J. Edgar Hoover to FBI Field Offices, Re: Dangerousness Classification, 8/14/43.)

¹⁷³ Memorandum from J. Edgar Hoover to FBI Field Offices, Re: Dangerousness Classification, 8/14/43.

¹⁷⁴ Bureau Bulletin No. 55, Series 1945, 9/12/45.

Security Index cards were "prepared only on those individuals of the greatest importance to the Communist movement."¹⁷⁵

At the end of the war the head of the FBI Intelligence Division, D. M. Ladd, recommended to Director Hoover another cutback in operations. This proposal was approved by the FBI Executive Conference; and the State Department and the Justice Department's Criminal Division were advised of the changes.¹⁷⁶ FBI field offices were

. . . instructed to immediately discontinue all general individual security matter investigations in all nationalistic categories with the specific exceptions of cases involving Communists, Russians, individuals whose nationalistic tendencies result from ideological or organizational affiliation with Marxist groups such as the Socialist Workers Party, the Workers Party, the Revolutionary Workers League or other groups of similar character and members of the Nationalist Party of Puerto Rico.

The FBI would open "no new general individual security matter investigations . . . unless they fall within the above specific exceptions." However, the instructions permitted the field to continue investigating "individuals whose activities are of paramount intelligence importance such as individuals closely allied with political or other groups abroad, individuals prominent in organizational activity of significance or individuals falling within similar categories." The instructions added,

It is realized, of course, that in connection with the intelligence jurisdiction of the Bureau it will be necessary to investigate the activities and affiliations of certain individuals considered key figures in nationalistic and related activities or considered leaders of importance in various foreign nationality groups. . . . If in such an instance you have any question as to the advisability or desirability of instituting such an investigation in view of the above instructions, you should, of course, refer the matter to the Bureau for appropriate decision.

This flexibility specifically allowed for the investigation of "fascist individuals of prosecutive or intelligence significance."¹⁷⁷

H. FBI Wartime Operations

A review of FBI intelligence work during World War II would not be complete without brief mention of several other activities. In 1940 President Roosevelt authorized the FBI with the approval of the Attorney General to conduct electronic surveillance of "persons suspected of subversive activities against the Government of the United

¹⁷⁵ In early 1946 there were 10,763 Security Index cards on "communists and members of the Nationalist Party of Puerto Rico." (Memorandum from D. M. Ladd to the Director, *Re: Investigations of Communists*, 2/27/46.)

¹⁷⁶ Memorandum from D. M. Ladd to the Director, 8/30/45.

¹⁷⁷ Bureau Bulletin No. 55, Series 1945, 9/12/45.

States, including suspected spies.”¹⁷⁸ The Federal Communications Commission denied the FBI access before the war to international communications on the grounds that such intercepts violated the Federal Communications Act of 1934.¹⁷⁹ However, military intelligence had secretly formed a Signals Intelligence Service to intercept international radio communications; and Naval intelligence arranged with RCA to get copies of Japanese cable traffic to and from Hawaii, although other cable companies used by the Japanese refused to violate the statute against interception before Pearl Harbor.¹⁸⁰ Moreover, the FBI developed “champering” or surreptitious mail opening techniques, and the practice of surreptitious entry was used by the FBI in intelligence operations.¹⁸¹

Several basic internal memoranda and agreements spelled out the policies governing the relationships between FBI and military intelligence in this period. The military concentrated more heavily on what it perceived as potential threats to the armed forces, while the FBI developed a wider and more sophisticated approach to the gathering of intelligence about “subversive activities” generally. An example of the Army’s policy was an intelligence plan approved in 1936 for the Sixth Corps Area which covered Illinois, Michigan, and Wisconsin. It called for the collection and indexing of the names of several thousand groups, ranging from the American Civil Liberties Union to pacifist student groups alleged to be Communist-dominated. Sources of information were to be the Justice Department, the Treasury Department, the Post Office Department, local state police, and private intelligence bureaus employed by businessmen to keep track of organized labor.¹⁸² The joint FBI-military intelligence plan prepared in 1938 stated that the Office of Naval Intelligence and the Military Intelligence Division (G-2) were concerned with “subversive activities that undermine the loyalty and efficiency” of Army and Navy personnel or civilians involved in military construction and maintenance. Since ONI and MID lacked trained investigators, they relied before the war on the FBI “to conduct investigative activity in strictly civilian matters of a domestic character.” The three agencies exchanged information of interest to one another, both in the field and at headquarters in Washington.¹⁸³

The FBI, ONI, and MID entered into a Delimitation Agreement in June 1940 pursuant to the authority of President Roosevelt’s 1939 di-

¹⁷⁸ Roosevelt to Jackson, 5/21/40. See Report on Warrantless FBI Electronic Surveillance.

¹⁷⁹ Whitehead, *The FBI Story*, p. 225.

¹⁸⁰ David Kahn, *The Codebreakers* (New York: Signet Books, 1973) (pb), pp. 11–16.

¹⁸¹ See Report on CIA and FBI Mail Opening; Memorandum From FBI to Select Committee, 9/23/75.

¹⁸² Sixth Corps Area, Emergency Plan—White, December 1936, AG No. 386, cited in *Military Surveillance*, Hearings before the Senate Subcommittee on Constitutional Rights, 93d Cong., 2d Sess. (1974), p. 174.

¹⁸³ Hoover memorandum, enclosed with letter from Cummings to the President, 10/20/38.

rectives. As revised in February 1942, the Agreement covered "investigation of all activities coming under the categories of espionage, counterespionage, subversion and sabotage." It provided that the FBI would be responsible for all investigations "involving civilians in the United States" and for keeping ONI and MID informed of "important developments . . . including the names of individuals definitely known to be connected with subversive activities."¹⁸⁴ As a result of this Agreement and prior cooperation, military intelligence could compile extensive files on civilians from the information disseminated to it by the FBI. For example, in May 1939 the MID transmitted a request from the Ninth Corps Area on the West Coast for the names and locations of "alien and disloyal American sabotage and espionage organizations," organizations planning to take advantage of war-time hardships to overthrow the government, "citizens opposed to our participation in war and conducting anti-war propaganda," and potential enemy nationals who should be interned in case of an "international emergency."¹⁸⁵

Moreover, despite the FBI-military agreement, the Counter Intelligence Corps of the Army (CIC) gradually undertook wider investigation of civilian "subversive activity" as part of a preventive security program which used voluntary informants and investigators to collect information.¹⁸⁶

The FBI developed a substantial foreign intelligence operation in Latin America during the war. On June 24, 1940, President Roosevelt issued a directive assigning foreign intelligence responsibilities in the Western Hemisphere to a Special Intelligence Service of the FBI. SIS furnished the State Department, the military, and other governmental agencies with intelligence regarding "financial, economic, political and subversive activities detrimental to the security of the United States." SIS assisted several Latin American countries "in training police and organizing anti-espionage and anti-sabotage defenses." When another foreign intelligence agency, the Office of Strategic Services, was established in 1941, it sought to enter the Latin American

¹⁸⁴ Delimitation of Investigative Duties of the Federal Bureau of Investigation, the Office of Naval Intelligence, and the Military Intelligence Division, 2/9/42.

¹⁸⁵ Memorandum from Colonel Churchill, Counter Intelligence Branch, MID, to E. A. Tamm, FBI, 5/16/39, and enclosure, "Subject: Essential Items of Domestic Intelligence Information."

¹⁸⁶ Victor J. Johanson, "The Role of the Army in the Civilian Arena, 1920-1970." U.S. Army Intelligence Command Study (1971).

The scope of wartime Army intelligence has been summarized as follows: "It reported on radical labor groups, communists, Nazi sympathizers, and 'semi-radical' groups concerned with civil liberties and pacifism. The latter, well intentioned but impractical groups as one corps area intelligence officer labeled them, were playing into the hands of the more extreme and realistic radical elements, G-2 still believed that it had a right to investigate 'semi-radicals' because they undermined adherence to the established order by propaganda through newspapers, periodicals, schools, and churches." (Joan M. Jensen, "Military Surveillance of Civilians, 1917-1967," in *Military Intelligence*, 1974 Hearings, pp. 174-175.)

field until President Roosevelt made clear that jurisdiction belonged to SIS.¹⁸⁷

There was constant friction throughout the war between the FBI and the OSS. Despite the President's orders, OSS operatives went to Latin America. Within the United States OSS officers are reported to have secretly entered the Spanish embassy in Washington to photo-

¹⁸⁷ Whitehead, *The FBI Story*, pp. 266, 456. President Roosevelt's Directive of December 1941 on the FBI's SIS read as follows:

"In accordance with previous instructions the Federal Bureau of Investigation has set up a Special Intelligence Service covering the Western Hemisphere, with Agents in Mexico, Central America, South America, the Caribbean, and Canada. Close contact and liaison have been established with the Intelligence officials of these countries.

"In order to have all responsibility centered in the Federal Bureau of Investigation in this field, I hereby approve this arrangement and request the heads of all Government Departments and Agencies concerned to clear directly with the Federal Bureau of Investigation in connection with any intelligence work within the sphere indicated.

"The Director of the Federal Bureau of Investigation is authorized and instructed to convene meetings of the chiefs of the various Intelligence Services operating in the Western Hemisphere and to maintain liaison with Intelligence Agencies operating in the Western Hemisphere." (Confidential Directive to the Heads of the Government Departments and Agencies Concerned, 12/41.)

An agreement between the FBI and military intelligence dealing with "Special Intelligence operations in the Western Hemisphere" cited Presidential "instructions" of June 24, 1940 and January 16, 1942. It described FBI responsibilities as follows:

"The Special Intelligence Service will obtain, primarily through undercover operations supplemented when necessary by open operations, economic, political, industrial, financial and subversive information. The Special Intelligence Service will obtain information concerning movements, organizations, and individuals whose activities are prejudicial to the interests of the United States." (Agreement between MID, ONI and FBI for Coordinating Special Intelligence Operations in the Western Hemisphere, 2/25/42.)

Overlap between FBI and OSS operations is indicated by the following sections from a Joint Chiefs of Staff Directive on the functions of the Office of Strategic Services in 1943:

"3. Secret Intelligence

"a. The Office of Strategic Services is authorized to: (1) Collect secret intelligence in all areas other than the Western Hemisphere by means of espionage and counter-espionage, and evaluate and disseminate such intelligence to authorized agencies. In the Western Hemisphere, bases already established by the Office of Strategic Services in Santiago, Chile, and Buenos Aires, Argentina, may be used as ports of exit and of entry for the purpose of facilitating operations in Europe and Asia, but not for the purpose of conducting operations in South America. The Office of Strategic Services is authorized to have its transient agents from Europe or Asia touching points in the Western Hemisphere transmit information through facilities of the Military Intelligence Service and of the Office of Naval Intelligence.

"4. Research and Analysis

"The Office of Strategic Services will (1) furnish essential intelligence for the planning and execution of approved strategic services' operations; and (2) furnish such intelligence as is requested by agencies of the Joint Chiefs of Staff, the armed services, and other authorized Government agencies. To accomplish the foregoing no geographical restriction is placed on the research and analysis functions of the Office of Strategic Services. . . ." (Emphasis supplied)

(JCS Directive: Functions of the Office of Strategic Services, JCS 155/11/D, 10/27/43.)

graph documents. The FBI Director apparently learned of the operation, but instead of registering a protest he waited until OSS returned a second time and then had FBI cars outside turn on their sirens. When OSS protested to the White House, the President's aides reportedly ordered the embassy entry project turned over to the FBI.¹⁸⁸ A similar incident occurred in 1945 when OSS security officers illegally entered the offices of *Amerasia* magazine in the search for confidential government documents.¹⁸⁹ This illegal entry made it impossible for the Justice Department to prosecute vigorously on the basis of the subsequent FBI investigation, for fear of exposing the "taint" which started the inquiry.

Director Hoover's most serious conflict with OSS involved a weighing of the respective needs of foreign intelligence and internal security. In 1944, the head of OSS, William Donovan, negotiated an agreement with the Soviet Union for an exchange of missions between OSS and the NKVD (the Soviet intelligence and secret police organization). Both the American military representative in Moscow and Ambassador Averill Harriman hoped the exchange would improve Soviet-American relations.¹⁹⁰ When Hoover learned of the plan, he warned Presidential aide Harry Hopkins of the potential danger of espionage if the NKVD were "officially authorized to operate in the United States where quite obviously it will be able to function without any appropriate restraint upon its activities." The Director also advised Attorney General Biddle that secret NKVD agents were already "attempting to obtain highly confidential information concerning War Department secrets." Thus, the exchange of intelligence missions was blocked.¹⁹¹ The FBI was also greatly concerned about the OSS policy of employing American Communists to work with the anti-Nazi underground in Europe, although OSS did dismiss some persons suspected of having links with Soviet intelligence.¹⁹²

The FBI was not withdrawn from the foreign intelligence field until 1946. At the end of the war President Truman abolished the Office of Strategic Services and dispersed its functions to the War and State Departments. The FBI proposed expanding its wartime Western Hemisphere intelligence system to a world-wide basis, with the Army and Navy handling matters of importance to the military. Instead, the President formed a National Intelligence Authority with representatives of the State, War, and Navy Departments to direct the foreign intelligence activities of a Central Intelligence Group. The Central Intelligence Group was authorized to conduct all foreign espionage and counterespionage operations in June 1946. Director Hoover immediately terminated the operations of the FBI's Special Intelligence Service; and in some countries SIS officers destroyed their files rather than transfer them to the new agency.¹⁹³

¹⁸⁸ Downes, *The Scarlet Thread*, pp. 87-97, cited in Smith, *OSS: The Secret History of America's First Central Intelligence Agency*, p. 20.

¹⁸⁹ Smith, *OSS*, p. 277.

¹⁹⁰ Smith, *OSS*, p. 21.

¹⁹¹ Whitehead, *The FBI Story*, pp. 277-278.

¹⁹² Smith, *OSS*, pp. 10-11.

¹⁹³ Whitehead, *The FBI Story*, pp. 279-280; Smith, *OSS*, p. 366.

IV. DOMESTIC INTELLIGENCE IN THE COLD WAR ERA: 1945-1963

If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

—Mr. Justice Oliver Wendell Holmes, Dissenting in *Gitlow v. New York*, 268 U.S. 652 (1925).

The situation with which Justices Holmes and Brandeis were concerned in *Gitlow* was a comparatively isolated event. . . . They were not confronted with any situation comparable to the instant one—the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis.

—Mr. Chief Justice Fred Vinson, Opinion in *Dennis v. United States*, 341 U.S. 494 (1951).

A. The Anti-communist Consensus

During the Cold War period the domestic intelligence activities of the Federal Government were rooted in a firm national consensus regarding the danger to the United States from international Communism. No distinction was made between the threats posed by the Soviet Union and by Communists within this country. At the peak of international tension during the Korean War, the Supreme Court upheld the conviction of Communist Party leaders under the Smith Act for conspiracy to advocate violent overthrow of the government. The conspiratorial nature of the Communist Party and its ideological links with the Soviet Union at a time of stress in Soviet-American relations were cited by the Court as the reasons for its decision.¹⁹⁴

In the same environment, Congress enacted the Internal Security Act of 1950 over President Truman's veto. Its two main provisions were the Subversive Activities Control Act to register Communist and Communist "front" groups and individual Communists, and the Emergency Detention Act for the internment in an emergency of persons who might engage in espionage or sabotage. Congress made findings that the Communist Party was "a disciplined organization" operating in this nation "under Soviet Union control" with the aim of installing "a Soviet style dictatorship."¹⁹⁵ Going even further in 1954, Congress passed the Communist Control Act which provided

¹⁹⁴ The Court held that the grave and probable danger posed by the Communist Party justified this restriction on free speech under the First Amendment: "The formation by petitioners of such a highly organized conspiracy, with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score." [*Dennis v. United States*, 341 U.S. 494, 510-511 (1951).]

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

that the Communist Party was "not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States."¹⁹⁶ These statutes buttressed the intelligence authority of the FBI, even though Congress never enacted legislation directly authorizing FBI domestic intelligence.¹⁹⁷

By the mid-1950s, gradual relaxation of international tensions between the United States and the Soviet Union, coupled with a decline in domestic Communist influence after the Smith Act prosecutions, slowed the momentum for suppression. The Supreme Court reversed Smith Act convictions of second-string Communist leaders in 1957, holding that the government must show advocacy "of action and not merely abstract doctrine."¹⁹⁸ However, as late as 1961, the Court sustained the constitutionality under the First Amendment of the requirement that the Communist Party register with the Subversive Activities Control Board.¹⁹⁹

The degree of consensus in favor of repression of the Communist Party should not be overstated. In contrast to the Congressional enthusiasm, President Truman was concerned about the risks to constitutional government. According to one White House staff member's notes during the debate over the Internal Security Act of 1950, "The President said that the situation . . . was the worst it had been since the Alien and Sedition Laws of 1798, that a lot of people on the Hill should know better but had been stampeded into running with their tails between their legs." Truman said he would veto the bill "regardless of how politically unpopular it was—election year or no election year."²⁰⁰

Throughout the period there was a confusing mixture of secrecy and disclosure, both within the executive branch and between the executive and Congress. On matters such as the Emergency Detention Program, the FBI and the Justice Department joined in disregarding the will of Congress. Unilateral executive action was frequently substituted for

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

¹⁹⁷ In light of the facts now known, the Supreme Court overstated the degree to which Congress had explicitly "charged" the FBI with domestic intelligence responsibilities: "Congress has devised an all-embracing program for resistance to the various forms of totalitarian aggression. . . . It has charged the Federal Bureau of Investigation and the Central Intelligence Agency with responsibility for intelligence concerning Communist seditious activities against our Government, and has denominated such activities as part of a world conspiracy." [*Pennsylvania v. Nelson*, 350 U.S. 497, 504–505 (1956).] This decision held that the Federal Government had preempted state sedition laws, citing President Roosevelt's September 1939 statement on FBI investigations and an address by FBI Director Hoover to state law enforcement officials in August 1940.

¹⁹⁸ *Yates v. United States*, 354 U.S. 298, 325 (1957).

¹⁹⁹ Justice Douglas, who dissented on Fifth Amendment grounds, agreed with the majority on the First Amendment issue:

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

²⁰⁰ File memorandum of S.J. Spingarn, assistant counsel to the President, 7/22/50, Spingarn Papers (Harry S. Truman Library).

legislation, sometimes with the full knowledge and consent of Congress and on other occasions without informing Congress or by advising only a select group of legislators. There is no question that both Congress and the public expected the FBI to gather domestic intelligence about Communists. But the broad scope of FBI investigations, its specific programs for achieving "pure intelligence" and preventive intelligence objectives, and its use of intrusive techniques and disruptive counterintelligence measures against domestic "subversives" were not fully known by anyone outside the Bureau.

B. The Post-War Expansion of FBI Domestic Intelligence

In February 1946, Assistant Director Ladd of the FBI Intelligence Division recommended reconsideration of previous restrictive policies and the institution of a broader program aimed at the Communist Party. Ladd advised Director Hoover:

The Soviet Union is obviously endeavoring to extend its power and influence in every direction and the history of the Communist movement in this country clearly shows that the Communist Party, USA has consistently acted as the instrumentality in support of the foreign policy of the USSR.

The Communist Party has succeeded in gaining control of, or extensively infiltrating a large number of trade unions, many of which operate in industries vital to the national defense....

In the event of a conflict with the Soviet Union, it would not be sufficient to disrupt the normal operations of the Communist Party by apprehending only its leaders or more important figures. Any members of the Party occupied in any industry would be in a position to hamper the efforts of the United States by individual action and undoubtedly the great majority of them would do so. . . .

It is also pointed out that the Russian Government has sent and is sending to this country a number of individuals without proper credentials or travel documents and that in the event of a breach of diplomatic relations there would undoubtedly be a considerable number of these people in the United States.

Therefore, Ladd recommended "re-establishing the original policy of investigating all known members of the Communist Party" and reinstating "the policy of preparing security index cards on all members of the Party."

He observed that "the greatest difficulty" with apprehending all Communists if war broke out was "the necessity of finding legal authorization." While enemy aliens could be interned, the only statutes available for the arrest of citizens were the Smith Act, the rebellion and insurrection statutes, and the seditious conspiracy law. These laws were inadequate because "it might be extremely difficult to prove that members of the Party knew the purpose of the Party to overthrow the Government by force and violence" under the Smith Act and "some overt act would be necessary" before the other statutes could be invoked. Hence, he proposed advising the Attorney General of the FBI's

plans and the need for "a study as to the action which could be taken in the event of an emergency."²⁰¹

Consequently, Director Hoover informed Attorney General Tom C. Clark that the FBI had "found it necessary to intensify its investigation of Communist Party activities and Soviet espionage cases." The FBI was also "taking steps to list all members of the Communist Party and any others who would be dangerous in the event of a break in diplomatic relations with the Soviet Union, or other serious crisis, involving the United States and the U.S.S.R." The FBI Director added that it might be necessary in a crisis "to immediately detain a large number of American citizens." He suggested that a study be made "to determine what legislation is available or should be sought to authorize effective action . . . in the event of a serious emergency."²⁰²

Assistant Director Ladd proposed another FBI program which was not called to the Attorney General's attention. He told the Director, "Apart from the legal problems involved, another difficulty of considerable proportions which would probably be encountered in the event of extensive arrests of Communists would be a flood of propaganda from Leftist and so-called Liberal sources." To counteract this possibility, he made the following recommendation :

It is believed that an effort should be made now to prepare educational material which can be released through available channels so that in the event of an emergency we will have an informed public opinion.

To a large extent the power and influence of the Communist Party in this country, which is out of all proportion to the actual size of the Party, derives from the support which the Party receives from "Liberal" sources and from its connections in the labor unions. The Party earns its support by championing individual causes which are also sponsored by the Liberal elements. It is believed, however, that, in truth, Communism is the most reactionary, intolerant and bigoted force in existence and that it would be possible to assemble educational materials which would incontrovertibly establish the truth.

Therefore, material could be assembled for dissemination to show that Communists would abolish or subjugate labor unions and churches if they came to power. Such material would undermine Communist influence in unions and support for the Party from "persons prominent in religious circles." Additional material could be assembled "indicating the basically Russian nature of the Communist Party in this country." Ladd proposed a two-day training conference for "Communist supervisors" from eighteen or twenty key field offices so that they might have "a complete understanding . . . of the Bureau's policies and desires. . . ." These recommendations were approved by the FBI Executive Conference.²⁰³

²⁰¹ Memorandum from Ladd to Hoover, 2/27/46.

²⁰² Personal and Confidential Memorandum from Hoover to the Attorney General, 3/8/46.

²⁰³ Memorandum from Ladd to Hoover, 2/27/46.

C. The Federal Loyalty-Security Program

In 1947, President Truman established by executive order a Federal Employee Loyalty Program.²⁰⁴ Its basic features were retained in the Federal Employee Security Program authorized by President Eisenhower in Executive Order 10450, which is still in effect with some modifications today.²⁰⁵ The program originated out of serious and well-founded concern that Soviet intelligence was using the Communist Party as an effective vehicle for the recruitment of espionage agents. However, from the outset it swept far beyond this counter-espionage purpose to satisfy more speculative preventive intelligence objectives. The program was designed as much to protect the government from the "subversive" ideas of federal employees as it was to detect potential espionage agents.

The basic outlines of the employee security program were developed in 1946-1947 by a Temporary Commission on Employee Loyalty. Its understanding of the problem was shaped largely by the report of a Canadian Royal Commission in June 1946. The Royal Commission had investigated an extensive Soviet espionage operation in Canada, which was disclosed by a defector from the Soviet Embassy. Its report described how employees of the Canadian government had communicated secret information to Soviet intelligence. The report concluded that "membership in Communist organizations or sympathy towards Communist ideologies was the primary force which caused these agents" to work for Soviet intelligence. It explained that "secret members or adherents of the Communist Party," who were attracted to Communism by its propaganda for social reform, had been developed into espionage agents. The Royal Commission recommended additional security measures "to prevent the infiltration into positions of trust under the Government of persons likely to commit" such acts of espionage.²⁰⁶ The impact of the report in the United States was that "questions of thought and attitudes took on new importance as factors of safety in the eyes of all those concerned with national security."²⁰⁷

A subcommittee of the House Civil Service Committee recommended shortly after release of the Canadian commission report that the President appoint an interdepartmental committee to study employee security practices. FBI Director Hoover suggested to Attorney General Clark whom he should appoint to such a committee "if it is set up."²⁰⁸ When President Truman appointed a Commission on Employee Loyalty in November 1946, the FBI Director's suggested Justice Department representative was made chairman, and the other

²⁰⁴ Executive Order 9835, 12 Fed. Reg. 1935, 3/21/47.

²⁰⁵ Executive Order 10450, 18 Fed. Reg. 2489 (1953).

²⁰⁶ *Report of the Royal Commission*, 6/27/46, pp. 82-83, 686-689. The report described how "a number of young Canadians, public servants and others who begin with a desire to advance causes which they consider worthy, have been induced into joining study groups of the Communist Party. They are persuaded to keep this adherence secret. They have then been led step by step along the ingenious psychological development course . . . until under the influence of sophisticated and unscrupulous leaders they have been persuaded to engage in illegal activities directed against the safety and interests of their own society."

²⁰⁷ Eleanor Bontecou, *The Federal Loyalty-Security Program* (Ithaca: Cornell University Press, 1953), p. 22.

²⁰⁸ Memorandum from Hoover to Clark, 7/25/46 (Harry S. Truman Library).

members represented the Departments of State, War, Navy, and Treasury, and the Civil Service Commission.

The President's Commission had less success than its Canadian counterpart in discovering the dimensions of the problem in the United States. FBI Assistant Director D. M. Ladd told the Commission that there were "a substantial number of disloyal persons in government service" and that the Communist Party "had established a separate group for infiltration of the government." He also called the Commission's attention to "a publication of the U.S. Chamber of Commerce" which had expressed the opinion "that Communists in the government have reached a serious stage." The War Department representative on the Commission then stated that it "should have something more than reports from the Chamber of Commerce, FBI, and Congress, to determine the size of the problem." However, when Assistant Director Ladd was asked later "for the approximate number of names in subversive files . . . and whether the Bureau had a file of names of persons who could be picked up in the event of a war with Russia," the FBI official "declined to answer because this matter was not within the scope of the Commission." The meeting ended with "general agreement that Mr. Hoover should be asked to appear. . . ." ²⁰⁹ Thereafter, the Commission prepared a lengthy list of questions for the FBI; but instead of Director Hoover appearing, Attorney General Clark testified in a session where no minutes were taken.

The Attorney General supplemented his "informal" appearance with a memorandum which stated that the number of subversive persons in the government had "not yet reached serious proportions," but that the possibility of "even one disloyal person" entering government service constituted a "serious threat." ²¹⁰ Thus, the President's Commission accepted its foreclosure from conducting any serious evaluation of FBI intelligence operations or FBI intelligence data on the extent of the danger. One Commission staff member observed that these were felt to be "matters exclusively for the consideration of the counterintelligence agencies." ²¹¹

It is impossible to determine fully the effect of the autonomy of FBI counterespionage on the government's ability to formulate appropriate security policies. Nevertheless, this record suggests that executive officials were forced to make decisions without full knowledge. They had to depend on the FBI's estimate of the problem, rather than being able to make their own assessment on the basis of complete information. With respect to the employee loyalty program in 1947, the FBI's view prevailed on three crucial issues—the broad definition of the threat of "subversive influence," the secrecy of FBI informants and electronic surveillance, and the exclusive power of the FBI to investigate allegations of disloyalty.

Although Director Hoover did not testify before the President's Commission, he submitted a general memorandum on the types of

²⁰⁹ Minutes of the President's Temporary Commission on Employee Loyalty, 1/17/46. (Harry S. Truman Library.)

²¹⁰ Memorandum from Attorney General Clark to Mr. Vanech, Chairman, President's Temporary Commission on Employee Loyalty, 2/14/47. (Harry S. Truman Library.)

²¹¹ Memorandum from S. J. Spingarn to Mr. Foley, 1/19/47. (Harry S. Truman Library.)

activities of "subversive or disloyal persons" in government service which would "constitute a threat" to the nation's security. The danger as he saw it was not limited to espionage or the recruitment of others for espionage. It extended to "influencing" the formation and execution of government policies "so that those policies will either favor the foreign country of their ideological choice or will weaken the United States Government domestically or abroad to the ultimate advantage of the . . . foreign power." Consequently, he urged that attention be given to the association of government employees with "front" organizations. These included not only established "fronts" but also "temporary organizations, 'spontaneous' campaigns, and pressure movements so frequently used by subversive groups." If a disloyal employee was affiliated with such "fronts", he could be expected to influence government policy in the direction taken by the group.²¹²

The President's Commission accepted Director Hoover's position on the threat, as well as the view endorsed later by a Presidential Commission on Civil Rights that there also was a danger from "those who would subvert our democracy by . . . destroying the civil rights of some groups."²¹³ Thus, the standards for determining employee loyalty included a criterion based on membership in or association with groups designated on an "Attorney General's list" as:

totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.²¹⁴

The executive orders provided a substantive legal basis for the FBI's investigation of allegedly "subversive" organizations which might fall within these categories.²¹⁵

The FBI also succeeded in protecting the secrecy of its informants and electronic surveillance. The Commission initially recommended that the FBI be required to make available to department heads upon request "all investigative material and information available to the investigative agency on any employee of the requesting department." Director Hoover protested that the FBI had "steadfastly refused to reveal the identities of its confidential informants." He advised the Attorney General that the proposal "would also apparently contemplate the revealing of our techniques, including among others, technical surveillances which are authorized by you." The Director assured the Attorney General that the FBI would make "information available to other agencies to evaluate the reliability of our infor-

²¹² Memorandum from the FBI Director to the President's Temporary Commission, 1/3/47. (Harry S. Truman Library.)

²¹³ President's Commission on Civil Rights, *To Secure These Rights* (1947), p. 52.

²¹⁴ Executive Order 9835, part I, section 2; cf. Executive Order 10450, section 8(a) (5).

²¹⁵ In 1960, for instance, the Justice Department advised the FBI to continue investigating an organization not on the Attorney General's list in order to secure "additional information . . . relative to the criteria" of the employee security order. (Memorandum from Assistant Attorney General Yeagley to Hoover, 5/17/60.)

nants" without divulging their identities.²¹⁶ The Commission revised its report to satisfy the FBI.²¹⁷

Director Hoover was still concerned that the Commission (and the President's executive order) did not give the FBI exclusive power to investigate allegedly subversive employees.²¹⁸ He went so far as to threaten "to withdraw from this field of investigation rather than to engage in a tug of war with the Civil Service Commission."²¹⁹ According to notes of presidential aide George Elsey, President Truman felt "very strongly anti-FBI" on the issue and wanted "to be sure and hold FBI down, afraid of 'Gestapo'."²²⁰ Presidential aide Clark Clifford reviewed the situation and came down on the side of the FBI as "better qualified" than the Civil Service Commission.²²¹ Nevertheless, the President insisted on a compromise which gave Civil Service "discretion" to call on the FBI "if it wishes."²²² The FBI Director objected to this "confusion" as to the FBI's jurisdiction.²²³

Justice Department officials warned the White House that Congress would "find flaws" with this arrangement; and President Truman noted "J. Edgar will in all probability get this backward looking Congress to give him what he wants. It's dangerous."²²⁴ President Truman was correct. The administration's budget request of \$16 million for Civil Service and \$8.7 million for the FBI to conduct loyalty investigations was revised in Congress to allocate \$7.4 million to the FBI and only \$3 million to the Civil Service Commission.²²⁵ The issue was finally resolved to the FBI's satisfaction. President Truman issued a statement to all department heads declaring that there were "to be

²¹⁶ Memorandum from J. Edgar Hoover to Attorney General Clark, Re: President's Temporary Commission on Employee Loyalty, 1/29/47. (Harry S. Truman Library.)

²¹⁷ *Report of the President's Temporary Commission on Employee Loyalty*, 2/20/47, pp. 31-32.

²¹⁸ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/19/47. (Harry S. Truman Library.)

²¹⁹ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/31/47. (Harry S. Truman Library.)

²²⁰ Memorandum of George M. Elsey, 5/2/47. (Harry S. Truman.)

²²¹ Clifford advised, "Inasmuch as 'undercover' and 'infiltration' tactics may become necessary, duplication will be costly and would jeopardize the success of both FBI and Civil Service." He added that the FBI "has a highly trained, efficiently organized corps of investigators. There are approximately 4,800 FBI agents now, 1,600 of whom are investigating Atomic Energy Commission employees. FBI expects to begin releasing these 1,600 shortly. . . . Civil Service, on the other hand, has fewer than 100 investigators, none of whom is especially trained in the techniques required in loyalty investigations. . . . It is precisely because of the dangers that I believe the FBI is a better agency than Civil Service to conduct loyalty investigations for new employees; the more highly trained, organized and administered an agency is, the higher should be its standards." (Memorandum from Clark Clifford to the President, 5/7/47.) (Harry S. Truman Library.)

²²² Memorandum from Clark Clifford to the President, 5/9/47. Letter from President Truman to H. B. Mitchell, United States Civil Service Commission, 5/9/47. (Harry S. Truman Library.)

²²³ Memorandum from J. Edgar Hoover to Attorney General Clark, Re: Executive Order 9835, 5/12/47. (Harry S. Truman Library.)

²²⁴ Memorandum from Clark Clifford to the President, 5/23/47. (Harry S. Truman Library.)

²²⁵ Bontecou, *The Federal Loyalty-Security Program*, pp. 33-34.

no exceptions" to the general rule that the FBI would make all loyalty investigations.²²⁶

The rationale for investigating groups under the authority of the loyalty-security program changed over the years.

Such investigations supplied a body of intelligence data against which to check the names of prospective federal employees.²²⁷ By the mid-1950s, the Communist Party and other groups fitting the standards for the Attorney General's list were no longer extensively used by Soviet intelligence for espionage recruitment.²²⁸ Therefore, FBI investigations of such groups became—in combination with the "name check" of Bureau files—almost entirely a means for monitoring the political background of prospective federal employees. They also came to serve a pure intelligence function of keeping the Attorney General informed of "subversive" influence and infiltration.²²⁹

No organizations were formally added to the Attorney General's list after 1955. Groups designated prior to that time included numerous defunct German and Japanese societies, Communist and Communist "front" organizations, the Socialist Workers Party, the Nationalist Party of Puerto Rico, and several Ku Klux Klan organizations.²³⁰ However, the FBI's "name check" reports on prospective employees were never limited to information about groups on the list. The list's criteria were independent standards for evaluating an employee's background, regardless of whether a group was formally designated by the Attorney General.²³¹

After 1955, a substitute for designation on the Attorney General's list was the FBI's "characterization" or "thumb-nail sketch" of a group. Thus, if a "name check" uncovered information about a prospective employee's association with a group which *might* fall under the categories for the list, the FBI would report the data and attach a "characterization" of the organization setting forth pertinent facts relating to the standards for the list.²³² This procedure made it unnecessary for the Attorney General to add groups to the formal list, since FBI "characterizations" served the same purpose within the executive branch.

²²⁶ Memorandum from J. R. Steelman, Assistant to the President, to the Attorney General, 11/3/47.

²²⁷ FBI "name checks" are authorized as one of the "national agencies checks" required by Executive Order 10450, section 3(a).

²²⁸ FBI monograph, "The Menace of Communism in the United States Today" (1955), pp. iv-v; testimony of former FBI liaison with CIA, 9/22/75, p. 32.

²²⁹ The FBI official in charge of the Internal Security Section of the Intelligence Division in the fifties and early sixties testified that the primary purpose of FBI investigations of Communist "infiltration" was to advise the Attorney General so that he could determine whether a group should go on the "Attorney General's list", and that investigations for this purpose continued after the Attorney General ceased adding names of groups to the list. (F. J. Baumgardner testimony, 10/8/75, pp. 48, 49.)

²³⁰ Memoranda from the Attorney General to Heads of Departments and Agencies, 4/29/53; 7/15/53; 9/28/53; 1/22/54.

²³¹ Executive Order 10450, section 8(a) (5).

²³² The FBI's field offices were supplied with such "thumb-nail sketches" or characterizations to supplement the Attorney General's list and the reports of the House Committee on Un-American Activities. e.g., SAC Letter No. 60-34, 7/12/60. (The SAC Letter is a formal regular communication from the FBI Director to all Bureau field offices.)

D. The Emergency Detention Program, 1946-1950

The development of plans during this period for emergency detention of dangerous persons and for intelligence about such persons took place entirely within the executive branch. In contrast to the employee security program, these plans were not only withheld from the public and Congress but were framed in terms which disregarded the legislation enacted by Congress. Director Hoover's decision to ignore Attorney General Biddle's 1943 directive abolishing the wartime Custodial Detention List had been an example of the inability of the Attorney General to control domestic intelligence operations. In the 1950s the FBI and the Justice Department collaborated in a decision to disregard the attempt by Congress to provide statutory direction for the Emergency Detention Program. This is not to say that the Justice Department itself was fully aware of the FBI's activities in this area. The FBI kept secret from the Department its most sweeping list of potentially dangerous persons, first called the "Communist Index" and later renamed the "Reserve Index," as well as its targeting programs for intensive investigation of "key figures" and "top functionaries" and its own detention priorities labeled "Detcom" and "Comsab".

Director Hoover advised Attorney General Clark in March 1946 of the existence of its Security Index, although he did not say that it had existed since Attorney General Biddle's 1943 directive. The Index listed persons "who would be dangerous or potentially dangerous in the event of . . . serious crisis, involving the United States and the U.S.S.R." ²³³ The Justice Department then prepared a memorandum concluding that the available options for action in an emergency were a declaration of martial law or suspension of the privilege of the writ of habeas corpus. ²³⁴ The FBI Director recommended going to Congress to secure "statutory backing for detention." ²³⁵

After a conference between Department and FBI officials, the FBI submitted a lengthy analysis of its standards for classifying potentially dangerous persons. The memorandum gave specific examples of "Communists and Communist sympathizers whose names appear in the Bureau's Security Index." However, the FBI did not provide any specific examples in the category "Espionage Suspects and Government Employees in Communist Underground." Assistant Director Ladd advised Director Hoover of the reason for excluding any such examples:

The Bureau has identified over 100 persons who are logically suspected of being in the Government Communist Underground; however, at the present time, the Bureau does not have evidence, whether admissible or otherwise, reflecting actual membership in the Communist Party. It is believed that for security reasons, examples of these logical suspects should not be set forth at this time.

²³³ Memorandum from J. Edgar Hoover to Attorney General Clark, 3/8/46.

²³⁴ Memorandum from T. L. Caudle, Assistant Attorney General, to Attorney General Clark, Re: Detention of Communists in the event of sudden difficulty with Russia, 7/11/46.

²³⁵ Memorandum from J. Edgar Hoover to the Attorney General, 8/5/46.

The Director noted, "I most certainly agree. There are too many leaks."²³⁶

The FBI memorandum explained that potentially dangerous persons included not only "every convinced and dependable member of the Communist Party," but also other individuals "who regard the Soviet Union as the exponent and champion of a superior way of life." The FBI listed:

known members of the Communist Party, USA; strongly suspected members of the Communist Party, USA; and persons who have given evidence through their activities, utterances and affiliations of their adherence to the aims and objectives of the Party and the Soviet Union.

The FBI provided a breakdown of the "fields of endeavor not directly identified with the Communist Party" where Communists on the Security Index were "promoting Communist Party objectives and principles." These included:

A. Organized Labor.—The Bureau has followed closely Communist infiltration of labor and is continually endeavoring to identify Communists in the labor movement.

B. Communist "Front" Organizations.—There are numerous of these organizations which not only serve as political and pressure instruments, but also as media for recruiting and raising funds for the Communist Party.

C. Exploitation of Racial Groups and Conditions.—In many areas of the country where racial tension has been prevalent, conspiratorial activity on the part of Communists could very easily instigate race riots.

D. Nationality Groups.—Communists have worked actively and intensely among various foreign language groups, endeavoring to control their political thinking and attempting to utilize them as pressure and propaganda media.

E. Youth.—[The leading "front"] organization could be effectively used, in the event of war with the Soviet Union, to urge draft evasion, "conscientious" objection and insubordination in the armed forces.

F. Propaganda Activities.—Communists have utilized several organizations in the United States to propagandize [for] the Soviet Union.

G. Political Work.—The Communists look upon obtaining informers in the major political parties or in other political bodies . . . as an excellent means of obtaining advice, political appointments, and other political influence.

H. Education and Cultural Work.—In the field of cultural work the Communist penetration of the motion picture industry is one of the best examples.

I. Science and Research.—In this field it is well established that the Communists and the Soviets are extremely anxious and desirous of obtaining the secret of the atomic bomb and

²³⁶ Memorandum from D. M. Ladd to the Director, 9/5/46.

other highly confidential and highly important scientific developments. Furthermore, existing scientific groups have been infiltrated by Communists with the view in mind of propagandizing the relinquishment of the secret of the atomic bomb by the United States. . . .

In addition, the FBI gave examples from the Security Index of "persons holding important positions who have shown sympathy for Communist objectives and policies" and therefore "might possibly serve the Community Party and/or the Soviet Union should war break out." Finally, the FBI pointed out that the Security Index included "Trottskyite Communists or members of such non-Stalinist groups as the Socialist Workers Party. . . ." Although such groups were "opposed to the Stalinist-Communist rule in the Soviet Union," many of them looked upon the Soviet Union "as the center for world revolution." Thus it was "entirely possible" in the event of a war that these groups "would engage in activities aimed at our national security and at hampering of our war effort."²³⁷

The Justice Department raised no objection to the FBI's standards, although it ignored the FBI Director's idea for legislation.

The FBI proceeded under this authority until late 1947, when Director Hoover objected to the Justice Department's tentative plans (based on suspension of habeas corpus) and again stressed the need for "appropriate legislation."²³⁸ In response, a "blind memorandum" was prepared in the Justice Department. As summarized and quoted by the FBI, it stated, "The present is no time to seek legislation. To ask for it would only bring on a loud and acrimonious discussion. . . ." In an emergency the President could issue a proclamation suspending the writ of habeas corpus which Congress could ratify later if it "is in a position to assemble—and if it is not, then the situation has obviously become so desperate that the President's actions will not be questioned." What was needed was "sufficient courage to withstand the courts . . . if they should act" and "a campaign of education directed to the proposition that Communism is dangerous." This educational purpose would be served by prosecuting Communist leaders under the Smith Act.²³⁹

In view of the Justice Department's position, the FBI Intelligence Division recommended reviewing the Security Index to keep it up-to-date, developing a "plan of action" for the apprehension of dangerous persons, and studying more carefully the information on persons most likely to be "saboteurs and espionage agents." The Intelligence Division also agreed with the Justice Department on the need to prosecute Communist leaders under the Smith Act so as to "obtain a Federal adjudication establishing the Communist Party as illegal for advocating the overthrow of government by force and violence."

. . . it is felt that as a broad but an immediate objective of the Bureau that it work earnestly to urge prosecution of important officials and functionaries of the Communist Party, particularly under Sections 10-13 of Title 18, United States

²³⁷ Memorandum from the FBI Director to the Attorney General, 9/5/46.

²³⁸ Memorandum from J. Edgar Hoover to Attorney General Clark, 10/20/47.

²³⁹ Memorandum from D. M. Ladd to J. Edgar Hoover, 1/22/48.

Code. Prosecution of Party officials and responsible functionaries would, in turn, result in a judicial precedent being set that the Communist Party as an organization is illegal; that it advocates the overthrow of the government by force and violence; and finally that the patriotism of Communists is not directed towards the United States but towards the Soviet Union and world Communism. Once this precedent is set then individual members and close adherents or sympathizers can be readily dealt with as substantive violators. This in turn has an important bearing on the Bureau's position should there be no legislative or administrative authority available at the time of the outbreak of hostilities which would permit the immediate apprehension of both aliens and citizens of the dangerous category.

Finally, the Intelligence Division proposed that Bureau inspectors review "the investigation of Communist activities in all field offices," since Bureau headquarters officials had "no way of knowing the contents of field office files concerning all potentially dangerous persons." The inspectors would make sure that the field was "following those dangerous and potentially dangerous persons as closely as possible."²⁴⁰

Thereafter, FBI Director Hoover again advised the Attorney General that he disagreed with the Justice Department's position against legislation, suggesting that it would "be adopted readily by Congress." Hoover also observed that the Attorney General "might wish to consider the prosecution well in advance of such an emergency of the Communist Party under [the Smith Act] . . . thereby obtaining judicial recognition of the aims and purposes of the Communist Party."²⁴¹

Instructions were issued to FBI field offices setting priorities for an intensified investigation of "Security Index subjects" and preparation of "a Communist Index (as distinguished from the Security Index) which will contain information on all known Communist Party members." Procedures for handling Security Index data were revised, and the field offices were asked for suggestions on how best to implement a detention program.²⁴²

Numerous draft proclamations and orders were prepared by the Justice Department and compiled in an "Attorney General's Portfolio" for use in an emergency. The FBI began using IBM punch cards for the storage and retrieval of its Security Index data.²⁴³ Lists of the names of persons on the Security Index were forwarded periodically to the Internal Security Section of the Justice Department's Criminal Division, beginning in October 1948.²⁴⁴

The Emergency Detention Plan finally took shape in 1949, pursuant to an agreement executed on February 11 by Secretary of Defense James Forrestal and Attorney General Clark. The purpose of the

²⁴⁰ Memorandum from Ladd to Hoover, 1/22/48.

²⁴¹ Memorandum from FBI Director to the Attorney General, 1/27/48. The Justice Department secured Smith Act indictments against the Party's national leaders later in 1948, and they were convicted in 1949.

²⁴² Memorandum from FBI Headquarters to all SACs, 3/15/48, SAC Letter No. 57, Series 1948, 4/10/48.

²⁴³ Memorandum from F. J. Baumgardner to D. M. Ladd, 6/28/49.

²⁴⁴ Memorandum from H. B. Fletcher to D. M. Ladd, 8/26/49.

agreement was "to provide maximum security with respect to the apprehension and detention of those persons who, in the event of war or other occasion upon which Presidential Proclamations, Executive Orders, and applicable statutes come into operation, are to be taken into custody and held pending further disposition." The agreement provided "that the entire program of apprehending and detaining civilians in such an emergency is the responsibility of the Attorney General. . . ." It also stated that the FBI was "designated by the Attorney General as the agency charged with the complete responsibility of investigating and apprehending the persons to be detained."²⁴⁵

The Assistant to the Attorney General asked the FBI in September 1949 for "the standards upon which decisions are based to incorporate names in the Security Index list or to remove them."²⁴⁶ Director Hoover replied,

The basic qualification required for inclusion of an individual in the security index is that such an individual is potentially dangerous or would be dangerous in the event of an emergency to the internal security of this country. The elements going into measuring an individual's potential dangerousness or dangerousness in the event of an emergency consist of two broad elements: (1) membership, affiliation or activity indicating sympathy with the principal tenets of the Communist Party or similar ideological groups and the Nationalist Party of Puerto Rico; and (2) a showing of one or more of the following:

- a. activity in the organization, promoting its aims and purposes;
- b. training in the organization, indicating a knowledge of its ultimate aims and purposes;
- c. a position in a mass organization of some kind where his affiliation or sympathy as set forth in element one will determine the destiny of the mass organization;
- d. employment or connection with an industry or facility vital to the national defense, health and welfare;
- e. possessing a potential for committing espionage or sabotage.

No individual was included on the Index until he had been "investigated by the Bureau"; and deletions were made "when an individual no longer fits the standards for inclusion. . . ." ²⁴⁷

These general standards represented several different programs developed within the FBI in connection with the Security Index. Field offices were instructed to give special attention to "top functionaries" and "key figures" in the Communist Party. In addition, a "Comsab program" concentrated on Communists with a potential for sabo-

²⁴⁵ *Joint Agreement of the Secretary of Defense and the Attorney General Respecting the Temporary Detention of Dangerous Persons in Event of Emergency*, 2/11/49, revised by Attorney General Herbert Brownell and Deputy Secretary of Defense R. B. Robertson, Jr., 9/6/56.

²⁴⁶ Memorandum from Peyton Ford to Hoover, Personal and Confidential, 9/13/49.

²⁴⁷ Memorandum from the FBI Director to the Assistant to the Attorney General, 9/16/49.

tage "either because of their training or because of their position relative to vital or strategic installations or industry." Finally, under the plans for the detention of Communists, the FBI had a "Detcom program" which was concerned with the individuals "to be given priority arrest in the event of . . . an emergency." Priority under the Detcom program was given to "all top functionaries, all key figures, all individuals tabbed under the Comsab program," and "any other individual who, though he does not fall in the above groups, should be given priority arrest because of some peculiar circumstances."²⁴⁸

If an individual did not meet the standards for the Security Index because investigation failed "to reflect sufficient disloyal information," he was considered for the Communist Index which was "a comprehensive compilation of individuals of interest to the internal security." Names for both the Communist Index and the Security Index would be produced by "loyalty of government employee investigations" and by "espionage and foreign intelligence investigations," as well as by "all other types of investigations." The reports of any FBI investigation of persons on the Security or Communist Index, regardless of the subject, were to be sent to the Security Index Desk at FBI headquarters. Finally, FBI personnel were instructed that "no mention must be made in any investigative report relating to the classifications of top functionaries and key figures, nor to the Detcom or Comsab Programs, nor to the Security Index or the Communist Index. These investigative procedures and administrative aids are confidential and should not be known to any outside agency."²⁴⁹ A review of FBI documents indicates that only the Security Index was made known to Justice Department officials.

In July 1950, when the Congress and the President were considering the Emergency Detention Act, Attorney General McGrath asked the FBI for an analysis of the Security Index.²⁵⁰ The FBI provided the following breakdown of the statistics by "Nationalistic Tendency or Organizational Affiliation:"

Communist Party, USA.....	11, 491
Socialist Workers Party.....	308
Independent Socialist League.....	45
Nationalist Party of Puerto Rico.....	77
Independent Labor League.....	2
Revolutionary Workers League.....	1
Proletarian Party of America.....	6
Total	11, 930

Of these, 9,258 were native born citizens, 2,281 were naturalized citizens, 296 were aliens, and 95 were of unknown nationality.²⁵¹

By early 1951, the total had increased to 13,901 names as the result of an FBI decision after the outbreak of the Korean War to broaden "the basis for inclusion in the Security Index to include all active members of the Communist Party." The size of the Communist Index, as contrasted with the Security Index, was indicated by the figures from the New York field office which had 2,897 names on the Se-

²⁴⁸ SAC Letter No. 97, Series 1949, 10/19/49.

²⁴⁹ SAC Letter No. 97, Series 1949, 10/19/49.

²⁵⁰ Memorandum from the Attorney General to the FBI Director, 7/25/50.

²⁵¹ Memorandum from the FBI Director to the Attorney General, 7/27/50.

curity Index and 42,000 names on the Communist Index. Since the Communist Index was based on "allegations of Communist activity," it was "a measure of investigations performed." If this proportion applied "throughout the field," as the FBI memorandum suggested, then the Communist Indexes in the field offices contained over 200,000 names.²⁵²

E. The Emergency Detention Act of 1950 and FBI/Justice Department Noncompliance

There is no indication that Congress was advised of these plans or the role of the Smith Act prosecution in them. When Congress was considering the Emergency Detention Act of 1950, President Truman's staff advised him that he could safely veto the measure in view of the government's power to use the Smith Act in an emergency. One of his aides said the Justice Department could "arrest immediately all principal national and local leaders of the Communist Party in the United States under the Smith Act, and bail could be set sufficiently high so that they could not be sprung."²⁵³

The Emergency Detention Act of 1950 set forth specific standards for the apprehension of persons in the event of an "internal security emergency" declared by the President. The basic criterion was whether there was "reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage and sabotage." The statute provided for hearings after arrest before presidentially appointed hearing officers, review by an administrative board, and appeal to the U.S. Court of Appeals.²⁵⁴ Nevertheless, the FBI and the Justice Department made no changes in either the Security Index criteria or the previous detention plans to bring them into conformity with the statute.

Shortly after passage of the Detention Act, according to an FBI memorandum, Attorney General J. Howard McGrath advised Director Hoover to disregard it and "proceed with the program as previously outlined." Justice Department officials were quoted as recognizing that the act was "undoubtedly in conflict with the Department's proposed detention program," but that the act's provisions were "unworkable."²⁵⁵

The Justice Department also advised the FBI that it did not have adequate personnel to review the placement of names on the Security Index and that in an emergency "all persons now or hereafter included by the Bureau on the Security Index should be considered subjects for immediate apprehension, thus resolving any possible doubtful cases in favor of the Government in the interests of the national security."²⁵⁶

The FBI continued to furnish Security Index names to the Justice Department, with one exception. The names of certain espionage subjects were not made available to the Department "for security rea-

²⁵² Memorandum from D. M. Ladd to the FBI Director, 1/12/51.

²⁵³ Memorandum of S. J. Spingarn, 7/21/50. A note on this memorandum indicates that a copy was given to the President by his counsel, Charles Murphy.

²⁵⁴ Title II, Internal Security Act of 1950, 64 Stat. 987, 50 U.S.C. 811-826.

²⁵⁵ Memorandum from A. H. Belmont to D. M. Ladd, 10/15/52.

²⁵⁶ Memorandum from Peyton Ford, Deputy Attorney General, to the FBI Director, 12/7/50.

sons." An internal FBI memorandum stated that apprehension of such persons in an emergency "would destroy chances of penetration and control of an operating Soviet espionage parallel or would destroy known chances of penetration and control of a 'sleeper' parallel."²⁵⁷ These counterespionage investigations were supervised by the Espionage Section of the FBI Intelligence Division, while all other domestic intelligence investigations under the Security Index program and related programs were supervised in the Division's Internal Security Section.²⁵⁸ There was also a category for "prominent persons" who were given special review since their apprehension "might cause the Bureau some embarrassment because these individuals would hold themselves out as martyrs" and thus "result in considerable adverse publicity and criticism of the FBI."²⁵⁹

By May 1951, the Security Index had grown to 15,390 names, of which over 14,000 were Communists. FBI officials decided to urge the Justice Department to pass on each name (except espionage subjects) so that, among other reasons, "the Bureau would not be open to an allegation of using Police State tactics."²⁶⁰ FBI Intelligence Division officials discussed the matter with officials of the Justice Department's Criminal Division, who advised that Criminal Division attorneys would conduct the reviews under the supervision of a former FBI agent and four other Division officials. FBI Director Hoover noted after this meeting, "What do our files show on these five? Can't we get names of the attorneys making the reviews?"²⁶¹

The Justice Department also undertook to revise the Security Index standards "so as to conform more closely" to the provisions of the Emergency Detention Act of 1950.²⁶² An FBI study of the Department's standards concluded that they needed further revision so that the FBI could continue to list the persons it believed to be dangerous. There was a "wide disparity" between the FBI standards and Departmental criteria.²⁶³

The FBI analysis of this problem disclosed how little the Justice Department knew about the scope and purposes of FBI domestic intelligence operations. In at least three areas of vital significance to the Bureau, the Departmental standards showed almost total ignorance of FBI intelligence programs. This lack of knowledge went far beyond the Department's unawareness of the "top functionaries," "key figures," "Comsab," and "Communist Index" programs deliberately kept secret by the FBI. The Justice Department failed to take account of the FBI programs aimed at "Marxist-type or other revolutionary groups" not controlled by the Communist Party, at Communist sympathizers who had not positively "discontinued such associations," and at subjects of "Nationalistic Tendency" or foreign

²⁵⁷ Memorandum from A. H. Belmont to D. M. Ladd, 4/17/51.

²⁵⁸ Memorandum from A. H. Belmont to All Supervisors in the Espionage and Internal Security Sections, 12/5/50.

²⁵⁹ Memorandum from Mr. Clegg to Mr. Tolson, 2/7/51.

²⁶⁰ Memorandum from Mr. Clegg to Mr. Tolson, 5/10/51.

²⁶¹ Memorandum from A. H. Belmont to Mr. Ladd, 5/31/51.

²⁶² Memorandum from Deputy Attorney General Peyton Ford to the FBI Director, 6/1/51.

²⁶³ Memorandum from F. J. Baumgardner to A. H. Belmont, 6/8/51.

intelligence investigations.²⁶⁴ The FBI informed the Justice Department of these disparities. Among the examples of Security Index subjects not covered by the Departmental standards were the following:

Individuals whose party membership or affiliation in a revolutionary group has not been proven, but who have committed past acts of violence during strikes, riots, or demonstrations, and, because of anarchist or revolutionary beliefs, are likely to seize upon the opportunity presented by a national emergency to endanger the public safety and welfare.

A number of individuals are now carried on the Security Index who were placed thereon several years ago . . . yet concerning whom we have no developed current activity of a subversive nature. These individuals have not been removed from the Security Index in the absence of positive indication of disaffection or cessation of the activities which caused them to be placed on the index. Bearing in mind the instructions of the Communist Party relative to "sleepers" and underground activities . . . we have no assurance that these individuals are not a continued potential threat . . . and, indeed, have strong reason to believe to the contrary.

Individuals . . . whose association and activities are closely affiliated with individuals or organizations having a definite foreign interest or connection contrary and detrimental to the interests of the United States. Examples are certain employees and associates of Amtorg, Tass News Agency, United Nations, foreign legations, etc.

The FBI Director asked for "a prompt resolution of the problem" posed by the disparity between FBI and Justice Department criteria.²⁶⁵

It took over a year for the Justice Department to decide that the proposed standards, based on the act of 1950, would be set aside in view of the FBI's desires. In discussions between FBI and Justice Department officials in 1952, the Department officials made clear that they intended to proceed under pre-1950 plans in the event of an emergency. Criminal Division official Raymond Whearty told FBI intelligence executives in March 1952 that the FBI should operate under the "Attorney General's Portfolio" rather than the 1950 act because of the latter's "unworkability."²⁶⁶ The standards in the "portfolio" used by Justice Department attorneys in reviewing Security Index names still differed from the FBI's criteria. Director Hoover noted, "I can't understand the Department having one set of standards and approving a different set for FBI."²⁶⁷

²⁶⁴ Memorandum from F. J. Baumgardner to A. H. Belmont, 6/8/51.

²⁶⁵ Memorandum from the FBI Director to Deputy Attorney General Peyton Ford, 6/28/51.

²⁶⁶ Memorandum from A. H. Belmont to Mr. Ladd, 3/19/52.

²⁶⁷ Note on memorandum from A. H. Belmont to D. M. Ladd, 7/10/52.

After meeting with Deputy Attorney General Ross Malone, an Intelligence Division official summarized the differences between the 1950 Act and the "Portfolio":

There are contained among the 19,577 individuals listed in our Security Index the names of many persons whom we consider dangerous but who *do not fall within the standards* set forth in the Internal Security Act of 1950. . . .

The fact that the Internal Security Act of 1950 does not provide for suspension of the Writ of Habeas Corpus would prove a definite hindrance to the execution of necessary measures. . . .

The lack of provision in the act for measures to be taken in the event of threatened invasion precludes the President from taking action against potentially dangerous persons prior to an actual invasion, insurrection, or declaration of war.

The provision in the Act for apprehension of subjects by individual warrants is a factor which would be a detrimental, time-consuming procedure as compared to the use of *one master warrant of arrest* for all subjects apprehended as provided in the Department's Portfolio.

The apparent lack of provision in the Act for *searches* and for confiscation of contraband would be a definite deterrent to our operation. . . .²⁶⁸ [Emphasis added.]

Director Hoover then repeated his request for "a definite and clear cut answer" from the Department.²⁶⁹ Attorney General James McGranery replied:

. . . I wish to assure you that it is the Department's intention to proceed under the program as outlined in the Department's Portfolio invoking the standards now used. This approval, of course, indicates agreement with your Bureau's concepts of the Detention Program and the Security Index standards as outlined in your memorandum of June 28, 1951. . . .²⁷⁰

This directive was classified "Top Secret". For security reasons there were only three copies made of the "Portfolio", two kept by the FBI and one by the Attorney General.²⁷¹

FBI records reveal no change in this policy under Attorney General Herbert Brownell during 1953-1954. In April 1953, Attorney General Brownell granted authority to the FBI "to implement the apprehension and search and seizure provisions of this program immediately upon ascertaining that a major surprise attack upon Washington, D.C., has occurred. . . ." The Attorney General also repeated previous instructions "to apprehend all individuals listed in the Security Index in the event that the . . . program is implemented prior to the completion of the review of the individual cases by the Criminal Division."²⁷²

²⁶⁸ Memorandum from D. M. Ladd to the FBI Director, 11/13/52.

²⁶⁹ Memorandum from the FBI Director to Deputy Attorney General Ross L. Malone, Jr., 11/14/52.

²⁷⁰ Memorandum from the Attorney General to the FBI Director, 11/25/52.

²⁷¹ Memorandum from D. M. Ladd to the Director, 11/13/52.

²⁷² Memorandum from the Attorney General to the FBI Director, 4/27/53.

By the end of 1954, the size of the Security Index had increased to 26,174, of whom 11,033 were designated under the Detcom and Comsab programs for priority apprehension. At that time the Intelligence Division decided to revise the Detcom and Comsab standards, reducing the number by fifty percent to "permit a more efficient handling of the arrests."²⁷³ Shortly thereafter, in response to a request from Attorney General Brownell, the FBI Director provided the Department the "general criteria" used for the Security Index.²⁷⁴ After a meeting between officials of the FBI Intelligence Division and the Justice Department, Director Hoover advised the Assistant Attorney General for the Internal Security Division "that there was no area of disagreement between the Department and this Bureau on the criteria or concepts regarding dangerousness" and that FBI standards were "not all-inclusive. . . ."²⁷⁵

On its own initiative the FBI decided in early 1955 to revise the Security Index criteria, primarily because all cases were not being reviewed by Justice Department attorneys and FBI officials wanted to "minimize the inevitable criticism of the dual role" the Bureau had in both investigating and passing on "the soundness of these cases."²⁷⁶ Soon thereafter the FBI reorganized the work of its Intelligence Division to create a new Subversives Control Section for the supervision of the Security Index and related programs for the investigation of individuals. The Internal Security Section continued to supervise investigations of subversive organizations and individuals considered to be "top functionaries" and "key figures" in those organizations.²⁷⁷ The result of the revision of Security Index standards was to reduce its size to 12,870 by mid-1958. The new standards still differed from the 1950 act and the Department's "Portfolio". To aid in applying the criteria, FBI agents were instructed frequently to interview the individual. "Refusal to cooperate" with such an interview was "taken into consideration along with other facts" in determining his dangerousness.²⁷⁸

The cancelled Security Index cards on individuals taken off the Index after 1955 were retained in the field offices. This was done because they remained "potential threats and in case of an all-out emergency, their identities should be readily accessible to permit re-study of their cases." These cards would be destroyed only if the subject agreed to become an FBI source or informant or "otherwise indicates complete defection from subversive groups."²⁷⁹

Thus, the cancelled cards served as a supplementary detention list which remained available despite the new, tighter standards for the Security Index itself. In 1956, the FBI decided to use these cancelled

²⁷³ Memorandum from A. H. Belmont to L. V. Boardman, 12/8/54.

²⁷⁴ Memorandum from the FBI Director to the Attorney General, 12/23/54.

²⁷⁵ Memorandum from the FBI Director to Assistant Attorney General William F. Tompkins, 1/27/55. In 1954 the Justice Department had established an Internal Security Division, replacing the previous Internal Security Section in the Criminal Division.

²⁷⁶ Memorandum from the FBI Director to the Attorney General, 3/9/55.

²⁷⁷ Staff summary of interview with James F. Bland, former Chief of the FBI Subversives Control Section (1955-1967), 10/13/75.

²⁷⁸ Memorandum from J. F. Bland to A. H. Belmont, 7/30/58.

²⁷⁹ Memorandum from A. H. Belmont to L. V. Boardman, 4/14/55; SAC Letter No. 55-31, 4/19/55.

cards as the basis for a revised Communist Index, since this Index had "grown unwieldy" and was "serving very little purpose." There is no indication in FBI records that the Justice Department was ever advised of the existence of the Communist Index. The Communist Index was reviewed in 1959 and reduced from 17,783 to 12,784 names.²⁸⁰ In mid-1959 the Security Index included 11,982 names.²⁸¹

The Communist Index was renamed the Reserve Index in 1960, and subdivided into two sections. Section A was to include

. . . those individuals whose subversive activities do not bring them within the SI criteria but who, in a time of national emergency, are in a position to influence others against the national interests or are likely to furnish financial or other material aid to subversive elements due to their subversive associations and ideology. Included therein would be individuals falling within the following categories: (1) Professors, teachers and educators; (2) Labor Union organizers and leaders; (3) Writers, lecturers, newsmen and others in the mass media field; (4) Lawyers, doctors and scientists; (5) Other potentially influential persons on a local or national level; (6) Individuals who could potentially furnish financial or material aid. This section could well include the names of such individuals as Norman Mailer, a novelist and author of "The Naked and the Dead" and an admitted "leftist", and -----, a former history teacher who was recently fired for praising Premier Khrushchev before his history class and stating that the pilot of the U-2 plane should be executed by the Reds.

Section B would follow the standards for the Communist Index, with the additional criterion "membership in the Nation of Islam." The purpose of the Reserve Index was to "have a special group of individuals listed therein who should receive priority consideration with respect to investigation and/or other action following the apprehension of our SI subjects."²⁸² The FBI disseminated investigative reports on Reserve Index subjects to the Justice Department, but there is no indication that the Department was advised of the existence of the Index itself.²⁸³

Throughout the 1950s, supervision of the collection of intelligence information about individuals for the Security Index, the Communist Index, and the Detcom programs was a major function of the FBI Intelligence Division. In addition, the "key figure" and "top functional" programs were operated separately from the Indexes and Detcom. The purpose of these two programs was "to select for special attention those individuals in a subversive movement who are of outstanding importance to the effectiveness of the movement." Field offices were instructed to obtain photographs and handwriting specimens, and to maintain intelligence coverage of the subject's activities through "contact with informants" and "established sources."²⁸⁴

²⁸⁰ Memorandum from J. F. Bland to A. H. Belmont, 11/5/59.

²⁸¹ Memorandum from J. F. Bland to A. H. Belmont, 8/18/59.

²⁸² Memorandum from A. H. Belmont to Mr. Parsons, 6/3/60.

²⁸³ Memorandum from J. F. Bland to A. H. Belmont, 9/9/60.

²⁸⁴ 1960 FBI Manual Section 87, pp. 66-70.

F. The Scope of FBI "Subversion" Investigations

While the Bureau targeted "key figures" and "top functionaries" for special attention, the scope of the FBI program for security intelligence investigations of individuals was far wider. The FBI Manual stated, "It is not possible to formulate any hard-and-fast standards by which the dangerousness of individual members or affiliates of revolutionary organizations may be automatically measured because of manner revolutionary organizations function and great scope and variety of activities." Individuals were investigated if they were "members in basic revolutionary organizations" or were "espousing the line of revolutionary movements." The Manual added, "Where there is doubt an individual may be a current threat to the internal security of the nation, the question should be resolved in the interest of security and investigation conducted." Anonymous allegations could start an FBI investigation if they were "sufficiently specific and of sufficient weight." On the other hand, prior approval from FBI headquarters was required for investigating students, faculty members, and U.S. or foreign government officials. Investigations were to be "thorough and exhaustive," developing "all pertinent information concerning the subject's background and subversive activity."

The FBI took the following steps if it learned that "any individual on whom we have subversive derogatory information" planned travel abroad:

Information concerning, these subjects' proposed travel abroad, including information concerning their subversive activities, is furnished by the Bureau to the Department of State, the *Central Intelligence Agency*, and [FBI] legal attaches if the proposed travel is in areas covered by such and, frequently, requests are made of one or all of the above to place stops with appropriate security services abroad to be advised of the activities of these subjects. [Emphasis added.]

Domestic investigative techniques included a review of existing FBI files, coverage by confidential informants, physical surveillance, photographic surveillance, public source records, records of private firms, and interviews with the subject.²⁸⁵

In addition to the policies for intelligence investigations of individuals, the FBI had substantial programs for collecting intelligence about "Marxist revolutionary-type organizations" including a "Cominfil" program aimed at groups suspected of being infiltrated by Communists. The purpose of these programs was not only to obtain evidence for possible prosecution, but also "to follow closely the activities of these organizations from an intelligence viewpoint to have a day-to-day appraisal of the strength, dangerousness, and activities of these organizations seeking the overthrow of the U.S. Government."²⁸⁶

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

²⁸⁵ 1960 FBI Manual Section 87, pp. 22-38.

²⁸⁶ 1960 FBI Manual Section 87, pp. 5-10.

Government.”²⁸⁷ One purpose of investigation was possible prosecution under the Smith Act. But no prosecutions were initiated under that Act after 1957.²⁸⁸ The Justice Department advised the FBI in 1956 that such a prosecution required “an actual plan for a violent revolution.”²⁸⁹ The Department’s position in 1960 was that “incitement to action in the foreseeable future” was needed.²⁹⁰ The First Amendment required:

something more than language of prophecy and prediction and implied threats against the Government to establish the existence of a clear and present danger to the nation and its citizens.²⁹¹

Despite the strict requirements for prosecution, the FBI kept on investigating “subversive” organizations “from an intelligence viewpoint” to appraise their “strength” and “dangerousness.”²⁹²

The FBI’s broadest program for collecting intelligence was carried out under the heading COMINFIL, for Communist infiltration.²⁹³

The FBI collected intelligence about Communist influence under the following categories:

- Political activities
- Legislative activities
- Domestic administration issues
- Negro question
- Youth matters
- Women’s matters
- Farmers’ matters
- Cultural activities
- Veterans’ matters
- Religion
- Education
- Industry²⁹⁴

FBI investigations covered “the entire spectrum of the social and labor movement in the country.”²⁹⁵ The purpose was pure intelligence—to “fortify” the government against “subversive pressures”²⁹⁶ or to “strengthen” the government against “subversive campaigns.”²⁹⁷ In other words, the COMINFIL program supplied the Attorney General and the President with political intelligence about groups

²⁸⁷ 1960 FBI Manual Section 87, p. 5.

²⁸⁸ The Supreme Court’s last decision upholding a Smith Act conviction was *Scales v. United States*, 367 U.S. 203 (1961), which reiterated that there must be “advocacy of action.” Cf., *Yates v. United States*, 354 U.S. 298 (1957).

²⁸⁹ Memorandum from Assistant Attorney General Tompkins to Director, FBI, 3/15/56.

²⁹⁰ Memorandum from Assistant Attorney General Yeagley to Director, FBI, 5/17/60.

²⁹¹ Memorandum from Assistant Attorney General Yeagley to Director, FBI, 9/23/60.

²⁹² 1960 FBI Manual Section 87, p. 5.

²⁹³ 1960 FBI Manual Section 87, pp. 83–84.

²⁹⁴ 1960 FBI Manual Section 87, pp. 5–11.

²⁹⁵ Annual Report of the Attorney General for Fiscal Year 1955, p. 195.

²⁹⁶ Annual Report for 1958, p. 338.

²⁹⁷ Annual Report for 1964, p. 375.

seeking to influence national policy, so that they might assess whether Communists were involved.²⁹⁸

The FBI said it was not concerned with the "legitimate activities" of "nonsubversive groups," but only with whether Communists were "gaining a dominant role."²⁹⁹ Nevertheless, COMINFIL reports inevitably described such "legitimate activities" unrelated whatsoever to the role of alleged "subversives." The FBI Manual required prior approval from FBI headquarters before opening a COMINFIL investigation. The techniques used included contacting established sources and informants and pretext interviews with members of the organization.³⁰⁰

An example of one such investigation was the FBI's COMINFIL case on the NAACP. In 1957, the New York Field Office prepared a 137-page report covering the intelligence gathered during the previous year. Copies were disseminated to the three military intelligence agencies. The report described the national section of the NAACP, its growth and membership, its officers and directors, its national convention, its stand on communism and the role in its state and local chapters of alleged Communists, members of Communist front groups, and the Socialist Workers Party. A synopsis of the report discussed the size of the NAACP and added,

NAACP 47th Annual Convention held June 26 to July 1, 1956, in San Francisco, California. Convention reaffirmed and extended 1950 resolution against Communism. Resolution bars NAACP membership to individuals with Communist affiliations. Informant, who has furnished reliable information in the past, advised that there was no activity at the convention which could be termed Communist activity. Informant, who has furnished reliable information in the past, advised that two individuals of national CP status would attend convention. NAACP in letter dated 11/3/55 to branch presidents instructs branches to be alert for Communists in the organization and see that no persons of questionable reputations are permitted to obtain positions in NAACP branches. The CP, USA continued to consider NAACP as main Negro mass organization and desires program to win leadership among Negro organizations. September 1956 issue of "Political Affairs" carried an article entitled "The NAACP Convention." Various attempts have been made by the CP to infiltrate and dominate certain NAACP branches throughout the United States and its territories. Identities of known CP members in various branches throughout the United States set forth.³⁰¹

²⁹⁸ The Chief of the Internal Security Section of the FBI Intelligence Division in 1948-1966 testified that the Bureau "had to be certain" that a group's position did not coincide with the Communist line "just by accident." The FBI would not "open a case" until it had "specific information" that "the Communists were there" and were "influencing" the group to "assist the Communist movement." (F. J. Baumgardner testimony, 10/8/75, p. 47.)

²⁹⁹ Annual Report for 1955, p. 195.

³⁰⁰ 1950 FBI Manual Section 87, pp. 83-84.

³⁰¹ Memorandum from New York City Field Office to FBI Headquarters, 2/12/57.

The report was based on information supplied by 151 informants or confidential sources, including at least four who attended the NAACP national convention; most of the informants or sources provided data on individuals with subversive connections who had either joined or associated with the NAACP.

Other reports from field offices in Boston, Seattle, Philadelphia, and Milwaukee provide additional examples of the scope of FBI intelligence coverage of the NAACP. In Boston, informants provided membership figures, and the FBI compiled lists of officers from public sources.³⁰² An informant in Seattle obtained a list of officers and reported on a meeting where signatures were gathered on a "petition directed to President Eisenhower" and plans announced for two members to go to Washington, D.C., for a "Prayer Pilgrimage."³⁰³ The Philadelphia office used an informant to discover the officers and total membership of the NAACP chapter and to learn its general objective—"to seek the enactment of new civil rights laws."³⁰⁴ A Milwaukee informant also provided a list of officers.³⁰⁵ Although these reports concentrated on information about alleged Communist infiltration, they all included data on individuals and activities such as the above having no connection with "subversive activity."

The FBI and the Justice Department both justified the continuation of COMINFIL investigations, despite the Communist Party's decline in the fifties and early sixties, on the theory that the Party was "seeking to repair its losses" with the "hope" of being able to "move in" on movements with "laudable objectives."³⁰⁶ The FBI reported to the White House in 1961 that the Communist Party had "attempted" to take advantage of "racial disturbances" in the South and had "endeavored" to bring "pressure to bear" on government officials "through the press, labor unions, and student groups." At that time the FBI had under investigation "two hundred known or suspected communist front and communist-infiltrated organizations."³⁰⁷ By not stating how effective the "attempts" and "endeavors" of the Communists were, and by not indicating whether they were becoming more or less successful, the FBI offered a deficient rationale for its sweeping intelligence collection policy.³⁰⁸

By 1960 the FBI had opened approximately 432,000 headquarters files on individuals and groups in the "subversive" intelligence field. Between 1960 and 1963 an additional 9,000 such files were opened.³⁰⁹

Apart from domestic intelligence programs aimed at the Communist Party, Communist infiltration, and other "revolutionary" groups such

³⁰² Memorandum from Boston Field Office to FBI Headquarters, 2/28/57.

³⁰³ Memorandum from Seattle Field Office to FBI Headquarters, 6/1/57.

³⁰⁴ Memorandum from Philadelphia Field Office to FBI Headquarters, 6/7/57.

³⁰⁵ Memorandum from Milwaukee Field Office to FBI Headquarters, 6/13/57.

³⁰⁶ Annual Report of the Attorney General for Fiscal Year 1959, pp. 247-248.

³⁰⁷ Memorandum from J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, to McGeorge Bundy, Special Assistant to the President for National Security, 7/25/61, enclosing IIC Report, Status of U.S. Internal Security Programs.

³⁰⁸ A former head of the FBI Intelligence Division has testified that such language was deliberately used to exaggerate the threat of Communist influence. William C. Sullivan testimony, 11/1/75, pp. 40-41.

³⁰⁹ Memorandum from FBI to Senate Select Committee, 10/6/75.

as the Socialist Workers Party and the Nationalist Party of Puerto Rico, the FBI had extensive programs in the foreign intelligence and counterintelligence areas. Within the FBI Intelligence Division, a separate Counterintelligence Branch supervised investigations and other operations directed against hostile foreign intelligence services and espionage activities. This branch took over supervision of cases of Communists suspected of being involved in espionage activity. The Counterintelligence Branch included an Espionage Section, a Liaison Section, and a Nationalities Section. The Internal Security (or domestic intelligence) Branch included the Internal Security Section for organizations, the Subversives Control Section for individuals, and a Research Section.

G. The Justice Department and FBI Intelligence Investigations

The Justice Department supplied only the most general guidance to the FBI for the investigation of organizations. An example is the FBI's intelligence investigation of the Nation of Islam. As early as 1952, the Criminal Division advised the FBI that the Nation of Islam would not then be placed on the "Attorney General's list," but that available information indicated that the organization "may be a fit subject for designation . . ." under the employee security program.³¹⁰ The following year the Criminal Division told the FBI that "the evidence presently available is insufficient to establish a violation of the Smith Act," but that the FBI should continue to furnish investigative reports "with a view to possible future prosecution under the Smith Act."³¹¹ In 1955, the FBI asked the Department's Internal Security Division whether it should continue to include leading members of the Nation of Islam on the Security Index.³¹² The Internal Security Division replied six months later that the evidence did not warrant designation for the "Attorney General's list," but that "statements and activities on the part of individual members of the Cult indicating anarchistic and revolutionary beliefs should be considered in making a judgment as to whether or not such individual members come within the revised Security Index criteria."³¹³ Shortly thereafter, the Internal Security Division advised that the evidence was still "insufficient to constitute a violation of the Smith Act," since the statements of group leaders were "more in the realm of prophecy than of an actual plan for a violent revolution."³¹⁴

Nevertheless, the FBI continued to investigate and supply reports to the Justice Department under the authority of the employee security program and the emergency detention program.³¹⁵ In June 1959, Director Hoover noted on an internal FBI memorandum, "Is there no

³¹⁰ Memorandum from Assistant Attorney General James M. McInerney to the FBI Director, 5/5/52.

³¹¹ Memorandum from Assistant Attorney General Warren Olney III to the FBI Director, 2/9/53.

³¹² Memorandum from the FBI Director to Assistant Attorney General William F. Tompkins, 8/8/55.

³¹³ Memorandum from Assistant Attorney General Tompkins to the FBI Director, 2/7/56.

³¹⁴ Memorandum from Assistant Attorney General Tompkins to the FBI Director, 3/15/56.

³¹⁵ Memorandum from the FBI Director to Assistant Attorney General Tompkins, 5/11/56; Assistant Attorney General Tompkins to FBI Director, 4/12/57.

action Dept. can take against the NOI?"³¹⁶ Therefore, the FBI asked the Internal Security Division to review the reports submitted by the Bureau and "advise whether any type of legal action against the NOI is feasible in the light of this additional information."³¹⁷ The Internal Security Division replied that the FBI reports "failed to disclose the type of evidence required" for a Smith Act prosecution, but that designation for the "Attorney General's list" was "under consideration." Upon receipt of this memorandum, Director Hoover noted, "They always come up with more reasons for no positive action and none for constructive approach."³¹⁸

Nearly a year later, the Internal Security Division advised the FBI that there were "a number of legal problems" with designation of the Nation of Islam for the "Attorney General's list" because the language of the group's leaders "concerning the destruction of the government usually has been couched in terms of prophecy or prediction rather than in terms of incitement to action in the foreseeable future." Nevertheless, the Division would continue to review any "additional information furnished by the Bureau relative to the criteria" of the employee security program.³¹⁹

Director Hoover was still dissatisfied, noting on the FBI's Current Intelligence Analysis for August 31, 1960, "Has the Department ruled on the NOI or are they still 'considering' it?" Hoover believed "nothing would be gained" by writing the Internal Security Division again, and suggested "an overall memo on NOI be sent A.G. stressing vicious character and statements of this outfit."³²⁰ Consequently, the FBI sent Attorney General William Rogers a summary of the most inflammatory rhetoric of the group and asked him to "consider whether there is any legal action that can be taken or whether the organization can be designated pursuant to the provisions of Executive Order 10450."³²¹

In reply, the Internal Security Division explained again that "the First Amendment would require something more than language of prophecy and prediction and implied threats against the Government to establish the existence of a clear and present danger to the nation and its citizens." Moreover, there was insufficient evidence to meet the criterion of Executive Order 10450 "that it has adopted a policy of advocating or approving the commission of . . . acts of violence to deny others their constitutional rights." Nevertheless, the FBI was requested to "continue its investigation . . . because of the semi-secret and violent nature of this organization, and the continuing tendency on the part of some of its leaders to use lan-

³¹⁶ Memorandum from S. B. Donahue to A. H. Belmont, 6/17/59. (The May 27, 1959, issue of the FBI's "Current Intelligence Analysis" had been devoted to "presentation of picture of growing threat to internal security of Nation of Islam.")

³¹⁷ Memorandum from the FBI Director to the Assistant Attorney General, Internal Security Division, 6/19/59.

³¹⁸ Memorandum from the Acting Assistant Attorney General J. Walter Yeagley to the FBI Director, 7/15/59.

³¹⁹ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 5/17/60.

³²⁰ Memorandum from A. H. Belmont to D. J. Parsons, 9/1/60.

³²¹ Memorandum from the FBI Director to the Attorney General, 9/9/60.

guage of implied threats against the Government. . . ." Director Hoover noted on this memorandum, "Just stalling!"³²²

Thus, for a decade the FBI continued to conduct an intelligence investigation of the Nation of Islam, despite the lack of any evidence to justify federal prosecution or other legal action by the Justice Department. Although the Department had an entire division concerned with internal security matters, it failed almost totally to provide the FBI guidance or direction.

The Internal Security Division contained a Subversive Activities Section to supervise prosecution of Communists under the Smith Act and related statutes (over one hundred Party leaders were prosecuted in the 1950s), a Subversive Organizations Section to enforce the Subversive Activities Control Act against Communist and Communist-front groups and to make designations for the Employee Security Program, an Appeals and Research Section to handle the voluminous appellate litigation and consider legislation, and a Foreign Agents Registration Section. In 1955, the Division received 101,470 memoranda and reports from the FBI.³²³ The Assistant Attorney General in charge of the Internal Security Division from 1958 until 1970, J. Walter Yeagley, was a former official of the FBI Intelligence Division; and his principal deputy, John Doherty, had been FBI Director Hoover's liaison with the White House in the early 1950s.

H. FBI Investigations of "Hate Groups" and "Racial Matters"

During the 1950s the FBI also developed investigative programs in the area of "racial matters," including racial disturbances and "Klan-type organizations, hate organizations, and associated individuals." As early as 1947, designations for the Attorney General's list required data on any organization which advocated the commission of acts of force or violence to deny persons their constitutional rights.³²⁴ At that time President Truman's Committee on Civil Rights endorsed "the principles of disclosure . . . to deal with those who would subvert our democracy by revolution or by encouraging disunity and destroying the civil rights of some groups."³²⁵ The first "Attorney General's list" of subversive organizations for the employee loyalty program included various Ku Klux Klan organizations.

The FBI program for Klan-type and hate organizations required investigation of "organizations and associated individuals that . . . have adopted a policy or have allegedly adopted a policy of advocating, condoning, or inciting the use of force or violence to deny others their rights under the Constitution." The intelligence sought included information about the structure, objectives, publications and propaganda, and finances of the organizations, as well as the officers, membership, recruiting activities, and meetings of each klavern or local chapter. Hate groups which did not "qualify for investigation" under

³²² Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 9/23/60.

³²³ Annual Report of the Attorney General for Fiscal Year 1955, pp. 44-66.

³²⁴ Executive Order 9835, 12 Fed. Reg. 1935 (1947), Executive Order 10450, 18 Fed. Reg. 2489 (1953).

³²⁵ President's Committee on Civil Rights, *To Secure These Rights* (1947), p. 52.

these standards were followed "through public source material and established sources."³²⁶

FBI field offices were instructed to "conduct no investigation regarding individual acts of violence allegedly or actually committed by an organization in absence of information indicating violation within Bureau's jurisdiction." Nevertheless, the FBI used its informants and sources within the groups to determine which group was involved in "each such incident" and "whether action taken was on initiative of individual members or with knowledge or approval of leadership." Individual investigations were opened "on officers, leaders, and active workers in these organizations to determine whether they have been involved in acts of violence or have a definite potential for future acts of violence." Names of members attending meetings were "indexed from informants' statements," and names of new members were furnished to FBI headquarters "for indexing purposes." Informants were "developed in all such organizations." However, field offices were cautioned,

Wholesale investigations of individuals of these organizations should not be conducted and investigations of individual members should be initiated only on a most selective basis. Individuals investigated should be those who are key personnel who actually formulate and carry out the organization's policy and not those individuals who merely attend meetings on a regular basis.³²⁷

This restriction was imposed in mid-1959, after supervision of Klan-type and hate matters were transferred from the FBI Intelligence Division to the General Investigative Division.

Nevertheless, the Bureau used its "established sources" to monitor the activities of hate groups which did not "qualify" under the violence standard.³²⁸ Thus, the FBI collected and disseminated intelligence about the John Birch Society and its founder, Robert Welch, in 1959.³²⁹ The activities of another right-wing spokesman, Gerald L. K. Smith who headed the Christian Nationalist Crusade, were the subject of FBI reports even after the Justice Department had concluded that there was no federal law violation and no basis for putting the group on the "Attorney General's list."³³⁰

³²⁶ 1960 FBI Manual Section 122, p. 1.

³²⁷ 1960 FBI Manual Section 122, pp. 2-3.

³²⁸ 1968 FBI Manual Section 122, p. 1.

³²⁹ The FBI has denied that it ever conducted a "security-type investigation" of the Birch Society or Welch, but the Boston Field Office "was instructed in 1959 to obtain background data" on Welch using public sources. (Memorandum from the FBI to the Senate Select Committee, 2/10/76.) A 1963 internal FBI memorandum stated that the Bureau "checked into the background" of the Birch Society "because of its scurrilous attack on President Eisenhower and other high Government officials." (Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/29/63.)

³³⁰ Letter from Assistant Attorney General Tompkins to Sherman Adams, Assistant to the President, 11/22/54; letters from J. Edgar Hoover to Robert Cutler, Special Assistant to the President, 10/15/57 and 1/17/58. (Dwight D. Eisenhower Library.)

Under the FBI program for "General Racial Matters," the Bureau gathered intelligence on "race riots, civil demonstrations, and similar developments." These developments included "proposed or actual activities of individuals, officials, committees, legislatures, organizations, etc., in the racial field." Although the FBI realized it did not have "investigative jurisdiction over such general racial matters," the Manual stated, "As an intelligence function the Bureau does have the responsibility of advising appropriate Government agencies and officials on both a national and local level of all pertinent information obtained concerning such incidents." FBI responsibilities were also based on the long-standing agreement with military intelligence:

Insofar as Federal jurisdiction in general racial matters is concerned, U.S. Army regulations place responsibility upon the Army to keep advised of any developments of a civil disturbance nature which may require the rendering of assistance to civil authorities or the intervention of Federal troops. OSI and ONI have a collateral responsibility under Army in such matters and copies of pertinent documents disseminated to Army concerning such matters should be furnished to OSI and ONI.³³¹

The need for federal troops to control civil disturbances was vividly demonstrated in the Little Rock school desegregation events of 1957-1958.

The President was informed during these years of the FBI's "racial matters" intelligence activities. At a Cabinet briefing in 1958, Director Hoover stated:

. . . we investigate such fanatical and so-called "hate" groups as the Negro Nation of Islam; the Ku Klux Klan; the National States Rights Party, an anti-Jewish and anti-Negro organization; and the "Confederate Underground." The latter is a name which has been mentioned on a number of occasions in recent bombing threats and other forms of violence.

Since January 1, 1957, there have been over 90 bombings, or attempted bombings, in the United States. Of these, at least 69 have involved Negro victims and at least eight Jewish religious and educational facilities. . . .

Recognizing the danger to the national welfare from a general pattern of organized terrorism, the FBI has moved in to expand its assistance to local law enforcement. . . . We are closely checking the activities of individuals prominently involved in racial incidents, such as [a leader of] the Seaboard White Citizens Council of Washington. As a further aid to local law enforcement agencies, the FBI has scheduled a series of special conferences . . . to discuss our cooperative services regarding bombings and threats of bombings against religious and educational institutions.

Our entry into these cases at this new level is not to be interpreted as an attempt on our part to usurp the jurisdiction of local authorities. To give the FBI this jurisdiction

³³¹ 1960 FBI Manual Section 122, pp. 5-6.

would relieve local governments of the basic responsibility to maintain law and order, and the ultimate responsibility rightfully rests at the local level.³³²

Director Hoover's sensitivity to possible criticism for exceeding the FBI's jurisdiction was reflected in a warning to the field offices that racial matters were "extremely delicate and great care must be exercised in the approach to such matters."³³³

There was greater emphasis on right-wing extremism in FBI domestic intelligence policy during 1960-1963. In January 1963, FBI field offices received a thirty-two page set of instructions on how to characterize "Klan-type and hate-type organizations." Field offices were advised that individual and group activities had to be "specifically identified with the correct Klan organization."³³⁴

Instructions to FBI field offices in June 1963 specifically emphasized investigations of "rightist or extremist" groups, based not only on the FBI's criminal investigative jurisdiction and its authority under the Federal Employee Security Program, but also on a general intelligence premise:

"Rightist or extremist" groups operating in the anticommunist field are being formed practically on a daily basis. I wish to re-emphasize the necessity for the field to be alert to, and advise the Bureau concerning, *the formation and identities of such groups*. The field should *also* be alert to the activities of such groups which come within the purview of Executive Order 10450 or are in violation of Federal statutes over which the Bureau has investigative jurisdiction. Investigations, where warranted, should be initiated and handled pursuant to Bureau policy relating to the specific substantive violation. You are reminded that anticommunism should not militate against checking on a group if it is engaged in unlawful activities in violation of Federal statutes over which the Bureau has investigative jurisdiction.

Investigations of groups in this field whose *activities are not in violation* of any statutes over which the Bureau has jurisdiction are not to be conducted without specific Bureau authority. A request for authority to investigate such a group should include the basis for your recommendations regarding investigation.³³⁵ [Emphasis added.]

Thus, the FBI developed a program for collecting general intelligence on right-wing extremism. There is no further reference to this program in comparable instructions to the field issued after 1963.

I. Legal Authority for Domestic Intelligence

During the 1945-1963 period, there were two formal presidential statements (or directives) on FBI domestic intelligence authority—one by President Truman in 1950 and the other by President Eisenhower in 1953. These statements specifically authorized FBI investiga-

³³² FBI Director Hoover's Briefing of the President and the Cabinet, 11/6/58.

³³³ 1960 FBI Manual Section 122, p. 6.

³³⁴ SAC Letter No. 63-4, 1/23/63.

³³⁵ SAC Letter No. 63-27, 6/11/63.

tion of "subversive activities," unlike the more ambiguous Roosevelt directives. Moreover, a confidential directive of the National Security Council in 1949 granted authority to the FBI and military intelligence for counterespionage operations and the investigation of "subversive activities." The power of the National Security Council to issue this order was based, in part, on the National Security Act of 1947. That act also created the Central Intelligence Agency, with a prohibition against its performance of "law enforcement or internal security functions" and a limitation on the authority of the Director of Central Intelligence to inspect FBI intelligence.

The action of the National Security Council in 1949 greatly strengthened the independence of the FBI. The line of authority for FBI and military domestic intelligence now flowed from the National Security Council to an Interdepartmental Intelligence Conference (IIC), composed of the FBI Director (as chairman) and the heads of the military intelligence agencies. This chain of command bypassed the Attorney General. A member of the National Security Council staff in the White House was assigned to serve as the point of contact between the IIC and the NSC. The Attorney General was, as a practical matter, regularly involved in major White House decisions.³³⁶ This arrangement continued until 1962, when President Kennedy placed the Interdepartmental Intelligence Conference under the direct authority of the Attorney General.³³⁷

The testimony before Congress and the floor debate at the time of consideration of the National Security Act of 1947 did not clarify the authority of the FBI. Nevertheless, the legislative history supporting the intent of Congress to exclude the CIA from domestic intelligence was extensive. The restriction against "police, law enforcement or internal security functions" appeared first in President Truman's directive establishing the Central Intelligence Group in January 1946.³³⁸ General Vandenberg, then serving as Director of Central Intelligence, testified in 1947 that this restriction was intended to "draw the lines very sharply between the CIG and the FBI" and to "assure that the Central Intelligence Group can never become a Gestapo or security police."³³⁹ Proponents of the creation of the Central Intelligence Agency cited the FBI as a model. For example, Allen Dulles stated:

The success of the FBI has been due not only to the ability of the director and the high qualities of his chief assistants, but to the fact that that director has been on that particular job for a sufficient period of years to build up public confidence, an esprit de corps in his organization, and a high prestige. We should seek the same results for our intelligence

³³⁶ The 1950 Truman statement on FBI authority was cleared by Acting Attorney General Peyton Ford; and Attorney General Herbert Brownell took part in the National Security Council meeting where the 1953 statement was approved. (Letter from James S. Lay, Jr., Executive Secretary, NSC, to Attorney General J. Howard McGrath, 7/24/50; Memorandum from J. Edgar Hoover to Attorney General Brownell, 12/29/53.)

³³⁷ National Security Action Memorandum 161, 6/9/62.

³³⁸ Presidential Directive, Coordination of Federal Foreign Intelligence Activities, 1/22/46, 11 Fed. Reg. 1337.

³³⁹ Hearings before the Senate Armed Services Committee on S. 758, 80th Cong. (1947), p. 497.

service, which will operate in the foreign field, and on items of foreign information.³⁴⁰

Secretary of the Navy James Forrestal testified that the purposes of the CIA were "limited definitely to purposes outside of this country, except the collation of information gathered by other Government agencies." The FBI was relied upon "for domestic activities."³⁴¹ In the House floor debate, Congressman Holifield stressed that the work of the CIA "is strictly in the field of secret foreign intelligence—what is known as clandestine intelligence. They have no right in the domestic field to collect information of a clandestine military nature. They can evaluate it; yes."³⁴²

Congressmen were also concerned with a provision of the original bill establishing the CIA which gave its Director the power to make "inspection" of the intelligence operations of other government agencies. Congressman Busby urged an amendment "to eliminate the possibility of its [the CIA's] going into the records and books of the FBI because the FBI does not go outside the United States. It is only concerned with internal intelligence and investigations in the United States."³⁴³ Congressman Judd introduced such an amendment "primarily to protect the FBI." He stated:

I do not believe we ought to give this Director of Central Intelligence power to reach into the operations of J. Edgar Hoover and the FBI, which are in the domestic field. . . . All the intelligence the FBI has . . . must be available to the Director of Central Intelligence if it relates to the national security. But the Director of Central Intelligence will not have the right to inspect their operations.

Congressman Judd feared the DCI "coming in and finding out who their agents are, what and where their nets are, how they operate, and thus destroy their effectiveness." He believed the FBI was "too valuable an agency to be tampered with." The amendment was adopted.³⁴⁴

Consequently, the National Security Act of 1947 contained two sections specifically applying to domestic intelligence. First, it provided that the CIA "shall have no police, subpoena, law-enforcement powers, or internal-security functions." Second, it excluded the FBI from the

³⁴⁰ Senate Armed Services Committee Hearings, on S. 758 (1947), pp. 525-526. President Truman had rejected a proposal by FBI Director Hoover in 1945 for expanding the FBI's wartime Special Intelligence Service, which was assigned to the Western Hemisphere, to a world-wide basis. Don Whitehead, *The FBI Story* (New York, Random House, 1956) p. 279.

³⁴¹ Hearings before the House Committee on Expenditures in the Executive Departments on H.R. 2319, 80th Cong. (1947), p. 127.

³⁴² 93 Cong. Rec. 9430 (1947). Fears that a foreign intelligence agency would intrude into domestic matters went back to 1944, when General William Donovan, head of the Office of Strategic Services, proposed that the OSS be transformed from a wartime basis to a permanent "central intelligence service." Donovan's proposal was leaked to the Chicago Tribune, allegedly by FBI Director Hoover, and it was denounced as a "super-spy system" which would "pry into the lives of citizens at home." [Corey Ford, *Donovan of the OSS* (Boston: Little Brown, 1970), pp. 303-304.]

³⁴³ 93 Cong. Rec. 9404 (1947).

³⁴⁴ 93 Cong. Rec. 4218-4219 (1947).

"inspection" powers of the Director of Central Intelligence and provided only "that upon the written request of the Director of Central Intelligence, the Director of the Federal Bureau of Investigation shall make available to the Director of Central Intelligence such information for correlation, evaluation, and dissemination as may be essential to the national security."³⁴⁵

The only indication of legislative intent regarding the type of information to be made available by the FBI appeared in the House debate. Congressman Judd was asked, "If the FBI has information about fifth-column activities and subversive information affecting the national defense, would that be open to the Central Intelligence Agency?" The sponsor of the amendment replied, "Yes."³⁴⁶

There was no general restatement of the FBI's domestic security intelligence responsibilities at this time. This issue arose first in 1948, when the Secretary of Defense recommended to the National Security Council that it consider how best to coordinate internal security matters. The NSC directed its executive secretary to conduct an internal security survey, and a report was submitted in August 1948.³⁴⁷

In 1948 there were also political developments in Congress and the forthcoming presidential election campaign, including the allegations of Elizabeth Bentley and Whittaker Chambers before the House Un-American Activities Committee regarding Communists in government service and charges that the administration's security procedures were lax. In this context, Attorney General Clark advised the President that he should make "a statement concerning investigations in the internal security field." The draft read as follows:

On September 6, 1939, and again on January 8, 1943, a Presidential directive was issued providing that the Federal Bureau of Investigation should take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and similar matters. It was requested that all law enforcement officers in the United States, and all patriotic organizations and individuals, promptly turn over to the Federal Bureau of Investigation any information concerning these matters

The Federal Bureau of Investigation has fully carried out its responsibilities with respect to the internal security of the United States, under these directives. The cooperation rendered to the Federal Bureau of Investigation in accordance with the directives has been of invaluable assistance to it.

I wish to emphasize at this time that these directives continue in full force and effect.

³⁴⁵ 50 U.S.C. 403(d) (3) and 403(e).

³⁴⁶ 93 Cong. Rec. 4219 (1947). The following discussion of FBI Director Hoover by Congressman John McCormack appears in the floor debate on the tenure of the CIA Director: "The best we can do is as in the case of J. Edgar Hoover: A man by his personality, a man who impresses himself so much upon his fellowmen that permanency accrues by reason of the character of service that he renders. But J. Edgar Hoover has no tenure for life. He has earned it because of his unusual capacity." [93 Cong. Rec. 9445 (1947).]

³⁴⁷ J. Patrick Coyne, *Major Chronological Developments on the Subject of Internal Security*, 4/8/49 (Harry S. Truman Library, Papers of Stephen J. Spingarn).

Investigations in matters relating to the internal security of the United States to be effective must be conducted in a comprehensive manner, on a national basis, and by a single central agency. The Federal Bureau of Investigation is the agency designated for this purpose. At this time, I request that all information concerning any activities within the United States, its territories or possessions, believed to be of a subversive nature, be reported promptly to the Federal Bureau of Investigation.³⁴⁸

Attorney General Clark's recommendation of a presidential statement on FBI authority was made the day after he met with White House aides Clark Clifford, Charles Murphy, and George Elsey to discuss how the President should handle the Bentley and Chambers allegations. At that meeting it had been decided that the President should not make a statement on the espionage allegations and that consideration would be given to "referring the question of Soviet espionage in the Federal Government to a bipartisan commission, such as the Hoover Commission."³⁴⁹

Upon receiving the Attorney General's proposed statement, presidential aide George Elsey asked Admiral Souers, Executive Secretary of the National Security Council, "to undertake a review of the statement, with a view to limiting the excessive authority granted to the FBI, and in such other ways as he finds desirable in the light of his experience in the National Security Council."³⁵⁰ However, the revised draft by Admiral Souers made no substantial change except to include reference to "the intelligence services of the military forces." Mr. Elsey and Admiral Souers passed the matter on to White House aide Stephen Spingarn, who met with Assistant Director Ladd of the FBI. Ladd urged "early issuance of the statement by the President" and stated that its purpose "was to spike vigilante activity in the internal security field by private organizations and persons." After this meeting, Spingarn advised Clark Clifford that "the issuance of such a statement at this time by the President might give rise to the impression that he was making a rather transparent show of activity on this matter as a result of needling from Congressional quarters. . . ." ³⁵¹

Nevertheless, the Justice Department did release a statement criticizing the "political activity" of the House Committee on Un-American Activities, and declaring that "all individuals and groups involved in activities potentially dangerous to the security of the nation are subject to the continuous but quiet watchfulness of the Federal Bureau of investigation."³⁵²

³⁴⁸ Memorandum from the Attorney General to the President, 9/17/48. (Harry S. Truman Library.)

³⁴⁹ Memorandum from G. M. Elsey to Clark Clifford, 8/16/48. (Harry S. Truman Library, Papers of George M. Elsey.)

³⁵⁰ Memorandum from Elsey to Charles Murphy, 8/26/48. (Harry S. Truman Library, Elsey Papers.)

³⁵¹ Memorandum from S. J. Spingarn to Mr. Clifford, 9/21/48. (Harry S. Truman Library, Official File.)

³⁵² Justice Department Press Release, 9/29/48. (Harry S. Truman Library, Spingarn Papers.)

After the 1948 presidential election, the National Security Council addressed formally the problem of coordination in the internal security field. An understanding was reached by the Secretary of Defense, the Attorney General, and the Director of the FBI on February 1, 1949; and recommendations were submitted thereafter to the President for the establishment under the NSC of two committees—the Interdepartmental Intelligence Conference and the Interdepartmental Committee on Internal Security—and the designation of an NSC Representative on Internal Security “to perform coordinating and advisory functions with the IIC and the ICIS. . . .”³⁵³ The President approved these recommendations and issued a directive on coordination of internal security.³⁵⁴

The National Security Council then approved charters for the IIC and the ICIS. They recited the provisions of Section 101 of the National Security Act of 1947, which authorized the NSC to “advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security,” and also the President’s directive of March 1949. The purpose of the IIC, composed of the FBI and military intelligence agencies, was to “effect the coordination of all investigation of domestic espionage, counterespionage, sabotage, subversion, and other related intelligence matters affecting internal security.” The ICIS, made up of representatives from the Departments of State, Treasury, Justice, and the military, was assigned responsibility for coordinating all non-investigatory internal security activities.³⁵⁵

The Delimitations Agreement between the FBI and the military intelligence agencies was also revised in 1949. It allocated responsibilities among the agencies for the “investigation of all activities coming under the categories of espionage, counterespionage, subversion, and sabotage.” Each agency was obliged “to exchange freely and directly with the other subscribing organizations all information of mutual interest.” The FBI had specific responsibility for advising the military agencies of “developments concerning the strength, composition, and intentions of civilian groups within its cognizance which are classed as subversive and whose activities are a potential danger to the security of the United States.” The military agencies were limited to investigations directly involving military personnel, civilian employees of the military, and areas under military control.³⁵⁶

A supplementary agreement in June 1949 required FBI and military intelligence officials in the field to “maintain close personal liaison” and to pay “particular attention . . . to avoiding any duplication in connection with the use of informers.” The supplementary agreement also stated, “Where there is doubt as to whether or not one of the other agencies is interested in information collected, it should be transmitted to the other agency.”³⁵⁷

³⁵³ J. P. Coyne, *Major Chronological Developments on the Subject of Internal Security*, 4/8/49. (Harry S. Truman Library, Spingarn Papers.)

³⁵⁴ NSC Memorandum 17/4, 3/23/49.

³⁵⁵ NSC Memorandum 17/5, 6/15/49.

³⁵⁶ *Delimitation of Investigative Duties and Agreement for Coordination*, 2/23/49.

³⁵⁷ *Supplemental Agreement No. 1 to the Delimitations Agreement*, approved by IIC, 6/2/49.

After the outbreak of the Korean War and in the midst of congressional consideration of new internal security legislation in 1950, the IIC under the chairmanship of FBI Director Hoover recommended to the NSC "that a Presidential statement be issued to bring up to date and clarify prior Presidential Directives . . . outlining the responsibilities of the Federal Bureau of Investigation in connection with espionage, sabotage, subversive activities and related matters." Attorney General McGrath forwarded the draft to the President's counsel.³⁵⁸

The NSC approved a revised version of the draft, and it was made public on July 24, 1950. There is no record of why it chose the broader interpretation of the Roosevelt directives and declared that they had provided that the FBI:

should take charge of investigate work in matters relating to espionage, sabotage, *subversive activities and related matters*.³⁵⁹ [Emphasis added.]

President Roosevelt's directives had not used this language. (See pp. — above.) Moreover, President Truman's domestic policy aides were surprised by the release of the statement. One noted, "This is the most inscrutable Presidential statement I've seen in a long time." Another asked, "How in H—— did this get out?" A third replied, "Don't know—I thought you were handling."³⁶⁰ Even before the statement was issued, one of these aides had warned the President's counsel that the Justice Department was attempting "an end run."³⁶¹

Despite this concern among his assistants, President Truman's statement clearly placed him on record as endorsing FBI investigations of "subversive activities." Neither the President's statement nor the secret NSC charter nor the confidential Delimitations Agreement defined "subversive activities" or "subversion."

The President's announcement gave the FBI an opportunity to make a statement of its own. The FBI statement denounced "hysteria, witch-hunts and vigilantes" and affirmed the need for "protecting the innocent as well as . . . identifying the enemies within our midst." Nevertheless, the FBI advanced the following view of the threat:

The forces which are most anxious to weaken our internal security are not always easy to identify. Communists have been trained in deceit and secretly work toward the day when they hope to replace our American way of life with a Communist dictatorship. They utilize cleverly camouflaged movements, such as some peace groups and civil rights organizations, to achieve their sinister purposes. While they as individuals are difficult to identify, the Communist Party line is clear. Its first concern is the advancement of Soviet Russia and the godless Communist cause. It is important to learn to know the enemies of the American way of life.³⁶²

³⁵⁸ Letter from Attorney General J. Howard McGrath to Charles S. Murphy, Counsel to the President, 7/11/50.

³⁵⁹ Statement of President Truman, 7/24/50.

³⁶⁰ Notes initialed D. Bell, SJS (S. J. Spingarn), and GWE (George W. Elsey) 7/24–25/50. (Elsey Papers, Harry S. Truman Library.)

³⁶¹ Memorandum from G. W. Elsey to Charles S. Murphy, Counsel to the President, 7/12/50. (Murphy Papers, Harry S. Truman Library.)

³⁶² Statement of J. Edgar Hoover, 7/26/50. (Harry S. Truman Library, Bontecou Papers.)

Shortly after President Eisenhower took office in 1953, the FBI advised the White House that its "internal security responsibility" went beyond "statutory" authority. The Bureau attached a copy of the Truman statement, but not the Roosevelt directive. The FBI again interpreted the Roosevelt directive as saying that it had authorized "investigative work" related to "subversive activities."³⁶³

In December 1953, President Eisenhower issued a statement reiterating President Truman's "directive" (including its interpretation of Roosevelt's orders) and extending it to matters under the Atomic Energy Act.³⁶⁴ On the day this statement was released, Director Hoover and Attorney General Herbert Brownell attended a National Security Council meeting to discuss "additional funds" for FBI "counterintelligence coverage." Director Hoover's memorandum after the meeting stated that the President "wanted to have" the "additional counterintelligence coverage."³⁶⁵ There was no reference to "subversive activities."

President Kennedy issued no public statement comparable to the Roosevelt, Truman, and Eisenhower "directives." However, in 1962 he did transfer the Interdepartmental Intelligence Conference from under the National Security Council to "the supervision of the Attorney General."³⁶⁶ In 1964, Attorney General Robert Kennedy re-issued the IIC charter, citing as authority the President's 1962 order and directing the IIC (still composed of the FBI and military intelligence agencies) to continue:

the coordination of all investigation of domestic espionage, counterespionage, sabotage and subversion, and other related intelligence matters affecting internal security.

The charter added that it did not "modify" or "affect" the previous "Presidential Directives" relating to the duties of the FBI, and that the Delimitations Agreement between the FBI and military intelligence "shall remain in full force and effect."³⁶⁷

Thus, the Kennedy administration made no change in the vague mandate for domestic intelligence activities, but merely placed formal control in the hands of the Attorney General.

J. FBI Intelligence and International Tension, 1961-1963

The basic policy theme for the entire 1945-1963 period is stated in a report for the National Security Council on the "Internal Security Program" in 1954:

Communist doctrine provides that a period of peace is to be used to consolidate and strengthen the Communist forces in the world while at the same time weakening and dividing, the democratic nations including disruption of the internal life of these nations economically, politically and socially. Thus

³⁶³ Letter from J. Edgar Hoover to Sherman Adams, Assistant to the President, 1/28/53, and attached memorandum on "FBI Liaison Activities," 1/26/53.

³⁶⁴ Statement of President Eisenhower, 12/15/53.

³⁶⁵ Memorandum from J. Edgar Hoover to Attorney General Brownell, 12/29/53.

³⁶⁶ National Security Action Memorandum 161, 6/9/62.

³⁶⁷ Memorandum from Attorney General Kennedy to J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, 3/5/64.

the present Soviet "peace tactics" emphasize that our internal security protective coverage must be maintained at a high level. Soviet Russia can continue to increase subversive, disruptive tactics without risk or cost to herself commensurate with the potential beneficial results to the Soviet cause.

The Internal Security Program was formulated on the assumption of a continuance of peacetime "cold war" conditions. However, it includes the elements to be expanded for a wartime operation.³⁶⁸

The scope and techniques of domestic security intelligence operations during this period cannot be fully understood without recognizing that this assumption prevailed throughout all branches of the United States government.³⁶⁹

In 1961, Director Hoover submitted a report to President Kennedy's Special Assistant for National Security, McGeorge Bundy, on the status of the internal security programs of the Interdepartmental Intelligence Conference. It began by reviewing the charter of the IIC and the Delimitations Agreement among the FBI and military intelligence agencies. The primary objective of the "investigative program" was "to counter the ever-increasing and continual threat from international communism and Soviet-bloc espionage and subversion."³⁷⁰

In addition to reviewing counterespionage operations, the report described programs for "identification and investigation of potentially dangerous persons in the United States" and for "coverage of Communist Party activities." The most significant recent change in operations was expanded coverage of Cuban groups. The FBI's Security Index program was explained in the following terms:

The FBI maintains a current list of individuals, both citizens and aliens, to be considered for apprehension and detention, if necessary, in a period of emergency. Approximately 12,000 individuals are listed at this time. This list is kept current on a daily basis by the addition of new individuals whose activities make them potentially dangerous to the United States, and by the deletion of individuals who are no longer engaged in subversive activities. Included on the list of po-

³⁶⁸ *Report on the Internal Security Program*, prepared by the Interdepartmental Intelligence Conference and the Interdepartmental Committee on Internal Security, 3/5/54.

³⁶⁹ The Justice Department's 1959 annual report stated:

"Despite the 'thaw,' real or apparent, in the Cold War, the [Communist] Party has continued as an organized force, *constantly seeking to repair its losses and to regain its former position of influence*. In a number of fields its activities are directed ostensibly toward laudable objectives, such as elimination of discrimination by reason of race, low cost housing for the economically underprivileged, and so on. These activities are pursued in large part *as a way of extending the influence of the Party and its contracts with other forces and currents in American life, and with the hope of being able to 'move in' on such movements when the time is propitious*. As a conspiratorial activity the Party is still very much alive." (Annual Report of the Attorney General for Fiscal Year 1959, pp. 247-248.) [Emphasis supplied.]

³⁷⁰ J. Edgar Hoover, Chairman, Interdepartmental Intelligence Conference, to McGeorge Bundy, Special Assistant to the President, 7/25/61, enclosing IIC Report, *Status of U.S. Internal Security Programs, July 1, 1960, Through June 30, 1961*.

tentially dangerous individuals are nearly 200 persons who are engaged in pro-Castro Cuban activities or who sympathize strongly with such activities. In addition to members of the Communist Party, it also includes certain members of such organizations as the Nationalist Party of Puerto Rico, the Nation of Islam, and the Socialist Workers Party.

The FBI's "intensive coverage" of Cuban activities was required because of "the close ties between the Castro government of Cuba and the Soviet bloc." Particular attention was paid to the "July 26 Movement", which had been required to register under the Foreign Agents Registration Act, and to "the Fair Play for Cuba Committee." Regarding the latter, the report stated:

The Fair Play for Cuba Committee is the principal outlet for pro-Castro propaganda and agitation on the part of U.S. nationals sympathetic to the Castro regime. There are indications that this organization is receiving funds from the Cuban Government. In addition, investigation has shown that this group has been heavily infiltrated by the Communist Party, USA (CPUSA), and the Socialist Workers Party (SWP). . . . In fact, some chapters of the group have been directly organized by and under the complete control of the CPUSA or the SWP.

Finally, with respect to coverage of the Communist Party and related groups, the report stated:

The CPUSA is active in agitation and spreading dissension in the U.S., and during the current racial disturbances in the South, it *has attempted* to take full advantage of the situation. The Party *has endeavored* to bring pressure to bear on state and Federal officials through the press, labor unions, and student groups. . . .

At the present time, the FBI has under investigation two hundred known or suspected communist front and communist-infiltrated organizations. Many of these organizations are national in scope with chapters in various cities throughout the United States. These groups represent transmission belts through which the CPUSA *can* further its line.³⁷¹ [Emphasis added.]

The report did not say how effective the "attempts" and "endeavors" of the Communists were, nor did it indicate Communist success was increasing or decreasing.

The question of pro-Cuban activities had arisen earlier at a National Security Council meeting in May 1961 after the Bay of Pigs invasion. Director Hoover attended at the request of the Attorney General. Hoover recorded after the meeting that he had "outlined to the President the fact that the FBI had intensified its coverage of Cubans in this country, both anti-Castro groups and pro-Castro

³⁷¹ IIC Report, *Status of U.S. Internal Security Program, July 1, 1960 through June 30, 1961.*

groups." He had also "commented briefly upon the activities of the Fair Play for Cuba Committee and the elements in back of it." ³⁷²

An FBI intelligence program aimed at Castro sympathizers had originally begun in November 1960 when field offices were instructed to consider "recommending for the Security Index those individuals who are not now on the Security Index but who . . . would be deemed dangerous or potentially dangerous to the internal security of the U.S. in the event of an emergency involving Cuba and the U.S." Such individuals included both Cubans and non-Cubans "who have been engaged in substantial activities in furtherance of the aims and purpose of the Cuban government, in support of pro-Castro groups or organizations or in furtherance of the communist or subversive infiltration of pro-Castro groups." ³⁷³

After the Bay of Pigs invasion in 1961, FBI field officers were advised that "increasing anti-United States attitudes and demonstrations stemming from the Cuban situation and 'cold war' tensions are cause for concern" and that pro-Castro groups might "react militantly to an emergency situation." In particular, the activities of the Fair Play for Cuba Committee revealed "the capacity of a nationality group organization to mobilize its efforts in such a situation so as to arrange demonstrations and influence public opinion." Hence, all field offices were to "be most alert to the possibility of demonstrations by nationality groups which could lead to incidents involving violence." ³⁷⁴

Further instructions covered both pro-Castro and anti-Castro groups:

The failure of the recent invasion attempt by Cuban rebel forces has accentuated the problem of investigating anti-Castro and pro-Castro groups and individuals in the United States. In addition to discharging our security and criminal responsibilities we are faced with the necessity of acquiring and providing other agencies informative and valid intelligence data relative to the objectives and activities of both factions as well as data regarding key personalities. . . .

In order to discharge these investigative and intelligence responsibilities with maximum effectiveness it is essential that particular attention be afforded the development on a broadly expanded basis of sources and informants in a position to provide knowledgeable data regarding pro-Castro and anti-Castro activities. ³⁷⁵

At the time of the Cuban missile crisis in 1962, the FBI intensified its program for placing pro-Cubans on the Security Index and established a special "Cuban Section" of the Index. Among the activities to be considered in placing Cuban aliens on the Index included:

- (1) participation in organizations supporting the Castro regime,
- (2) participation in picket lines formed in support of the Cuban Government,
- (3) contacts with

³⁷² Memorandum of J. Edgar Hoover, 5/11/61.

³⁷³ SAC Letter No. 60-54, 11/22/60.

³⁷⁴ SAC Letter No. 61-24, 4/27/61.

³⁷⁵ SAC Letter No. 61-28, 5/23/61.

Cuban agents operating in this country on behalf of the Cuban Government, or (4) statements or activities on a subject's part establishing reasonable grounds to believe that his loyalty would lie with the Cuban Government in the event of armed conflict between the United States and Cuba.³⁷⁶

This program would have made it possible for the President, at the height of the Cuban missile crisis, to declare an "internal security emergency" and order the arrest and detention of those persons deemed "potentially dangerous" because of their pro-Castro sympathies.

In 1962 there were 11,165 persons on the Security Index, 969 persons in Section A of the Reserve Index, and approximately 10,000 persons in Section B of the Reserve Index. An internal FBI memorandum stated, "Essentially, all of the individuals included therein fall within the emergency detention provisions in the Internal Security Act of 1950 as well as the emergency detention provisions of the Attorney General's Portfolio."³⁷⁷ There is no indication that Justice Department officials under the Kennedy Administration were informed of the existence of the Reserve Index.

In late 1963 the Security Index contained the names of 10,519 individuals, of whom 1,967 were designated for the Detcom Priority Apprehension Program because "their training, violent tendencies and prominence in subversive activity represent the greatest threat in time of a national emergency. . . ."³⁷⁸ The procedures for Justice Department review of the Security Index were described as follows:

The Department does not review individual cases *prior* to the time they are placed on the Security Index. . . . In July 1955 the Department advised that it would engage in reviewing a "sampling" of our Security Index cases and it has been so engaged since. We furnish the Department each month a list of our Security Index subjects for attachment to the Master Warrant of Arrest maintained by the Department should an emergency occur requiring their apprehension and from this list the Department selects cases for reviewing. For information, as of today approximately 59.4 percent of the Security Index cases have been reviewed and approved by the Department.

We request the Department to conduct specific review of a Security Index case when such a subject becomes (1) a U.S. Government employee, (2) a foreign government employee, and (3) an employee of the United Nations. We also request the Department to specifically review a case previously reviewed and approved by it prior to taking action with respect to removing a subject's name from the Security Index. These reviews are generally conducted by the Department within a thirty-day period.³⁷⁹

³⁷⁶ SAC Letter No. 62-55, 10/5/62.

³⁷⁷ Memorandum from J. F. Bland to W. C. Sullivan, 6/7/62, 12/11/62.

³⁷⁸ Memorandum from W. C. Sullivan to A. H. Belmont, 11/26/63.

³⁷⁹ Memorandum from W. C. Sullivan to A. H. Belmont, 12/9/63.

The date of this December 1963 memorandum, in response to a request by Director Hoover, indicates high-level concern that Lee Harvey Oswald was not on the Security Index.

Following the Kennedy assassination, the FBI Intelligence Division proposed "a broadening of the factors which must be considered in evaluating an individual's dangerousness." Six new criteria were added:

1. Contacts with Sino-Soviet-bloc establishments (including Cuba) where purpose of contact cannot be determined or contact indicates communist sympathies.
2. Contacts with Sino-Soviet-bloc, Cuban, or Yugoslav intelligence agents where purpose of contact cannot be determined or contact indicates communist sympathies.
3. Individuals who have defected, revoked or sought revocation of their United States citizenship in favor of a Sino-Soviet-bloc country, who have returned to the United States, and who have taken no positive steps to counteract such action.
4. Statements or activities on a subject's part establishing reasonable grounds to believe that his loyalty would lie with communist nations in the event of armed conflict between the United States and communist nations.
5. Training and/or participation in espionage, sabotage, or intelligence activities.
6. A history of emotional instability or irrational behavior on the part of an individual with a subversive background whose prior acts depict a propensity for violence and hatred against organized government.

It was pointed out that such criteria were "sufficiently elastic so that when applied with the necessary judgment the complex questions which arise can be resolved."³⁸⁰

These FBI domestic intelligence policies in 1961-1963 indicated the central purpose of the Bureau's internal security assignment. International tensions were still sufficiently intense that the FBI could reasonably anticipate the possibility of an "internal security emergency." The basic assumptions which had prevailed since World War II had not been seriously questioned, and new events were viewed within that framework.

V. FBI INTELLIGENCE AND DOMESTIC UNREST, 1964-1974

"Mr. J. Edgar Hoover and the FBI had developed into an extraordinarily independent agency within our Government. It is hard to exaggerate that. Mr. Hoover, in effect, took orders only from himself, sometimes from an Attorney General, usually from a President, and that was it. He had created a kind of kingdom of which he was very jealous. . . .

"Mr. Hoover built a position which I think is almost unparalleled in the administrative branch of our Government, a combination of pro-

³⁸⁰ Memorandum from W. C. Sullivan to A. H. Belmont, 12/11/63; SAC Letter No. 63-61, 12/17/63.

fessional performance on the job, some element of fear, very astute relations with the Congress, and very effective public relations.”

—Testimony of former Secretary of State Dean Rusk before the Senate Foreign Relations Committee, July 23, 1974.

During the tumultuous years of the mid- and late-1960s and early 1970s, the FBI and other executive officials confronted entirely new domestic security problems which did not fit the assumptions of the past. Civil rights demonstrations, the violent Klan reaction, urban ghetto disturbances, and protests against the Vietnam War raised substantially different concerns for federal executives. They were essentially law enforcement matters, requiring effective criminal investigation of violent acts, improved police-community relations in the cities, and careful planning to insure peaceful demonstrations. Nevertheless, the FBI approached them within the framework of its domestic intelligence operations, based on the concepts of previous decades; and the Justice Department did not attempt in any significant way to reorient the Bureau away from its preoccupation with Communist “influence.” Instead, Attorneys General simply added new assignments for FBI intelligence, in broad requests containing little guidance and even less control.

A. Klan Intelligence

During the first half of 1964 officials of the Justice Department—including Attorney General Kennedy, Deputy Attorney General Nicholas Katzenbach, and Assistant Attorney General Burke Marshall of the Civil Rights Division—were increasingly concerned about the spread of Ku Klux Klan activity and violence in Mississippi and parts of Louisiana and Alabama. Attorney General Kennedy sent a team of lawyers experienced in organized crime investigations to Mississippi. Based on their report and his own findings, Assistant Attorney General Marshall prepared a memorandum for the Attorney General to send to President Johnson in June 1964. Its purpose was to encourage the FBI “to develop its own procedures for the collection of intelligence.” The memo to the President stated, in part:

... it seems to me that consideration should be given by the Federal Bureau of Investigation to new procedures for identification of individuals who may be or have been involved in acts of terrorism, and to the possible participation in such acts by law enforcement officials or at least their toleration of terrorist activity. In the past the procedures used by the Bureau for gaining information on known, local Klan groups have been successful in many places, and the information gathering techniques used by the Bureau on Communist or Communist related organizations have of course been spectacularly efficient.

The unique difficulty that 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.³⁸¹

Shortly thereafter, when three civil rights workers disappeared in Mississippi, President Johnson called on former CIA Director Allen Dulles to evaluate the situation. After conferring with the Attorney General, the FBI Director, and other Justice Department officials, Dulles flew to Jackson, Mississippi. There he met with the Governor, the head of the highway patrol, civic business leaders, black and white religious leaders, and civil rights workers. Upon his return to Washington, Dulles recommended to the President that a substantial increase be made in the number of FBI agents in Mississippi to help "control the terrorist activities". He announced publicly that the President appeared to favor his proposal and had indicated it would be implemented very shortly.³⁸²

According to an account based on FBI sources, President Johnson directed J. Edgar Hoover "to put people after the Klan and study it from one county to the next. I want the FBI to have the best intelligence system possible to check on the activities of these people."³⁸³

Another account suggests that Hoover initially told the President to send Federal marshals or troops to Mississippi, but finally agreed that the FBI would take on the assignment.³⁸⁴ Consequently, the FBI opened a new field office in Jackson, Mississippi, in July 1964. In addition, the Justice Department's Civil Rights Division set up a special unit as "a central clearing house for information on Klan and Klan-type organizations and on acts of violence and intimidation found to have been encouraged by the Klan." The unit maintained a current listing of Klan membership; compiled information on the organization of Klan federations and Klaverns and the relationship among different groups; monitored trends toward growth or attrition, recruiting activities, and changes in support for the Klan movement in particular areas; and reviewed and recommended action against Klan organizations where members were acting to violate Federal statutes.³⁸⁵

At FBI headquarters the supervision of investigations of Klan and hate groups was transferred from the General Investigative Division to the Domestic Intelligence Division, where it had been prior to 1958. The Inspection Division prepared a study of the matter before the 1964 shift occurred. This study recalled that "one of the prime factors" in the 1958 decision had been "the almost complete absence of Communist Party activity in the racial area;" another factor had been the need to "streamline operations." Because the General Investigative Division handled "the investigation of individual cases, *i.e.*, bombings,

³⁸¹ Quoted in Victor Navasky, *Kennedy Justice* (New York: Atheneum 1971), pp. 105-106.

³⁸² "Dulles Requests More FBI Agents for Mississippi," *New York Times*, 6/27/64; see also Joseph Alsop, "Murder by Night," *Washington Post*, 6/17/64.

³⁸³ Don Whitehead, *Attack Against Terror: The FBI Against the Ku Klux Klan in Mississippi* (1970), pp. 90-91.

³⁸⁴ Joseph Kraft, "J. Edgar Hoover: The Complete Bureaucrat," *Commentary* (February 1965), pp. 59-62.

³⁸⁵ Annual Report of the Attorney General for Fiscal Year 1965, pp. 185-186.

murders, police brutality, etc.," there was an advantage in "having the hate group informants and intelligence functions with the substantive civil rights cases." This argument was repeated by officials opposed to the transfer in 1964:

[One official] believes the transfer of functions would create an undesirable division of authority and responsibility; that our best chance to break major civil rights cases such as bombings, murders, etc., is through information developed from the inside as a result of coverage established in the community where the crime occurred; i.e., informants and sources in the Klan, hate groups, subversive organizations, but also sources not connected with any group, who will report potential violence and individuals prone to violence. We are following the policy of aggressively seeking out persons addicted to violence even though they have not violated a federal law as yet. He feels that the Division that is going to investigate these cases should forge the necessary tools to use for this purpose.

The contrary argument was based on "the premise that organizations like the KKK and supporting groups are essentially subversive in that they hold principles and recommend courses of action that are inimical to the Constitution as are the viewpoints of the Communist Party." The Domestic Intelligence Division had experienced with aggressive techniques in the area of "subversion."

[Another official] feels that the DID over the years has developed wide experience in the penetration of subversive organizations through informants, anonymous sources, sophisticated microphone and technical surveillances, interview programs of highly specialized nature, etc., and that his division could put this experience to excellent use in penetrating the Klan and other hate groups.

It was also suggested that the Domestic Intelligence Division "would be in a position to launch a disruptive counterintelligence program against the Klan and other hate groups with the same effectiveness that they are now doing insofar as the Communist Party is concerned."

The Inspection Division agreed that the Domestic Intelligence Division had "achieved noteworthy results in infiltrating the Communist Party and Soviet intelligence operations" and that "this experience and knowhow could be put to good advantage in penetrating the Klan and other hate groups." The Inspection Division also "felt that a study of counterintelligence and disruption tactics against the Klan certainly merits further consideration." On the basis of this recommendation, Director Hoover approved the transfer.³⁸⁶

Former Attorney General Nicholas Katzenbach vigorously defended the FBI's broad intelligence-gathering program against the Klan in his testimony before the Select Committee:

³⁸⁶ Memorandum from J. H. Gale to Mr. Tolson, 7/30/64 (See Report on COINTELPRO).

The Klan program involved the investigation and prosecution of persons who engaged in and who were committed to the violent deprivation of constitutionally guaranteed rights of others through murders, kidnappings, beatings and threats of violence—all in contravention of federal and state laws. . . . The Bureau was investigating and attempting to prevent violence. To equate such efforts with surveillance or harassment of persons exercising constitutionally guaranteed rights is in my view unmitigated nonsense. . . .

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 Klan members, and made Klan members aware of the extensive informant system of the FBI and the fact that they were under constant observation. Klan members were interviewed and reinterviewed openly—a fact which appeared in the public press at the time. They were openly surveilled. These techniques were designed to deter violence—to prevent murder, bombings and beatings. In my judgment they were successful. I was aware of them and I authorized them. In the same circumstances I would do so again today.³⁸⁷

Mr. Katzenbach spoke of the FBI's intensive investigation of individuals and groups with a "propensity for violence." The FBI Manual did, in fact, attempt to focus Klan intelligence investigations in this manner. The basic standard for opening an investigation was whether organizations or individuals "have adopted a policy or have allegedly adopted a policy of advocating, condoning, or inciting the use of force or violence to deny others their rights under the Constitution." The FBI Manual stressed:

The fundamental objective is to identify those who may be engaged in or responsible for acts of violence, and care must be taken to avoid becoming involved in widespread, nebulous investigation which does not go to the heart of the problem at hand. When a case is opened, it should receive immediate and continuous attention until the initial allegation is resolved. The case should be promptly closed if it is definitely determined that it does not fall within the criteria set out . . . above.

. . . wholesale investigations of individuals associated with these organizations should not be undertaken. Individuals investigated should be those key personnel who have the propensity for violence and actually formulate and carry out

³⁸⁷ Nicholas deB. Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 207.

the organization's policies and not those individuals who merely attend meetings on a regular basis.

However, general intelligence collection did go beyond these limits. Field officers were instructed to "follow through public source material and established sources activities of organizations which do not qualify for investigation under above standards."³⁸⁸

The Domestic Intelligence Division chafed under these restrictions, which were held over from when Klan investigations had been under the General Investigative Division. Assistant Director William C. Sullivan, head of the Intelligence Division, told the FBI Executives Conference in 1966 that

. . . in his strong opinion the FBI is not adequately coping with the problems created by the Ku Klux Klan. He had in mind bombings, beatings, civil rights violations, etc. Mr. Sullivan pointed out that there are 14,000 members of the Klans in the United States today. The FBI's policy calls for investigating all officers of the Klan and all Klan members who are violence prone. He said there are 4,500 officers and to date we have investigated only 1,500 of them, and only 300 violence-prone of whom there are many more.

Sullivan specifically cited the problem in North Carolina where there were 152 Klaverns and the FBI needed informant coverage of 81. He urged that the Bureau give "sufficient manpower . . . and direction to seriously disrupt and reduce their activities and practices."³⁸⁹

Thereafter, in 1967 the FBI Manual was revised to direct field offices specifically to furnish "details concerning rallies [and] demonstrations" by Klan or hate-type organizations.³⁹⁰ In 1969 these instructions were broadened to "include full details concerning the speeches made at the rallies or demonstrations, as well as the identities of the speakers."³⁹¹

In 1971 the criteria for investigating individuals were widened still further. Special Agents in Charge of field offices were instructed to investigate not only persons with "a potential for violence," but also anyone else "who in judgment of SAC should be subject of investigation due to extremist activities."³⁹²

Thus, the FBI gradually expanded its Klan intelligence investigations, moving beyond information related to possible violence. By 1971 the FBI program for investigating Klan and hate-groups delegated virtually unlimited discretion to the field and specifically required FBI agents to report on lawful political speeches.

For example, the FBI's collection of intelligence about "white militant groups" included groups "known to sponsor demonstrations against integration and against the bussing of Negro students to white schools." As soon as a new organization of this sort was formed, the Bureau used its informers and "established sources" to determine "the

³⁸⁸ 1965 FBI Manual Section 122, pp. 1-2.

³⁸⁹ Executives Conference Memorandum, 3/24/66.

³⁹⁰ 1967 FBI Manual Section 122, p. 2.

³⁹¹ 1969 FBI Manual Section 122, p. 2.

³⁹² 1971 Manual Section 122, p. 2.

aims and purposes of the organization, its leaders, approximate membership" and other "background data" bearing upon "the militancy" of the group.³⁹³

B. FBI Intelligence and the Black Community

Events in 1964 also led to a substantial change in FBI intelligence programs dealing with black "extremists" and civil disorders, in addition to the Klan. During the first urban ghetto riots in the summer of 1964, President Johnson instructed the FBI to investigate their origins and extent. The Bureau's report was made public in late September. The FBI had surveyed nine cities where riots had occurred and gathered information "from public officials, police officers, clergymen, leaders of responsible organizations and individuals considered to be reliable." The basis for the inquiry was explained in the most general terms:

It is a truism that the first duty of all government is to maintain order, else there is no government. Keeping the peace in this country is essentially the responsibility of the state government. Where lawless conditions arise, however, with similar characteristics from coast to coast, the matter is one of national concern even though there is no direct connection between the events and *even though no federal law is violated*. [Emphasis added.]

The FBI's findings served to reassure the public: there was no evidence "that the riots were organized on a national basis;" none of the incidents was a "race riot" involving interracial violence; and none was a "direct outgrowth of conventional civil rights protest." However, the FBI did report the role of "a Marxist-Leninist group following the more violent Chinese Communist line" and other individuals "with histories of Communist affiliation" in alleged attempts to instigate riot activity. The FBI also called attention to the growth of black militancy, asserting that "a number of violent agitators" had arisen. Without mentioning his name, the FBI report described the activities of Malcolm X as one example of a leader urging blacks "to abandon the doctrine of non-violence."³⁹⁴

These developments in the North and the increasing number of civil rights demonstrations in the South were the background for an expansion of the FBI program for collecting intelligence on "General Racial Matters" in early 1965. The FBI Manual was revised to cover demonstrations, racial violence and riots. These revisions included the following:

In order that the Bureau's information will be complete regarding planned racial activity, such as demonstrations, rallies, marches, or threatened opposition to activity of this kind, each office must assume responsibility for following up the planned activity and promptly advising the Bureau by teletype of subsequent developments even though the develop-

³⁹³ SAC Letter 68-25, 4/30/68.

³⁹⁴ "Text of FBI Report on Recent Racial Disturbances," *New York Times*, 9/27/64.

ment may be a postponement or cancellation of the planned activity.

In the event of an outbreak of mob violence or rioting . . . you must: Immediately launch a vigorous investigation to determine the causes and forces behind the threatened or actual mob violence or rioting and whether there is an organized pattern underlying it emanating from subversive or radical groups or other outside sources . . . [and] afford specific assignments to informants, and keep them assigned, to determine the underlying cause of the mob violence or riot. . . .³⁹⁵

At this time the FBI Director testified before the House Appropriations Committee that the FBI was following "the racial situation from an intelligence viewpoint." The Justice Department reported that this intelligence had already made it possible for the Civil Rights Division to keep "a close and continuing watch on civil rights demonstrations which totaled 2,422 in almost all states during the year ending April 1964."³⁹⁶

In late 1966 after two more "long hot summers," including the 1965 Watts riot in Los Angeles and many smaller-scale disorders, the FBI instituted a program for preparing semi-monthly summaries of possible racial violence in major urban areas. Field offices were instructed to conduct "a continuing survey to develop advance information concerning racial developments which clearly point to the possibility of mob violence and riotous conditions."

This survey should afford the Bureau a realistic, comprehensive picture of the existing racial conditions in major urban areas on a current basis and this can only be accomplished by maintaining a constant and effective check on existing conditions through racial, criminal, and security informants and through established logical sources. Information . . . should cover the following categories:

- (1) Name of community. . . .
- (2) General racial conditions. . . .
- (3) Current evaluation of violence potential. . . .
- (4) Identities of organizations involved in local racial situations. Such organizations may include not only civil rights organizations but also subversive organizations, black nationalist organizations, Klan organizations, hate-type groups, and others. Include a concise summary of the general programs of such organizations relating to the racial issue. In particular include any indications of subversive or radical infiltration of organizations and any indication that organizations involved in the racial issue advocate or may resort to extralegal action or violence.

- (5) Identities of leaders and individuals involved. Include the identity of leaders and individuals in the civil rights movement as well as readily available personal background data, any pertinent information contained in office files

³⁹⁵ 1965 FBI Manual Section 122, pp. 6-8.

³⁹⁶ Department of Justice Appropriation for Fiscal Year 1966, Hearings before the House Appropriations Committee (1965), pp. 175, 342-343, 348.

showing affiliation or association with Klan-type, communist or related subversive organizations and/or statements made by such individuals advocating racial violence and/or extra-legal activity.

(6) Existence of channels of communication between minority leaders and local officials. . . .

(7) Objectives sought by minority community, and possible points of contention. . . . Describe the number, character, and intensity of the techniques used by the minority community, such as picketing or sit-in demonstrations, to enforce their demands.

(8) Reaction of leaders and members of the community to minority demands . . .³⁹⁷

The Bureau concentrated investigations in this field on "black nationalist groups," described as "hate-type organizations" with a "propensity for violence and civil disorder."³⁹⁸ The term "militant black nationalist" was not defined with any precision. Such "racial militants" were deemed a "threat to the internal security" because of their "anarchistic tendencies"³⁹⁹ or their "propensity for fomenting racial disorder."⁴⁰⁰ Leaders and members of "black nationalist" groups were investigated under the Emergency Detention Program for placement on the FBI's Security Index.⁴⁰¹

The standards were so vague, however, that the FBI included Dr. Martin Luther King and his nonviolent Southern Christian Leadership Conference in the "radical and violence-prone" category, because Dr. King might "abandon his supposed 'obedience' to 'white, liberal doctrines' (nonviolence) and embrace black nationalism."⁴⁰²

Another leading civil rights group, the Council on Racial Equality (CORE), which had "negligible" Communist infiltration, was investigated under the "Racial Matters" Program because the Bureau concluded that it was moving "away from a legitimate civil rights organization" and was "assuming a militant black nationalist posture." The FBI reached this conclusion on the grounds that "some leaders in their public statements" had condoned "violence as a means of attaining Negro rights." The investigation was intensified, even though there was as yet no information that its members "advocate violence" or "participate in actual violence."⁴⁰³

The Justice Department provided little guidance for FBI intelligence investigations. The Nation of Islam again provides an example. In 1962, the FBI asked if the group could be prosecuted or designated for the "Attorney General's list." In reply, the Internal Security Division repeated its earlier position that there was not "sufficient evidence to warrant prosecutive action," but that the FBI should "continue its investigation . . . because of the radical, semi-secret, and violent nature of this organization, and the continuing tendency on the

³⁹⁷ FBI Manual Section 122, revised 12/13/66, pp. 8-9.

³⁹⁸ Memorandum from FBI Headquarters to all SACs, 8/25/67.

³⁹⁹ Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

⁴⁰⁰ Memorandum from P. L. Cox to Mr. Sullivan, 9/5/67.

⁴⁰¹ Memorandum from Brennan to Sullivan, 4/30/68.

⁴⁰² Memorandum from FBI Headquarters to all SACs, 3/4/68.

⁴⁰³ SAC Letter 68-16, 3/12/68.

part of some of its leaders to use language of implied threats against the Government.”⁴⁰⁴ Although the Division did not mention the Security Index, the FBI believed that the investigation was conducted primarily so that leaders and/or active members could be considered “for apprehension during the period of a national emergency and for inclusion in the Security Index.”⁴⁰⁵

The FBI again asked for the Justice Department’s opinion in 1963. An official of the FBI Domestic Intelligence Division observed to his superior, “Inasmuch as the Department is in possession of all pertinent information regarding the NOI and its teachings, it appears the Department is trying to get the Bureau to do the Department’s work.”⁴⁰⁶

The Internal Security Division replied only that there was “insufficient evidence” for prosecution and said nothing about further investigation.⁴⁰⁷

Nevertheless, the FBI did continue investigating “because of the radical, semisecret and violent nature of the organization.” In 1964, it once again asked for the Department’s opinion “as to whether the activities of the NOI come within the criteria of Executive Order 10450 or whether its activities are in violation of any other Federal statute.”⁴⁰⁸ The Internal Security Division’s answer reiterated that there was “insufficient evidence” for prosecution, and went into greater detail regarding applicability of the criteria for the Employee Security Program under Executive Order 10450:

The activities reported must be shown to be more than mere prophecies or utterances made with the hope of ultimate attainment of their desired aims. For example, while teaching that the white man must be exterminated they do not say by whom or how. There should be available evidence to show that the advocacy or approval of the commission of acts of violence to deny others their Constitutional rights is calculated to incite the members to action now or in the foreseeable future. Evidence is needed to show the specific acts taken by particular individual leaders in advocating or approving acts of force and violence; not that “heads will roll in the streets”, which could be merely a prediction, but rather what specific plan of action, direction or urging has been made to bring about such an event; not the abstract teaching that Allah will cause the desired event, but the concrete steps taken by specific individual leaders to effectuate their goals. It is fully realized that such evidence is not easily obtained even if it exists; and finally there seems to be some indication that the leaders are becoming more cautious in their utterances.⁴⁰⁹

⁴⁰⁴ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 1/25/62.

⁴⁰⁵ Note on Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 1/10/62.

⁴⁰⁶ Memorandum from F. J. Baumgardner to W. C. Sullivan, 2/21/63.

⁴⁰⁷ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 5/16/63.

⁴⁰⁸ Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 1/31/64.

⁴⁰⁹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 3/3/64.

Despite this formal opinion, the FBI continued to investigate and to furnish the results to the Department in reports and memoranda.

FBI intelligence officials assumed they could go ahead not only because the Justice Department did not say "stop the investigation," but also because the FBI still included "names of appropriate Nation of Islam officials . . . in our Security Index" (which was reviewed by the Internal Security Division). In mid-1966 an FBI intelligence official observed, "The Department apparently has no intention of authorizing prosecution of the Nation of Islam, in absence of the Nation of Islam causing large-scale riots, or virtual insurrection. However, it appears to be in the Bureau's best interests to put the Department on record once again as to whether a prosecutable violation exists. . . ." ⁴¹⁰

This time the Internal Security Division specifically asked the FBI to continue "active investigation . . . for possible violation of Federal statutes or for possible designation under the provisions of Executive Order 10450." This request was made despite the Division's conclusion that there was still "insufficient evidence" and that in the previous two years there had "been no significant changes as to the character and tactics of the organization." The only reason offered for this Departmental instruction to continue the investigation was that the group's leaders "advocate disobedience of any law contrary to the beliefs of Muslims." ⁴¹¹

There were no further FBI requests for Departmental opinion or instructions provided by the Internal Security Division regarding the continued intelligence investigation of the Nation of Islam from 1966 until 1973.

C. COMINFIL Investigations—"Racial Matters"

In June 1964, the FBI established a "special desk" in the Domestic Intelligence Division to supervise an "intensification of the investigation of communist influence in racial matters." ⁴¹² The chief of the Division's Internal Security Section stressed that civil rights was "the primary domestic issue on the political front today," and that "both sides" in the Senate debate on the Civil Rights Bill might "ask the Bureau" for information about "communist penetration into the racial movement." Thus, the FBI had to be prepared to make "a proper presentation of the facts." The Bureau's Inspection Division endorsed this step, noting that the "urgency" for the FBI to "stay ahead" of the situation was tied not only to the civil rights bill, but to "the complex political situations in an election year where civil rights and social disturbances will play a key role in campaign efforts and possibly election results." ⁴¹³ Instructions to the field in August 1964 stated:

There are clear and unmistakable signs that we are in the midst of a social revolution with the racial movement at its core. The Bureau, in meeting its responsibilities in this area, is an integral part of this revolution. ⁴¹⁴

⁴¹⁰ Memorandum from F. J. Baumgardner to W. C. Sullivan, 7/15/66.

⁴¹¹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 7/28/66.

⁴¹² Memorandum from F. J. Baumgardner to W. C. Sullivan, 10/1/64.

⁴¹³ Memorandum from F. J. Baumgardner to W. C. Sullivan, 5/20/64.

⁴¹⁴ Memorandum from FBI Headquarters to all SACs, 8/28/64.

The part the FBI played in this "revolution" in American race relations was not a noble one. Director Hoover's formal statement to the Appropriations Committee, published in April 1964, discussed at great length the "Communist interest in Negro activities." He concluded that "Communist influence" in the "Negro movement" was "vitally important" because "it can be the means through which large masses are caused to . . . succumb to the party's propaganda lures." The number of Negroes recruited by the Communists was "not the important thing." Rather, Director Hoover said it was "an old Communist principle" that: "Communism must be built with non-Communist hands."⁴¹⁵

Director Hoover's public and private message in 1964, on this and other occasions, was that the "importance of the Communist influence in the Negro movement" could not be "ignored or minimized."⁴¹⁶ Most Americans at that time would not have questioned Hoover's preeminence as an expert on Communism.⁴¹⁷ Nevertheless, Bureau records indicate that he rejected the findings of the FBI's most experienced intelligence officials on this issue, that he influenced his subordinates to abandon their own judgments and to exaggerate Communist influence in the civil rights movement, and that these subordinates then instituted massive investigative efforts to find every possible bit of evidence of Communist links in order to substantiate the Director's preconception.⁴¹⁸

The August 1963 March on Washington had a dramatic impact on the nation—and devastating consequences within the FBI. Shortly before the March, Bureau intelligence officials summarized the results of extensive investigations (initiated a month before the March).⁴¹⁹ There was no evidence that the March was "actually initiated" or "controlled" by Communists, although they did plan to participate. There had been "an obvious failure" of the Communists "to appreciably infiltrate, influence, or control large numbers of American Negroes." The report concluded that "time alone will tell" whether the Communists would have "great success" in the future.⁴²¹

Director Hoover, upon reading the report, sharply rejected its finding that Communist influence was "infinitesimal."⁴²² His subordinates got the message. "The Director is correct," wrote the head of the Domestic Intelligence Division, adding, "We regret greatly that the memorandum did not measure up to what the Director has a right to expect from our analysis."⁴²³

The Division head advised another Bureau official: "It is obvious that we did not put the proper interpretation upon the facts which we gave to the Director." He promised to "do everything that is

⁴¹⁵ Justice Department Appropriation for FY 1965, Hearings before the House Appropriations Subcommittee, 88th Cong. (1964), p. 309.

⁴¹⁶ Memorandum from C. D. DeLoach to Edwin O. Guthman, Special Assistant to the Attorney General for Public Information, 5/14/64. (Enclosure)

⁴¹⁷ His book, *Masters of Deceit: The Story of Communism in America and How to Fight It* (New York: Henry Holt, 1958), was a best-seller and was used in schools across the country.

⁴¹⁸ See Committee Report on Dr. Martin Luther King.

⁴¹⁹ Memorandum from F. J. Baumgardner to W. C. Sullivan, 8/22/63.

⁴²¹ Memorandum from F. J. Baumgardner to W. C. Sullivan, 8/23/63.

⁴²² J. Edgar Hoover's note on Baumgardner memorandum, 8/23/63.

⁴²³ Memorandum from W. C. Sullivan to A. Belmont, 8/30/63.

humanly possible to develop all facts nationwide relative to Communist penetration and influence over Negro leaders and their organizations.”⁴²⁴

This exchange set in motion a disastrous series of events. The Domestic Intelligence Division recommended asking the Attorney General to approve a wiretap on Dr. Martin Luther King,⁴²⁵ intensifying field investigations to uncover “communist influence on the Negro” using “all possible investigative techniques,” and expanding COINTELPRO operations using “aggressive tactics” to “neutralize or disrupt the Party’s activities in the Negro field.”⁴²⁶ After a sarcastic initial rejection of these plans, Director Hoover approved a new Intelligence Division memorandum on “Communism and the Negro Movement—A Current Analysis” and noted, “I am glad that you recognize at last that there exists such influence.”⁴²⁷

Approving a recommendation after a December 1963 conference that the Bureau take Dr. King “off his pedestal” and promote someone else to be his successor as the new “national Negro leader,” FBI Director Hoover observed:

I am glad to see that “light” has finally, though dismally delayed, come to the Domestic Int. Div. I struggled for months to get over the fact that the Communists were taking over the racial movement but [illegible] couldn’t or wouldn’t see it.⁴²⁸

Director Hoover’s exaggeration of Communist influence in the civil rights movement (especially his 1964 appropriations testimony) risked poisoning the political climate in the months before passage of the 1964 Civil Rights Act.⁴²⁹ And the investigation of the civil rights movement to uncover any shred of evidence of Communist influence added massive reports to the files of the Bureau and other agencies on lawful political activity and law-abiding Americans.

To achieve this end FBI Manual provisions for internal security intelligence were revised substantially without any outside supervision. New instructions were added to intensify FBI intelligence investigations of Communist influence in the civil rights movement and in protest demonstrations. First of all, field offices were to identify all Negro members of the Communist Party. Second, a new program code-named CIRM (Communist Influence in Racial Matters) was instituted. Quarterly reports from the field offices were to include information on:

... communist infiltration in various organizations, such as the Congress of Racial Equality, Student Non-Violent Coordinating Committee, and the like; investigations of subversive individuals active in the racial movements; investigations of communist fronts and other miscellaneous organizations; and racial disturbances and other racial matters. ... These reports shall be designed to precisely spell out the full extent of the communist influence in racial matters. They

⁴²⁴ Memorandum from W. C. Sullivan to A. Belmont, 9/25/63.

⁴²⁵ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 10/7/63.

⁴²⁶ Memorandum from F. J. Baumgardner to W. C. Sullivan, 9/16/63.

⁴²⁷ Note on Memorandum from Alan Belmont to Clyde Tolson, 10/17/63.

⁴²⁸ Note on memorandum from W. C. Sullivan to A. Belmont, 1/8/64.

⁴²⁹ “Rights Bill Crippling is Feared,” *Washington Post*, 5/11/64.

should separate words and intentions from actions; mere participation from direct influence; and the bona fide communist from the mere "do-gooder". They should not include information concerning legitimate efforts in the racial movement where there is no communist taint.

The FBI Manual also required field office reports on protest activities where Communists might be involved including:

Information on communist direction and influences of and participation in racial demonstrations, disturbances, drives, boycotts, and any other similar activities with racial overtones. This part will illustrate *how* communist activities *attempt* to exploit radical situations and expand communist influence, thus furthering communist objectives. . . . [Emphasis added.]

Under each subheading include such information as nature of event; sponsoring and participating groups; total participants; number and identities of subversives involved; specifics as to whether subversives directed, controlled, instigated, or merely participated; whether violence resulted and, if so, whether subversives involved; arrests of subversives and court disposition; and any other information believed pertinent to the over-all picture of communist influence. Efforts by supporting groups to avoid communist involvement should also be reported. If a particular event had no communist involvement, it should, of course, not be included in the report.

The last restriction had somewhat less effect, because FBI offices were advised that "the term 'communist' should be interpreted in its broad sense as including persons not only adhering to the principles of the CPUSA itself, but also to such splinter and offshoot groups as the Socialist Workers Party, Progressive Labor Party, and the like." Whenever a group was subject to Communist influence, field offices had to report:

. . . pertinent data as to the national headquarters, as well as any local affiliates. . . . The number of members, nationally and by locals, should be indicated. Include under each organization information as to officers and others in positions of influence who have present *or past* subversive connections; information as to other subversives who are merely members; specific evidence of influence wielded by subversives; policy concerning communist participation in the organization's activities, such as prohibition of communists holding office or membership (if no such stated policy, so indicate); and use and distribution of communist propaganda. [Emphasis added.] ⁴³⁰

These instructions continued in effect until the early 1970's. Their application to Dr. Martin Luther King, Jr., and the Southern Christian Leadership Conference are described elsewhere. ^{430a}

⁴³⁰ FBI Manual Section 87, pp. 12a-12c, revision of 9/18/64.

^{430a} See Committee Report on Dr. Martin Luther King, Jr.

Under this program the FBI also intensified investigations of moderate groups like the NAACP, which had been under investigation since the 1940's. For example, the Detroit office relied on six informants to "follow and report on all efforts by the Communist Party to infiltrate the NAACP."⁴³¹

The New York Field Office used sixteen informants and confidential sources "to follow CP infiltration of the national organization of the NAACP and local branches of the NAACP." All the national officers and board members of the NAACP were listed, and any data in FBI files on their past associations with subversives were included. Most of this information went back to the 1940's. Copies of the report were disseminated to local military intelligence officers.⁴³²

The FBI's Chicago office prepared a Letterhead Memorandum (a report designed for dissemination to other Executive Branch agencies) on the plans of Communist leaders to have "the Party forces" at the NAACP National Convention press for certain policies. The memorandum did not indicate how extensive or influential these "Party forces" would be.⁴³³ The St. Louis office used eleven informants and confidential sources to "follow and report interest and activity of the CP and SWP in the NAACP in St. Louis."⁴³⁴ The New York office reported changes in the leadership and board of the NAACP in 1966, once again going back in FBI files to uncover any subversive associations in the 1940's.⁴³⁵ The FBI did close cases on specific chapters where there were very few Communists involved.⁴³⁶ In order to reach the point of closing a case, however, FBI offices submitted reports listing all officers of the NAACP chapters and the number of members. Membership figures were sometimes obtained by "pretext telephone call . . . utilizing the pretext to being interested in joining that branch of the NAACP." (Copies of all reports were disseminated to local military intelligence offices "in view of their interest in matters pertaining to infiltration of the NAACP.")⁴³⁷

D. COMINFIL Investigations—The Antiwar Movement and Student Groups

The scope of FBI intelligence investigations of Communist infiltration of civil rights groups was matched, if not exceeded, by its investigations of Communist links to the antiwar movement. As early as 1964 the FBI reported publicly that the Communist Party was conducting "an intensive campaign for the withdrawal of American forces from South Vietnam."⁴³⁸

In April 1965, President Johnson's Assistant for National Security Affairs, McGeorge Bundy, asked the FBI for information concerning the Communist role in criticism of American policy in Vietnam. The following day Director Hoover met with the President to discuss this matter. According to Hoover's account:

⁴³¹ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/65.

⁴³² Memorandum from New York Field Office to FBI Headquarters, 4/15/65.

⁴³³ Memorandum from Chicago Field Office to FBI Headquarters, 5/7/65.

⁴³⁴ Memorandum from St. Louis Field Office to FBI Headquarters, 4/14/66.

⁴³⁵ Memorandum from New York Field Office to FBI Headquarters, 4/15/66.

⁴³⁶ Memorandum from FBI Headquarters to Indianapolis Field Office, 5/4/66.

⁴³⁷ Memorandum from Los Angeles Field Office to FBI Headquarters, 11/5/65.

⁴³⁸ Annual Report of the Attorney General for fiscal year 1964, pp. 373-376.

The President informed me that he was quite concerned over the anti-Vietnam situation that has developed in this country and he appreciated particularly the material that we sent him yesterday containing clippings from various columnists in the country who had attributed the agitation in this country to the communists as there was no doubt in his mind but that they were behind the disturbances that have already occurred. He said he had just received from Mr. McCone, the outgoing Director of the Central Intelligence Agency, a letter in which the Central Intelligence Agency stated that their intelligence showed that the Chinese and North Vietnamese believe that by intensifying the agitation in this country, particularly on the college campus levels it would so confuse and divide the Americans that our troops in South Vietnam would have to be withdrawn in order to preserve order here and it would enable North Vietnam to move in at once. . . . He stated he would like me to take prompt and immediate steps to brief at least two Senators and two Congressmen, preferably one of each Party, on the demonstrations in this country of the anti-Vietnam groups so that they might in turn not only make speeches upon the floors of Congress but also publicly. . . .

I informed the President that I had just received word this morning before coming to the White House that plans had been made from May 3 to May 9 to demonstrate in 85 cities of this country by the Students for Democratic Society, which is largely infiltrated by communists and which has been woven into the civil rights situation which we know has large communist influence. I told the President we were preparing a memorandum on the Students for Democratic Society which I would try to get to him by tomorrow. . . .

I also told the President that we were preparing, in response to the request he had made through Honorable McGeorge Bundy at the White House an over-all memorandum on the Vietnam demonstrations and communist influence in the same. . . .

Director Hoover issued the following instructions to his subordinates after his meeting with the President :

. . . I want prepared immediately a memorandum which I can transmit to the President containing what we know about the Students for Democratic Society. While I realize we may not be able to technically state that it is an actual communist organization, certainly we do know there are communists in it. It is somewhat similar to the situation we found in the Selma-to-Birmingham March in which we were able to identify 75 communists from New York City as being in that march even though there were many others in the march who were not communists and we could not be certain it was a communist demonstration. What I want to get to the President is the background *with emphasis upon the communist influence therein* so that he will know exactly what the picture is. [Emphasis added.]

I believe we should intensify through all field offices the instructions to endeavor to penetrate the Students for Democratic Society so that we will have proper informant coverage similar to what we have in the Ku Klux Klan and the Communist Party itself.

The Director also issued instructions for the overall memorandum on antiwar demonstrations "so that it can be used publicly by prominent officials of the Administration whom the President intends to send in various parts of the country to speak on the Vietnam situation."

I want it prepared in such a manner that there will be nothing to uncover our informant coverage but be a good, strong memorandum that will pinpoint that these demonstrations which have occurred, particularly on the campuses of the colleges and universities have been largely participated in by communists even though they may not have initiated them but they at least have joined and forced the issue such as has been done at Berkeley, California, and as they are doing at Ohio State University at the present time. Give this matter immediate attention and top priority as the President is quite concerned about the situation and wants prompt and quick action.⁴³⁹

The resulting report on "Communist Activities Relative to United States Policy on Vietnam" presented extensive information showing the Communist Party's *desire* to influence antiwar activity—by sending letters to the President and Congressmen, issuing press releases, delivering speeches on campuses and elsewhere, distributing Party propaganda, and participating in protest demonstrations. Only one antiwar group other than the Party itself was reported as being significantly influenced—the W.E.B. DuBois Clubs allegedly formed in 1964 "as a result of a mandate by the Communist Party." The Party had instructed its district leaders "to organize activities in the trade-union movement, in youth groups and in religious organizations until peace is achieved." The extent or success of this effort was not discussed. Instead, a recent demonstration of some 15,000 persons in Washington, D.C., "was not communist instituted, dominated or controlled," although party members participated. Party members also were "participants" in a "vigil" at the LBJ ranch.⁴⁴⁰

FBI field offices were instructed in 1965 to intensify their investigation of "subversive activity" among student groups.⁴⁴¹ However, in 1967, there was concern that FBI intelligence activity on college campuses might be exposed by the controversy over CIA links with the National Student Association. Therefore, field offices were advised:

It is possible that this current controversy could focus attention on the Bureau's investigations of student groups on college campuses. It is also possible that student groups such as the Students for a Democratic Society and the W.E.B. DuBois Clubs of America could use this controversy as a vehicle to create some incident to embarrass the Bureau by

⁴³⁹ Memorandum of J. Edgar Hoover, 4/28/65.

⁴⁴⁰ Letter to McGeorge Bundy, 4/28/65, enclosing FBI memorandum, 4/28/65.

⁴⁴¹ SAC Letter No. 65-44, 8/17/65.

claiming that we are infringing on academic freedom by investigating such groups. You should, therefore, 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.

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 or source." These interviews or contacts were also to "be made away from the campus."⁴⁴²

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."⁴⁴³

Thus, at least one dimension of the FBI's expanding domestic intelligence program in the 1960s was temporarily cut back to avoid criticism. Director Hoover's restrictions imposed in 1966-1967 on the use of other sensitive techniques, including electronic surveillance and surreptitious entries, are discussed elsewhere.^{443a}

The FBI's desires for intelligence conflicted directly with its fear of "embarrassment." Shortly after the cutback in campus coverage, the FBI formally characterized the Students for a Democratic Society for the first time. The characterization (or "thumbnail sketch") stressed the following information on "subversive" connections with SDS.

Gus Hall, General Secretary, Communist Party, USA, when interviewed by a representative of United Press International in San Francisco, California, on May 14, 1965, described the SDS as a part of the "responsible left" which the Party has "going for us." At the June, 1965, SDS National Convention, an anticommunist proviso was removed from the SDS constitution. In the October 7, 1966, issue of "New Left Notes," the official publication of SDS, an SDS spokesman stated that there are some communists in SDS and they are welcome.⁴⁴⁴

As intelligence investigations of SDS chapters expanded, FBI officials realized that the restrictions on campus contacts "impose problems for the field." Field offices were advised to stress "the development of noncampus informants and sources" to maintain intelligence

⁴⁴² SAC Letter No. 67-13, 2/21/67.

⁴⁴³ SAC Letter No. 67-20, 4/7/67.

^{443a} See Reports on Warrantless FBI Electronic Surveillance; Warrantless FBI Surreptitious Entry; and CIA and FBI Mail Opening.

⁴⁴⁴ SAC Letter No. 67-23, 4/25/67.

coverage of "subversive" activity at educational institutions.⁴⁴⁵ 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 was still needed to contact students or professors.⁴⁴⁶

An example of the scope of these investigations is the coverage of various antiwar teachins 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 complete detail a "public hearing on Vietnam."

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 1950s. 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 \$5.00 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. 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";
- 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.

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 in-

⁴⁴⁵ SAC Letter No. 67-24, 5/2/67.

⁴⁴⁶ SAC Letter No. 67-29, 5/24/67.

formant was "wired." Another informant reported the remarks of 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.

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.⁴⁴⁷

Even where there was no specific prior indication of Communist involvement, the FBI investigated emerging "New Left" groups such as "Free Universities" attached to various college campuses. 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 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." A note on the instruction stated.

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.⁴⁴⁸

The field office contacted five informants and confidential sources, 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. Although no further investigation was recommended, the report was disseminated to local military intelligence and Secret Service office, military intelligence and Secret Service headquarters in Washington, the State Department, and Internal Security Division of the Justice Department.⁴⁴⁹

Intelligence developed under what the Bureau called its VIDEM Program on Vietnam demonstrations was teletyped to headquarters "for immediate dissemination to the White House and other interested Government agencies, followed by . . . routine dissemination to the intelligence community."⁴⁵⁰ The White House not only received the product of FBI intelligence on antiwar demonstrations, but it also asked the Bureau to conduct "name checks" of its files on dozens of

⁴⁴⁷ Memorandum from Philadelphia Field Office to FBI Headquarters, 3/2/66.

⁴⁴⁸ Memorandum from FBI Headquarters to Detroit Field Office, 2/17/66.

⁴⁴⁹ Memorandum from Detroit Field Office to FBI Headquarters, 4/15/66.

⁴⁵⁰ SAC Letter No. 68-20, 3/26/68.

persons who signed telegrams critical of U.S. Vietnam policy.⁴⁵¹ An assistant to President Johnson also requested that the FBI monitor the televised hearings of the Senate Foreign Relations Committee on Vietnam policy and prepare a memorandum comparing statements of Senators William Fulbright and Wayne Morse with "the Communist Party line."⁴⁵² Another White House aide requested name checks on persons whose names appeared in the *Congressional Record* as signers of letters to Senator Morse expressing support for his criticism of U.S. Vietnam policy.⁴⁵³

A similar request was channeled through Attorney General Ramsey Clark, who supplied a Presidential aide (at the latter's request) with a summary of information concerning the National Committee for a Sane Nuclear Policy.⁴⁵⁴ This same aide summarized for the President an FBI memorandum on "peace" demonstrations, pinpointing those particular examples which gave evidence that (as quoted from the Bureau report) :

The Communist Party and other organizations are continuing their efforts to force the United States to change its present policy toward Vietnam ⁴⁵⁵

The exaggeration of Communist participation, both by the FBI and White House staff members, could only have had the effect of reinforcing President Johnson's original tendency to discount dissent against the Vietnam War as "Communist inspired." It is impossible to measure the larger impact on the fortunes of the nation from this distorted perception at the very highest policymaking level.

E. Civil Disturbance Intelligence

While no explicit directive from the Attorney General authorized the FBI's collection of intelligence about protest demonstrations in the early sixties, the Justice Department's Civil Rights Division made "oral requests" to the FBI for intelligence, including for example a tape recording of a speech by Governor-elect George Wallace of Alabama in late 1962 ⁴⁵⁶ and "photographic coverage" of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation.⁴⁵⁷ The FBI advised the Division of information from a "confidential source" about plans for a demonstration in Virginia, including background data on its "sponsor" and the intention to make "a test case."⁴⁵⁸ The Division prepared regular summaries of information from the Bureau on "demonstrations and other racial matters."⁴⁵⁹

⁴⁵¹ Letter from J. Edgar Hoover to Marvin Watson, Special Assistant to the President, 6/4/65.

⁴⁵² FBI Summary Memorandum, 1/31/75.

⁴⁵³ Letter from J. Edgar Hoover to Marvin Watson, Special Assistant to the President, 7/15/66 (cites request of "Mr. Jake Jacobsen, Legislative Counsel to the President").

⁴⁵⁴ Memorandum from Attorney General Clark to Marvin Watson, 4/8/67, enclosing memorandum from Director, FBI, to the Attorney General, 4/7/67.

⁴⁵⁵ Memorandum from Marvin (Watson) to the President, 5/16/67.

⁴⁵⁶ Memorandum from Director, FBI, to Assistant Attorney General Burke Marshall (Civil Rights Division), 12/4/62.

⁴⁵⁷ Memorandum from St. J. B. (St. John Barrett) to Mr. Marshall, 6/18/63.

⁴⁵⁸ Memorandum from J. Edgar Hoover to Attorney General Kennedy, 7/11/63.

⁴⁵⁹ Memorandum from Carl W. Gabel to Burke Marshall, 7/19/63. This memorandum described 21 such "racial matters" in ten states, including Ohio, New Jersey, Pennsylvania, Indiana, and Nevada outside the South. While some of the

(Continued)

The only formal directive on this intelligence activity was sent by Attorney General Kennedy to U.S. Attorneys throughout the South in May 1963. It instructed them to "make a survey" to ascertain "any places where racial demonstrations are expected within the next 30 days" and to make "assessments of situations" in their districts. The FBI was "asked to cooperate" with the U.S. Attorneys.⁴⁶⁰

During the first small-scale Northern ghetto disturbances in the summer of 1964, President Johnson ordered the FBI to investigate their origins and extent.⁴⁶¹ However, after the FBI submitted a report on the Watts riots in Los Angeles in 1965, Attorney General Nicholas Katzenbach advised President Johnson that the FBI would only investigate "directly" the possible "subversive involvement." He did not believe the FBI should conduct a "general investigation" of "other aspects of the riot." The President approved this "limited investigation."⁴⁶² As described earlier (at pp. 475-477), internal Bureau instructions in 1965 and 1966 went far beyond this limitation.

Instructions to all FBI offices in 1966 stressed the need for "expanding awareness and alertness" regarding demonstrations against the Vietnam War. Director Hoover stated:

There are increasing indications that the public is losing patience with the continued succession of demonstrations which have been occurring in all parts of the nation. This rising tide of public indignation is more and more creating waves of retributive action directed at the demonstrators. Increasingly, irate spectators are rejecting their passive roles and expressing their opposition and indignation toward the demonstrators by attacking them physically.

On the other hand, leaders of many of the groups involved in demonstrations have been exhorting their followers to more "direct action tactics" to gain their ends. Thus, the demonstrations have been marked by a growing militancy.

Clearly, the situation is one in which the conflict of interests produces a growing tension. With summer approaching, the potentialities for violent outbreaks will increase immeasurably, whether demonstrations are directed at opposition toward United States foreign policy in Vietnam or protests involving racial issues.

We must not only intensify and expand our coverage to insure prompt and accurate reporting of violent outbreaks of this nature but also to insure that advance signs of such outbreaks are detected and disseminated to appropriate authorities.

(Continued)

items in this and later summaries related to violent or potentially violent protest activity, or to the role of alleged "subversives" in the demonstrations, they went beyond those limits to include entirely peaceful protest activity and group activities (such as conferences, meetings, leadership changes) unrelated to demonstrations. (Memoranda from Gabel to Marshall, 7/22/63, 8/2/63 and 8/22/63.)

⁴⁶⁰ Memorandum from Attorney General Kennedy to U.S. Attorneys, 5/27/63.

⁴⁶¹ "Text of FBI Report on Recent Racial Disturbances," *New York Times*, 9/27/64.

⁴⁶² Memorandum from Attorney General Katzenbach to President Johnson, 8/17/65.

I want to stress to you that the emphasis in these matters must be on *advance detection*. Post mortem reporting is of secondary consequence. We are an intelligence agency and as such are expected to know what is going to or is likely to happen. National, state, and local authorities rely upon us to obtain this information so they can take appropriate action to avert disastrous outbreaks.⁴⁶³

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, the Attorney General reexamined the intelligence capabilities of the Justice Department, and the use of Federal troops in riot torn cities led to widespread military intelligence surveillance of civilians. It was a period of intense pressure and little coordination. Antiwar protests under the banner of "Resistance to Illegitimate Authority" culminated in a massive march on the Pentagon in October 1967. The combination of ghetto violence, the highly-publicized militant rhetoric of figures like Stokely Carmichael and H. Rap Brown, widening protest against the Vietnam war, and increasing acts of civil disobedience during antiwar demonstrations generated intense demands for domestic intelligence.

In late July 1967 President Johnson created the National Advisory Commission on Civil Disorders to investigate and make recommendations with respect to:

- (1) The origins of the recent major civil disorders in our cities, including the basic causes and factors leading to such disorders and the influence, if any, of organizations or individuals dedicated to the incitement or encouragement of violence.
- (2) The development of methods and techniques for averting or controlling such disorders . . .

The President directed the FBI, in particular, to "provide investigative information and assistance" to the Commission. The President stated publicly that the FBI would "continue to exercise its full authority to investigate these riots, in accordance with my standing instructions, and continue to search for evidence of conspiracy."⁴⁶⁴

Director Hoover appeared before the Commission on August 1, 1967. He discussed the role in certain disturbances of "rabble-rousers who initiate action and then disappear;" and he identified Martin Luther King, Floyd McKissick (of the Congress of Racial Equality), and Rap Brown and Stokely Carmichael (of SNCC) as "vociferous firebrands who are very militant in nature and who at times incite great numbers to activity." When asked about proposed Federal antiriot legislation, Hoover expressed the "opinion that any law which allowed law enforcement the opportunity to arrest militant and vicious rabble-rousers like Carmichael and Brown would be healthy to have on the

⁴⁶³ SAC Letter 66-27, 5/3/66.

⁴⁶⁴ Executive Order 11365, 7/29/67; Remarks of the President 7/29/67, in *Report of the National Advisory Commission on Civil Disorders* (1968), pp. 534-537 (Bantam Books ed.).

books." New York Mayor John Lindsay asked the FBI Director "if it would be possible to total up and fully identify the number of militant Negroes and whites who were in the same category as Carmichael and Brown" so that the Commission could learn "just exactly what the hard core in this country amounted to." Director Hoover replied "that the FBI, through its intelligence gathering, was of course capable of identifying and totaling up such individuals." Mayor Lindsay also asked "if the FBI had any intelligence regarding Negroes or white groups shifting money or firearms to foreign countries." Hoover answered "that the FBI had no such intelligence," but that Stokely Carmichael's travel to Cuba and other countries "should not be overlooked." Lindsay then observed that "such travels were apparently not widespread."

In his discussion of the riots in Watts, Newark, and Detroit, the FBI Director pointed out that the FBI "had no intelligence reflecting an overall organized conspiracy" and "that many of the riots occurred as the result of an incidental spark." However, he added "that the communist and other subversive forces always, while not initiating the riots, certainly attempted to exploit them once the riot started." The chairman, Governor Otto Kerner, asked that FBI reports be made available to the Commission. Director Hoover replied:

. . . that it should be definitely understood that the FBI cannot make individual investigations, but that the FBI would be most willing to make inquiries in communities where there are allegations of subversive influences, involvement of out-of-state influences, and the like. . . . [V]olumes on subversive organizations, as well as a rundown on major disorders and riots of this summer, would be left with the Commission at this time.

Following his meeting with the Commission, Director Hoover ordered his subordinates to intensify their collection of intelligence about "vociferous rabble-rousers."⁴⁶⁵

Parallel with the FBI's expansion of domestic intelligence operations in 1967-1968, the Justice Department developed a mechanism for the analysis and evaluation of civil disturbance intelligence. Indeed, one substantial basis for FBI intelligence authority in this period was a memorandum from Attorney General Ramsey Clark to Director Hoover in September 1967:

Although the bulk of criminal offenses occurring in the course of recent riots have been local rather than federal in nature, the question as to whether there was an organization which (a) had made advanced plans for, and (b) was active during any of the riots in the summer of 1967 is one that cannot always be readily resolved by local authorities. In view of the seriousness of the riot activity across the country, it is most important that you use the maximum resources, investigative and intelligence, to collect and report all facts bearing upon the question as to whether there has been or is a scheme or conspiracy by *any group of whatever size, effectiveness or affiliation*, to plan, promote or aggravate riot activity. [Emphasis added.]

⁴⁶⁵ Memorandum from C. D. DeLoach to Mr. Tolson, 8/1/67.

Attorney General Clark listed numerous Federal statutes which "could be applicable" in a specific situation, including criminal statutes on rebellion or insurrection, seditious conspiracy, advocacy of violent overthrow of the government (Smith Act), activities affecting the armed forces, Selective Service, interstate travel to commit arson or transport explosives, assault on a Federal officer, destruction of government property, firearms regulation, and crimes on Federal reservations. The Attorney General added:

I appreciate that the Bureau has constantly been alert to this problem and is currently submitting intelligence reports to us about riots and about the activity of certain groups and individuals before, during and after a riot. Indeed, the President has said both publicly and privately that the FBI is conducting extensive and comprehensive investigations of these matters.

There persists, however, 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. Further, we need to investigate fully allegations of conspiratorial activity that come to our attention from outside sources . . . ⁴⁶⁶ [Emphasis added.]

In furtherance of the Attorney General's instructions, the FBI advised its field offices in October 1967 that there was "a definite need to develop additional penetrative coverage of the militant black nationalist groups and the ghetto areas immediately to be in a position to have maximum intelligence in anticipation of another outburst of racial violence next summer." For this purpose the FBI instituted a program for "the development of ghetto-type racial informants." In addition, the FBI intensified its existing "Black Nationalist Groups

⁴⁶⁶ Memorandum from Attorney General Ramsey Clark to the FBI Director, 9/14/67.

TOPLEV Informant Program." Racial informants were to be "directed to obtain information concerning individuals who may be stockpiling firebombs, Molotov cocktails, weapons, and to identify any groups of terrorists who may be planning on carrying out a type of guerrilla warfare during riotous situations."⁴⁶⁷

In contrast to previous policies for centralizing domestic intelligence investigations of "subversives," local police were encouraged to establish intelligence programs both for their use and to feed into the Federal intelligence gathering process, thus greatly expanding the domestic intelligence apparatus and making it harder to control.

In reaction to civil disorders in 1965-1966, Attorney General Nicholas Katzenbach had turned to the newly-created President's Commission on Law Enforcement and Administration of Justice for advice. After holding a conference with police and National Guard officials, the crime commission urged police not to react with too much force to disorder "in the course of demonstrations," but to make advance plans for "a true riot situation." This meant that police should establish "procedures for the acquisition and channeling of intelligence" for the use of "those who need it."⁴⁶⁸ Former Assistant Attorney General Vinson recalls the Justice Department's concern that local police did not have "any useful intelligence or knowledge about ghettos, about black communities in the big cities."⁴⁶⁹

During the winter of 1967-1968, the Justice Department and the National Advisory Commission on Civil Disorders reiterated the message that local police should set up "intelligence units" to gather and disseminate information on "potential" civil disorders. These units would use "undercover police personnel and informants" and draw on "community leaders, agencies, and organizations in the ghetto."⁴⁷⁰ The Commission also urged that these local units be linked to "a national center and clearinghouse" in the Justice Department.⁴⁷¹ The unstated consequence of these recommendations was that the FBI, having regular liaison with local police, served as the channel (and supplementary repository) for this intelligence data.

These federal policies led to the proliferation of police intelligence activities, often without adequate controls. For example, a recent state grand jury report on the Chicago Police Department's "Security Section" revealed its "close working relationship" with federal intelligence agencies, including Army intelligence and the FBI. The report found that the police intelligence system produced "inherently inaccurate and distortive data" which contaminated Federal intelligence. For example, one police officer testified that he listed "any person" who attended two "public meetings" of a group as a "member." This conclusion was forwarded "as a fact" to the FBI. Subsequently, an agency seeking "background information" on that person from the Bureau would be told that the individual was "a member." The grand jury stated:

⁴⁶⁷ SAC Letter No. 67-72, 10/17/67.

⁴⁶⁸ President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), pp. 118-119.

⁴⁶⁹ Fred Vinson testimony, 1/27/76, p. 32.

⁴⁷⁰ *Report of the National Advisory Commission on Civil Disorders* (1968), p. 487 (Bantam Books ed.).

⁴⁷¹ *Ibid.*, p. 490.

Since federal agencies accepted data from the Security Section without questioning the procedures followed, or methods used to gain information, the federal government cannot escape responsibility for the harm done to untold numbers of innocent persons.⁴⁷²

Several urban police departments have more recently attempted to set "guidelines" for their security intelligence activities.⁴⁷³

F. The Justice Department and the IDIU

Joseph Califano, who was President Johnson's assistant in 1967, has testified that the Newark and Detroit riots were a "shattering experience" for Justice Department officials and "for us in the White House." They were concerned about the "lack of intelligence," since they "didn't know what the black groups were" in Detroit. Consequently, "there was a desire to have the Justice Department have better intelligence, for lack of a better term, about dissident groups;" and this "precipitated the intelligence unit" set up by Attorney General Ramsey Clark in late 1967. The President and the White House staff were saying, "There must be a way to predict violence. We've got to know more about this."⁴⁷⁴

In 1966 the Justice Department had started an informal "Summer Project," staffed by a handful of law students, to pull together data from the newspapers, the U.S. Attorneys, and "some Bureau material" for the purpose, according to former Assistant Attorney General Fred Vinson, Jr., of finding out "what's going on in the black community."⁴⁷⁵ Vinson has recalled that many people "jumped to a conspiracy theory," and the government "would have been remiss" if it had not investigated.⁴⁷⁶

In September 1967 Attorney General Ramsey Clark asked Assistant Attorney General John Doar to review the Department's "facilities for keeping abreast of information we receive about organizations and individuals who may or may not be a force to be taken into account in evaluating the causes of civil disorder in urban areas." After conferring with Assistant Attorneys General Fred Vinson of the Criminal Division and J. Walter Yeagley of the Internal Security Division, Doar

⁴⁷² "Improper Police Intelligence Activities," A Report by the Extended March 1975 Cook County (Illinois) Grand Jury, 11/10/75. The report also stated:

"Finally, political spying by police lowers the community's respect for law enforcement. Without the respect and support of the community, law enforcement agencies cannot operate effectively. The decision by high police officials to indiscriminately infiltrate community groups makes the difficult job of responsible law enforcement even more difficult."

⁴⁷³ For example, Procedures: Public Security Activities of the Intelligence Division, New York City Police Department, published in "Domestic Intelligence Operations for Internal Security Purposes," Hearings before the Committee on Internal Security, House of Representatives, 93d Cong., 2d Sess. (1974), pp. 3747-3792; and Standards and Procedures: Public Disorder Intelligence Division, Los Angeles Police Department, April 10, 1975.

⁴⁷⁴ Joseph Califano testimony, 1/27/76, pp. 6-9. Califano states in retrospect that the attempt to "predict violence" was "not a successful undertaking," that "advance intelligence about dissident groups" would not "have been of much help," and that what is "important" is "physical intelligence" about geography, hospitals, power stations, etc. (Califano, 1/27/76, pp. 8, 11-12.)

⁴⁷⁵ Vinson, 1/27/76, p. 33.

⁴⁷⁶ Vinson, 1/27/76, pp. 37-38.

reported their joint recommendation that the Department establish "a single intelligence unit to analyze the FBI information we receive about certain persons and groups who make the urban ghetto their base of operation." Doar also proposed that other Divisions of the Justice Department, including the Community Relations Service, should "funnel information to this unit." He recognized that the Community Relations Service risked losing "its credibility with people in the ghetto," but he believed the Department could develop safeguards to maintain "the confidentiality of the information." In addition, Doar recommended,

Other agencies of the government might become a source of intelligence information. This is a sensitive area, but the poverty programs, the Labor Department programs, and the Neighborhood Legal Services, all have access to facts which a unit in the Department might find helpful. At the very least the intelligence unit should know where the poverty programs are operating, where the Neighborhood Legal Services are located, who is staffed there so that if there were a need in a particular area the unit would know where to go to get additional factual material.

Other investigative agencies of the federal government might also furnish intelligence information, for example, the intelligence unit of the Internal Revenue Service. I found that in Detroit this unit under the direction of John Olszewski, had by far the best knowledge of the Negro areas in Detroit. According to Olszewski, the Alcohol, Tax and Tobacco Unit has the best intelligence on the geography of ghetto areas. The Narcotics Bureau is another possibility, and, finally, my experience in Detroit suggests that the Post Office Department might be helpful. Perhaps utilization of other agencies intelligence potential is too big and difficult a task, but I raise it for your consideration.

Beyond the FBI and other governmental sources Doar expected that the unit would become familiar with "the literature"—including Jack Newfield's *The Prophetic Minority*, Howard Zinn's *The New Abolitionists*, and writings on the "New Left" by Andrew Kopkind and Nicholas von Hoffman—and with the work produced by the Institute for Policy Studies and Studies on the Left. The unit would undertake "critical analysis" of intelligence data and prepare periodic reports and evaluations for the Attorney General "on the Organizations, on individuals and on particular urban areas."

It is evident from Assistant Attorney General Doar's memorandum that the primary purpose was to have a unit that would "include conclusions and recommendations" in its civil disturbance intelligence reports. This was a function the FBI would not perform. Instead, FBI reports to the Department normally carried the form statement: "This document contains neither recommendations nor conclusions of the FBI." Doar described current procedures for evaluation of intelligence:

The Internal Security Division has been engaged in evaluating FBI reports involving several thousand alleged Communists in order to determine their individual dangerousness

(2300 per year). It also reviews FBI reports on more than 125 organizations and their officers. Internal Security says that it received 16,192 FBI reports and memoranda last year . . .

I note from Mr. Yeagley's memorandum . . . that for the most part he restricts his lawyers to summarizing the pertinent facts in the memorandum and has discouraged them from injecting personal opinions or indulging any prognostication. He limits analysis to the recognition of whether particular information represents a fact, a probable fact or only a possible fact, or is pure fiction in evaluating material found in FBI reports, publications or other source material. I am not sure that I understand this distinction.

Doar also presented a sample from the FBI memoranda which came to the Civil Rights Division and showed the broad range of FBI intelligence reports. He did not recommend placing any limits on FBI intelligence collection. Instead, he proposed "that the scope be very broad initially."

We have not taken a broad spectrum approach to collection and analysis of intelligence. Rather, we have focused narrowly on individuals, a limited number of traditional subversive groups, and intelligence information about a suspect who may have become a subject of a specific statutory violation. As the unit became knowledgeable and sophisticated and could make reasonable judgments and could measure the influence of particular groups or organizations, then it could narrow its spectrum to a more limited target.

Doar anticipated that the unit would need five or six lawyers and six to eight college graduate research analysts. The lawyers would go out in the field to "become familiar with urban areas."⁴⁷⁷

Attorney General Clark did not implement Doar's plan at once, but appointed a committee to study the matter further. In the meantime the Internal Security Division began "compiling an index and abstracts on individuals and organizations connected with civil disturbance matters." Approximately 1400 cards were prepared in the first two months. The Departmental committee made its report in December 1967. A careful review of the FBI's intelligence reports to the Internal Security Division disclosed that reports and files were being maintained on approximately 400 organizations, more than one-third relating directly "to the civil disturbance problem (due to a characterization as black power, new left, pacifist, pro-Red Chinese, anti-Vietnam War, pro-Castro, etc.)." The committee recommended that the new intelligence unit collate this data so as to develop "a master index on individuals, or organizations, and by cities." Departmental attorneys would prepare "monographs" on particularly important organizations, including "a statement of its purposes, its relevant activities within the past few years, the location of the headquarters and all branch offices of the organization, activities and significant background information concerning its officers and active

⁴⁷⁷ Memorandum from Assistant Attorney General John Doar to the Attorney General, 9/27/67.

members, etc." The unit would also draw on the Departmental files on individuals maintained under the Emergency Detention Program, which contained "brief synopses of approximately 10,000 individuals who are members of the Communist Party, the SWP, the Nation of Islam, etc." However, the committee stressed that the unit's "primary goal . . . must be the meaningful evaluation of information received rather than preparation of an exhaustive index." There was also a potential for "computerizing the master index." Possible links to other government agencies were suggested:

As he becomes familiar with the subjects involved, the head of the Intelligence Unit should develop contacts with other intelligence gathering agencies. Since this may represent a duplication of the liaison established with the FBI, it should be undertaken with care. Possible sources of outside intelligence include the President's Commission on Civil Disorders, various corresponding state agencies such as the New Jersey Blue Ribbon Commission, CIA, State Department, Army Intelligence, National Security Agency, and Office of Economic Opportunity. In addition, other federal agencies may have relevant information. These perhaps would include Department of Labor, Migration and Unemployment studies, Department of Housing and Urban Development surveys and Model City applications, the Treasury Department's Alcohol and Tobacco Tax Unit and Narcotics Bureau, and the general background information available from the Post Office Department Postal Inspector's Branch.

The committee did not seriously consider assigning the unit's analysis and evaluation functions to the FBI. It was divided as to whether the unit should be placed in the Internal Security Division or directly under the Attorney General and the Deputy Attorney General. In either case, there was a pressing need for "coordination" because of "the heavy flow of FBI reports to the Attorney General, the Deputy Attorney General, and the Internal Security, Criminal, and Civil Rights Divisions." On the other hand, it did "not seem wise to establish an elaborate organizational structure" because it was "impossible to tell how long the Intelligence Unit will need to exist."^{477a}

Attorney General Clark adopted the committee's recommendation and established a permanent Interdivision Information Unit (IDIU). He noted that it would "take over and extend the activities of the so-called Summer Project of the past two years" (in the Criminal Division). The IDIU was placed under the supervision of a Committee composed of the Director of the Community Relations Services and the Assistant Attorneys General in charge of the Civil Rights, Criminal, and Internal Security Divisions. The IDIU "charter" stated:

The Unit shall function for the purposes and within the guidelines expressed in my memorandum of November 9 and the report of December 6, 1967. It is enough to state here that, in the main, it shall be responsible for reviewing and reduc-

^{477a} Memorandum from Kevin T. Maroney, et al., to Attorney General Clark, 12/6/67.

ing to quickly retrievable form all information that may come to this Department relating to organizations and individuals throughout the country who may play a role, *whether purposefully or not*, either in instigating or spreading civil disorders, or *in preventing or checking them*.⁴⁷⁸ [Emphasis added.]

The memorandum of November 9, appointing the study committee had also stated:

It is imperative that the Department seek and obtain the most comprehensive intelligence possible regarding organized or other purposeful stimulation of domestic dissention, civil disorders, and riots. To carry out these responsibilities we must make full use of, and *constantly endeavor to increase and refine*, the intelligence available to us, both from internal and external sources, concerning organizations and individuals throughout the country who may play a role either in instigating or spreading disorders or in preventing or checking them. However, we do not now adequately use such intelligence or develop and implement methods of improving intelligence. Thus, we do not have any systematic means at present of compiling and analyzing the voluminous information about various persons or organizations furnished to us by the FBI, and we make very little effort *to obtain information elsewhere*.⁴⁷⁹ [Emphasis added.]

Finally, the committee report had formally defined the IDIU's responsibilities as follows:

1. Gathering facts from sources within and without the Department relating to organizations and individuals whose activities are or may be related to planning for or participating in civil disturbances.

2. Systematically collating, evaluating and recording such information so that it is subject to convenient and expeditious recalls.

3. Preparing periodic intelligence summaries, from time to time, or as directed by the Attorney General on persons, organizations and places including therein estimates and evaluations of potential disturbances.

4. Report immediately to the Attorney General the receipt of information indicating plans or attempts by individuals or organizations to foster or promote civil disorders, including therewith an evaluation of the source and pertinent background material.

5. Recommending to the Attorney General means for obtaining additional intelligence.

6. Consulting with the Assistant Attorneys General of Internal Security, Criminal and Civil Rights Divisions and the

⁴⁷⁸ Memorandum from Attorney General Ramsey Clark to Assistant Attorneys General John Doar, Fred M. Vinson, Jr., Roger W. Wilkins, and J. Walter Yeagley, 12/18/67.

⁴⁷⁹ Memorandum from Attorney General Clark to Kevin T. Maroney, et al, 11/9/67.

Director of the Community Relations Service on each of the above functions.⁴⁸⁰

The IDIU, later renamed the Interdivisional Intelligence Unit, obtained computer facilities in 1968 and continued to function as the Attorney General's main source of civil disturbance intelligence analysis until 1971, when the Intelligence Evaluation Committee was created in the aftermath of the "Huston Plan."^{480a} The IDIU and the IEC both existed from 1970 until 1973, when the IEC was abolished. The IDIU has been renamed the Civil Disturbance Unit and remains, on a more limited basis, the Attorney General's principal source for regular summaries of information about civil disturbances.

The IDIU's work in 1968 was summarized as follows by Assistant Attorney General Yeagley:

The Unit, immediately upon its establishment, embarked on an information retrieval system utilizing automatic data processing, which . . . constitutes probably the best information retrieval system in the Department. In pursuit of its duties, the analysts and attorneys during the year 1968 reviewed more than 32,000 FBI investigative reports, teletypes, *army intelligence reports* and other material concerning individuals and organizations involved primarily in the area of *racial agitation*. In addition, but on a more selective basis, the Unit has also followed certain other activities, when related. . . . Information concerning individuals and organizations who are the subjects of the reports coming into the Unit is abstracted by the analysts and put on special forms for automatic data processing. The information input concerns itself with data regarding disturbances and incidents such as individual fire bombings, gunfire, attacks on police or other officials, vandalism, etc., which may occur in a particular locality which appear to be caused by or to contribute to racial unrest. [Emphasis added.]

The computer system could generate reports listing all individuals "who are members or affiliates of any particular organization," as well as their location and travel. IDIU also had the capability to produce reports on:

All incidents relating to *specific issues* or specific coded events such as all Black Power activity or all incidents relating to convention demonstrations or all information to some future and planned specific demonstration, such as we had in connection with the Chicago Democratic Convention and the demonstrations on Inaugural weekend in Washington.⁴⁸¹

A later review of IDIU operations states that "1968 entries in the IDIU files include numerous anti-war activists and other dissidents."⁴⁸²

⁴⁸⁰ Memorandum from Maroney, et al, to Attorney General Clark, 12/6/67.

^{480a} See Report on The Huston Plan.

⁴⁸¹ Memorandum from Assistant Attorney General J. Walter Yeagley to Deputy Attorney General Richard G. Kleindienst, 2/6/69.

⁴⁸² Statement of Deputy Attorney General Laurence H. Silberman, Justice Department Press Release, 1/14/75.

The IDIU's receipt and use of Army intelligence reports in 1968 had the effect, if perhaps not the full intent, of providing the Attorney General's implicit authorization for a vast expansion of military surveillance of civilians during this period. At a White House meeting in January 1968, Attorney General Clark told those present (including Defense Department officials) that "every resource" must be used in the domestic intelligence effort, although he asked the Army to be more selective in the reports it sent to the Justice Department.⁴⁸³ The Army's intelligence collection plans of February 1, 1968, and May 2, 1968, were circulated to the Justice Department; and Army intelligence officers received specific oral requests from the Justice Department.^{483a} There was never a formal decision by civilian officials in the Defense Department or the Justice Department which explicitly authorized Army surveillance of civilian political activity. However, the practice was accepted without challenge by those responsible officials who received the intelligence product. For example, Deputy Attorney General Warren Christopher thanked an Army intelligence officer for the Army's spot reports and daily summaries, although he explained that the FBI would be in charge of distributing intelligence to other agencies and that the IDIU provided analyses for intradepartmental use only.⁴⁸⁴

As a result of the long-standing Delimitations Agreement, the FBI and military intelligence shared their intelligence product. Consequently, FBI reports constituted a substantial part of the information about civilians stored in the Army's computerized data banks. Likewise, the military's surveillance efforts complemented the FBI's intelligence coverage, especially with respect to groups which could be infiltrated by Army intelligence agents more readily than by FBI agents or FBI-recruited informants. Thus, by the end of 1968 a massive domestic intelligence apparatus had been established in response to ghetto riots, militant black rhetoric, antiwar protest activity, and campus disruptions. To a great extent each component of the structure—FBI, IDIU, military—set its own generalized standards and priorities.

In the first year of the Nixon Administration, Attorney General John Mitchell and Deputy Attorney General Richard Kleindienst sought to bring greater order and coherence to the domestic intelligence operations set in motion by their predecessors. The Attorney General and the Secretary of Defense developed an "Interdepartmental Action Plan for Civil Disturbances" under which the Attorney General was designated "as the chief civilian officer in charge of coordinating all Federal Government activities relating to civil disturbances." The plan provided:

Under the supervision of the Attorney General, raw intelligence data pertaining to civil disturbances will be acquired *from such sources of the Government as may be available*. Such data will be transmitted to the Intelligence

⁴⁸³ Memorandum for the Undersecretary of the Army, printed in *Federal Data Banks, Computers, and the Bill of Rights*, Hearings before the Subcommittee on Constitutional Rights (1971), pp. 1278-1281.

^{483a} See Report on Improper Surveillance of Private Citizens by the Military.

⁴⁸⁴ Letter from Deputy Attorney General Warren Christopher to Maj. Gen. William P. Yarborough, Assistant Chief of Staff for Intelligence, 5/15/68.

Unit of the Department of Justice, and it will be evaluated on a continuing basis by representatives from various departments of the Government. After evaluations have been made, the data will be disseminated to the Attorney General, the Secretary of Defense, and the White House. [Emphasis added.]

During the early stages of a crisis in which it appears that a request for Federal military assistance may be forthcoming, the intelligence organization of the Department of Justice will alert the Attorney General and the Secretary of Defense. It is expected that responsible State and local officials will promptly inform the Attorney General of the situation and will thereafter keep him informed of developments. When advised that a serious disturbance is in the making, the Attorney General will immediately inform the President.

If time permits, the Attorney General and the Secretary of Defense may dispatch their personal representatives to the disturbance area to appraise the situation before any decision is made to commit Federal forces. Such action can help to assure that the Federal Government responds in accordance with the realities of the situation as perceived by its own observers.⁴⁸⁵

The plan formalized the use of civil disturbance teams to be sent out from Washington when IDIU evaluations indicated possible serious disorder. However, it did not clarify which federal agencies would collect civil disturbance intelligence, thus permitting the Army to continue its surveillance of civilian activity. Military intelligence operations continued unabated until 1970, when public exposure and Congressional criticism led to a substantial curtailment.⁴⁸⁶

Pursuant to the plan, the first Intelligence Evaluation Committee was created to advise the Attorney General as to the steps to be taken in case of possible serious disorders. Its members included the heads of the Internal Security and Criminal Divisions, the Community Relations Service, and the IDIU, as well as representatives from the Civil Rights Division, the Secret Service, and Army Intelligence. The chairman was the Assistant to the Director of the FBI, Cartha DeLoach. This prominent role for the FBI was a significant departure from previous practice under Attorney General Clark.⁴⁸⁷ The head of the IDIU, James T. Devine, described its functions in 1970:

The Information Unit is responsible for collecting, analyzing, and computerizing all intelligence information received by the Department in the area of civil disorders and *campus disturbances*. This intelligence encompasses informa-

⁴⁸⁵ Memorandum from Melvin Laird, Secretary of Defense, and John N. Mitchell, Attorney General to the President, 4/1/69.

⁴⁸⁶ Improper Surveillance of Private Citizens by the Military.

⁴⁸⁷ Memorandum from Attorney General John N. Mitchell to Deputy Attorney General Richard G. Kleindienst, 7/22/69.

tion on both events and individuals past, prior, and during actual disorders. Intelligence information is received from the FBI, the U.S. Attorneys, Bureau of Narcotics and Dangerous Drugs, Military Intelligence, Alcohol, Tobacco, and Firearms Division of the Treasury Department and other intelligence gathering bodies within the Executive Branch. These intelligence reports run in excess of 42,000 a year. [Emphasis added.]

The Unit produces a daily morning and evening report on disturbances nation-wide and a summation weekly report. . . .

The Unit produces a complete print-out of all intelligence within the ADP system on a weekly basis for study as to the degree of civil disturbance intensity throughout various sections of the country. Upon request by concerned citizens, special printouts are made on such subjects as *BPP* [Black Panther Party] *activities, foreign travel*, assaults on police, bombings during a given period, high school disorders, etc. . . . [Emphasis added.]

The Chief . . . is chargeable with the intelligence briefing of all Civil Disturbance teams prior to their commitment to a given area. Intelligence briefings are also provided on an intermittent basis to senior officials of the Department of Defense. This office is further charged with maintaining liaison with Chiefs of Police, Public Safety Directors and the offices of Mayors and State Governors as a situation warrants.⁴⁸⁸

The references to campus disturbances, the Black Panther Party, and foreign travel indicate some of the highest priorities for domestic intelligence in 1969–1970. In addition Assistant Attorney General Jerris Leonard of the Civil Rights Division, who was assigned as the Attorney General's Chief of Staff for the Civil Disturbance Group, arranged in 1970 for the Justice Department "to make available for examination or copying, to designated officials of the Central Intelligence Agency, computerized tapes of information submitted by the IDIU." An inquiry in 1975 concluded that the Department "initiated the transaction by requesting the CIA to check against its own sources whether any of the individuals on the IDIU list were engaged in foreign travel, or received foreign assistance or funding. At the time it was provided to the CIA, the IDIU subject list contained records of approximately ten to twelve thousand individuals. The records contained identifying information, aliases, brief narratives and file sources of the data, including FBI inputs."⁴⁸⁹

An examination of the IDIU computer printout in 1971 disclosed such prominent names as Rev. Ralph Abernathy, Cesar Chavez, Bosley Crowther (former *New York Times* film critic), Sammy Davis, Jr., Charles Evers, James Farmer, Seymour Hersh, Julius Hobson, and Mrs. Coretta King. Organizations noted in the computer printout included the NAACP, the Congress of Racial Equality, the Institute for Policy Studies, VISTA, United Farm Workers of California, and

⁴⁸⁸ James T. Devine, *Interdivisional Information Unit, Civil Disturbance Group*, 9/10/70.

⁴⁸⁹ Statement of Deputy Attorney General Laurence H. Silberman, Justice Department Press Release, 1/14/75.

the Urban League. Many ordinary people who were not prominent nationally had their names included in the IDIU subject data listing. One was described as "a local civil rights worker," another as "student at Merritt College and member of Peace and Freedom Party as of mid '68," and another as "a breaded militant who writes and recites poetry."⁴⁹⁰

There were some congressional misgivings expressed about the Justice Department's procedures for handling demonstrations in Washington, D.C. To allay these concerns, the Department prepared a report on *Demonstration and Dissent in the Nation's Capital*. With respect to intelligence, the report stated:

Accurate and complete information is essential for the planning necessary to achieve peaceful demonstrations and for dealing with disorders. It is not only important to know how many are coming at a particular time, but who they might be and why they are coming. *This kind of relevant information is freely available to anyone*; it is only necessary to collect it in one place and, having collected it, to evaluate it in order to make value judgments and to formulate a plan of action. To provide the concerned departments and agencies with reliable information, there has been established within the Department of Justice an Interdivisional Information Unit (IDIU) and an Intelligence Evaluation Committee. Whenever the information indicates a large demonstration may occur, all intelligence concerning that potential demonstration is reviewed by the Intelligence Evaluation Committee. The Intelligence Evaluation Committee is composed of officials of the Executive Branch experienced with demonstrations and in assessing the potential for disorders. The Intelligence Evaluation Committee weighs all of the available information and reports its conclusions regarding the potential for disorder to the Attorney General.⁴⁹¹ [Emphasis added.]

The Justice Department report did not make clear that the IDIU and the first IEC received and evaluated not only publicly available information, but also data provided from clandestine intelligence investigations by the FBI and military intelligence.

In 1971, Assistant Attorney General Robert Mardian issued new "guidelines" for the IDIU, which stated in part:

... IDIU must analyze and monitor all information relating to past civil disorders as well as information relating to the potential for civil disorder. ... [W]e must identify and understand the philosophies of organizations and individuals who have engaged in civil disorder or have demonstrated a propensity to do so.

In carrying out our purpose, it is imperative that the analysts involved keep clearly in mind that IDIU is not an investigative agency. Its mission, reduced to its simplest es-

⁴⁹⁰ Staff Memorandum for the Subcommittee on Constitutional Rights, United States Senate, 9/14/71.

⁴⁹¹ Department of Justice Report, *Demonstration and Dissent in the Nation's Capital*, in Hearings before the Senate Subcommittee on Administrative Practice and Procedure, *Federal Handling of Demonstrations* (1970), pp. 52-53.

sential, is merely the indexing and filing of information collected by investigatory agencies, principally the FBI, and information furnished by the news media in a quickly retrievable form.

... [W]e must take every reasonable precaution to insure that the identity of individuals included in our indexes be protected from unauthorized or inadvertent disclosure. We must keep clearly in mind that it is the use to which the information is put rather than the collection of the information itself that gives rise to the greatest possibility of abuse. . . .⁴⁹²

These "guidelines" were prepared shortly before Assistant Attorney General Mardian and other Justice Department officials were called to testify before the Senate Subcommittee on Constitutional Rights, which was inquiring into military surveillance and other domestic intelligence collection programs. At those hearings Mardian did explain that IDIU relied on FBI reports for most of its information; but Justice Department officials did not disclose the reorganized IEC, nor did they provide the Subcommittee with FBI's standards of intelligence collection.⁴⁹³

Assistant Attorney General William Rehnquist defended the power of the executive to collect any information which was "legitimately related to the statutory or constitutional authority of the executive branch to enforce the laws." [Emphasis added.] He cited the Supreme Court's opinion in *In Re Neagle*, 135 U.S. 1, 64 (1890), interpreting the President's duty to "take care that the Laws be faithfully executed" under Article II, section 3 of the Constitution. The Court had construed the word "Laws" to encompass not only statutes enacted by Congress, but also "the right, duties and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of government under the Constitution." Assistant Attorney General Rehnquist also cited as a basis for gathering intelligence about both protest demonstrations and ghetto unrest Article IV, section 4 of the Constitution which provides, "The United States shall guarantee every State in this Union a Republican Form of Government and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence." This provision had traditionally been understood as authorizing the President to dispatch federal troops under implementing statutes passed in 1792 and the 1860's. But the Justice Department now asserted that it was "another basis of the information gathering authority of the Executive Branch," therefore justifying "investigative activities . . . directed to determine the possibility of domestic violence occurring at a particular place or at a particular time."⁴⁹⁴

G. "New Left" Intelligence

The FBI collected intelligence under its VIDEM (Vietnam Demonstration) and STAG (Student Agitation) programs on "anti-Government demonstrations and protest rallies" which the Bureau con-

⁴⁹² Memorandum from Assistant Attorney General Robert C. Mardian to all IDIU personnel, 3/5/71.

⁴⁹³ *Federal Data Banks, Computers, and the Bill of Rights*, Hearings before the Senate Subcommittee on Constitutional Rights (1971), pp. 867-877.

⁴⁹⁴ *Federal Data Banks*, 1971 Hearings, pp. 598-601.

sidered "disruptive." Field offices were warned against "incomplete and nonspecific reporting," which neglected such details as "number of protesters present, identities of organizations, and identities of speakers and leading activists." Although every person arrested at a demonstration was not automatically investigated by the FBI, all that was needed to open an individual case was some "propensity for violence" or association with "subversive or revolutionary activity."⁴⁹⁵

After the disorders at Columbia University and other campuses, in 1968, FBI field offices were instructed:

The most recent outbreak of violence on college campuses represents a direct challenge to law and order and a substantial threat to the stability of society in general. The Bureau has an urgent and pressing responsibility to *keep the intelligence community informed* of plans of new left groups and student activists to engage in acts of lawlessness on the campus. We can only fulfill this responsibility through the development of high quality informants who are in a position to report on the plans of student activists to engage in disruptive activities on the campus. [Emphasis added.]

In view of the increased agitational activity taking place on college campuses, each office is instructed to immediately expand both its coverage and investigation of campus-based new left groups and black nationalist organizations with the objective of determining *in advance* the plans of these elements to engage in violence or disruptive activities on the campus. It cannot be too strongly emphasized that all offices are expected to develop and maintain adequate sources to enable the Bureau to determine *in advance* and promptly report agitational activities being planned by campus-based groups. In carrying out these instructions, you should, of course, be guided by existing regulations which require that Bureau authorization be obtained prior to the development of informants and sources on college campuses . . .⁴⁹⁶

The possibility of "embarrassment" placed some limits on intelligence operations, especially when there was adverse publicity. The following is one example:

At a recent antidraft demonstration, a Bureau Agent posing as a newsman was recognized by a representative of a newspaper that has been traditionally hostile to the FBI. The Special Agent involved was attempting to identify the demonstrators and those who were burning their draft cards, and to record statements of various individuals participating in the demonstration. A distorted news item regarding the Agent's activities appeared in a subsequent issue of that paper reflecting the Bureau in an unfavorable light.

Consequently, you should instruct your Agent personnel that, henceforth, no matter what the justification, they are not to pose as newsmen or representatives of any wire service for the purpose of establishing an investigative cover.⁴⁹⁷

⁴⁹⁵ SAC Memorandum 1-72, 5/23/72.

⁴⁹⁶ SAC Letter No. 68, 5/21/68.

⁴⁹⁷ SAC Letter No. 68-38, 6/2/68.

The FBI attempted to define the "New Left," but with little success. Field offices were told that it was a "subversive force" dedicated to destroying our "traditional values." Although it had "no definable ideology," it was seen as having "strong Marxist, existentialist, nihilist and anarchist overtones." Field offices were instructed that "proper areas of inquiry" regarding the subjects of "New Left" investigations were "public statements, the writings and the leadership activities" which might establish their "rejection of law and order" and thus their "potential threat to the security of the United States." Such persons would also be placed on the Security Index because of these "anarchistic tendencies," even if the Bureau could not prove "membership in a subversive organization."⁴⁹⁸

Later instructions to the field stated that the term "New Left" did not refer to "a definite organization," but to a "loosely-bound, free-wheeling, college-oriented movement" and to the "more extreme and militant anti-Vietnam war and antidraft protest organizations." These instructions initiated a "comprehensive study of the whole movement" for the purpose of assessing its "dangerousness." Quarterly reports were to be prepared, and "subfiles" opened, under the following headings:

- Organizations ("when organized, objectives, locality in which active, whether part of a national organization");
- Membership (and "sympathizers"—use "best available informants and sources");
- Finances (including identity of "angels" and funds from "foreign sources");
- Communist influence;
- Publications ("describe publications, show circulation and principal members of editorial staff");
- Violence;
- Religion ("support of movement by religious groups or individuals");
- Race Relations;
- Political Activities ("details relating to position taken on political matters including efforts to influence public opinion, the electorate and Government bodies");
- Ideology;
- Education ("courses given together with any educational outlines and assigned or suggested reading");
- Social Reform ("demonstrations aimed at social reform");
- Labor ("all activity in the labor field");
- Public Appearances of Leaders ("on radio and television" and "before groups, such as labor, church and minority groups," including "summary of subject matter discussed");
- Factionalism;
- Security Measures;

⁴⁹⁸ SAC Letter No. 68-21, 4/2/68. This directive did caution that "mere dissent and opposition to Governmental policies pursued in a legal constitutional manner" was "not sufficient to warrant inclusion in the Security Index." Moreover, "anti-Vietnam or peace group sentiments" were not, in themselves, supposed to "justify an investigation."

International Relations ("travel in foreign countries,"
 "attacks on United States foreign policy");
 Mass Media ("indications of support of New Left by mass
 media").

Through these massive reports, the FBI hoped to discover "the true nature of the New Left movement."⁴⁹⁹ Few Bureau programs better reflect "pure intelligence" objectives going far beyond even the most generous definition of "preventive intelligence."

The FBI prepared a study of "Youth in Rebellion" early in 1969. This "comprehensive document on new left and black extremist activities" was designed to review the "worldwide ramifications of these movements as well as their impact on the internal security of the country."⁵⁰⁰ When the FBI completed this report, the Internal Security Division of the Justice Department specifically authorized the FBI to conduct investigations "to determine whether there is any underlying subversive group giving illegal directions and guidance to the numerous campus disorders throughout the country." The Internal Security Division also submitted "suggested areas of particular interest for future investigative efforts."⁵⁰¹ These instructions were generally comparable to Attorney General Clark's September 1967 memorandum regarding ghetto riots and civil disturbance intelligence. Both were taken by the FBI as broad authorizations for domestic intelligence investigations.⁵⁰²

An additional request from the Internal Security Division in March 1969 advised the FBI that the Justice Department was "considering the possibility of conducting a grand jury investigation of some future serious campus disorder" with a view towards prosecution under the antiriot act, the Smith Act, the Voorhis Act, and statutes on seditious, conspiracy and insurrection. Consequently, the Internal Security Division asked the FBI:

... to secure in advance the names of any persons planning activities which might fall within the proscription of any of the foregoing statutes. It would also be important for us to know the identities of the officials of any participating organizations who have custody or control of records concerning the activities of such organizations which we would seek to obtain by means of subpoenas duces tecum.

It would also be most helpful if you were able 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.

The FBI was asked to use not only its "existing sources" but also "any other source you may be able to develop. . . ." ⁵⁰³

Despite the pressure for greater intelligence about campus groups, Director Hoover decided "that additional student informants cannot

⁴⁹⁹ Memorandum from FBI Headquarters to all SAC's 10/28/68, and enclosure.

⁵⁰⁰ SAC Letter No. 69-14, 2/25/69.

⁵⁰¹ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 2/18/69.

⁵⁰² FBI Intelligence Division, Position Paper on Jurisdiction, 2/13/75.

⁵⁰³ Memorandum from Assistant Attorney General J. Walter Yeagley to the FBI Director, 3/3/69.

be developed." 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."⁵⁰⁴ One way to achieve this result without the FBI recruiting additional student informants was to have local police do so. Thus, when field offices were reminded of the need for gathering intelligence so that the Justice Department could provide "data regarding developing situations having a potential for violence," FBI headquarters stressed the need for "in-depth liaison with local law enforcement agencies."⁵⁰⁵ The restriction on new campus informants was finally relaxed, although field officers were still forbidden to develop informants "under the age of 21" and procedures were instituted "for tight controls and great selectivity in this most sensitive area."

Upon initial contact with a potential student informant or source, informant or source should be requested to execute a 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 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. [Emphasis added.]

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."⁵⁰⁶ FBI Intelligence Division officials were greatly dissatisfied with these limits, as became clear in the preparation of the "Huston Plan" in 1970.⁵⁰⁷

FBI intelligence surveillance of the New Left was further expanded in early 1970 after an explosion at a New York City townhouse killed several youthful bomb-makers and dramatized the violence potential of the Weatherman faction of SDS. Because members of the Weatherman faction were believed to live in communes, all FBI field officers were instructed:

For the purposes of Bureau investigations, a commune is defined as a group of individuals residing in one location who practice communal living, i.e., they share income and adhere to the philosophy of a Marxist-Leninist-Maoist-oriented violent revolution.

A rebuttable presumption exists that persons having a past history of participation in violent leftist radical activity, or leftist terrorist activity, living in a communal relationship constitutes a commune within the above definition.

When information is received by an office that indicates a commune exists, falling within the above definition, it is incumbent upon that office to conduct sufficient investigation to determine the identity of all members. Each member must be

⁵⁰⁴ SAC Letter No. 69-16, 3/11/69.

⁵⁰⁵ SAC Letter 69-44, 8/19/69.

⁵⁰⁶ SAC Letter No. 69-55, 9/26/69.

⁵⁰⁷ See Report on the Huston Plan.

investigated as a suspected extremist within the framework of existing instructions to determine whether they should be included on the Security Index. Every effort must be made by the office to obtain informant and/or sophisticated coverage of the commune and its participants to develop advance knowledge of any planned violence so that preventative action can be initiated and prosecutive action brought to bear where possible.⁵⁰⁸

To conduct more intensive investigations of "terrorism by New Left extremists," the FBI Intelligence Division requested that additional manpower be assigned. Director Hoover noted, "O.K. but it must be kept in mind that we will get no additional personnel until July 1971 so whatever personnel is needed now will have to come from cutbacks in other programs."⁵⁰⁹ To a significant extent these resources were drawn away from the FBI's counterintelligence effort against hostile foreign intelligence operations in the United States.⁵¹⁰

By the time of the widespread disturbances following the Cambodian invasion and Kent State, the Intelligence Division believed 451 additional agents were needed for New Left investigations, with an increase to 741 "for peak periods." The Intelligence Division explained the need for more agents in the following terms:

The tragic, violent aftermath of violence and destruction on our campuses following the President's speech on Cambodia is a clear warning of the impact of New Left terrorist philosophy and advocacy of street action. The ability of radical activists to seize a controversial issue and whip up violent reaction among large crowds is again demonstrated. The threat to the Nation's ability to function in a crisis situation posed by New Left extremists has never been more clearly drawn. This grave threat requires immediate and positive steps be taken to fulfill our responsibilities for protection of the internal security of the Nation.⁵¹¹

Subsequent instructions to the field stressed intensified investigation of persons adhering to the "Weatherman ideology of violence and revolution", and again observed that "communal living follows Weatherman lifestyle and is good guide to individual's adherence to Weatherman ideology." Persons who used "terroristic tactics in furtherance of revolution" were to be considered "for inclusion in Priority I of Security Index." Field offices were directed to "begin shifting personnel to this work from other work areas, except for personnel specifically designated for organized crime work . . ." ⁵¹²

H. Target Lists and the Security Index

After meeting with the President's Commission on Civil Disorders in 1967, FBI Director Hoover instructed "that an index be compiled of racial agitators and individuals who have demonstrated a propensity

⁵⁰⁸ Memorandum from FBI Headquarters to all SAC's, 4/17/70.

⁵⁰⁹ Note on Memorandum from C. D. Brennan to W. C. Sullivan, 4/16/70.

⁵¹⁰ C. D. Brennan testimony, 9/25/75, Hearings, Vol. 2, p. 177.

⁵¹¹ Memorandum from C. D. Brennan to W. C. Sullivan, 5/11/70.

⁵¹² Memorandum from Headquarters to all SAC's, 5/13/70.

for fomenting racial discord.”⁵¹³ Standards for the Rabble Rouser Index were then sent to the field:

The Index will consist of the names, identifying data, and background information of individuals who are known rabble rousers and who have demonstrated by their actions and speeches that they have a propensity for fomenting racial disorder. It is desired that only individuals of prominence who are of national interest be included on this index. Particular consideration should be given to recommending those individuals in this category who travel extensively . . . The fact that an individual is on the Security Index or Reserve Index does not preclude his inclusion on the Rabble Rouser Index.⁵¹⁴

The initial effect of the Rabble Rouser Index was to collect in files at FBI headquarters all information from the field offices about persons on the Index. Field offices were also to provide information about their “possible foreign travel.”⁵¹⁵ The first Index contained less than 100 names.⁵¹⁶

At the same time as the creation of the Rabble Rouser Index, the FBI instituted a COINTELPRO program aimed at disrupting and discrediting black nationalist or black “extremist” groups and individuals. The Rabble Rouser Index served as a convenient list of primary targets for COINTELPRO activity.⁵¹⁷ Within the FBI Domestic Intelligence Division, there was a substantial reorganization to take account of these new functions in 1967. The Subversives Control Section was abolished and its supervision of investigations of individual “subversives”—both “Old Left” and “New Left”—were transferred back to the Internal Security Section. A new Racial Matters Section was established to supervise intelligence investigations of black and white “extremist” groups.

The standards for the Rabble Rouser Index were broadened in November 1967 to cover persons with a “propensity for fomenting” any disorders affecting the “internal security,” not just racial disorders, and to include persons of local as well as national interest. A rabble rouser was defined “as a person who tries to arouse people to violent action by appealing to their emotions, prejudices, et cetera; a demagogue.” The purpose of this expansion to develop a nationwide index “of agitators of all types whose activities have a bearing on the national security.” This included “black nationalists, white supremacists, Puerto Rican nationalists, anti-Vietnam demonstration leaders, and other extremists.”⁵¹⁸ Standardized forms for automatic data processing of the Index by computer included the following organizational affiliation categories:

American Nazi Party
Anti-Vietnam
Black Nationalist

⁵¹³ Memorandum from C. D. Brennan to W. C. Sullivan, 8/3/67.

⁵¹⁴ SAC Letter No. 67-47, 8/4/67.

⁵¹⁵ SAC Letter No. 67-56, 9/12/67.

⁵¹⁶ Memorandum from P. L. Cox to Mr. Sullivan, 9/5/67.

⁵¹⁷ See Report on COINTELPRO.

⁵¹⁸ SAC Letter No. 67-70, 11/28/67.

Black Panther Party
 Communist
 Congress of Racial Equality
 Ku Klux Klan
 Latin American
 Minuteman
 Nation of Islam
 National States Rights Party
 Progressive Labor Party
 Nationalist groups advocating Independence for Puerto Rico
 Revolutionary Action Movement
 Southern Christian Leadership Conference
 Students for a Democratic Society
 Student Nonviolent Coordinating Committee
 Socialist Workers Party
 Workers World Party
 Miscellaneous ⁵¹⁹

The overlap with the Security Index is indicated by the inclusion in 1968 of Students for a Democratic Society and the Student Nonviolent Coordinating Committee in a list of organizational affiliations for the Security Index. By 1968 the Security Index also contained persons without organizational affiliation designated "Anarchist" and "Black Nationalist." ⁵²⁰

The Rabble Rouser Index was renamed the Agitator Index in March 1968, and field offices were directed to obtain a photograph of each person on the Index. ⁵²¹

The Domestic Intelligence Division also stressed the dangerousness of the "New Left" movement and the need to include its "leading activists" on the Security Index.

The emergence of the new left movement as a subversive force dedicated to the complete destruction of the traditional values of our democratic society presents the Bureau with an unprecedented challenge in the security field. Although the new left has no definable ideology of its own, it does have strong Marxist, existentialist, nihilist and anarchist overtones. While mere membership in a new left group is not sufficient to establish that an individual is a potential threat to the internal security of the United States, it must be recognized that many individuals affiliated with the new left movement do, in fact, engage in violence or unlawful activities, and their potential dangerousness is clearly demonstrated by their statements, conduct and actions.

The Bureau has recently noted that in many instances security investigations of these individuals are not being initiated. In some cases, subjects are not being recommended for inclusion on the Security Index merely because no membership in a basic revolutionary organization could be established. Since the new left is basically anarchist, many of the

⁵¹⁹ SAC Letter No. 68-5, 1/16/68.

⁵²⁰ SAC Letter No. 68-14, 2/20/68.

⁵²¹ Memorandum from FBI Headquarters to all SAC's, 3/21/68.

leading activists in it are not members of any basic revolutionary group. It should be borne in mind that even if a subject's membership in a subversive organization cannot be proven, his inclusion on the Security Index may often be justified because of activities which establish his anarchistic tendencies. In this regard, you should constantly bear in mind *the public statements, the writings and the leadership* activities of subjects of security investigations which establish them as anarchists *are proper areas of inquiry*. Such activity should be actively pursued through investigation with the ultimate view of including them on the Security Index. It is entirely possible, therefore, that a subject without any organizational affiliation can qualify for the Security Index by virtue of his public pronouncements and activities which establish *his rejection of law and order* and reveal him to be a *potential threat* to the security of the United States. [Emphasis added.]

Field offices were cautioned, however, "that mere dissent and opposition to the Governmental policies pursued in a legal constitutional manner are not sufficient to warrant inclusion in the Security Index." Agents were to report information "to show the potential threat and not merely show anti-Vietnam or peace group sentiments without also revealing advocacy of violence or unlawful action which would justify an investigation."⁵²²

At the same time that these instructions were issued, the FBI instituted a COINTELPRO program against the "New Left." The Agitator Index and the Security Index served as indicators of the prime subjects for efforts under COINTELPRO to disrupt groups and discredit individuals in the "New Left."⁵²³

The FBI did not develop its new Security Index policies alone. As the Commission on Civil Disorders had encouraged the FBI to identify "rabble rousers," so President Johnson ordered a comprehensive review of the Government's emergency plans after the October 1967 March on the Pentagon against the Vietnam war.

Attorney General Ramsey Clark was appointed chairman of a committee to review the Presidential Emergency Action Documents (PEADs) prepared under the Emergency Detention Program. Subsequent decisions were summarized in an FBI memorandum:

After extensive review, in which the FBI participated, a proposal was submitted to the President that certain documents be revised. It was proposed that the Emergency Detention Program be revised to agree with the provisions of the Emergency Detention Act [of 1950].

The Internal Security Division (ISD) of the Department has raised questions as to the ability to discharge the responsibilities of the Attorney General under the Emergency Detention Act of 1950. By letter dated 2/26/68 the Department requested a conference with the FBI for the purpose of reviewing the implementation of the Emergency Detention Program...

⁵²² SAC Letter No. 68-21, 4/2/68.

⁵²³ See Report on COINTELPRO.

One of the changes in PEAD pertains to the definition of a "dangerous individual". The document, which has been approved by the President, now states, "The Attorney General acting through such officers and agents as he may designate for the purpose, shall apprehend, and by order detain, pursuant to the provisions of the Emergency Detention Act, each person as to whom there is reasonable ground to believe that such person probably will engage in, or probably will conspire with others to engage in, acts of espionage and sabotage, including acts of terrorism or assassination and any interference with or threat to the survival and effective operation of the national, state, and local governments and of the national defense effort." As used in this section, the term "person," shall mean any citizen or national of the United States, or any citizen, subject or national of any foreign nation, or any stateless person.

The above is an all encompassing definition of a "dangerous person". This will extend the criteria for the Security Index.

During the conference of 4/22/68 with ISD, the definition of a dangerous individual was discussed, and it was decided that Item D of the SI criteria should be expanded to include the definition as stated in the new PEAD 6...

With the emergence of the New Left and the intensification of activities by the racial militants and black nationalists, who are not affiliated with basic revolutionary organizations but because of their anarchist tendencies do present a threat to the internal security of the United States, it has become apparent that these individuals warrant inclusion on the SI.

Many individuals on the SI, because of their violent tendencies and their representation of top leadership of subversive organizations, are scheduled for priority apprehension. The administrative procedures developed to make these apprehensions are referred to as the Detcom Program. In an all-out emergency, all subjects whose names are in the SI will be considered for immediate apprehension.

The new priorities for apprehension under Detention Program were described as follows:

Priority I.—Top national and state leadership of basic subversive organizations, leaders of anarchistic groups, individuals who have shown greatest propensity for violence, as well as those who have special training in sabotage, espionage, guerrilla warfare, etc. . . .

Priority II.—Second level leadership and individuals who present significant threat but are in less influential positions than Priority I . . .

Priority III.—All other individuals on SI. Made up mainly of rank and file members . . .

Results of FBI investigations would continue to be provided to the Justice Department "for its concurrence and approval of the persons listed for apprehension".⁵²⁴

The FBI formally requested Departmental approval for the broader Security Index criteria and the standards for the Priority Apprehension Program.⁵²⁵ Even though the Department's formal reply was that the criteria were "under study," the FBI went ahead with Manual revisions and new instructions to the field.⁵²⁶ There was "informal" Departmental approval for these changes, as noted in a later memorandum.⁵²⁷

The Justice Department's Office of Legal Counsel eventually approved a modified version of the Security Index criteria in September 1968. Since this was the first time since 1955 that the Department had fully considered the matter, it is important to stress that the previous policy of disregarding the Emergency Detention Act of 1950 was now formally abandoned. If an emergency occurred, the Attorney General would abide by "the requirement that any person actually detained will be entitled to a hearing at which time the evidence will have to satisfy the standards of . . . the Emergency Detention Act". However, the Security Index criteria themselves could be less precise because of "the needed flexibility and discretion at the operating level in order to carry on an effective surveillance program." As revised by the Office of Legal Counsel, the Security Index criteria read as follows:

A. Membership or participation in the activities of a basic revolutionary organization within the last 5 years as shown by overt acts or statements established through reliable sources, informants or individuals.

B. Subject has had membership or participation in the affairs of one or more front organizations which adhere to the policies and doctrines of a basic revolutionary organization, in a leadership capacity or by active substantial participation in the furtherance of those aims and purposes of the front organization which coincide with those of a basic revolutionary organization, within the last three years as shown by overt acts or statements established through reliable sources, informants, or individuals.

C. Investigation has developed information that an individual, though *not a member of or a participant* in the activities of a basic revolutionary or front organization, has *anarchistic or revolutionary beliefs* and is likely to seize upon the opportunity presented by a national emergency to commit acts of espionage or sabotage, including acts of terrorism, assassination, or *any interference with* or threat to the survival and *effective operation* of the national, state and local governments and of the defense effort. [Emphasis added.]

⁵²⁴ Memorandum from C. D. Brennan to W. C. Sullivan, 4/30/68.

⁵²⁵ Memorandum from the FBI Director to Assistant Attorney General J. Walter Yeagley, 5/1/68.

⁵²⁶ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 6/17/68; memorandum from C. D. Brennan to W. C. Sullivan, 6/19/68; SAC Letter No. 68-36, 6/21/68.

⁵²⁷ Memorandum from Assistant Attorney General Frank M. Wozencraft, Office of Legal Counsel, to Assistant Attorney General J. Walter Yeagley, 9/9/68.

D. Although investigation has failed to establish the facts required by (A), (B) or (C) above, either as to the substance of those criteria or because there have been no overt acts or statements within the time limits prescribed, facts have been developed which clearly and unmistakably depict the subject as a dangerous individual who could be expected to commit acts of the kind described in (C) above.⁵²⁸

The Internal Security Division forwarded the Office of Legal Counsel's memorandum to the FBI, and the Bureau agreed that it would "be guided by these revised criteria of 1968." The FBI Manual was changed accordingly.⁵²⁹

Their expanding size made the Agitator Index and the Security Index less valuable for most efficiently concentrating FBI intelligence investigations. Consequently, the Domestic Intelligence Division developed more refined tools for this purpose—including the Key Activist Program and the Black Nationalist Photograph Album. Instructions went out to ten major field offices in January 1968 to designate certain persons as "Key Activists," 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." [Emphasis added.] There was to be "an intensive investigation" of each Key Activist:

. . . with the objective of developing detailed and complete information regarding their day-to-day activities and future plans for staging demonstrations and disruptive acts directed against the Government. 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 contracts, and future plans.

In the event adequate live informant coverage is not immediately available on these individuals, other types of coverage such as technical surveillances and physical surveillances should be considered as temporary measures to establish the necessary coverage.⁵³⁰

In May 1968, the FBI obtained the Federal income tax returns for Key Activists and, in some instances, used this and other intelligence information as part of COINTELPRO operations to disrupt an individual's activities.⁵³¹

The Key Activist Program was expanded to virtually all field offices in October 1968. The offices were instructed to recommend additional

⁵²⁸ Memorandum from Wozencraft to Yeagley, 9/9/68.

⁵²⁹ Memorandum from Assistant Attorney General Yeagley to the FBI Director, 9/19/68; memorandum from FBI Director to Assistant Attorney General Yeagley, 9/26/68; FBI Manual Section 87, p. 45, revised, 10/14/68.

⁵³⁰ Memorandum from FBI Headquarters to all SAC's, 1/30/68.

⁵³¹ Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/68.

persons for the program and to "consider if the individual was rendered ineffective would it curtail such [disruptive] activity in his area of influence." The importance of the program was explained by stressing "the shift to violence in the New Left movement."

Sabotage, arson, bombing, and a variety of obstructive tactics have been openly advocated during the past year. In September, 1968, within a five-day period three ROTC establishments were sabotaged and a fourth threatened. In addition, a Central Intelligence Agency office at Ann Arbor, Michigan, was bombed during that month. These instances of openly made plans for violence and the brazen follow through of action are examples of the problems facing the Bureau in this field and the absolute necessity for intensive investigative efforts in these matters. Successful prosecution is the best deterrent to such unlawful activity. Intensive investigations of Key Activists under this Program are logically expected to result in prosecutions under substantive violations within the Bureau's investigative jurisdiction.⁵³²

While the FBI considered Federal prosecution a "logical" result, it should be noted that Key Activists were not chosen because they were suspected of having committed or planning to commit any specific Federal crime.

A counterpart to the Key Activist Program for the "New Left" was the Black Nationalist Photograph Album, which grew out of a conference of FBI agents from forty-two field offices. The conferences recommended concentrating on no more than fifty prominent "militant black nationalists" who traveled extensively. Each field office would have a copy of the Album, including photographs and "biographical data," so that they could be identified "should they turn up in different areas of the country."⁵³³

The Key Activist Program, the Black Nationalist Photograph Album, the Agitator Index, and the revised Security Index identified the prime subjects for domestic intelligence investigation. However, the scope of inquiry went far beyond these defined targets. Inflammatory reports about possible "catastrophes" intensified headquarters pressures on the field to produce more intelligence in 1968:

Recently we have been advised by informants that militant black nationalist organizations, as well as independent Negro extremists are talking of taking such action as dynamiting the Empire State Building in New York City, throwing dynamite on the floor of the New York Stock Exchange and possibly assassinating some white political candidates as a means of retaliating for the killing of Martin Luther King, Jr. We have also received information that militant black racial extremists feel that all white people should be killed and one has stated that he believes if the right contact is made with the White House staff, a plan might be formulated to poison 500 to 600 people attending functions at the White House.

⁵³² Memorandum from FBI Headquarters to all SAC's 10/24/68.

⁵³³ Memorandum from FBI Headquarters to all SAC's, 3/11/68.

. . . With the increased number of violent statements coming to the attention of the Bureau, you must be alert to promptly run out all rumors of violence connected with racial activity for the purpose of either proving or disproving these rumors.

In addition, our experience in the past has shown that often when an individual is confronted concerning a violent statement he is alleged to have made, it will deter him from taking any such action. In view of this, whenever possible, interview individuals who are alleged to have made violent statements. . . .⁵³⁴

This latter form of deterrent "preventive action" proceeded independently from FBI COINTELPRO operations.

In early 1969, the FBI stepped up its Key Activist Program. Reports on Key Activists were to be made every ninety days, and "particular effort" was to be made "to obtain recordings of or reliable witnesses to inflammatory speeches or statements made which may subsequently become subject to criminal proceedings."⁵³⁵ The FBI Intelligence Division also compiled a Key Activist Album containing photographs and biographies of each Key Activist for distribution to all field offices.⁵³⁶ At this time there were 55 individuals covered by the program. To expand this number, FBI field offices were instructed to investigate all persons connected with the regional offices of Students for a Democratic Society—to determine whether they should be included in the Security Index or the Key Activist Program.⁵³⁷

The Black Nationalist Photograph Album was also expanded in early 1969 "to include the photographs of the principal leaders of any black extremist organization," not just those specifically known to travel.⁵³⁸ Later in the year the FBI broadened the scope of its Racial Calendar, which had been established in 1968 to advise each field office of "the dates of black nationalist type conferences and . . . racial events and anniversaries." Because of increasing cooperation between "black extremists and white subversives," the Racial Calendar would now include demonstrations and conferences "of the antifascist, antidraft and anti-Vietnam variety" which would "easily develop into a racial event."⁵³⁹

In anticipation of possible racial unrest in the summer of 1969, FBI headquarters reemphasized to the field the need for "developing a network of ghetto-type informants . . . to enable you to advise appropriate local and Federal authorities in advance of potential large scale racial violence." The FBI was particularly concerned that the "radical Negro students on college campuses" would seek "to promote racial violence" in the ghettos. Therefore, it was deemed necessary "to thoroughly saturate every level of activity in the ghetto."⁵⁴⁰

⁵³⁴ SAC Letter No. 68-32, 6/4/68.

⁵³⁵ Memorandum from FBI Headquarters to all SAC's, 3/10/69.

⁵³⁶ Memorandum from FBI Headquarters to all SAC's, 4/2/69.

⁵³⁷ Memorandum from FBI Headquarters to all SAC's, 5/22/69.

⁵³⁸ Memorandum from FBI Headquarters to all SAC's, 1/17/69.

⁵³⁹ Memorandum from G. C. Moore to W. C. Sullivan, 9/2/69.

⁵⁴⁰ SAC Letter No. 69-30, 5/27/69.

I. Investigations of "Foreign Influence" on Domestic Unrest

The FBI was increasingly interested in possible foreign influence on domestic violence and protest, partly at the urging of President Johnson. As early as 1963 the FBI Manual had authorized requests for CIA investigations of Americans abroad for internal security purposes. Prior thereto the sole purpose of advising the CIA of foreign travel by domestic "subversives" was "to place stops with appropriate security services abroad to be advised of the activities of these subjects."⁵⁴¹ This provision was revised as follows in 1963:

Information concerning these subjects' proposed travel abroad, including information concerning their subversive activities, is furnished by the Bureau to the Department of State, Central Intelligence Agency, and legal attaches if the proposed travel is in areas covered by such. . . . In the cover letter accompanying the letterhead memorandum, indicate *extent of foreign investigation recommended* or whether *only* stops should be placed with appropriate security services abroad.⁵⁴² [Emphasis added.]

It was through these procedures that the FBI secured the assistance of the CIA in the investigation of antiwar activists and black militant leaders who traveled overseas.⁵⁴³

In 1966 the FBI and CIA negotiated an informal agreement to regularize their "coordination." This agreement had as its "heart" that the CIA would "seek concurrence and coordination of the FBI" before engaging in clandestine activity in the United States, and that the FBI would "concur and coordinate if the proposed action does not conflict with any operation, current or planned, including active investigation [by] the FBI."⁵⁴⁴ Moreover, when an agent recruited by the CIA abroad arrived in the United States, the FBI would "be advised" and the two agencies would "confer regarding the handling of the agent in the United States." The CIA could "continue" its "handling" of the agent for "foreign intelligence" purposes, and the FBI would also become involved where there were "internal security factors,"⁵⁴⁵ although it was recognized that CIA might continue to "handle" the agent in the United States and provide the Bureau with "information" bearing on "internal security matters."

The term "internal security factors" used in the agreement meant that CIA agents were used after 1966 to report on domestic "dissidents" for the FBI. There were instances where, according to the former FBI liaison with CIA:

CIA had penetrations abroad in radical, revolutionary organizations and the individual was coming here to attend a conference, a meeting, and would be associating with leading dissidents, and the question came up, can he be of any use to us, can we have access to him during that period.

In most instances, because he was here for a relatively short period, we would levy the requirement or the request upon the

⁵⁴¹ 1960 FBI Manual Section 87, p. 33.

⁵⁴² FBI Manual Section 87, p. 33a, revised 4/15/63.

⁵⁴³ See Report on CIA Intelligence Collection About Americans.

⁵⁴⁴ Former FBI liaison with the CIA testimony, 9/22/75, p. 52.

⁵⁴⁵ Liaison testimony, 9/22/75, p. 55.

CIA to find out what was taking place at the meetings to get his assessment of the individuals that he was meeting, and any other general intelligence that he could collect from his associations with the people who were of interest to us.⁵⁴⁶

The policies embodied in the 1966 agreement and the practice under it clearly involved the CIA in the performance of "internal security functions." At no time was Congress asked to amend the 1947 Act to modify its ban against CIA "internal security functions."

As previously noted (p. 484), President Johnson and Director Hoover had been seeking proof that Communists were behind the anti-war movement since 1965. The CIA increasingly was drawn into that quest, in part in response to Bureau requests. Joseph Califano, a principal assistant to President Johnson, testified that high governmental officials could not believe that

a cause that is so clearly right for the country, as they perceive it, would be so widely attacked if there were not some [foreign] force behind it.⁵⁴⁷

The same pressures and beliefs led to FBI investigations of possible "foreign influence" on "militant black nationalists" and radical students.

Within the United States the FBI established intelligence coverage on domestic groups if a Communist country appeared interested in exercising influence. For example, on the basis of information that a black American fugitive was in the People's Republic of China and that the Chinese government was making propaganda statements "to promote and abet racial strife in this country," the FBI instructed its field offices in 1967 "to be on the alert constantly for information indicating Chicom attempts to influence groups or individuals involved in the racial movement and . . . that development of live formants who can become knowledgeable of such attempts is vital."⁵⁴⁸ Similarly, information that Cuba had plans for "the use of American Negroes, Indians, and Communists to methodically sabotage our installations throughout the Western Hemisphere" and that Cuban officials had offered arms and assistance to "Puerto Rican revolutionary groups" led the FBI to alert its informants in defense plants and to ask its "trustworthy police contacts . . . to alert their racial and security informants" so that they would report information about "dissident groups, including 'black nationalist' organizations, which have potential for carrying out sabotage or other disruptive activities on behalf of Cuba."⁵⁴⁹

In addition to these specific problems, the FBI issued general instructions to the field for collecting intelligence on "foreign influences in the Black Nationalist movement":

The potential for foreign influences in these matters certainly exists as evidenced by wide travel in communist countries of such militant black nationalists as Stokely Carmichael who, within the recent past, has visited, such far-flung places

⁵⁴⁶ Liaison testimony, 9/22/75, pp. 57-58.

⁵⁴⁷ Califano, 1/27/76, p. 70.

⁵⁴⁸ SAC Letter No. 67-56, 9/12/67.

⁵⁴⁹ SAC Letter No. 67-62, 10/17/67.

as Cuba, North Vietnam, Czechoslovakia, Algeria, United Arab Republic, and other countries abroad. Other individuals connected with the Student Nonviolent Coordinating Committee as well as individuals affiliated with other black nationalist organizations are known to have traveled in communist countries.

Each office should review its files for the identities of any known black nationalists who have traveled to Iron Curtain countries and other communist countries during the past two years . . . [I]n instances in which investigations have not been conducted, penetrative investigations should be initiated at this time looking toward developing any information regarding contacts on the part of these individuals with foreign elements and looking toward developing any additional information having a bearing upon whether the individual involved is currently subjected to foreign influence or direction. . . .

During your investigative coverage of all militant black nationalists, be most alert to any foreign travel. Advise the Bureau promptly of such in order that appropriate overseas investigations may be conducted to establish activities and contacts abroad.

In addition, each office should submit a letterhead memorandum . . . to include indications of foreign support, direction, guidance or influence, as well as a listing of individual black nationalists . . . who have traveled to communist countries within the past two years. . . .⁵⁵⁰

The FBI passed such information on to the CIA, which in turn began to place individual black nationalists on a "watch list" for the interception of international communications by the National Security Agency.⁵⁵¹ One purpose for the FBI effort to obtain income tax returns of Key Activists was "to determine whether their income supports their ability to travel throughout this country, and abroad as part of the New Left revolt."⁵⁵²

The IDIU's transfer of its computer printout to the CIA was just one instance of the substantial flow of domestic intelligence to and from the foreign intelligence agencies. The FBI was the main channel for mobilizing foreign intelligence resources and techniques against domestic targets. The FBI began submitting names of citizens engaged in domestic protest and violence to the CIA not only for investigation abroad (as had been the case before 1969), but also for placement on a "watch list" to be used in conjunction with the CIA's mail opening project.⁵⁵³ Similar lists of names went from the FBI to the National Security Agency, for use on a "watch list" for monitoring other channels of international communication.⁵⁵⁴

In 1970 these agencies attempted to obtain formal authorization to use these techniques, and to resume previously forbidden methods such

⁵⁵⁰ SAC Letter No. 67-66, 11/7/67.

⁵⁵¹ See Report on National Security Agency Surveillance Affecting Americans.

⁵⁵² Memorandum from C. D. Brennan to W. C. Sullivan, 5/24/67.

⁵⁵³ See Report on CIA and FBI Mail Opening.

⁵⁵⁴ See Report on National Security Agency Surveillance Affecting Americans.

as FBI "black bag jobs," for domestic intelligence purposes.⁵⁵⁵ These efforts to broaden intelligence surveillance resulted largely from intense pressures from the White House to determine whether there was foreign direction or financing of domestic protest activity. Rather than relying on intelligence coverage of foreign governments and their officials or agents, the FBI and the foreign intelligence agencies targeted American citizens in the hope of finding foreign influence even when there was no prior indication of contact with foreign agents.

A good picture of the FBI's basic approach to the issue of foreign influence is provided by a memorandum prepared in the Intelligence Division early in 1969 summarizing its "coverage of the New Left:"

Foreign influence of the New Left movement offers us a fertile field to develop valuable intelligence data. To date there is no real cohesiveness between international New Left groups, but such an effort was initiated in September, 1968, at an International Student Conference at Columbia University. This conference disclosed that despite the factionalism and confusion now so prevalent, *there is great potential* for the development of an international student revolutionary movement. We are initiating investigations aimed at identifying prominent foreign New Left leaders and activists and to increase our reservoir of background information regarding foreign New Left organizations. This also encompasses travel on the part of groups or individuals either to or from the U.S., and will include international conferences. . . .

Furthermore, it is apparent that the old-line communist groups such as the Communist Party, USA, the Progressive Labor Party, the Socialist Workers Party, and particularly its youth affiliate, the Young Socialist Alliance are *making a determined effort* to move into the New Left movement to exert a greater influence and control over its future activities. More and more we see the New Left movement *holding up as heroes* international communists such as Fidel Castro, Ho Chi Minh, and Mao Tse-tung. More and more we also see old-line leftist groups *influencing the thinking* of the New Left along Marxist lines and giving direction to *attacks against the police in general and the FBI in particular*, to drive us off the campuses; as well as attacks against the new administration to *degrade President Nixon*. We can expect this activity to intensify greatly in the future.⁵⁵⁶ [Emphasis added.]

There was no mention of, or apparent concern for, direct influence or control of the "New Left" by agents of hostile foreign powers. Instead, the stress was almost entirely upon ideological links and similarities, and the threat of dangerous ideas.

White House interest in the financing of New Left protest activities intensified FBI intelligence investigations in early 1970. In response to a specific request, the FBI furnished the White House "material concerning income sources of revolutionary groups" in February 1970.

⁵⁵⁵ See Report on the Huston Plan.

⁵⁵⁶ Memorandum from C. D. Brennan to W. C. Sullivan, 2/3/69.

FBI officials observed that this request was "indicative of high-level interest" in the question. Consequently, the Intelligence Division instructed field offices "to develop information indicative of support of the New Left Movement by tax-exempt charitable foundations or financial 'angels' . . . as well as support by politically oriented groups such as the Vietnam Moratorium Committee to End the War in Vietnam." The field was advised that such support might include "furnishing bail money to arrested demonstrators, furnishing printing equipment or office space, and underwriting the cost of conventions or rallies." FBI officials realized, however, that "direct intensive financial investigation of large foundations, prominent wealthy individuals, . . . or politically oriented groups such as the Vietnam Moratorium Committee" might result in "embarrassment to the bureau."⁵⁵⁷

It was in this climate of stress that the Assistant Director in charge of the Intelligence Division, William C. Sullivan, and the chief of the Internal Security Section, Charles D. Brennan, played influential roles in the development of the "Huston Plan" in June 1970.⁵⁵⁸ These officials saw the threat as essentially domestic in nature. Mr. Brennan has testified that the FBI "never developed any information to indicate that communist sources abroad were financing the anti-war activities in the United States." The only significant foreign connections were that "many activists in the anti-war movement had traveled to foreign countries, had attended communist conferences in various countries abroad and appeared to be getting some degree of propaganda, if not indirectly some guidance which they applied in the conduct of the anti-war demonstrations here."⁵⁵⁹

Mr. Brennan gave one example of this influence:

They attended conferences in various . . . countries abroad which were sponsored by Communists. The peace movement in the United States was generally discussed and I recall in one instance, for example, where several of the activists were involved in the policy committee of the anti-war activities . . . and attended conferences where these issues were the subject of discussion with many Communist representatives. And at the time, the general feeling of the anti-war movement here was that the next step in the stage should be protest demonstrations around the United States.

It is my recollection that information at the Communist Conference abroad led to the conclusion that there should be instead a concentrated demonstration in Washington, D.C. And following the return of these individuals to this country, I think they served to project that view and indeed we did have a concentrated demonstration in Washington, D.C., and it is my recollection that when that demonstration took place, there were also concerted demonstrations at American embassies in many foreign countries on the same day.

⁵⁵⁷ Memorandum from C. D. Brennan to W. C. Sullivan, 3/12/70; Memorandum from FBI Headquarters to all SAC's, 3/16/70.

⁵⁵⁸ See Report on the Huston Plan.

⁵⁵⁹ C. D. Brennan deposition, 9/23/75, p. 4.

This kind of indirect "guidance" was not matched by financial support or direct control. Mr. Brennan stated, "I personally held the feeling that we were dealing with what I term credit card revolutionaries, and that the individuals involved in this type of activity in the United States had ample resources of their own . . . to finance these activities. I never saw anything to the contrary."⁵⁶⁰ Nevertheless, Brennan pointed out that the FBI was "constantly being asked by the White House as to whether or not there was foreign funding . . . and in response to that, then I felt it was necessary for us to try to respond to the question."⁵⁶¹

From Brennan's point of view, the problem was much broader than foreign influence. He explained:

I think you have to look at the social, political, and economic complexities that were related, which built tremendous pressures on the White House, and these, I think, stem from the thousands of bombings, the arsons, the disruptions, the disorder. Our academic communities were being totally disrupted, and I think that a vast majority of American people were subjecting the representatives of Congress and . . . the White House staff and other people in Government to a great deal of pressure, as to why these things were taking place and why something wasn't being done about these, and I think in a broader context, then, the FBI was getting a tremendous amount of pressure from the White House, in response to the overall problem.⁵⁶²

In addition to these outside pressures, FBI intelligence officials themselves had their own reasons for conducting extensive intelligence investigations. This view is illustrated in the following testimony when Brennan was asked about decisions expanding intelligence coverage in the fall of 1970:

I believe[d] that the leaders of the New Left movement had publicly professed their determination to act to overthrow the government of the United States. And I felt that with them on public record as having this basic objective, anyone who joined in membership in their cause, possibly should have their names recorded for future reference in FBI files. And I was reminded of the circumstances of the 1930's, when a great deal of individuals, who at that time were involved and concerned as a result of the economic depression, they became involved with communist activities.

A great deal of communist cells developed, and many of the individuals who, at that time, were in colleges, subsequently were employed in sensitive positions of government, and government had no record of their previous communist involvement. I did not want to see a repetition of that sort of circumstances come about.

So that when individuals did profess themselves to be in adherence to concepts which aimed at, or called for the over-

⁵⁶⁰ C. D. Brennan testimony, 9/25/75, Hearings, Vol. 2, p. 104.

⁵⁶¹ Brennan, 9/25/75, Hearings, Vol. 2, p. 107.

⁵⁶² Brennan, 9/25/75, Hearings, Vol. 2, p. 108.

throw of the government, I did feel that the FBI had the responsibility to record that type of information so if they ever obtained sensitive government positions that could be made known, and known to the agency for which they were going to go to work.⁵⁶³

Brennan admitted that this policy meant putting greater emphasis on FBI domestic intelligence and less on counterintelligence operations directed at hostile foreign intelligence activities in the United States. He stated, "I personally felt that the domestic situation had a higher priority at that particular given time."⁵⁶⁴

Brennan advanced one additional reason for domestic intelligence investigations, completely separate and apart from prevention or prosecution of violent crime and maintenance of the government's security against disloyal employees. He stated:

I think that basically intelligence investigations are designed not specifically for prosecutive intent, but basically to develop intelligence information which will be provided to officials of the United States Government to enable them to possibly consider *new types of legislation* which may be affecting the security of the country. . . .⁵⁶⁵ [Emphasis added.]

This "pure intelligence" function meant that even if Congress had not made an activity a Federal crime, the FBI could be authorized to investigate it so that the President and Congress could consider making it a crime.

J. Intensifications After the 1970 "Huston Plan."

There are several dimensions to the expansion of FBI domestic intelligence operations during the fall of 1970, in the aftermath of the "Huston Plan." Field offices were instructed in mid-September "to immediately institute an aggressive policy of developing new productive informants who can infiltrate the ranks of terrorist organizations, their collectives, communes and staffs of their underground newspapers." Specifically implementing one of the provisions of the "Huston Plan," the FBI authorized its field offices "to develop student security and racial informants who are 18 years of age or older." This removal of the previous restriction on recruiting informants under the age of twenty-one presented the field "with a tremendous opportunity to expand your coverage."⁵⁶⁶

Further intensifications occurred following a series of conferences held at FBI headquarters for domestic intelligence supervisors from the field. There is some dispute as to whether the decisions made at this time were the result of the recommendations made at these conferences, of an attempt by FBI executives to implement certain elements of the "Huston Plan," or of Director Hoover's desire to increase caseload statistics in order to justify a larger appropriation for the FBI. All three factors contributed to some extent.

The head of the FBI Domestic Intelligence Division, William C. Sullivan, was promoted in the summer of 1970 to be Assistant to the

⁵⁶³ Brennan, 9/25/75, Hearings, Vol. 2, p. 117.

⁵⁶⁴ Brennan, 9/25/75, Hearings, Vol. 2, p. 117.

⁵⁶⁵ Brennan, 9/25/75, Hearings, Vol. 2, p. 101.

⁵⁶⁶ SAC Letter 70-48, 9/15/70.

Director in charge of all investigative and intelligence activities. His successor as Assistant Director for the Domestic Intelligence Division was Charles D. Brennan, previously chief of the Internal Security Section. Both men had participated in drafting the "Huston Plan" and were now in positions of greater influence within the Bureau.

Brennan has testified that their success in persuading the FBI Executives' Conference to expand domestic intelligence coverage was partly due to "budgetary considerations." He stated:

I believe . . . that the Bureau of the Budget had questioned the Bureau's appropriation request, pointing to a drop in what was categorized as certain types of security cases, and apparently it involved a practice whereby there were cases listed which consisted mostly of name checks and the like, and because of this apparent drop in security cases, the budget question [was] whether or not the Bureau's request for appropriations was consistent. And this, as I understand, was the basis on which they suddenly saw a need to open a number or more cases.⁵⁶⁷

The relationship between the "Huston Plan" and the intensification programs in the fall of 1970 was described by Mr. Brennan in the following exchange with Committee counsel:

Mr. BRENNAN. The Huston Plan really had nothing to do with it. What was essential here was the recognition of what was taking place inside the country and the recognition of the individuals, whether the Division, whose responsibility it was to cope with the growing violence, to recommend the types of action and programs which they thought necessary to cope with the problem.

Q. Well, let me ask this question another way. Did these programs emanate from Mr. Hoover, Mr. Tolson, or any other part of the Bureau, except the Domestic Intelligence Division?

Mr. BRENNAN. Definitely not. They emanated from individuals within the Domestic Intelligence Division with the exception of the opening of a number of cases which you mentioned, which were the subject of the discussion at the Executive Conference.

Q. But, on the whole, it represented an effort by intelligence professionals who recognized what they perceived to be the extreme nature of the domestic violence in this country.

Mr. BRENNAN. Right, definitely.

Q. And these same individuals would have been much happier if the Huston Plan had been implemented at the same time. Is that correct?

Mr. BRENNAN. Yes, I think so. The general feeling was that there was a greater need for the types of sophisticated techniques which had been eliminated. This would have given us a greater capacity to cope with the problem.

Q. This program was the next best thing. Is that correct?

Mr. BRENNAN. Well, you did everything that you did con-

⁵⁶⁷ Brennan, 9/23/75, pp. 31-32.

sistent with your continuing determination to try to do your job.

Q. And this was done in spite of Mr. Hoover and some of the top executives of the FBI.

Mr. BRENNAN. Mostly, I think, it was done over their grudging acquiescence.⁵⁶⁸

The decisions of the FBI Executive Conference increasing the domestic intelligence caseload were recorded in the following memorandum :

Lifting of existing moratorium on report writing and investigation of Priority II and Priority III, Security Index cases.

There are approximately 10,690 individuals currently included in Priority II and Priority III of the Security Index. Virtually no investigation has been conducted regarding approximately 6,924 of these individuals since the imposition of the moratorium in February, 1969. Many of these individuals have changed residence and/or employment and their whereabouts are unknown. To fulfill our current responsibilities, we should know where they are. . . .

Black Student Unions and similar groups on college campuses.

In 1967, black students began forming their own groups to project their demands, many of which indicate a commitment to black nationalism. These groups are autonomous and have a strong sense of common purpose. The Black Panther Party has made open efforts to organize the Black Student Unions nationally and other black extremist groups have used these organizations to project their extremism and separatism.

Campus disorders involving black students increased 23 percent in the 1969-1970 school year over the previous year indicating that these groups represent a real potential for violence and disruption. In the past, we have opened cases on these organizations following evidence of black extremist activities; however, in view of the vast increase in violence on college campuses, it is felt that every Black Student Union and similar group, *regardless of their past or present involvement in disorders*, should be the subject of a discreet preliminary inquiry through established sources and informants to determine background, aims and purposes, leaders and key activists. It is estimated that this would cause the field to open approximately 4,000 cases involving organizations and the key activists and leaders connected therewith. [Emphasis added.]

Students for a Democratic Society (SDS) and militant New Left campus organizations.

At the end of the 1969-1970 academic year, the various factions of the SDS, excluding the Weatherman faction, which has become an organization in its own right, consisted of a membership of approximately 2,500 individuals. In addition to the SDS groups, there are about 252 totally inde-

⁵⁶⁸ Brennan, 9/23/75, pp. 29-31.

pendent groups on college campuses which are pro-communist New Left-type and are followers of the SDS ideology. It is estimated that the membership of these organizations consists of about 4,000 members. At the present time, we are conducting investigations of all these organizations but have not, in the past, initiated investigations of the individual members of such organizations, with the exceptions of the key activists and individuals who are known to be violence prone.

Major campuses across the nation have been completely disrupted by violent demonstrations, bombings, arsons and other terroristic acts perpetrated by these organizations. It is, therefore, proposed that cases be opened *on all individuals* belonging to such organizations to determine whether they have a propensity for violence. If this proposal were implemented, it is estimated that the field would be required to open approximately 6,500 new cases.⁵⁶⁹ [Emphasis added.]

Subsequent instructions to the field regarding Black Student Unions stressed the need to "target informants and sources to develop information regarding these groups on a continuing basis to fulfill our responsibilities and to develop such coverage where none exists."⁵⁷⁰

The directive on New Left campus groups stated, in part:

As you are aware, SDS and other similar subversive campus-oriented groups are clearly symbolic of violence and Marxist-Leninist revolution on the Nation's campuses. As their intent has crystallized, the *adherence to this philosophy* of revolution and violence is, of necessity, more inherent among members and followers. These groups are undoubtedly the breeding ground for revolutionaries, extremists and terrorists. Logic and good judgment should be used in these investigations, bearing in mind the objective is to identify *potential* and actual extremists, revolutionaries and terrorists and to assess their threat to the internal security of the Government. [Emphasis added.]

Field offices were also reminded, "Each individual investigated should be considered for inclusion on the Security Index."⁵⁷¹

The Domestic Intelligence Division convened a conference of racial intelligence supervisors from the field in late October 1970. In preparation for this conference, Division officials and Assistant to the Director Sullivan proposed that a Justice Department representative be invited to attend a session on the Black Panther Party. The chief of the Racial Intelligence Section explained:

One of our primary objectives in the investigation of the BPP is to develop information which could be used to prosecute the Party and its leaders. The Department has had in operation for little over a year a special task force looking into all phases of BPP operations and currently is presenting evi-

⁵⁶⁹ Memorandum from Executives Conference to Mr. Tolson, 10/29/70.

⁵⁷⁰ Memorandum from FBI Headquarters to all SAC's, 11/4/70.

⁵⁷¹ Memorandum from FBI Headquarters to all SAC's, 11/4/70.

dence to a Federal Grand Jury looking towards indictments of BPP leaders on Smith Act violations. We have not received any concrete information from the Department which would indicate prosecutions are imminent.

The Section Chief added "that these discussions will impress the Departmental representative as to our seriousness in our efforts to put the violent BPP leaders in jail as quickly as possible." Assistant to the Director Sullivan appended a note stating, "The Department needs to be not only educated to some of the ugly realities of the Black Panthers, but also the Department needs to be pushed into getting some prosecutive action underway. People about the country are beginning to wonder why something isn't being done." The proposal was rejected. Associate Director Clyde Tolson wrote, "I doubt the wisdom of this." And Director Hoover noted, "I agree with Tolson." ⁵⁷²

One of the recommendations growing out of the conference was a revision of the Agitator Index, which was described as "a ready reference to individuals who have demonstrated a propensity for fomenting disorder of racial and/or security nature." The Agitator Index was viewed as "a valuable and necessary administrative tool," although it was observed that the Justice Department had "not been advised as to the establishment of the AI." Since many of the "extremist and revolutionary" individuals on the Agitator Index were now included in the Security Index, however, field offices were instructed to delete persons on the Security Index from the Agitator Index. ⁵⁷³

There was serious concern at the conference about the contemporaneous events in Canada, where terrorist activities in Quebec had led the Canadian government to impose a state of emergency and suspend certain legal guarantees. Of equal concern were the reports that at least one antiwar group in the United States—the East Coast Conspiracy to Save Lives, involving Father Philip Berrigan—was considering the kidnaping of American government officials. Summarizing the conference results, the head of the Racial Intelligence Section stated,

The conference was most timely and productive in light of the present terroristic activities in Canada and the imminent concern of the White House concerning the probability of extremist groups taking action against Government officials or their families.

The topics discussed at the conference covered the entire spectrum of the problems inherent in investigating and developing informants in the BPP as well as related extremist matters. These topics included detailed discussion concerning the need for full penetration of extremist groups to obtain information concerning terroristic activities which may be aimed against Government officials. In addition, the conference took note that maximum attention should be given to the

⁵⁷² Memorandum from G. C. Moore to C. D. Brennan, 9/22/70.

⁵⁷³ Memorandum from G. C. Moore to C. D. Brennan, 11/3/70; SAC Letter No. 70-64, 11/10/70.

extremist activities in Canada in connection with our investigations as well as intensifying our investigations having international ramifications. . . .⁵⁷⁴

The conference also reviewed COINTELPRO operations directed against black extremists:

Our experience over the past year and the growth of our knowledge regarding black extremist activities have resulted in utilization of increasing number of sophisticated techniques. . . . Among highly successful tangible results realized during the past year, as a result of this program, were the disbandment of a Black Panther Party (BPP) front group in . . . Mississippi; the transfer of an energetic organizer and key leader of the . . . BPP chapter to a less influential post . . . ; and the complete disruption of a planned conference of the violence-prone Republic of New Africa. . . .⁵⁷⁵

Following the conference, FBI intelligence officials developed a Key Black Extremist program for concentrated investigation and COINTELPRO operations. The program was justified in the following terms:

The information submitted by the field indicates that there is a need for intensified coverage on a group of black extremists who are either key leaders or activists and are *particularly extreme, agitative, anti-Government, and vocal in their calls for terrorism* and violence. Leaders of the violence-prone Black Panther Party have indicated that the "revolution" is entering the beginning phases of actual armed struggle and our investigations indicate there are certain extremists more likely to resort to or to order terrorism as a tactic and therefore require particular attention. [Emphasis added.]

FBI officials envisioned that about ninety cases would be involved.⁵⁷⁶ All field offices were sent a list of Key Black Extremists (KBEs) and instructed to "remain alert for additions to the KBE list." The following measures were to be taken:

(1) All KBEs must be included in Priority I of the Security Index. . . .

(2) All KBEs must be included in the Black Nationalist Photograph Album (BNPA). . . .

(3) All aspects of the finances of a KBE must be determined. Bank accounts must be monitored. Safe deposit boxes, investments, and hidden assets must be located and available information regarding them must be reported.

(4) Continuing consideration must be given by each office to develop means to neutralize the effectiveness of each KBE. Any counterintelligence proposal must be approved by the Bureau prior to implementation.

⁵⁷⁴ Memorandum from G. C. Moore to C. D. Brennan, 10/27/70.

⁵⁷⁵ Memorandum from G. C. Moore to C. D. Brennan, 10/29/70.

⁵⁷⁶ Memorandum from G. C. Moore to C. D. Brennan, 12/22/70.

(5) Obtain suitable handwriting specimens of each KBE to be placed in the National Security File in the Laboratory....

(6) Particular efforts should be made to obtain records of and/or reliable witnesses to, inflammatory statements made which may subsequently become subject to criminal proceedings....

(7) Where there appears to be a possible violation of a statute within the investigative jurisdiction of the Bureau, the ... possible violation [should be] vigorously investigated in accordance with existing instructions.

(8) Particular attention must be paid to travel by a KBE and every effort made to determine financial arrangements for such travel....

(9) The Federal income tax returns of all KBEs must be checked annually in accordance with existing instructions.

Reports on all KBEs were to be submitted every ninety days, and the field offices were urged to use "initiative and imagination in order that the desired results are achieved."⁵⁷⁷

K. The 1971 Inspection Reports

The annual inspection of the FBI Domestic Intelligence Division in January 1971 reflected the increasing intensification of FBI domestic surveillance programs. The role of the Inspection Division was to encourage more aggressive measures. One example involved the East Coast Conspiracy to Save Lives (ECCSL), the group associated with Father Philip Berrigan which allegedly had planned to kidnap government officials. Inspector E. S. Miller advised the Domestic Intelligence Division:

The field should be appropriately instructed to keep the Bureau fully advised of all demonstrations, vigils, harassment tactics, etc., conducted by sympathetic groups and followers of the ECCSL. Such vigils and demonstrations should be afforded sufficient appropriate coverage to develop identities and backgrounds of leading activists and sponsors of such sympathetic activities.

Field offices should also be alerted to other retaliatory actions by sympathetic groups attempting to capitalize on the "persecution" theory thereby exploiting the recent indictments as a sympathetic rallying point for more conspiratorial activities.⁵⁷⁸

The Inspector also recommended using the facilities of the FBI Identification Division and the computerized National Crime Information Center for intelligence purposes in locating members of the Venceremos Brigade (VB) who had visited Cuba:

While no evidence has been received that those persons who travel to Cuba received guerrilla warfare training in Cuba, they were constantly told that they were the vanguard of the Revolution in the United States....

⁵⁷⁷ Memorandum from FBI Headquarters to all SAC's, 12/23/70.

⁵⁷⁸ Inspection Report, Domestic Intelligence Division, 1/8-26/71, p. 7.

Inasmuch as some of the VB members have indicated they were going underground and the fact that a majority have not been located for interview, you should consider placing name stops in the Identification Division so that if these persons are arrested or an inquiry is made by local law enforcement authorities, this fact will be immediately brought to the attention of the Bureau. In addition, a stop file is now being set up by the NCIC Unit for persons other than fugitives concerning whom the Bureau has an interest. . . . Every effort should be made to utilize stops with the Identification Division and the NCIC Unit on these persons.⁵⁷⁹

This proposal was implemented shortly thereafter and the field advised "to submit stop notices for Identification Division and NCIC, concerning Venceremos Brigade (VB) subjects whose whereabouts are not known. . . ." ⁵⁸⁰ Although Inspector Miller criticized to some extent the Domestic Intelligence Division's shortcomings in the foreign counterintelligence field, he placed great emphasis on the opportunities in the domestic area:

You should bear in mind that the attitude and instructions expressed by the President, the Director, and many of the legislators in Congress, have been to curtail the militant actions and violent activities on the part of a significant group of young people in the United States today. The thinking of the Supreme Court of the United States with its several recent changes may be along the lines of suppressing the activities of those who openly espouse the overthrow of all forms of democratic authority in the United States. In addition, the Internal Security Division of the Department of Justice has been specifically enlarged and strengthened to deal with these matters.⁵⁸¹

The details of many of the FBI's most disruptive COINTELPRO operations were set out in the Inspection Report as significant "accomplishments" of the Domestic Intelligence Division.

Among additional measures taken in 1971 were the following, as summarized in the next Inspection Report prepared in August-September:

In March, 1971, a coalition of leftist individuals including subversives and extremists under the sponsorship of the Clergy and Laymen Concerned About Vietnam, American Friends Service Committee, and Fellowship of Reconciliation traveled to Paris, where they were in contact with the North Vietnamese and other elements antagonistic to the U.S. We developed two informants to participate in this travel and as a result, identified all 170 people in attendance, their activities, contacts, and objectives. All information developed was afforded dissemination to appropriate government agencies and

⁵⁷⁹ Inspection Report, Domestic Intelligence Division, 1/8-26/71, pp. 234-236.

⁵⁸⁰ Memorandum from R. L. Shackelford to C. D. Brennan, 3/9/71.

⁵⁸¹ Inspection Report, Domestic Intelligence Division, 1/8-26/71, p. 239.

we were commended by one intelligence agency for the excellent coverage.⁵⁸²

Through the Key Activist Program, we have focused investigative attention on the leaders of the New Left Movement with the aim of prosecuting these leaders under appropriate statutes, federal or local, wherever possible. This program has proved successful in that we have been able to follow closely the activities of these individuals and furnish interested agencies and high government officials with information concerning their subversive and agitational activities. Of particular note is the fact that more than half of the 73 individuals designated as Key Activists are subjects of some type of prosecutive action.⁵⁸³

Extremist intelligence information gathered through our informants and investigations makes up a major portion of the Bureau's sophisticated document which is disseminated to the White House and other high level government agencies. This document captioned "FBI Summary of Extremist Activities" furnishes the White House and other agencies with a digest of the extremist problem in the United States.⁵⁸⁴

By airtel to all offices dated 6/15/71 the field was advised that a new "Stop Index" program had been instituted in the National Crime Information Center (NCIC). This program is for Bureau use only and concerns extremists who are in Priority I of the Security Index and who are not already carried in the NCIC wanted persons file. Through this program, the field obtains prompt notice from NCIC by telephone whenever a police agency makes inquiry concerning one of these extremists, which enables the field to better follow the activities and movements of extremists.

By SAC Letter 71-37 (E) dated 8/10/71 captioned "Security Flash Notices Regarding Security Index Subjects", the field was advised of new procedures which enable the Identification Division to better disseminate arrest information on Security Index subjects for whom no fingerprints are on file in the Identification Division. This is accomplished by periodic submission by the field of Security Flash Notices . . . which determine if fingerprints of a Security Index subject have been received since the last check and if so, a stop is placed in the fingerprint record to assure that the field is advised of all subsequent fingerprint submissions. The Security Flash Notice is periodically submitted at different intervals depending on the priority of the subject's Security Index status.⁵⁸⁵

⁵⁸² Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 34.

⁵⁸³ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 56.

⁵⁸⁴ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 72.

⁵⁸⁵ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 104.

New University Conference (NUC)

The NUC, composed of radical professors, graduate students, and teachers, is committed to the growth of a revolutionary socialist movement in the U.S., with educational institutions and professional associations being their main targets. In Bureau airtel 6/4/71, the attention of Chicago Division, Office of Origin, was directed to the fact that the NUC claimed 42 national chapters plus 15 pre-chapter groupings, with 675 national members, and anticipated further expansion. Chicago Division was instructed to ensure appropriate leads were set out to confirm the existence of all NUC chapters and to conduct appropriate investigations in accordance with Bureau instructions relating to investigations of organizations connected with institutions of learning. It was further instructed these investigations should include information concerning the leaders and leading activists, aims and objectives and the activities of these chapters.⁵⁸⁶

Vietnam Veterans Against the War (VVAW)

Letter to all offices dated 8/3/71 instructed each office to initiate a survey to determine existence of VVAW. This action was necessary in the light of increasing indication that the VVAW may be a target for infiltration by subversive groups such as the Communist Party USA and the Socialist Workers Party and their respective youth groups. VVAW has also been involved in aiding and financing U.S. deserters, including false identity papers and reportedly in one area has a cache of arms. VVAW has become increasingly active in the antiwar field and must be considered a prime target for infiltration.⁵⁸⁷

Computerized Telephone Number File (CTNF) was expanded on 2/26/71, to include telephone numbers of black, New Left, and other ethnic extremists. As a result, black extremist groups, black extremist Security Index subjects, and individuals included in the Black Nationalist Photograph Album have been entered into the CTNF. This has proven to be extremely valuable investigative tool and has saved the field considerable investigative time in ascertaining subscribers of telephone numbers since "hits" are made on 15.5% of numbers checked against the file.⁵⁸⁸

During 1971, Assistant to the Director Sullivan and Assistant Director Brennan made proposals for major reorganization of the Domestic Intelligence Division, Sullivan suggested that it be divided into two separate divisions—one for Domestic Intelligence (including a New Left Section, an Extremist Intelligence Section, and an Internal Security Section) and the other for Counterespionage—Foreign Intelligence. In addition, Brennan proposed that supervision of spe-

⁵⁸⁶ Inspection Report, Domestic Intelligence Division 8/17-9/9/71, p. 107.

⁵⁸⁷ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 111.

⁵⁸⁸ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 127.

cific antiriot and bombing criminal investigations be transferred from the General Investigative Division to the Domestic Intelligence Division. These recommendations were examined in the second 1971 Inspection Report.

Regarding the proposal for two separate divisions, Assistant Director Brennan stated that the advantage of having "smaller divisions thus allowing for tighter and more effective supervision" was outweighed by the disadvantages:

(a) The nature of the work of DID does not readily lend itself to division. The interrelationship of foreign influence in domestic subversion cases is well established and requires close coordination within the Division. . . . Our goal should be to obtain maximum utilization of the knowledge and expertise of supervisory personnel, and division of DID would obviously result in diffusion of related talents. . . .

(b) Budgetary considerations and administrative efficiency would be affected by imposing an additional Divisional superstructure. . . .

Brennan noted that when Sullivan had originally made the proposal in a memorandum to Associate Director Tolson in June 1971, Director Hoover had noted, "I do not approve. We do not have any provision for another Assistant Director and all hearings before Budget Bureau and Congress have been concluded for Fiscal Year 1972."⁵⁸⁹

Assistant Director Brennan's proposal for shifting bombing cases was not a new one. In 1968, the Inspection Division had conducted a study of the desirability of transferring antiriot and bombing investigations from the General Investigative Division to the Domestic Intelligence Division. The two divisions had jointly proposed the shift because the specific criminal investigations in these areas were "so interrelated with the gathering of intelligence in the racial and security fields that overlap constantly occurs." The Inspection Division had endorsed the transfer:

The logic of the proposed reassignments, appears unassailable. In both categories of cases the principle involved is the same, namely, that individual violations of applicable statutes arising from the activities of subversive organizations or groups should be supervised within the same division (DID) that has the basic and continuing responsibility for supervision of the overall investigations of these organizations and groups as well as of the members thereof and the development of informants within the groups. The obvious benefit . . . is the avoidance of duplication of supervisory reviews of these interrelated matters and the ready identification of individuals who may be involved in a specific violation with persons already under investigation from an intelligence standpoint. Informants who may be utilized in specific violations or who are developed in the course of investigation of such violations must of necessity be closely correlated with the supervision of these informant programs which now rests with DID. . . .⁵⁹⁰

⁵⁸⁹ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, pp. 216-223.

⁵⁹⁰ Memorandum from W. M. Felt to Mr. Tolson, Re: Proposed Transfer of Supervisory Responsibility, 8/30/68.

Despite this general agreement among middle-level FBI executives, the 1968 recommendation was not implemented. Associate Director Tolson and Director Hoover were "opposed to this proposed transfer of duties." One consideration which weighed against the shift was that the Justice Department divided supervision of these criminal cases: "antiriot cases are handled in the Criminal Division of the Department, racial bombings in the Civil Rights Division and nationalist bombings in the Internal Security Division."⁵⁹¹

By 1971 the Justice Department had consolidated these responsibilities. Assistant Director Brennan pointed out that the Department had "moved to invest the Internal Security Division with the overall responsibility of prosecuting terrorist activities regarding above-mentioned matters." Consequently, he contended that "similar reorganization" within the FBI would "enhance more effective supervision." Assistant Director Rosen of the General Investigative Division agreed:

As a practical matter substantially all antiriot laws investigations involve extremists and political terrorists. With regard to bombings, substantially all investigations deal at the outset with unknown subjects and it would be most impractical to attempt to delineate between bombings which do or do not involve terrorists. Since the act of bombing is in itself an act of terror it is logical to assume at the outset that terrorists are involved and the types of bombings delegated to the FBI by the Department's guidelines are limited to those targets most likely to be selected by political terrorists. (These targets pertain to Government property or functions, federally funded projects, diplomatic establishments, colleges and universities, and those probably perpetrated by terrorists.)⁵⁹²

The joint recommendation of Assistant Directors Brennan and Rosen was carried out later in 1971, and the unit in the General Investigative Division which supervised bombing investigations was transferred to the Domestic Intelligence Division.⁵⁹³

L. The "New" Internal Security Division and Turmoil in the FBI, 1971.

In late 1970, the Justice Department's Intelligence Evaluation Committee was secretly reconstituted as a permanent body including officials from the Central Intelligence Agency and the National Security Agency. This reorganization implemented one feature of the "Huston Plan," and the new IEC assumed broader functions in preparing regular domestic intelligence evaluations for the White House.⁵⁹⁴ The creation of a new IEC was one of several measures taken in late 1970 and early 1971 by Assistant Attorney General Robert Mardian, who replaced J. Walter Yeagley as head of the Internal

⁵⁹¹ Memorandum from W. M. Felt to Mr. Tolson, 9/4/68.

⁵⁹² Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, pp. 224-238.

⁵⁹³ Assistant Director Rosen's reference to Justice Department guidelines pertained to an agreement between the Justice Department and the Bureau of Alcohol, Tobacco, and Firearms of the Treasury Department defining their respective jurisdictions under the antibombing legislation enacted in 1970.

⁵⁹⁴ See Report on the Huston Plan.

Security Division. Under Mardian the Internal Security Division took over from the Criminal Division the supervision of prosecutions in cases of extremist violence and Selective Service violations.

One of Assistant Attorney General Mardian's most significant actions in 1971, from the viewpoint of domestic intelligence, was the preparation of a new Executive Order on federal employee security. Its first purpose was to update the standards for evaluating the "subversive activity" of potential Federal employees. In addition, the order was designed to reinvigorate the Subversive Activities Control Board, which had been created by the Internal Security Act of 1950 to register Communist organizations and their members.⁵⁹⁵ The Supreme Court had declared the provision for registration of individuals unconstitutional as a violation of the privilege against self-incrimination in 1965.⁵⁹⁶ According to Assistant Attorney General Mardian, there was a "problem resulting from the fact that the Attorney General's list has not been updated for 17 years—a failure which required Federal agencies to individually evaluate information regarding membership in allegedly subversive organizations based on raw data furnished by the Federal Bureau of Investigation or other governmental sources." Mardian expected that the SACB would be able to "deal specifically with the revolutionary/terrorist organizations which have recently become a part of our history."⁵⁹⁷

FBI intelligence investigations of organizations were based in part on the standards for the "Attorney General's list" under Executive Order 10450, issued by President Eisenhower in 1953. Consequently, the new Executive Order 11605 issued by President Nixon in 1971, amending Executive Order 10450, substantially redefined FBI authority. The basic definitions of "subversive" organizations in the two orders compare as follows:

Executive Order 10450 (1953)

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

Executive Order 11605 (1971)

. . . totalitarian, fascist, communist, or subversive, or which has adopted a policy of *unlawfully* advocating the commission of acts of force or violence to deny others their rights under the Constitution *or laws* of the United States *or of any State*, or which seeks to overthrow the government of the United States *or any State or subdivision thereof* by unlawful means. [Emphasis added.]

⁵⁹⁵ The new order assigned to the Subversive Activities Control Board the function of designating organizations for what had been the "Attorney General's list," to be used in evaluating applicants for Federal employment.

⁵⁹⁶ *Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965).

⁵⁹⁷ Robert C. Mardian, Address before the Atomic Energy Commission Security Conference, Washington, D.C., 10/27/71.

The 1971 order was more restrictive in its requirement of "unlawful" advocacy, but it was far broader in extending to state and local matters. The breadth of the order is shown in its more detailed standards for designation of an organization by the SACB. A group could be put on the "SACB list" if it:

engages in, unlawfully advocates, or adopts as a means of obtaining any of its purposes or objectives—

(1) The commission of acts of force or violence or other unlawful acts to deny others their rights or benefits guaranteed by the Constitution or laws of the United States or of the several States or political subdivisions thereof; or

(2) The unlawful damage or destruction of property; or injury to persons; or

(3) The overthrow or destruction of the government of the United States or the government of any State, Territory, district, or possession thereof, or the government of any political subdivision therein, by unlawful means; or

(4) The commission of acts which violate laws pertaining to treason, rebellion, or insurrection, riots or civil disorders, seditious conspiracy, sabotage, trading with the enemy, obstruction of the recruiting and enlistment service of the United States, impeding officers of the United States, or related crimes or offenses.⁵⁹⁸

Testifying before the House Appropriations Subcommittee, Assistant Attorney General Mardian linked the new order directly with FBI investigations: "We have a new brand of radical in this country and we are trying to address ourselves to the new situation. With the investigative effort of the FBI we hope to present petitions to the Board in accordance with requirements of the Executive Order."⁵⁹⁹

FBI intelligence officials anticipated that the Executive Order would have a substantial impact on their operations, as indicated in the Inspection Report:

The implementation of Executive Order 11605 will affect primarily the work of the New Left Section, Extremist Intelligence Section and Internal Security Section. . . .

So far, the Department has indicated that it intends to initiate proceedings against the Black Panther Party, Progressive Labor Party, Young Socialist Alliance, and Ku Klux Klan; however, we have not as yet had any specific requirements levied upon by the Department in these cases. Based on past experience, it can be anticipated the services of one supervisor, full time, will be required to prepare each of these cases for presentation to the SACB.

The language of Executive Order 11605 is very broad and generally coincides with the basis for our investigation of extremist groups. Conceivably, consistent with manpower available, proceedings could be initiated on most of the or-

⁵⁹⁸ Executive Order 11605, 7/2/71.

⁵⁹⁹ Hearings on the Appropriation for the Department of Justice before the House Subcommittee on Appropriations, 92d Cong., 2d Sess. 673 (1972).

ganizations we have under investigation although the Department has not indicated at this time that they will undertake any wholesale action.⁶⁰⁰

From the outset the Executive Order was the subject of serious criticism in the United States Senate, primarily on the ground that the President did not have the power to assign this new function to a Board created by statute to perform different duties. Congress ultimately refused to appropriate funds for the implementation of the order. Nevertheless, the order's provision broadening the definition of "subversive" groups still remained in effect as the standard for evaluating prospective federal employees and for FBI investigations conducted for the federal employee security program.

Hearings on Army surveillance before the Senate Subcommittee on Constitutional Rights in the spring of 1971, and the furor over the SACB order, marked the beginning of a change in the climate of opinion regarding domestic intelligence. In this environment Director Hoover and his top associates expressed growing concern over the close relationship established by Assistant to the Director William C. Sullivan and other FBI intelligence officials with Assistant Attorney General Mardian in the Justice Department.

A memorandum of an Executives Conference meeting in June 1971 exemplifies the increasing tensions within the FBI. Director Hoover's "instructions relative to being very careful in our dealings with Assistant Attorney General Mardian" were pointed out. It was made clear that Assistant Director Dwight Dalbey of the Office of Legal Counsel was to attend "at any time officials of the Department are being contacted on any policy consideration which affects the Bureau." It was specifically noted "that this was not done in connection with a recent conference held between Supervisors of the Domestic Intelligence Division and Deputy Assistant Attorney General A. William Olsen of the Internal Security Division of the Department at which time discussion ensued as to proposed changes in procedure requesting Attorney General authority for electronic surveillance."⁶⁰¹ The conflicts within the FBI that had been muted at the time of the "Huston Plan" in 1970 were now coming into the open.

One of the issues which triggered the break between Director Hoover and Assistant to the Director Sullivan had little to do with domestic intelligence. Instead, it involved an expansion of the number of FBI Legal Attache offices abroad. The details of the controversy need not be reviewed here. What is most significant is that five days after the Executives Conference meeting described above, Sullivan began expressing strong opposition to the program for expanding Legal Attache offices.⁶⁰² Director Hoover solicited the views

⁶⁰⁰ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71.

⁶⁰¹ Executives Conference Memorandum, 6/2/71. The first Assistant Director for the Office of Legal Counsel was Dwight Dalbey, who had for years been in charge of the legal training of Bureau agents. Dalbey's elevation early in 1971, and Hoover's requirement that he review all legal aspects of FBI policy, including intelligence matters, were major changes in Bureau procedure. (Memorandum from Hoover to all Bureau Officials and Supervisors, 3/8/71.)

⁶⁰² Memorandum from W. C. Sullivan to Mr. Tolson. Re: *Estimated Cost of Proposed Expansion of Foreign Liaison*, June 7, 1971.

of other FBI officials, who supported the expansion. Sullivan then replied most forcefully, making the following statements among others:

I have read the comments of the above-named men. It was somewhat more than mildly distressing and saddening to me to observe the lack of objectivity, originality, and independent thinking in their remarks. The uniformity and monolithic character of their thinking constitutes its own rebuttal. While I am certain it was not the intention of these important Bureau officials, who occupy unique roles, to create the impression in the reader's mind that they said what they did because they thought this was what the Director wanted them to say, nevertheless it seems to me this is the impression conveyed.

. . . [T]he evidence points to the fact that, because of racial conflict, student and academic revolution, and possible increase in unemployment, this country is heading into ever more troubled waters, and the Bureau had better be fully prepared to cope with the difficulties which lie ahead. This cannot be done if we spread ourselves too thin and finance operations which do not give us proper returns for the dollars spent. . . .

Lastly, I am not unmindful of the fact that the Director pointed out that we could get along quite well without an expensive domestic liaison section and, therefore, he dissolved it. Applying the Director's reasoning foreign liaison, I think certainly the conclusion is valid that we can at least reduce it, with benefits to the Bureau.⁶⁰³

The final passage had reference to Director Hoover's decisions in 1970, first, to abolish the position of FBI liaison officer with the CIA, and then to eliminate the entire FBI Liaison Section dealing with other federal agencies.⁶⁰⁴

Upon reviewing Sullivan's second memorandum, one high FBI official advised Director Hoover that it appeared "more definite to me that he is more on the side of CIA, State Department and Military Intelligence Agencies, than the FBI." This official added, "There has to be something wrong for him to do such an abrupt about face at this time, after agreeing with what we have done in the past and now being unalterably opposed to any further expansion. . . ." ⁶⁰⁵

Within less than a month, Director Hoover had appointed W. Mark Felt, formerly Assistant Director in charge of the Inspection Division, to a newly created position as Sullivan's superior. During this period, Sullivan gave Assistant Attorney General Mardian the FBI's documents recording the authorization for and dissemination of information from certain wiretaps placed on executive officials and journalists during 1969-1971. The absence of these materials was not dis-

⁶⁰³ Memorandum from W. C. Sullivan to the Director. Re: *FBI Foreign Liaison Program*, 6/16/71.

⁶⁰⁴ See report on the Huston Plan.

⁶⁰⁵ R. R. Beaver, Memorandum for the Director's Personal Files, Re: W. C. Sullivan, 6/18/71.

covered by other FBI officials until after Sullivan was forced to resign in September 1971.⁶⁰⁶

Additional friction within the FBI developed in mid-1971 during the investigation of the "Pentagon Papers" matter and Daniel Ellsberg.

Assistant Director C. D. Brennan of the Domestic Intelligence Division considered the "Pentagon Papers" case a matter of overriding importance, especially in view of the White House interest. Brennan's views were summarized in an Inspection Report:

. . . [H]e commented upon the fact that the Ellsberg case might be a landmark in historical significance in view of the long range potential regarding governmental operations and the FBI's role in relation thereto. He stated that the leak in this case represented a deliberate and determined effort on the part of certain individuals to seriously disrupt and destroy the government's capacity to carry out effectively its foreign policy in various areas. Mr. Brennan noted that the past 15 to 20 years had witnessed the evolution of a new breed of fanatics who were determined to disrupt and destroy governmental operations and to alter this country's foreign policy. He further noted that the movement supported by these fanatics bordered on treason which must be dealt with if our current form of government is to survive.

In early July 1971 Director Hoover advised his subordinates that Presidential assistant H. R. Haldeman had called about the Ellsberg case and said that the President wanted regular reports. A month later, Assistant Director Brennan and other officials met with White House aide Gordon Liddy, who was "coordinating all White House interest in this matter." Liddy explained that the White House wanted the case handled as a "Bureau special". Although the FBI devoted substantial resources to the investigation, there was resistance to attempts by Assistant Attorney General Mardian and the Internal Security Division to direct the details of the FBI's inquiry.⁶⁰⁷

Moreover, Assistant Director Brennan was removed from his position in the course of the investigation. His replacement as Assistant Director for the Domestic Intelligence Division was Inspector E. S.

⁶⁰⁶ Memorandum from T. J. Smith to E. S. Miller, 5/13/73; FBI Summary of Interview with Robert Mardian, 5/10/73. William C. Sullivan stated that he "turned over the material, following a discussion in depth with Mr. Mardian relative to security and possible abuses of the material." (Memorandum from W. C. Sullivan to Acting FBI Director Ruckelshaus, 5/11/73.) Robert Mardian recalled that Sullivan told him Director Hoover "might use these tapes for the purpose of preserving his position as Director of the FBI." (Mardian testimony, Senate Watergate Hearings, 7/20/73, p. 2393.)

Former Attorney General John Mitchell recalled that Mardian had indicated to him "that Sullivan was furious over the way he was being treated by the Director and that for this reason he disclosed the information concerning the wiretaps to Mardian." Mitchell also said that Director Hoover had "advised him of the problems he was having with Sullivan," and Mitchell recalled "telling Mr. Hoover that he had no choice but to get rid of Mr. Sullivan." (FBI interview with John Mitchell, 5/12/73.)

⁶⁰⁷ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, pp. 4-10.

Miller, who had conducted two inspections of the Division during 1971.^{607a}

M. The "Administrative Index"

In the fall of 1971 the FBI confronted the prospect of the first serious Congressional action which might curtail domestic intelligence operations—repeal of the Emergency Detention Act of 1950. The Inspection Report completed in September 1971 viewed the possibility of repeal without great alarm:

Legislation has been introduced in the 92d Congress to repeal Title II of the ISA of 1950. In the event Title II should be repealed at a future date under new legislation, *the Government's inherent right to protect itself internally* will continue to be safeguarded by the Bureau under its basic responsibility for protecting the Nation's internal security.⁶⁰⁸ [Emphasis added.]

Congress passed the repeal measure shortly thereafter. FBI intelligence officials began at once to consider the impact on the Security Index program. They believed the Security Index should still be maintained "since the potential dangerousness of subversives is probably even greater now than before the repeal of the Act, since they no doubt feel safer now to conspire in the destruction of this country." However, they also saw a need to consult the Justice Department "to determine if there is any manner in which the essence of the Security Index and emergency detention of dangerous individuals could be utilized under Presidential powers."⁶⁰⁹

The argument for keeping the Security Index in the event of an emergency was elaborated further:

Those listed now or included under existing criteria in the future will continue to represent a potential danger to the national defense. Should this country come under attack from hostile forces, foreign or domestic, there is nothing to preclude the President from going before a joint session of Congress and requesting necessary authority to apprehend and detain those who would constitute a menace to national defense. At this point it would be absolutely essential to have an immediate list, such as the SI, for use in making such apprehensions. The SI, backed by our investigative files, would provide documentation of subversive backgrounds during any hearings which might be required following apprehensions.

^{607a} According to former FBI executive W. Mark Felt, Brennan was replaced as a matter "of policy." The purpose was "to put someone else into that spot who was not a protege of Sullivan," as a means of "controlling the Domestic Intelligence Division." It was Felt's "understanding" that Director Hoover "felt that Sullivan was out of hand."

Brennan was also disciplined for one aspect of his handling of the "Pentagon Papers" investigation. According to Mark Felt, "Mr. Hoover was convinced that Mr. Brennan deliberately disregarded his instructions" not to interview Louis Marx, father-in-law of Daniel Ellsberg. Felt thought Brennan "got a bum rap" and that "it was an honest error." (Felt, 2/3/76, pp. 67-71.)

⁶⁰⁸ Inspection Report, Domestic Intelligence Division, 8/17-9/9/71, p. 98.

⁶⁰⁹ Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act*, 9/17/71.

The Security Index also served useful purposes in connection with the FBI's day-to-day intelligence operations:

The SI constitutes an extremely valuable list of subversives and malcontents who constantly pose a threat to the safety of the President. Secret Service is provided a constant flow of data concerning current whereabouts and backgrounds of individuals on the SI. In addition, the SI would immediately pinpoint for our own use the identities of subversives who would require intensified investigative attention to provide evidence of espionage, sabotage, or the like. . . .

Quarterly we have furnished Passport Office of State Department a list of those on Priority I (the most potentially dangerous) so that we can be advised of travel abroad by these subjects. The list is not identified in any way as SI and since it is beneficial to us, it is believed we should continue to send it.

Repeal of the Emergency Detention Act of 1950 was not thought to affect the basis for FBI investigative authority:

Title I of the Internal Security Act of 1950, which relates to Subversive Activities Control Board, strengthened by Executive Order 11605 dated 7/2/71, provides investigative authority as do Smith Act of 1940, Communist Control Act of 1954, Fraud Against the Government, Rebellion and Insurrection, Sedition and Seditious Conspiracy, among others.

However, FBI intelligence officials believed that the Bureau's "Office of Legal Counsel should examine this more critically from a legal standpoint." ⁶¹⁰ Assistant Director D. J. Dalbey, head of the Office of Legal Counsel, agreed that the repeal did not affect the FBI's "basic investigative authority:"

Our basic investigative authority for this type of case is in the Presidential directive of September 6, 1939, which still remains in effect, with updatings. In addition to that there is a host of criminal statutes which are particularly applicable to the type of action-oriented subversives with whom we now deal. Principal subversives now carry guns, rob banks to get money, steal arms and ammunition, commit arson, set off bombs, incite riots, and do many other things which violate one or more criminal statutes over which this Bureau has investigative jurisdiction. From a combination of those statutes, plus the original Presidential directive on internal security, we have wide investigative authority.

Assistant Director Dalbey also endorsed the position of FBI intelligence officials regarding the Security Index:

. . . [E]limination of the Emergency Detention Act does not prevent this Bureau from carrying in its files an assessment of each principal subversive which would be sufficient to mark him for Government attention should a need arise in a national emergency.

⁶¹⁰ Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act*, 9/21/71.

Bearing in mind that the Emergency Detention Act could as easily be put back in force should an emergency convince Congress of its need, this Bureau would then be expected to have on hand the necessary action information pertaining to individuals.

Nevertheless, the FBI's Legal Counsel strongly urged that "a letter should be written to the Attorney General in which this Bureau asks for a reassessment of our investigative and record-keeping authority concerning subversive matters." This would "protect" the FBI in case "some spokesman of the extreme left" claimed that repeal of the Detention Act did, in fact, eliminate the Bureau's investigative authority.⁶¹¹

FBI intelligence officials became increasingly concerned about possible "charges by the Bureau's critics that we are evading the will of Congress." They believed it was necessary to "get some written authority from the Attorney General, not only to keep records which, in effect, represent a workable substitute for the Security Index, but also serves as a mandate for our continued investigation of subversive activity and related matters."⁶¹²

Thereupon, a letter was sent to Attorney General Mitchell soliciting his views "concerning FBI authority to continue investigations of subversive activity covered, in part, by this [Emergency Detention] Act." The letter cited as bases for continuing FBI authority the Smith Act, the Subversive Activities Control Act of 1950, the Communist Control Act of 1954, statutes relating to espionage, sabotage, rebellion and insurrection, sedition, and seditious conspiracy, as well as "certain Presidential Directives." The line of Presidential directives from President Roosevelt's order of June 26, 1939, through President Eisenhower's statement of December 15, 1953, was reviewed. The FBI Director's letter concluded:

I strongly feel that irrespective of the repeal of the Emergency Detention Act, the Federal Government must take whatever steps are necessary, within the law, to protect itself from all hostile forces bent on its destruction. We, therefore, feel that it is absolutely incumbent upon the FBI to continue investigations of those who pose a threat to the internal security of the country and to maintain an *administrative index* of such individuals as an essential part of our investigative responsibility. Such an index not only enables the FBI to pinpoint individuals who have exhibited a propensity to conduct acts inimical to national security, but also serves as an extremely valuable list of individuals who pose a continuing threat to the safety of the President and thereby enables us to provide current data to U. S. Secret Service concerning backgrounds and whereabouts of such individuals.⁶¹³ [Emphasis added.]

⁶¹¹ Memorandum from D. J. Dalbey to Mr. Tolson, Re: *Emergency Detention Act Repeal*, 9/24/71.

⁶¹² Memorandum from R. D. Cotter to E. S. Miller, Re: *Emergency Detention Act Repeal*, 9/29/71.

⁶¹³ Memorandum from the FBI Director to the Attorney General, Re: *Emergency Detention Program*, 9/30/71.

The FBI made no mention of the Agitator Index, which had been abolished earlier in 1971 because "extremist subjects" were now "adequately followed" through the Security Index.⁶¹⁴

There was also no allusion to the theory advanced within the FBI that the new "administrative index" could serve as the basis for a revived Detention Program in some future emergency.

The Attorney General replied that the FBI's authority to investigate "subversive activities" on the bases cited by the Bureau was "unaffected by the repeal of the Emergency Detention Act." With respect to the Security Index, the Attorney General advised:

... [T]he repeal of the aforementioned Act does not alter or limit the FBI's authority and responsibility to record, file and index information secured pursuant to its statutory and Presidential authority. An FBI administrative index compiled and maintained to assist the Bureau in making readily retrievable and available the results of its investigations into subversive activities and related matters is not prohibited by repeal of the Emergency Detention Act.

While the Department does not desire a copy of any lists that you may compile on the basis of such records or indices, the Internal Security Division should be furnished a monthly memorandum reflecting the identity of government employees who by significant acts or membership in subversive organizations, have demonstrated a propensity to commit acts inimical to our national security.

The Justice Department was studying what to do with the "Attorney General's portfolio"—the secret plans for emergency detention.⁶¹⁵ Several months later the FBI was instructed to destroy the materials prepared for the "Attorney General's portfolio."⁶¹⁶

Upon receipt of the Attorney General's memorandum, the FBI reconstituted the Security Index as an Administrative Index (ADEX) with revised standards. FBI intelligence officials explained that, since the Justice Department would no longer review the names on the list, the FBI was "now in a position to make a sole determination as to which individuals should be included in an index of subversive individuals. Previously, the Justice Department had 'frequently removed individuals who in the strictest legal interpretation should not be considered for arrest and detention.' Under the new procedure the FBI could make its own 'determination based not on arrest and detention but rather on overall potential for committing acts inimical to the national defense interest.'" This meant restructuring the Index so that it no longer stressed "membership in or affiliation with old line revolutionary organizations," such as the Communist Party. Instead, it would concentrate on the "new breed of subversive individual":

⁶¹⁴ Memorandum from G. C. Moore to C. D. Brennan, Re: *Agitator Index*, 4/21/71; SAC Letter No. 71-17, 4/27/71.

⁶¹⁵ Memorandum from Attorney General John N. Mitchell to the FBI Director, Re: Emergency Detention Program, 10/22/71.

⁶¹⁶ Memorandum from Assistant General Robert C. Mardian to the FBI Director, Re: *Emergency Detention Program*, 2/9/72.

He may adhere to old-line revolutionary concepts but he is unaffiliated with any organization. He may belong to or follow one New Left-type group today and another tomorrow. He may simply belong to the loosely knit group of revolutionaries who have no particular political philosophy but who continuously plot the overthrow of our Government. He is the nihilist who seeks only to destroy America.

On the other hand, he may be one of the revolutionary black extremists who, while perhaps influenced by groups such as the Black Panther Party, he is also unaffiliated either permanently or temporarily with any black organization but with a seething hatred of the white establishment will assassinate, explode, or otherwise destroy white America.

The previous Reserve Index, which had never been disclosed to the Justice Department, would now be incorporated into Category IV of the new ADEX. It included "teachers, writers, lawyers, etc." who did not actively participate in subversive activity "but who were nevertheless influential in espousing their respective philosophies." It was estimated that the total case load increase under the ADEX would be "in excess of 23,000 cases the first year," including 17-18,000 individuals who "are either now being investigated or who have been investigated in the past."⁶¹⁷

The following standards for placing subjects of "security investigations" on the ADEX were sent out to the field offices:

Category I

(1) All national leaders of revolutionary organizations whose aims and purposes include the overthrow and destruction of the Government by force and violence or other unconstitutional means, and individuals affiliated therewith who have demonstrated propensity for violence against the person rather than property or have received special training in sabotage, espionage, or guerrilla warfare or have engaged in underground-type operations.

(2) Revolutionaries, though unaffiliated with any specific organization, who have demonstrated by acts or statements a propensity for violence, including acts of terrorism, assassination, or any interference with or threat to the survival and effective operation of national, state, or local Governments and of the defense efforts.

(3) National leaders of black extremist separatist organizations.

(4) Any individual who qualifies for the ADEX should be included in Category I if he is employed in or has access to a key facility.

Category II

(1) Secondary leadership of revolutionary and black extremist separatist organizations. Secondary leadership would comprise, for example, regional, state, and local leaders who are involved in policy making in fulfilling anti-U.S. objec-

⁶¹⁷ Memorandum from T. J. Smith to E. S. Miller, Re: *Security Investigations of Individuals*, 11/11/71.

tives of their respective revolutionary organizations and whose activities do not justify their inclusion in Category I.

(2) Active participants in furthering the aims and purposes of the revolutionary or black extremist separatist organization with which affiliated.

(3) Other unaffiliated revolutionaries who have demonstrated by acts or statements a propensity for violence against property rather than persons.

Category III

(1) Rank-and-file membership in, or participation in activities of, revolutionary organizations within the last five years as evidenced by overt acts or statements established through reliable sources, informants, or individuals.

(2) Leadership or activist position in affiliated fronts of revolutionary organizations within the last three years as shown by overt acts or statements established through reliable sources, informants, or individuals.

(3) An individual who, although not a member of or participant in activities of revolutionary organizations or considered an activist in affiliated fronts, has exhibited a revolutionary ideology and is *likely to seize upon the opportunity presented by national emergency* to commit acts of espionage or sabotage, including acts of terrorism, assassination, or any interference with or threat to the survival and effective operation of national, state, and local Governments and of the defense efforts. [Emphasis added.]

Category IV

(1) Individuals whose activities do not meet criteria of Categories I, II, or III but who are in a position to influence others to engage in acts inimical to the national defense or are likely to furnish financial aid or other assistance to revolutionary elements *because of their sympathy, associations, or ideology*. [Emphasis added.]

Field offices were also instructed to review the cases of persons on the Reserve Index and, "where appropriate", recommend them for inclusion in the ADEX.⁶¹⁸

The assumption that the ADEX could be used as the basis for detention or other action in an emergency was made clear in the standards for Category III (3). However, when these criteria were supplied to the Justice Department in 1972, the Attorney General did not question the fact that the ADEX was more than just an administrative aid for conducting current investigations.⁶¹⁹

One Bureau memorandum indicates that "representatives of the Department" in fact agreed with the view that there might be "circumstances" where it would be necessary "to quickly identify persons who were a threat to the national security" and that the

⁶¹⁸ Memorandum from FBI Headquarters to all SAC's, Re: *Security Investigations of Individuals*, 11/15/71.

⁶¹⁹ Memorandum from the FBI Director to the Attorney General, Re: *Security Investigations of Individuals*, 2/10/72.

President could then go to Congress "for emergency legislation permitting apprehension and detention."⁶²⁰

Thus, although the Attorney General did not formally authorize the ADEX as a continuation of the previous detention list, there was informal Departmental knowledge that the FBI would proceed on that basis. One FBI official later recognized that the ADEX could be "interpreted as a means to circumvent repeal of the Emergency Detention Act."⁶²¹

N. Curtailment of FBI Domestic Intelligence

In 1971, the first serious congressional inquiry into domestic intelligence policy influenced the Army to curtail its extensive surveillance of civilian political activity and led, after Director Hoover's death in 1972, to serious reconsideration by the FBI of the legal basis for its domestic intelligence activities and eventually to a request for clarification of its authority by the Attorney General.

In February 1971, the Subcommittee on Constitutional Rights of the Senate Judiciary Committee began a series of hearings on federal data banks and the Bill of Rights which marked a crucial turning point in the development of domestic intelligence policy. The Subcommittee, chaired by Senator Sam J. Ervin of North Carolina, reflected growing concern among Americans for the protection of "the privacy of the individual against the 'information power' of government."⁶²² Senator Ervin declared that a major objective of the inquiry was to look into "programs for taking official note of law-abiding people who are active politically or who participate in community activities on social and political issues." The problem, as Senator Ervin saw it, was that there were citizens who felt "intimidated" by these programs and were "fearful about exercising their rights under the First Amendment to sign petitions, or to speak and write freely on current issues of Government policy." The ranking minority members of the Subcommittee, Senator Roman Hruska, endorsed the need for a "penetrating and searching" inquiry.⁶²³

Assistant Attorney General Robert Mardian testified before the Constitutional Rights Subcommittee in March 1971. He declared that the Justice Department's IDIU did not itself collect intelligence, but rather it relied upon information from "public sources" and from the FBI. Under questioning, Mardian admitted that neither the Department nor the Bureau had "any specific published regulation or guideline" for the collection of intelligence about civil disturbances.⁶²⁴ When this statement appeared in the press, Director Hoover asked, "What about this?"⁶²⁵ In response, FBI officials prepared a summary of the relevant Bureau Manual provisions and submitted it to the Director as the FBI's "Guidelines."⁶²⁶

⁶²⁰ Memorandum from T. J. Smith to E. S. Miller, 8/29/72.

⁶²¹ Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

⁶²² *Federal Data Banks*, 1971 Hearings, p. 1.

⁶²³ *Federal Data Banks*, 1971 Hearings, pp. 4, 7.

⁶²⁴ *Federal Data Banks*, 1971 Hearings, p. 873.

⁶²⁵ Note on news article attached to memorandum from R. D. Cotter to C. D. Brennan, 3/18/71. Hoover also noted on a column in the *Washington Post* by Alan Barth, "We must get together at once all out guidelines." Routing slip, 3/25/71.

⁶²⁶ Memorandum from R. D. Cotter to C. D. Brennan, 3/25/71.

There is no indication that the "guidelines" material or the FBI Manual provisions themselves were submitted to, or requested by, the Justice Department in 1971.⁶²⁷ Indeed, when Deputy Attorney General Richard Kleindienst testified in February 1972 at the hearings on his nomination to be Attorney General, he stated that he was "not sure" what guidelines were used by the FBI. Kleindienst also stated that he believed FBI investigations were "restricted to criminal conduct or the likelihood of criminal conduct."⁶²⁸ Director Hoover noted on a newspaper report of the testimony, "Prepare succinct memo to him on our guidelines."⁶²⁹

The FBI's summary of its "guidelines," submitted to the Acting Attorney General, in 1972, stated that the Bureau investigated "any individual" who is "affiliated with or adheres to the principles of" an organization "which has as an objective" the violent overthrow of the government or "other criminal activity detrimental to the National defense."⁶³⁰ The Bureau also made clear that the purpose of these investigations was not just to "obtain evidence for prosecution," but also

to obtain intelligence data in order to have day-to-day appraisal of strength, dangerousness, and activities of the organization; and to keep the Department of Justice and other affected Government agencies advised.

These investigations were partly based on criminal statutes, although the Bureau admitted that "subversive activity . . . often does not clearly involve a specific section of a specific statute." They were also based on the 1939 Roosevelt directives which were said to have been "reiterated and broadened by subsequent Directives."⁶³¹ [Emphasis added.]

Shortly thereafter (and only two days before Director Hoover's death), the Bureau advised Kleindienst that it was abandoning the use of the term "New Left" and substituting "Revolutionary Activities" so as to more accurately "depict" the "militant, violence-prone revolutionaries with whom we are concerned in our current investigations."⁶³²

After Director Hoover's death in May 1972, FBI intelligence officials prepared a "position paper" for Acting Director L. Patrick Gray, in

⁶²⁷ After repeal of the Emergency Detention Act in the fall of 1971, the FBI's Assistant Director for Legal Counsel recommended that the Bureau's request for approval of its new ADEX also include a more general request for reaffirmation of FBI domestic intelligence authority to investigate "subversive activity." (Memorandum from D. J. Dalbey to Mr. Tolson, 9/24/71) The letter to the Attorney General reviewed the line of "Presidential directives" from 1939 to 1953. (Memorandum from Hoover to Mitchell, 9/30/71) The Attorney General replied with a general endorsement of FBI authority to investigate "subversive activities." (Memorandum from Mitchell to Hoover, 10/22/71)

⁶²⁸ Richard Kleindienst testimony, Hearings Before the Senate Judiciary Committee, 2/24/72, p. 64.

⁶²⁹ FBI routing slip attached to Washington Post article, 2/24/72.

⁶³⁰ The summary also stated that "affiliation" with "basic revolutionary front groups" was not a "prerequisite" for investigation, since "other individuals with anarchistic, revolutionary or extremist beliefs" were also investigated. (Attachment to Memorandum from Hoover to Kleindienst, 2/25/72.)

⁶³¹ Memorandum from Hoover to Kleindienst, 2/25/72 (attachment).

⁶³² Memorandum from the FBI Director to Acting Attorney General Kleindienst, 4/28/72.

response to his request for a review of Bureau "authority" for investigations "where there is no direct violation of law." This paper merely recited the various Presidential directives, Executive Orders, delimitations agreements, and general authorizations from the Attorney General, with no attempt at analysis. The need for "intelligence collection" to assure "proper vigilance" was introduced in the following terms:

It is clear that the aspirations of most revolutionary groups far exceed their capability to achieve their ultimate objectives. They are, however, quite capable of eroding the integrity of the democratic system by lesser acts and, if not discouraged or thwarted, might well accumulate the will and power for more decisive action. The dramatic success of the Castro revolution is a sufficient example.⁶³³

At the same time, the FBI Office of Legal Counsel began its own review of the constitutional issues; and one memorandum, anticipating the likelihood of further "congressional intervention," recommended the development of "tight internal controls and carefully developed guidelines."⁶³⁴

There was a sharp split within the Domestic Intelligence Division over whether or not the Bureau should continue to rely on the various executive orders as a basis for its authority. One official concluded that the FBI had "overstated our authority supposedly derived from Presidential directives," and that the Attorney General should be called upon "to provide legal guidance and advice as to just how much authority we have or need." Other intelligence officials believed that FBI policies might be "undermined" if it attempted to rely solely on "statutory authority."⁶³⁵ Nevertheless, a new Division position paper concluded that domestic intelligence investigations could practicably be based on the "concept" that their purpose was "to prevent a violation of a statute." The paper also indicated that the ADEX would be revised so that it could not be "interpreted as a means to circumvent repeal of the Emergency Detention Act."⁶³⁶

One of the arguments for not relying on the authority of the Presidential orders was the risk of abuse of the FBI by the White House:

Over the years it became common practice for White House staff members to telephone requests for information or investigations to Mr. Hoover's office or the office of one of his officials. Such requests were usually considered as being within the constitutional Executive power, and for the most part such requests were completely legitimate and well within the recognized scope of the FBI investigative authority.

Occasionally, however, requests were made—and complied with—which in retrospect appear to have been beyond any

⁶³³ FBI Domestic Intelligence Division, Position Paper: Investigations of Subversion, 5/19/72. Assistant Director E. S. Miller, head of the Domestic Intelligence Division, withdrew this paper at a conference with Gray and other top Bureau officials; Miller then initiated work on a more extensive position paper, which was completed in July. (T. J. Smith to E. S. Miller, 8/1/72.)

⁶³⁴ Memorandum from J. B. Hotis to D. J. Dalbey, 5/18/72.

⁶³⁵ Memorandum from T. J. Smith to E. S. Miller, 8/1/72.

⁶³⁶ Domestic Intelligence Division, Position Paper: Scope of Authority, Jurisdiction and Responsibility in Domestic Intelligence Investigations, 7/31/72.

recognized Executive authority. An example is a telephone request to furnish all available information to the White House concerning a forthcoming Earth Day rally in 1970. The rally, which was sponsored by groups concerned with pollution and ecology, attracted the attention of a few subversive elements, but appeared to be very much under the control of the sponsors. Senator Edmund S. Muskie spoke at the rally in Washington, D.C., and Rennie Davis, an anti-war activist with a subversive background, appeared on the same platform with Senator Muskie. A few minor disturbances erupted in some areas, but overall the Earth Day rallies were peaceful and attained their general objective, the calling of attention to environmental problems. Senator Muskie, who learned that the FBI covered the rally in Washington, was incensed that the FBI was involved. We had a poor defense and in this case, at least, it is doubtful that there was any legitimate Executive authority to have the FBI involved. In any event, it would appear that such requests should flow through channels, including the Department of Justice where possible, to assure that unreasonable and improper requests are [not] made for investigative activity.^{636a}

Acting Director Gray postponed making any formal request for advice from the Attorney General in 1972.⁶³⁷ Meanwhile, the Domestic Intelligence Division proceeded on its own to revise the pertinent Manual sections and the ADEX standard. One official observed that there were "some individuals now included in ADEX even though they do not realistically pose a threat to the national security." He added that this would leave the Bureau "in a vulnerable position if our guidelines were to be scrutinized by interested Congressional committees." Thus, it was recommended that the list be trimmed to those who were "an actual danger now," reducing the number of persons on the ADEX by two-thirds.⁶³⁸ The Justice Department was advised of this change.⁶³⁹

The revision of the Manual was completed by May 1973. It was described as "a major step" away from "heavy reliance upon Presidential Directives" to an approach "based on existing Federal statutes."

^{636a} Position Paper, 7/31/72. For an examination of other instances of political abuse of the FBI, see the Final Report on Domestic Intelligence.

⁶³⁷ Gray did order that the Bureau should indicate its "jurisdictional authority" to investigate in every case, "by citing the pertinent provision of the U.S. Code, or other authority," and also that the Bureau should "indicate whether or not an investigation was directed by DJ (Department of Justice), or we opened it without any request from DJ." In the latter case, the Bureau was to "cite our reasons." Note on FBI routing slip, 8/27/72.

⁶³⁸ Memorandum from Smith to Miller, 8/29/72. The anticipated reduction was from 15,259 (the current figure) to 4,786 (the top two priority categories).

⁶³⁹ Memorandum from Gray to Kleindienst, 9/18/72. The basic standard for the revised ADEX read as follows:

"Individuals, whether affiliated with organized groups or not, who have shown a willingness and capability of engaging in treason, rebellion, or insurrection, seditious conspiracy, sabotage, espionage, terrorism, guerrilla warfare, assassination of Government officials or leaders, or other such acts which would result in interference with or a threat to the survival and effective operation of national, state or local government."

Draft copies were distributed to the field for suggestions.⁶⁴⁰ The field was advised that the "chief statutes" upon which the new criteria were based were those dealing with rebellion or insurrection (18 U.S.C. 2383), seditious conspiracy (18 U.S.C. 2384) and advocating overthrow of the government (18 U.S.C. 2385). The ADEX was to be "strictly an administrative device" and should play no part "in investigative decisions or policies." The revision also eliminated "over-emphasis" on the Communist Party. Although field offices were instructed to "close" investigations not meeting the new criteria, headquarters did not want "a massive review on crash basis" of all existing cases.⁶⁴¹

A series of regional conferences were held with field office supervisors to discuss the new standards, after which they were revised to allow greater flexibility. For example, the supervisors saw the need to undertake "preliminary inquiries" before it was known "whether a statutory basis for investigation exists." This specifically applied where a person had "contact with known subversive groups or subjects," but the Bureau did not know "the purpose of the contact." These preliminary investigations could go on for 90 days "to determine whether or not a statutory basis for a full investigation exists." Moreover, at the urging of the field supervisors, the period for a preliminary investigation of an allegedly "subversive organization" was expanded from 45 to 90 days.⁶⁴²

For the first time in FBI history, a copy of the Manual section for "domestic subversive investigations" was sent to the Attorney General, apparently "in connection with" a request made earlier by Senator Edward M. Kennedy who had asked to see a copy of this section at the time of the confirmation hearings for Attorney General Kleindienst in 1972.⁶⁴³

After Clarence M. Kelley was confirmed as FBI Director, he requested guidance from the Attorney General. In a memorandum to Attorney General Elliott Richardson, Director Kelley cited Senator Sam J. Ervin's view that the FBI should be prohibited by statute "from investigating any person without that individual's consent, unless the Government has reason to believe that the person has committed a crime or is about to commit a crime." He then summarized the position paper prepared by the Domestic Intelligence Division and the Bureau's current policy of attempting to rely on statutory authority. However, he observed that the statutes upon which the FBI was relying were either "designed for the Civil War era, not the Twentieth Century" (the seditious conspiracy, rebellion and insurrection laws) or had been "reduced to a fragile shell by the Supreme Court" (the

⁶⁴⁰ Memorandum from E. S. Miller to Felt, 5/22/73. This memorandum also stated, looking back on past Bureau policy, that since the FBI's authority to investigate "subversive elements" had never been "seriously challenged until recently." Bureau personnel (and "the general public") had accepted "the FBI's right to handle internal security matters and investigate subversive activities without reference to specific statutes." But the "rationale" based on "Presidential Directives" was no longer "adequate."

⁶⁴¹ Memorandum from FBI Headquarters to all SAC's, 6/7/73.

⁶⁴² Memorandum from FBI Headquarters to all SAC's, 8/8/73.

⁶⁴³ Kleindienst, Senate Judiciary Committee, 2/24/72, p. 64; memorandum from Kelley to Richardson, 8/7/73.

Smith Act dealing with advocacy of overthrow). Moreover, it was difficult to fit into the statutory framework groups "such as the Ku Klux Klan, which do not seek to overthrow the Government, but nevertheless are totalitarian in nature and seek to deprive constitutionally guaranteed rights."

Kelley stated that, while the FBI had "statutory authority," it still needed "a definite requirement from the President as to the nature and type of intelligence data *he* requires in the pursuit of *his* responsibilities based on *our* statutory authority." [Emphasis added.] While the statutes gave "authority," an Executive Order "would define our national security objectives." The FBI Director added,

It would appear that the President would rather spell out his own requirements in an Executive Order instead of having Congress tell him what the FBI might do to help him fulfill his obligations and responsibilities as President.

Kelley concluded that it "would be folly" to limit the Bureau to investigations only when a crime "has been committed," since the government has to "defend itself against revolutionary and terrorist efforts to destroy it." Consequently, he urged that the President exercise his "inherent Executive power to *expand* by further *defining* the FBI's investigative authority to enable it to develop advance information" about the plans of "terrorist and revolutionaries who seek to overthrow or destroy the Government."⁶⁴⁴ [Emphasis added.]

Director Kelley's request initiated a process of reconsideration of FBI intelligence authority by the Attorney General. Even before Kelley's request, Deputy Attorney General-Designate William Ruckelshaus (who had served for two months as Acting FBI Director between Gray and Kelley), sent a list of questions to the Bureau to begin "an indepth examination of some of the problems facing the Bureau in the future."⁶⁴⁵ The Ruckelshaus study was interrupted by his departure in the "Saturday Night Massacre" of October 1973.

The Ruckelshaus study and Kelley's request were superseded in December 1973, when Acting Attorney General Robert Bork in consultation with Attorney General-Designate William Saxbe gave higher priority to a Departmental inquiry into the FBI's COINTELPRO practices. Responsibility for this inquiry was assigned to a committee headed by Assistant Attorney General Henry Petersen.⁶⁴⁶ Even at this stage, however, the Bureau resisted efforts by the Department to look too deeply into its operations. Director Kelley advised the Acting Attorney General that the Department should exclude from its review the FBI's "extremely sensitive foreign intelligence collection techniques," which were handled within the Bureau "on a strictly need-to-know basis" and thus should not be included in a study "which will be beyond the control of the FBI."⁶⁴⁷

As a result, the Petersen committee's review of COINTELPRO did not consider anything more than a brief FBI-prepared summary of

⁶⁴⁴ Memorandum from Kelley to Richardson, 8/7/73.

⁶⁴⁵ Memorandum from Ruckelshaus to Kelley, 7/20/73.

⁶⁴⁶ Memorandum from Bork to Kelley, 12/5/73.

⁶⁴⁷ Memorandum from Kelley to Bork, 12/11/73.

foreign counterintelligence operations.⁶⁴⁸ Moreover, the inquiry into domestic COINTELPRO cases was based mainly on short summaries of each incident compiled by FBI agents, with Department attorneys making only spot-checks of the underlying files to assure the accuracy of the summaries. Thus, the inquiry did not consider the complete story of COINTELPRO as reflected in the actual memoranda discussing the reasons for adopting particular tactics and the means by which they were implemented.⁶⁴⁹

One Bureau memorandum to the Petersen committee even suggested that the Attorney General did not have authority over the FBI's foreign counterintelligence operations, since the Bureau was accountable in this area directly to the United States Intelligence Board and the National Security Council. The Peterson Committee sharply rejected this view, citing the fact that the *ad hoc* equivalent of the U.S. Intelligence Board had approved the discredited "Huston plan" in 1970 and declaring, "There can be no doubt that in the area of foreign counterintelligence, as in all its other functions, the FBI is subject to the power and authority of the Attorney General."⁶⁵⁰

Thus, while the Bureau was seeking guidance and clarification of its authority, at the same time vestiges remained of its past resistance to outside scrutiny and its desire to rely on Executive authority, rather than statute, for the definition of its intelligence activities.

O. Re-Authorization of FBI Domestic Intelligence

In the absence of any new standards imposed by the Attorney General via "guidelines" or established by statute, the Bureau continued to conduct domestic intelligence investigations under broad authorizations issued by the Justice Department in 1974. These authorizations were explicitly based on conceptions of inherent executive power, broader in theory than the FBI's own claim, in 1973, that its authority could be found in the criminal statutes.

(1) Executive Order 10450, as amended

The Federal employee security program continued to be, according to the Justice Department's 1974 instructions, a substantive basis for FBI domestic intelligence investigations. An internal Bureau memorandum stated that this order:

specifically requires the FBI to check the names of all civil applicants and incumbents of the Executive branch against our records. In order to meet this responsibility FBIHQ records must contain identities of all persons connected with subversive or extremist activities, together with necessary identifying information.⁶⁵¹

FBI field offices were instructed in mid-1974 to report to Bureau headquarters such data as the following:

Identities of subversive and/or extremist groups or movements (including front groups) with which subject has been

⁶⁴⁸ FBI memorandum, "Overall Recommendations—Counterintelligence Activity."

⁶⁴⁹ Henry Petersen testimony, 12/8/75, Hearings, Vol. 6, pp. 270-271.

⁶⁵⁰ Petersen Committee Report, p. 35.

⁶⁵¹ Memorandum from A. B. Fulton to Mr. Wannall, 7/10/74.

identified, period of membership, positions held, and a summary of the type and extent of subversive or extremist activities engaged in by subject (e.g., attendance at meetings or other functions, fund-raising or recruiting activities on behalf of the organization, contributions, etc.).⁶⁵²

In June 1974 President Nixon formally abolished the "Attorney General's list," upon the recommendation of Attorney General Saxbe. However, the President's order retained a revised definition of the types of organizations, association with which would continue to be taken into account in evaluating prospective federal employees.⁶⁵³ The Justice Department instructed the FBI that it should undertake to "detect organizations with a potential" for falling within the terms of the order and to investigate "individuals who are active either as members of or as affiliates of" such organizations. The Departmental instructions added:

It is not necessary that a crime occur before the investigation is initiated, but only that a reasonable evaluation of the available information suggests that the activities of the organization may fall within the proscription of the Order. . . .

It is *not possible to set definite parameters covering the initiation* of investigations of potential organizations falling within the Order but once the investigation reaches a stage that offers a basis for determining that the activities are legal in nature, then the investigation should cease, but if the investigation suggests a determination that the organization is engaged in illegal activities or *potentially* illegal activities it should continue. [Emphasis added.]

The Department applied "the same yardstick" to investigations of individuals "when information is received suggesting their involvement."⁶⁵⁴

With respect to one organization, the Department advised the Bureau that "despite the abolition" of the Attorney General's list, the group "would still come within the criteria" of the employee security program if it "may have engaged in activities" of the sort proscribed by the revised executive order.⁶⁵⁵

(2) *Civil Disorders Intelligence*

The Justice Department also instructed the FBI in 1974 that it should not, as the Bureau had suggested, limit its civil disturbance

⁶⁵² Memorandum from FBI Headquarters to all SAC's, 8/16/74.

⁶⁵³ Executive Order 11785, 6/4/74. The new standard was:

"Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State or or of any state, or which seeks to overthrow the Government of the United States or subdivision thereof by unlawful means." [Emphasis added.]

⁶⁵⁴ Memorandum from Glen E. Pommerening, Assistant Attorney General for Administration, to Kelley, 11/17/74.

⁶⁵⁵ Memorandum from Henry E. Petersen, Assistant Attorney General, Criminal Division, to Kelley, 11/13/74.

reporting "to those particular situations which are of such a serious nature that Federal military personnel may be called upon for assistance." The Department advised that this suggested "guideline" was "not practical" since it "would place the burden on the Bureau" to make an initial decision as to "whether military personnel may ultimately be needed," and this responsibility rested "legally" with the President. Instead, the FBI was ordered to "continue" to report on

all significant incidents of civil unrest and should not be restricted to situations where, in the judgment of the Bureau, military personnel eventually may be used.⁶⁵⁶

Moreover, under this authority the Bureau was also ordered to "continue" reporting on

all disturbances where there are indications that extremist organizations such as the Communist Party, Ku Klux Klan, or Black Panther Party are believed to be involved in efforts to instigate or exploit them.

The instructions specifically declared that the Bureau "should make timely reports of significant disturbances, even when no specific violation of Federal law is indicated." This could be done, at least in part, through "liaison" with local law enforcement agencies. The FBI was expected to "be aware of disturbances and patterns of disorder," although it was not to report "each and every relatively insignificant incident of a strictly local nature."⁶⁵⁷

The Justice Department abolished the Intelligence Evaluation Committee, set up in partial implementation of the "Huston Plan," after its existence was publicized in 1973.⁶⁵⁸ The IDIU also dismantled its computerized data bank even though the basic functions of the IDIU continued to be performed by a Civil Disturbance Unit in the office of the Deputy Attorney General, and the FBI was under instructions to disseminate its civil disturbance reports to that Unit.⁶⁵⁹

FBI officials considered these instructions "significant" because they now gave it "an official, written mandate from the Department." The Department's desires were viewed as "consistent with what we have already been doing for the past several years," although the Bureau Manual was rewritten to "incorporate into it excerpts from the Department's letter."⁶⁶⁰

From a legal point of view, the instructions were significant because they relied for authority on the President's powers under Article IV, section 4 of the Constitution to protect the states, upon application of the legislature or the executive, against "domestic violence," as well

⁶⁵⁶ "On the other hand," the instructions stated, "the FBI should not report every minor local disturbance where there is no apparent interest to the President, the Attorney General or other Government officials and agencies." (Memorandum from Henry E. Petersen, Assistant Attorney General, Criminal Division, to Kelley, 10/22/74.)

⁶⁵⁷ Memorandum from Assistant Attorney General Petersen to Kelley, 10/22/74.

⁶⁵⁸ Memorandum from Assistant Attorney General Petersen to Col. Werner Michel, 6/11/73.

⁶⁵⁹ Memorandum from Assistant Attorney General Petersen to Kelley, 10/22/74; Frank Nyland testimony, 1/27/76, pp. 46-58.

⁶⁶⁰ Memorandum from J. G. Deegan to W. R. Wannall, 10/30/74.

as upon the statute (10 U.S.C. 331, et seq.) authorizing the use of troops and upon the Presidential directive of 1969 designating the Attorney General as chief civilian officer to coordinate the Government's response to civil disturbances.⁶⁶¹

(3) "Potential" Crimes

The FBI has recently abolished completely its ADEX, or administrative index of persons considered "dangerous now." However, in 1974, the Justice Department elaborated a theory to support broad power of the Executive branch to investigate groups which represent a "potential threat to the public safety," or which have a "potential" for violating specific statutes. In the case of one group, for example, the Department advised the FBI that the General Crimes Section of the Criminal Division had "recommended continued investigation" on the basis of "potential violations" of the antiriot statutes, 18 U.S.C. 2101-2102. These same instructions added that there need not be a "potential" for violation of any specific statute:

[W]ithout a broad range of intelligence information, the President and the departments and agencies of the Executive branch could not properly and adequately protect our nation's security and enforce *the numerous statutes* pertaining thereto . . . [T]he Department, and in particular the Attorney General, must continue to be informed of those organizations that engage in violence which represent a *potential threat to the public safety*.⁶⁶³ [Emphasis added.]

The Department's theory of executive power was also spelled out in 1974 testimony before the House Internal Security Committee. According to Deputy Assistant Attorney General Kevin Maroney, "the primary basis" for FBI domestic intelligence authority was "the constitutional powers and responsibilities vested in the President under Article II of the Constitution." These powers arise from the President's duty in his oath of office to "preserve, protect, and defend the Constitution of the United States,"⁶⁶⁴ the Chief Executive's duty to "take care that the laws be faithfully executed,"⁶⁶⁵ the President's responsibilities as Commander-in-Chief, and his "power to conduct our foreign relations." The latter power was said to relate "more particularly to the Executive's power to conduct foreign intelligence activities here and abroad." Nevertheless, Mr. Maroney added,

We recognize the complexity and difficulty of adequately spelling out the FBI's authority and responsibility to conduct

⁶⁶¹ Memorandum from Petersen to Kelley, 10/22/74; Directive of 4/1/69, discussed at pp. 501-502.

⁶⁶³ Memorandum from Assistant Attorney General Petersen to Kelley, 11/13/74.

⁶⁶⁴ The opinion of the Supreme Court in *United States v. United States District Court*, 407 U.S. 297 (1972)—the domestic security wiretapping case—stated, "Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means."

⁶⁶⁵ A 19th century Supreme Court opinion was cited as having interpreted the word "laws" broadly to encompass not only statutes enacted by Congress, but also "the rights, duties and obligations growing out of the Constitution itself, our international relations and all the protection implied by the nature of Government under the Constitution." [*In Re Neagle*, 135 U.S. 1 (1890).]

domestic intelligence-type investigations. The concept of national security is admittedly a broad one, while the term subversive activities is even more difficult to define.⁶⁶⁶

The chairman of the Internal Security Committee, Rep. Richard H. Ichord, stated at that time that, except in limited areas, the Congress "has not directly imposed upon the FBI clearly defined duties in the acquisition, use, or dissemination of domestic or internal security intelligence."⁶⁶⁷ Subsequently, the FBI Intelligence Division revised its 1972-1973 position on its legal authority, and in a paper completed in 1975 it returned to the view "that the intelligence-gathering activities of the FBI have had as their basis the intention of the President to delegate his Constitutional authority," as well as the statutes "pertaining to the national security."⁶⁶⁸

The generalized instructions issued by the Justice Department in 1974, when viewed in the larger framework of the theory of executive power upon which they were based, have presented the Congress with the formidable but essential task of developing statutory standards for FBI domestic intelligence to replace vague executive mandates. The record clearly indicates that, even though the Attorney General has promulgated more precise "guidelines," the broad claims of power in the hands of the Executive branch could readily permit a return to the vague and overbroad domestic intelligence policies of the past.⁶⁶⁹

⁶⁶⁶ Kevin Maroney testimony, *Domestic Intelligence Operations for Internal Security Purposes*, Hearings before the House Committee on Internal Security, 93d Cong., 2d Sess. (1974), pp. 3332-3335. Mr. Maroney also cited the following from the Supreme Court's opinion in the domestic security wiretapping case: "The gathering of security intelligence is often long range and involves the interrelation of various sources and types of information. The exact targets of such surveillance may be more difficult to identify . . . Often, too, the emphasis of domestic intelligence gathering is on the prevention of unlawful activity or the enhancement of the Government's preparedness for some possible crisis or emergency. Thus, the focus of domestic surveillance may be less precise than that directed against more conventional types of crime." (*United States v. United States District Court*, 407 U.S. 297, 322 (1972).)

⁶⁶⁷ House Committee on Internal Security Hearings, (1974) pp. 3330-3331.

⁶⁶⁸ W. Raymond Wannall, Assistant Director for the Intelligence Division, unaddressed memorandum re: "Basis for FBI National Intelligence Investigations," 2/13/75.

⁶⁶⁹ The "guidelines" for FBI domestic security investigations developed by Attorney General Edward H. Levi and other recent developments are discussed in the Committee's Final Report on Domestic Intelligence.