

G. DEFICIENCIES IN CONTROL AND ACCOUNTABILITY

MAJOR FINDING

The Committee finds that those responsible for overseeing, supervising, and controlling domestic activities of the intelligence community, although often unaware of details of the excesses described in this report, made those excesses possible by delegating broad authority without establishing adequate guidelines and procedural checks; by failing to monitor and coordinate sufficiently the activities of the agencies under their charge; by failing to inquire further after receiving indications that improper activities may have been occurring; by exhibiting a reluctance to know about secret details of programs; and sometimes by requesting intelligence agencies to engage in questionable practices. On numerous occasions, intelligence agencies have, by concealment, misrepresentation, or partial disclosure, hidden improper activities from those to whom they owed a duty of disclosure. But such deceit and the improper practices which it concealed would not have been possible to such a degree if senior officials of the Executive Branch and Congress had clearly allocated responsibility and imposed requirements for reporting and obtaining prior approval for activities, and had insisted on adherence to those requirements.

Subfindings

(a) Presidents have given intelligence agencies firm orders to collect information concerning "subversive activities" of American citizens, but have failed until recently to define the limits of domestic intelligence, to provide safeguards for the rights of American citizens, or to coordinate and control the ever-expanding intelligence efforts by an increasing number of agencies.

(b) Attorneys General have permitted and even encouraged the FBI to engage in domestic intelligence activities and to use a wide range of intrusive investigative techniques—such as wiretaps, microphones, and informants—but have failed until recently to supervise or establish limits on these activities or techniques by issuing adequate safeguards, guidelines, or procedures for review.

(c) Presidents, White House officials, and Attorneys General have requested and received domestic political intelligence, thereby contributing to and profiting from the abuses of domestic intelligence and setting a bad example for their subordinates.

(d) Presidents, Attorneys General, and other Cabinet officers have neglected until recently to make inquiries in the face of clear indications that intelligence agencies were engaging in improper domestic activities.

(e) Congress, which has the authority to place restraints on domestic intelligence activities through legislation, appropriations, and

oversight committees, has not effectively asserted its responsibilities until recently. It has failed to define the scope of domestic intelligence activities or intelligence collection techniques, to uncover excesses, or to propose legislative solutions. Some of its members have failed to object to improper activities of which they were aware and have prodded agencies into questionable activities.

(f) Intelligence agencies have often undertaken programs without authorization with insufficient authorization, or in disregard of express orders.

(g) The weakness of the system of accountability and control can be seen in the fact that many illegal or abusive domestic intelligence operations were terminated only after they had been exposed or threatened with exposure by Congress or the news media.

Elaboration of Findings

The Committee has found excesses committed by intelligence agencies—lawless and improper behavior, intervention in the democratic process, overbroad intelligence targeting and collection, and the use of covert techniques to discredit and “neutralize” persons and groups defined as enemies by the agencies. But responsibility for those acts does not fall solely on the intelligence agencies which committed them. Systematic excesses would not have occurred if lines of authority had been clearly defined; if procedures for reporting and review had been established; and if those responsible for supervising the intelligence community had properly discharged their duties.

The pressure of events and the widespread confidence in the FBI help to explain the deficiencies in command and authorization discovered by the Committee. Most of the activities examined in this report occurred during periods of foreign or domestic crisis. There was substantial support from the public and all branches of government for some of the central objectives of domestic intelligence policy, including the search for “Fifth Columnists” before World War II; the desire to identify communist “influence” in the Cold War atmosphere of the 1950s; the demand for action against Klan violence in the early 1960s; and the reaction to violent racial disturbances and anti-Vietnam war activities in the late 1960s and early 1970s. It was in this heated environment that President and Attorneys General ordered the FBI to investigate “subversive activities”. Further, the Bureau’s reputation for effectiveness and professionalism, and Director Hoover’s ability to cultivate political support and to inspire apprehension, played a significant role in shaping the relationship between the FBI and the rest of the Government.

With only a few exceptions, the domestic intelligence activities reviewed by the Committee were properly authorized *within* the intelligence agencies. The FBI epitomizes a smoothly functioning military structure: activities of agents are closely supervised; programs are authorized only after they have traveled a well-defined bureaucratic circuit; and virtually all activities—ranging from high-level policy considerations to the minutia of daily reports from field agencies—are reduced to writing. These characteristics are commendable. An efficient law enforcement and intelligence-gathering machine, acting consistently with law, can greatly benefit the nation. However, when used for wrongful purposes, this efficiency can pose a grave danger.

It appears that many specific abuses were not known by the Attorney General, the President, or other Cabinet-level officials directly responsible for supervising domestic intelligence activities. But whether or not particular activities were authorized by a President or Attorney General, those individuals must—as the chief executive and the principal law enforcement officer of the United States Government—bear ultimate responsibility for the activities of executive agencies under their command. The President and his Cabinet officers have a duty to determine the nature of activities engaged in by executive agencies and to prevent undesired activities from taking place. This duty is particularly compelling when responsible officials have reason to believe that undesirable activity is occurring, as has often been the case in the context of domestic intelligence.

The Committee's inquiry has revealed a pattern of reckless disregard of activities that threatened our Constitutional system. Intelligence agencies were ordered to investigate "subversive activities," and were then usually left to determine for themselves which activities were "subversive" and how those activities should be investigated. Intelligence agencies were told they could use investigative techniques—wiretaps, microphones, informants—that permitted them to pry into the most valued areas of privacy and were then given in many cases the unregulated authority to determine when to use those techniques and how long to continue them. Intelligence agencies were encouraged to gather "pure intelligence," which was put to political use by public officials outside of those agencies. This was possibly because Congress had failed to pass laws limiting the areas into which intelligence agencies could legally inquire and the information they could disseminate.

Improper acts were often intentionally concealed from the Government officials responsible for supervising the intelligence agencies, or undertaken without express authority. Such behavior is inexcusable. But equally inexcusable is the absence of executive and congressional oversight that engendered an atmosphere in which the heads of those agencies believed they could conceal activities from their superiors. Attorney General Levi's recent guidelines and the recommendations of this Committee are intended to provide the necessary guidance.

Whether or not the responsible Government officials knew about improper intelligence activities, and even if the agency heads failed in their duty of full disclosure, it still follows that Presidents and the appropriate Cabinet officials *should* have known about those activities. This is a demanding standard, but one that must be imposed. The future of democracy rests upon such accountability.

Subfunding (a)

Presidents have given intelligence agencies firm orders to collect information concerning "subversive activities" of American citizens, but have failed until recently to define the limits of domestic intelligence, to provide safeguards for the rights of American citizens, or to coordinate and control the ever-expanding intelligence efforts by an increasing number of agencies.

As emphasized throughout this report, domestic intelligence activities have been undertaken pursuant to mandates from the Executive branch, generally issued during times of war or domestic crisis. The

directives of Presidents Roosevelt, Truman, and Eisenhower to investigate “subversive activities,” or other equally ill-defined targets, were echoed in various orders from Attorneys General, who themselves encouraged the FBI to undertake domestic intelligence activities with vague but vigorous commands.

Neither Presidents nor their chief legal officers, the Attorneys General, have defined the “subversive activities” which may be investigated or provided guidelines to the agencies in determining which individuals or groups were engaging in those activities. No reporting procedures were established to enable Cabinet-level officials or their designees to review the types of targets of domestic investigations and to exercise independent judgment concerning whether such investigations were warranted. No mechanisms were established for monitoring the conduct of domestic investigations or for determining if and when they should be terminated. If Presidents had articulated standards in these areas, or had designated someone to do the job for them, it is possible that many of the abuses described in this report would not have occurred.

Considering the proliferation of agencies engaging in domestic intelligence and the overlapping jurisdictional lines, it is surprising that no President has successfully designated one individual or body to coordinate and supervise the domestic intelligence activities of the various agencies. The half-hearted steps that were taken in that direction appear either to have been abandoned or to have resulted in the concentration of even more power in individual agency heads. For example, in 1949 President Truman attempted to establish a control mechanism—the Interdepartmental Intelligence Conference—to centralize authority for supervising domestic intelligence activities of the FBI and military intelligence agencies in a committee chaired by the Director of the FBI. The Committee reported to the National Security Council, and an NSC staff member was assigned responsibility for internal security.¹ The practical effect of the IIC was apparently to increase the power of the FBI Director and to remove control further from the Cabinet level. In 1962, the functions of the IIC were transferred to the Justice Department, and the Attorney General was put in nominal charge of domestic intelligence.² While in theory supervision resided in the Internal Security Division of the Justice Department, that Division deferred in large part to the FBI and provided little oversight.³ The top two executives of the Internal Security Division were former FBI officials. They

¹ National Security Council memorandum 17/5, 6/15/49.

² National Security Action memorandum 161, 6/9/62.

³ For example, the FBI continued an investigation of one group in 1964 after the Internal Security Division told the Bureau there was “insufficient evidence” of any legal violations. (Memorandum from Yeagley to Hoover, 3/3/64.) Two years later, an FBI intelligence official suggested that it would be “in the Bureau’s best interest to put the Department on record again.” The Department approved the FBI’s request for permission to continue the investigation even though there had been “no significant changes as to the character and tactics of the organization.” The FBI did not request further instructions in this investigation until 1973. (Memorandum from Baumgardner to Sullivan, 7/15/66; memorandum from Yeagley to Hoover, 7/28/66.)

appeared sympathetic to the Bureau, and like the Bureau, emphasized threats of Communist "influence" without mentioning actual results.⁴

Another opportunity to coordinate intelligence collection was missed in 1967, when Attorney General Ramsey Clark established the Interdivisional Intelligence Unit (IDIU) to draw on virtually the entire Federal Government's intelligence collecting capability for information concerning groups and individuals "who may play a role, whether purposefully or not, either in instigating or spreading civil disorders, or in preventing or checking them."⁵ In the rush to obtain intelligence, no efforts were made to formulate standards or guidelines for controlling how the intelligence would be collected. In the absence of such guidelines and under pressure for results, the agencies undertook some of the most overly broad programs encountered by the Committee. For example, the FBI's "ghetto" informant program was a direct response to the Attorney General's broad requests for intelligence.

The need for centralized control of domestic intelligence was again given serious consideration during the vigorous demonstrations against the war in Vietnam in 1970. The intelligence community's program for dealing with internal dissent—the Huston Plan—envisioned not only relaxing controls on surveillance techniques, but also coordinating intelligence collection efforts. According to Tom Charles Huston's testimony, the President viewed the suggestion of a coordinating body as the most important contribution of the plan.⁶ Although the President quickly revoked his approval for the Huston Plan, the idea of a central domestic intelligence body had taken root. Two months later, with the encouragement of Attorney General John Mitchell, the Intelligence Evaluation Committee was established in the Justice Department. That Committee, like its precursor, the IDIU, compiled and evaluated raw intelligence; it did not exercise supervision.⁷

The growing sophistication of intelligence collection techniques underscores the present need for central control and coordination of domestic intelligence activities. Although the Executive Branch has

⁴ For example, the annual report of Assistant Attorney General J. Walter Yeagley for Fiscal Year 1959 emphasized Communist attempts to wield influence, without pointing out the lack of tangible results:

"Despite the 'thaw,' real or apparent, in the Cold War, and despite [its] losses, 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 the 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 forces and currents in American life, and *with the hope of being able to 'move in'* on such movements when the time seems propitious." [Emphasis added.] (Annual Report of the Attorney General for Fiscal Year 1959, pp. 247–248.)

The same executives headed the Internal Security Division from 1959 until 1970, through the administrations of five Attorneys General and four Presidents. In 1971 a new Assistant Attorney General for the Internal Security Division, Robert Mardian, actively encouraged FBI surveillance and collaborated with FBI executive William C. Sullivan in transferring the records of the "17" wiretaps from the Bureau to the Nixon White House.

⁵ Memorandum from Attorney General Clark to Kevin Maroney, et al., 11/9/67.

⁶ Tom Charles Huston deposition, 5/23/75, p. 32.

⁷ Staff summary of interview of Colonel Werner E. Michel, 5/12/75.

recognized that need in the past, it has not, until recently, faced up to its responsibilities. President Gerald Ford's joint effort with members of Congress to place further restrictions on wiretaps is a welcome step in the right direction. Congress must act expeditiously in this area.

Subfunding (b)

Attorneys General have permitted and even encouraged the FBI to engage in domestic intelligence activities and to use a wide range of intrusive investigative techniques—such as wiretaps, microphones, and informants—but have failed until recently to supervise or establish limits on these activities or techniques by issuing adequate safeguards, guidelines, or procedures for review.

The Attorney General is the chief law enforcement officer of the United States and the Cabinet-level officer formally in charge of the FBI.¹⁰ The Justice Department, until recently, has failed to issue directives to the FBI articulating the grounds for opening domestic intelligence investigations or the standards to be followed in carrying out those investigations. The Justice Department has neglected to establish machinery for monitoring and supervising the conduct of FBI investigations, for requiring approval of major investigative decisions, and for determining when an investigation should be terminated. Indeed, in 1972 the Attorney General said he did not even know whether the FBI itself had formulated guidelines and standards for domestic intelligence activities, was not aware of the FBI's manual of instructions, and had never reviewed the FBI's internal guidelines.¹¹

The Justice Department has frequently levied specific demands on the FBI for domestic intelligence, but has not accompanied these demands with restrictions or guidelines. Examples include the Justice Department's Civil Rights Division's requests for reports on demonstrations in the early 1960's (including coverage of a speech by Governor-elect George Wallace^{11a} and coverage of a civil rights demonstration on the 100th anniversary of the Emancipation Proclamation¹²): Attorney General Kennedy's efforts to expand FBI infiltration of the Ku Klux Klan in 1964;¹³ Attorney General Clark's sweeping instructions to collect intelligence about civil disorders in 1967;¹⁴ and the Internal Security Division's request for more extensive investigations of campus demonstrations in 1969.¹⁵ While a limited investigation into some of these areas may have been warranted, the improper acts committed in the course of those investigations were possible because no restraints had been imposed.

The Justice Department also cooperated with the FBI in defying the Emergency Detention Act of 1950 by approving the Bureau's Security Index criteria for the investigation of "potentially dangerous"

¹⁰ Despite the formal line of responsibility to the Attorney General, Director J. Edgar Hoover in fact developed an informal channel to the White House. During several administrations beginning with President Franklin Roosevelt the Director and the President circumvented the Justice Department and dealt directly with each other.

^{11a} Memorandum from St. John Barrett to Marshall, 6/18/63.

^{11b} Memorandum from Director, FBI to Assistant Attorney General Burke Marshall, 12/4/62.

¹² Memorandum from Director, FBI to Assistant Attorney General Burke

¹³ Annual Report of the Attorney General for Fiscal Year 1965, pp. 185-186.

¹⁴ Memorandum from Attorney General Clark to Hoover, 9/14/67.

¹⁵ Memorandum from Assistant Attorney General Yeagley to Hoover, 3/3/69.

persons.¹⁶ Even after Congress repealed the Detention Act, the Justice Department allowed the Bureau to continue listing "potentially dangerous" persons on a new Administrative Index. The Department stopped reviewing the names on the FBI's index, and apparently endorsed the FBI's view that the list could, contrary to law, be used for detention purposes in an "emergency."

The FBI's autonomy has been a prominent and long-accepted feature of the Federal bureaucratic terrain. As early as the 1940s the FBI could oppose Justice Department inquiries into its internal affairs by raising the specter of "leaks."¹⁷ The Department acquiesced in the Bureau's claim that it was entitled to withhold its raw files, conceal the identities of informants, and, in a number of cases, refuse to give the Justice Department evidence supporting broad allegations and characterizations. Former Attorney General Katzenbach has pointed out that there were both positive and negative sides to the Bureau's autonomy:

Keeping the Bureau free from political interference was a powerful argument against efforts by politically appointed officials, whatever their motivations, to gain a greater measure of control over operations of the Bureau. . . . [Director Hoover also] found great value in his formal position as subordinate to the Attorney General and the fact that the FBI was a part of the Department of Justice. . . . In effect, he was uniquely successful in having it both ways; he was protected from public criticism by having a theoretical superior who took responsibility for his work, and was protected from his superior by his public reputation.¹⁸

As a consequence of its autonomy, the Bureau could plan and implement many of the abusive operations described in this report. Former Attorneys General have told the Committee that they would never have permitted the more unsavory aspects of the New Left or Racial COINTELPROs if they had been aware of the Bureau's plans. To the extent that Attorneys General were ignorant of the Bureau's activities, it was the consequence not only of the FBI Director's independent political position, but also of the failure of the Attorneys General to establish procedures for finding out what the Bureau was doing and for permitting an atmosphere to evolve in which Bureau officials believed that they had no duty to report their activities to the Justice Department, and that they could conceal those activities with little risk of exposure.²⁰

¹⁶ Memorandum from Belmont to Ladd, 10/15/52.

¹⁷ Memorandum from Hoover to L. M. C. Smith, Chief, Neutrality Laws Unit, 11/28/40.

¹⁸ Nicholas Katzenbach testimony, 12/3/75, Hearings, Vol. 6, p. 201.

²⁰ The Justice Department's investigation of the FBI's COINTELPRO illustrates the reluctance of the Justice Department to interfere in or even inquire about Internal Bureau matters. Although the existence of COINTELPRO was made public in 1971, the Justice Department did not initiate an investigation until 1974. The Department's Committee, headed by Assistant Attorney General Henry Petersen, which conducted the investigation, agreed to use only summaries of documents prepared by the Bureau instead of examining the Bureau documents themselves.

Those summaries were often extremely misleading. For example, one summary stated:

"It was recommended that an anonymous letter be mailed to the leader of the Blackstone Rangers, a black extremist organization in Chicago. The letter would

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Attorneys General have not only neglected to establish procedures for reviewing FBI programs and activities, but they have at the same time granted the FBI authority to employ highly intrusive investigative techniques with inadequate guidelines and review procedures, and in some instances with no external restraints whatsoever. Before 1965, wiretaps required the approval of the Attorney General in advance, but once the Attorney General had authorized wiretap coverage of a subject, the Bureau could continue the surveillance for as long as it judged necessary.

This permissive policy was current in October 1963 when Attorney General Robert Kennedy authorized the FBI to wiretap the phones of Dr. Martin Luther King, Jr. "at his current address or at any future address to which he may move" and to wiretap the New York and Atlanta SCLC offices.²¹ Reading the Attorney General's wiretap authorization broadly, the FBI construed Dr. King's "residence" so as to permit wiretaps on three of his hotel rooms and the homes of friends with whom he stayed temporarily.²² The FBI was still relying on Attorney General Kennedy's initial authorization when it sought reauthorization for the King wiretaps in April 1965 in response to new procedures formulated by Attorney General Katzenbach. Although Attorney General Kennedy's authorizing memorandum in October 1963 said that the FBI should provide him with an evaluation of the wiretaps after 60 days, he failed to complain when the FBI neglected to send him the evaluation. Apparently the Attorney General never mentioned the wiretaps to the FBI again, even though he received FBI reports from the wiretaps until he resigned in September, 1964.²³

The Justice Department's policy toward the use of microphones has been even more permissive than for wiretaps. Until 1965, the FBI was free to carry out microphone surveillance in national security cases without first seeking the approval of the Attorney General or notifying him afterward. The total absence of supervision enabled the FBI to hide microphones in Dr. Martin Luther King's hotel rooms for nearly two years for the express purpose of not only determining whether he was being influenced by allegedly communist advisers, but to "attempt" to obtain information about the private "activities

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hopefully drive a wedge between the Blackstone Rangers and the Black Panthers Party. The anonymous letter would indicate that the Black Panther Party in Chicago blamed the leader of the Blackstone Rangers for blocking their programs."

The document from which this summary was derived, however, stated that the Blackstone Rangers were prone to "violent type activity, shooting, and the like." The anonymous letter was to state that "the Panthers blame you for blocking their thing and there's supposed to be a hit out for you." The memorandum concluded that the letter "may intensify the degree of animosity between the two groups" and "lead to reprisals against its leadership." (Memorandum from Chicago Field Office to FBI Headquarters, 1/18/69.)

²¹ Memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/7/63; memorandum from J. Edgar Hoover to Attorney General Robert Kennedy, 10/18/63.

²² Letter from FBI to Senate Select Committee, 7/24/75, pp. 4-5.

²³ See M. L. King Report: "Electronic Surveillance of Dr. Martin Luther King and the Christian Leadership Conference." It should be noted, however, that President Kennedy was assassinated a month after the wiretap was installed which may account for Attorney General Kennedy's failure to inquire about the King wiretaps, at least for the first few months.

of Dr. King and his associates" so that Dr. King could be "completely discredited."²⁴ Attorney General Kennedy was apparently never told about the microphone surveillances of Dr. King, although he did receive reports containing unattributed information from that surveillance from which he might have concluded that microphones were the source.²⁵

The Justice Department imposed external control over microphones for the first time in March 1965, when Attorney General Katzenbach applied the same procedures to wiretaps and microphones, requiring not only prior authorization but also formal periodic review.²⁶ But irregularities were tolerated even with this standard. For example, the FBI has provided the Committee three memoranda from Director Hoover, initialed by Attorney General Katzenbach, as evidence that it informed the Justice Department of its microphone surveillance of Dr. King after the March 1965 policy change. These documents, however, show that Katzenbach was informed about the microphones only after they had already been installed.²⁷ Such after-the-fact approval was permitted under Katzenbach's procedures.^{27a} There is no indication that Katzenbach inquired further after receiving the notice.²⁸

The Justice Department condoned, and often encouraged, the FBI's use of informants—the investigative technique with the highest potential for abuse. However, the Justice Department imposed no restrictions on informant activity or reporting, and established no procedures for reviewing the Bureau's decision to use informants in a particular case.

In 1954 the Justice Department entered into an agreement with the CIA in which the CIA was permitted to withhold the names of

²⁴ Memorandum from Frederick Baumgardner to William Sullivan, 1/28/64.

²⁵ The FBI informed the Committee that it has no documents indicating that Attorney General Kennedy was told about the microphones. His associates in the Justice Department testified that they were never told, and they did not believe that the Attorney General had been told about the microphones. (See memorandum from Charles Brennan to William Sullivan, 12/19/66; Courtney Evans testimony, 12/1/75, p. 20; Burke Marshall testimony, 3/3/76, p. 43.)

The question of whether Attorney General Kennedy suspected that the FBI was using microphones to gather information about Dr. King must be viewed in light of the Attorney General's express authorization of wiretaps in the King case on national security grounds, and the FBI's practice—known to the Attorney General—of installing microphones in such national security cases without notifying the Department.

²⁶ Memorandum from Director, FBI to Attorney General, 3/30/65, p. 2. The Attorney General's policy change occurred during a period of publicity and Congressional inquiry into the FBI's use of electronic surveillance.

²⁷ Memorandum from Director, FBI to Attorney General, 5/17/65; Memorandum from Director, FBI, to Attorney General, 10/19/65; Memorandum from Director, FBI, to Attorney General, 12/1/65.

^{27a} Katzenbach advised Director Hoover in September 1965 that "in emergency situations [wiretaps and microphones] may be used subject to my later ratification." (Memorandum from Katzenbach to Hoover, 9/27/65.) Nevertheless, there is no indication that these microphone surveillances of Dr. King presented "emergency situations."

²⁸ Katzenbach testified that he could not recall having seen the notices, although he acknowledged the initials on the memoranda as in his handwriting and in the location where he customarily placed his initials. (Katzenbach, 12/3/75, Hearings, Vol. 6, p. 227.)

employees whom it had determined were "almost certainly guilty of violations of criminal statutes" when the CIA could "devise no charge" under which they could be prosecuted that would not "require revelation of highly classified information."²⁹ This practice was terminated by the Justice Department in January, 1975.^{29a}

Despite the failure of Attorneys General to exercise the supervision that is necessary in the area of domestic intelligence, several Attorneys General have taken steps in the right direction. Of note were Attorney General Nicholas Katzenbach's review procedures for electronic surveillance in 1965; Ramsey Clark's refusal to approve electronic surveillance of domestic intelligence targets and his rejection of repeated requests by the FBI for such surveillance; Acting Deputy Attorney General William Ruckelshaus' inquiries into the Bureau's domestic intelligence program; Deputy Attorney General Laurence Silberman's inquiry into political abuses of the FBI in early 1975; and Attorney General Saxbe's decision to make the Justice Department's COINTELPRO report public.

During the past year, Attorney General Edward H. Levi has exercised welcome leadership by formulating guidelines for FBI investigations; developing legislative proposals requiring a judicial warrant for national security wiretaps and microphones; establishing the Office of Professional Responsibility to inquire into departmental misconduct; initiating investigations of alleged wrongdoing by the FBI; and cooperating with this Committee's requests for documents on FBI intelligence operations.³⁰ The Justice Department's concern in recent years is a hopeful sign, but long overdue.

Subfinding (c)

Presidents, White House officials, and Attorneys General have requested and received domestic political intelligence, thereby contributing to and profiting from the abuses of domestic intelligence and setting a bad example for their subordinates.

The separate finding on "political abuse" sets forth instances in which the FBI was used by White House officials to gather politically useful information, including data on administration opponents and critics. This misuse of the Bureau's powers by its political superiors necessarily contributed to the atmosphere in which abuses flourished.

If the Bureau's superiors were willing to accept the fruits of excessive intelligence gathering, to authorize electronic surveillance for political purposes, and to receive reports on critics which included intimate details of their personal lives, they could not credibly hold the Bureau to a high ethical standard. If political expediency characterized the decisions of those expected to set limits on the Bureau's conduct, it is not surprising that the FBI considered the principle of expediency endorsed.

²⁹ Memorandum from Lawrence Houston to Deputy Attorney General, 3/1/54.

^{29a} Memorandum for the Record by General Counsel, CIA, 1/31/75.

³⁰ The Committee's requests also provided the Department of Justice with the opportunity to see most of these FBI documents for the first time.

Subfinding (d)

Presidents, Attorneys General, and other cabinet officers have neglected, until recently, to make inquiries in the face of clear indications that intelligence agencies were engaging in improper domestic activities.

Executive branch officials contributed to an atmosphere in which excesses were possible by ignoring clear indications of excesses and failing to take corrective measures when directly confronted with improper behavior. The Committee's findings on "Violating and Ignoring the Law" illustrate that several questionable or illegal programs continued after higher officials had learned partial details and failed to ask for additional information, either out of the naive assumption that intelligence agencies would not engage in lawless conduct, or because they preferred not to be informed.³¹

Some of the most disturbing examples of insufficient action in the face of clear danger signals were uncovered in the Committee's investigation of the FBI's program to "neutralize" Dr. Martin Luther King, Jr. as the leader of the civil rights movement. The Bureau informed the Committee that its files contain no evidence that any officials outside of the FBI "were specifically aware of any efforts, steps, or plans or proposals to 'discredit' or 'neutralize' King."³² The relevant executive branch officials have told the Committee that they were unaware of a general Bureau program to discredit King. Former Attorney General Katzenbach, however, told the Committee:

Nobody in the Department of Justice connected with Civil Rights could possibly have been unaware of Mr. Hoover's feelings [against Dr. King]. Nobody could have been unaware of the potential for disaster which those feelings embodied. But, given the realities of the situation, I do not believe one could have anticipated the extremes to which it was apparently carried.³⁴

The evidence before the Committee confirms that the "potential for disaster" was indeed clear at the time. There is no question that officials in the White House and Justice Department, including President Johnson and Attorney General Katzenbach, knew that the Bureau was taking steps to discredit Dr. King, although they did not know the full extent of the Bureau's efforts.

—In January 1964 the FBI gave Presidential Assistant Walter Jenkins an FBI report unfavorable to Dr. King. According to a contemporaneous FBI memorandum, Jenkins said that he "was of the opinion that the FBI could perform a good service to the country if this matter could somehow be confidentially given to members of the press." Jenkins, in a staff interview, denied having made such a suggestion.³⁵

³¹ One cabinet official, when told that the CIA wanted to tell him something secret, replied, "I would rather not know anything about it." The "secret" matter was CIA's illegal mail opening program. (J. Edward Day testimony, 10/22/75, Hearings, Vol. 4, p. 45.)

³² Letter from FBI to the Senate Select Committee, 11/6/75.

³⁴ Katzenbach, 12/3/75, Hearings, Vol. 6, p. 209.

³⁵ Memorandum from Cartha DeLoach to J. Edgar Hoover, 1/14/64; Staff summary of Walter Jenkins interview, 12/1/75, pp. 1-2. Mr. Jenkins subsequently said that he was unable to testify formally because of illness and has failed to answer written interrogatories submitted to him by the Committee for response under oath.

—In February 1964 a reporter informed the Justice Department that the FBI had offered to “leak” information unfavorable to Dr. King to the press. The Justice Department’s Press Chief, Edwin Guthman, asked Cartha DeLoach, the FBI’s liaison with the press, about this allegation and DeLoach denied any involvement. The Justice Department took no further action.³⁶

—Bill Moyers, an Assistant to President Johnson, testified that he learned sometime in early 1964 that an FBI agent twice offered to play a tape recording for Walter Jenkins that would have been personally embarrassing to Dr. King and that Jenkins refused to listen to the tape on both occasions.^{36a} Moyers testified that he never asked the FBI why it had the tape or was offering to play it in the White House.³⁷ When asked if he had ever questioned the propriety of the FBI’s disseminating information of a personal nature about Dr. King within the Government, he replied, “I never questioned it, no.” When he was asked if he could recall anyone in the White House ever questioning the propriety of the FBI disseminating this type of material, Moyers testified. “I think . . . there were comments that tended to ridicule the FBI’s doing this, but no.”³⁸

—Burke Marshall, Assistant Attorney General in charge of the Civil Rights Division, testified that sometime in 1964 a reporter told him that the Bureau had offered information unfavorable to Dr. King. Marshall testified that he repeated this allegation to a Bureau official and asked for a report. The Bureau official subsequently informed him “The Director wants you to know that you’re a . . . damned liar.”³⁹

—In November 1964 the Washington Bureau Chief of a national news publication told Attorney General Katzenbach and Assistant Attorney General Marshall that one of his reporters had been approached by the FBI and offered the opportunity to hear some “interesting” tape recordings involving Dr. King. Katzenbach testified that he had been “shocked,” and that he and Marshall had informed President Johnson, who “took the matter very seriously” and promised to contact Director Hoover.⁴⁰ Neither Marshall nor Katzenbach knew if the President contacted Hoover.⁴¹ Katzenbach testified that, during this same period, he learned of at least one other reporter who had been offered tape recordings by the Bureau, and that he personally confronted DeLoach, who was reported to have made the offers.⁴² DeLoach told Katzenbach that he had never made such offers.⁴³ The only record of this episode in FBI files is a memorandum by DeLoach stating that Moyers had informed him that the newsman was “telling

³⁶ Memorandum from John Mohr to Cartha DeLoach, 2/5/65; Edwin Guthman testimony, 3/16/76, pp. 20–23.

^{36a} Bill Moyers testimony, 3/2/76, p. 19.

³⁷ Bill Moyers testimony, 3/2/76, p. 19; staff summary of Bill Moyers interview, 11/24/75.

In an unsworn staff interview, Jenkins denied that he ever received an offer to listen to such tapes. (Staff summary of Walter Jenkins interview, 12/1/75.)

³⁸ Moyers, 3/2/76, pp. 17–18.

³⁹ Marshall, 3/8/76, pp. 46–47.

⁴⁰ Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

⁴¹ Marshall, 3/3/76, p. 43; Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

⁴² Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210.

⁴³ Katzenbach, 12/3/75, Hearings, Vol. 6, p. 210. DeLoach testified before the Committee that he did not recall conversations with reporters about tape recordings of Dr. King. (Cartha DeLoach testimony, 11/25/75, p. 156.)

all over town" that the FBI was making allegations concerning Dr. King, and that Moyers had "stated that the President felt that [the newsmen] lacked integrity. . . ." ⁴⁴ Moyers could not recall this episode, but told the Committee that it would be fair to conclude that the President had been upset by the fact that the newsmen revealed the Bureau's conduct rather than by the Bureau's conduct itself. ⁴⁵

The response of top White House and Justice Department officials to strong indications of wrongdoing by the FBI was clearly inadequate. The Attorney General went no further than complaining to the President and asking a Bureau official if the charges were true. President Johnson apparently not only failed to order the Bureau to stop, but indeed warned it not to deal with certain reporters because they had complained about the Bureau's improper conduct.

In 1968 Attorney General Ramsey Clark asked Director Hoover if he had "any information as to how" facts about Attorney General Kennedy's authorization of the wiretap on Dr. King had leaked to columnists Drew Pearson and Jack Anderson. Clark requested the FBI Director to "undertake whatever investigation you deem feasible to determine how this happened." ^{45a} Director Hoover's reply, drafted in the office of Cartha DeLoach, expressed "dismay" at the leak and offered no indication of the likely source. ^{45b}

In fact, DeLoach had prepared a memorandum ten days earlier stating that a middle-level Justice Department official with knowledge of the King wiretap met with him and admitted having "discussed this matter with Drew Pearson." According to this memorandum, DeLoach attempted to persuade the official not to allow the story to be printed because "certain Negro groups would still blame the FBI, whether we were ordered to take such action or not." ^{45c} Thus, DeLoach and Hoover deliberately misled Attorney General Clark by withholding their knowledge of the source of the "leak."

Subfunding (e)

Congress, which has the authority to place restraints on domestic intelligence activities through legislation, appropriations, and oversight committees, has not effectively asserted its responsibilities until recently. It has failed to define the scope of domestic intelligence activities or intelligence collection techniques, to uncover excesses, or to propose legislative solutions. Some of its members have failed to object to improper activities of which they were aware and have prodded agencies into questionable activities.

Congress, unlike the Executive branch, does not have the function of supervising the day-to-day activities of agencies engaged in domestic

⁴⁴ Memorandum from Cartha DeLoach to John Mohr, 12/1/64.

⁴⁵ Moyers, 3/2/76, p. 9.

^{45a} Memorandum from Clark to Hoover, 5/27/68. The story was published in the midst of Robert Kennedy's campaign for the Democratic presidential nomination.

^{45b} Memorandum from Hoover to Clark, 5/28/68.

^{45c} Memorandum from C. D. DeLoach to Mr. Tolson, 5/17/68. Four days later DeLoach had a phone conversation with Jack Anderson in which, according to department official "had advised him concerning specific information involving an old wire tap on King." (Memorandum from C. D. DeLoach to Mr. Tolson, 5/21/68.) Both of these memoranda were initialed by Hoover.

intelligence. Congress does, however, have the ability through legislation to affect almost every aspect of domestic intelligence activity: to erect the framework for coordinating domestic intelligence activities; to define and limit the types of activities in which executive agencies may engage; to establish the standards for conducting investigations; and to promulgate guidelines for controlling the use of wiretaps, microphones, and informants. Congress could also exercise a great influence over domestic intelligence through its power over the appropriations for intelligence agencies' budgets and through the investigative powers of its committees.

Congress has failed to establish precise standards governing domestic intelligence. No congressional statutes deal with the authority of executive agencies to conduct domestic intelligence operations, or instruct the executive in how to structure and supervise those operations. No statutes address when or under what conditions investigations may be conducted. Congress did not attempt to formulate standards for wiretaps or microphones until 1968, and even then avoided the issue of domestic intelligence wiretaps by allowing an exception for an undefined claim of inherent executive power to conduct domestic security surveillance, which was subsequently held unconstitutional.^{45d} No legislative standards have been enacted to govern the use of informants.

Congress has helped shape the environment in which improper intelligence activities were possible. The FBI claims that sweeping provisions in several vague criminal statutes and regulatory measures enacted by Congress provide a basis for much of its domestic intelligence activity.^{45e} Congress also added its voice to the strong consensus in favor of governmental action against Communism in the 1950's and domestic dissidents in the 1960's and 1970's.

Congress' failure to define intelligence functions has invited action by the executive. If the top officials of the executive branch are responsible for failing to control the intelligence agencies, that failure is in part due to a lack of guidance from Congress.

During most of the 40-year period covered in this report, congressional committees did not effectively monitor domestic intelligence activities. For example, in 1966, a Senate Judiciary subcommittee undertook an investigation of electronic surveillance and other intrusive techniques by Federal agencies. According to an FBI memorandum, its chairman told a delegation from the FBI that he would make "a commitment that he would in no way embarrass the FBI," and acceded in the FBI's request that the subcommittee refrain from calling FBI witnesses.⁴⁶

^{45d} *U.S. v. U.S. District Court*, 407 U.S. 297 (1972).

^{45e} These include the Smith Act of 1940 and the Voorhis Act of 1941. In addition to reliance on these statutes to buttress its claim of authority for domestic intelligence operations, the FBI has also placed reliance on a Civil War seditious conspiracy statute and a rebellion and insurrection statute passed during the Whiskey Rebellion of the 1790's. FBI Director Clarence Kelley, in a letter to the Attorney General, stated that these later statutes were designed for past centuries, "not the Twentieth Century." (Memorandum from Director, FBI, to Attorney General, Hearings, Vol. 6, Exhibit 53.) The Committee agrees.

⁴⁶ Memorandum from DeLoach to Clyde Tolson, 1/21/66.

Another example of the deficiencies in congressional oversight is seen in the House Appropriations Committee's regular approval of the FBI's requests for appropriations without raising objections to the activities described in the Director's testimony and off-the-record briefings. There is no question that members of a House Appropriations subcommittee were aware not only that the Bureau was engaged in broad domestic intelligence investigations, but that it was also employing disruptive tactics against domestic targets.

In 1958, Director Hoover informed the subcommittee that the Bureau had an "intensive program" to "disorganize and disrupt" the Communist Party, that the program had existed "for years" and that Bureau informants were used "as a disruptive tactic."⁴⁷ The next year, the Director informed the subcommittee that informants in 12 field offices

have been carefully briefed to engage in controversial discussions with the Communist Party so as to promote dissension, factionalism and defections from the communist cause. This technique has been extremely successful from a disruptive standpoint.

Under another phase of this program, we have carefully selected 28 items of anticommunist propaganda and have anonymously mailed it to selected communists, carefully concealing the identity of the FBI as its source. More than 2,800 copies of literature have been placed in the hands of active communists.⁴⁸

Hoover described more aggressive "psychological warfare" techniques in 1962:

During the past year we have caused disruption at large Party meetings, rallies and press conferences through various techniques such as causing the last-minute cancellation of the rental of the hall, packing the audience with anticommunists, arranging adverse publicity in the press and making available embarrassing questions for friendly reporters to ask the Communist Party functionaries.

The Appropriations subcommittee was also told during this briefing that the FBI's operations included exposing and discrediting "communists who are secretly operating in legitimate organizations and employments, such as the Young Men's Christian Association, Boy Scouts, civic groups, and the like."⁴⁹

In 1966 Director Hoover informed the Appropriations subcommittee that the disruptive program had been extended to the Ku Klux Klan.⁵⁰

The present Associate Director of the FBI, Nicholas Callahan, who accompanied Director Hoover during several of his appearances before the Appropriations subcommittee, said that members of the subcom-

⁴⁷ 1958 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

⁴⁸ 1959 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

⁴⁹ 1962 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

⁵⁰ 1966 Fiscal Year Briefing Paper prepared by FBI for House Appropriations Committee.

mittee made “no critical comment” about “the Bureau’s efforts to neutralize groups and associations.”⁵¹

Subcommittee Chairman John Rooney’s statements in a televised interview in 1971 regarding FBI briefings about Dr. Martin Luther King are indicative of the subcommittee’s attitude toward the Bureau:

Representative ROONEY. Now you talk about the F.B.I. leaking something about Martin Luther King. I happen to know all about Martin Luther King, but I have never told anybody.

Interviewer. How do you know everything about Martin Luther King?

Representative ROONEY. From the Federal Bureau of Investigation.

Interviewer. They’ve told you—gave you information based on taps or other sources about Martin Luther King.

Representative ROONEY. They did.

Interviewer. Is that proper?

Representative ROONEY. Why not?⁵²

Former Assistant Attorney General Fred Vinson recalled that in 1967 the Justice Department averaged “fifty letters a week from Congress” demanding that “people like [Stokely] Carmichael be jailed.” Vinson said that on one occasion when he was explaining First Amendment limits at a congressional hearing, a Congressman “got so provoked he raised his hand and said, ‘to hell with the First Amendment.’” Vinson testified that these incidents fairly characterized “the atmosphere of the time.”⁵³

The congressional performance has improved, however, in recent years. Subcommittees of the Senate Judiciary Committee have initiated inquiries into Army surveillance of domestic targets and into electronic surveillance by the FBI. House Judiciary Committee subcommittees commissioned a study of the FBI by the General Accounting Office and have inquired into FBI misconduct and surveillance activities. Concurrent with this Committee’s investigations, the House Select Committee on Intelligence considered FBI domestic intelligence activities.

Our Constitution envisions Congress as a check on the Executive branch, and gives Congress certain powers for discharging that function. Until recently, Congress has not effectively fulfilled its constitutional role in the area of domestic intelligence. Although the appropriate congressional committees did not always know what intelligence agencies were doing, they could have asked. The Appropriations subcommittee was aware that the FBI was engaging in activities far beyond the mere collection of intelligence, yet it did not inquire into the details of those programs.⁵⁴ If Congress had addressed the issues of domestic intelligence and passed regulatory legislation, and if it had probed into the activities of intelligence agencies and required them to

⁵¹ Memorandum from FBI to Select Committee, 1/12/76.

⁵² Interview with Congressman Rooney, NBC News’ “First Tuesday,” 6/1/71.

⁵³ Fred Vinson testimony, 1/27/76, p. 34.

⁵⁴ Director Hoover appears to have told the subcommittee of the House Appropriations Committee more about COINTELPRO operations and techniques than he told the Justice Department or the White House.

account for their deeds, many of the excesses in this Report might not have occurred.

Subfinding (f)

Intelligence agencies have often undertaken programs without authorization, with insufficient authorization, or in defiance of express orders.

The excesses detailed in this report were due in part to the failure of Congress and the Executive branch to erect a sound framework for domestic intelligence, and in part to the dereliction of responsibility by executive branch officials who were in charge of individual agencies. Yet substantial responsibility lies with officials of the intelligence agencies themselves. They had no justification for initiating major activities without first seeking the express approval of their superiors. The pattern of concealment and partial and misleading disclosures must never again be allowed to occur.

The Committee's investigations have revealed numerous instances in which intelligence agencies have assumed programs or activities were authorized under circumstances where it could not reasonably be inferred that higher officials intended to confer authorization. Sometimes far-reaching domestic programs were initiated without the knowledge or approval of the appropriate official outside of the agencies. Sometimes it was claimed that higher officials had been "notified" of a program after they had been informed only about some aspects of the program, or after the program had been described with vague references and euphemisms, such as "neutralize," that carried different meanings for agency personnel than for uninitiated outsiders. Sometimes notice consisted of references to programs buried in the details of lengthy memoranda; and "authorization" was inferred from the fact that higher officials failed to order the agency to discontinue the program that had been obscurely mentioned.

The Bureau has made no claim of outside authorization for its COINTELPROs against the Socialist Workers Party, Black Nationalists, or New Left adherents. After 1960, its fragile claim for authorization of the COINTELPROs against the Communist Party USA and White Hate Groups was drawn from a series of hints and partial, obscured disclosures to the Attorneys General and the White House.

The first evidence of notification to higher government officials of the FBI's COINTELPRO against the Communist Party USA consists of letters from Director Hoover to President Eisenhower and Attorney General William Rogers in May 1958 informing them that "in August of 1956, this Bureau initiated a program designed to promote disruption within the ranks of the Communist Party (CP) USA."⁵⁵ There is no record of any reply to these letters.

Later that same year, Director Hoover told President Eisenhower and his Cabinet:

To counteract a resurgence of Communist Party influence in the United States, we have a . . . program designed to intensify any confusion and dissatisfaction among its members.

⁵⁵ Memorandum from the Director, FBI to the Attorney General, 5/8/58.

During the past few years, this program has been most effective. Selected informants were briefed and trained to raise controversial issues within the Party. . . . The Internal Revenue Service was furnished names and addresses of Party functionaries who had been active in the underground apparatus . . . ; Anticommunist literature and simulated Party documents were mailed anonymously to carefully chosen members. . . .⁵⁶

The FBI's only claim to having notified the Kennedy Administration about COINTELPRO rests upon a letter written shortly before the inauguration in January 1961 from Director Hoover to Attorney General-designate Robert Kennedy, Deputy Attorney General-designate Byron R. White, and Secretary of State-designate Dean Rusk. One paragraph in the five-page letter stated that the Bureau had a "carefully planned program of counterattack against the CPUSA which keeps it off balance," and which was "carried on from both inside and outside the party organization." The Bureau claimed to have been "successful in preventing communists from seizing control of legitimate mass organizations" and to have "discredited others who were secretly operating inside such organizations."⁵⁷ Specific techniques were not mentioned, and no additional notice was provided to the Kennedy Administration. Indeed, when the Kennedy White House formally requested of Hoover a report on "Internal Security Programs," the Director described only the FBI's "investigative program," and made no reference to disruptive activities.⁵⁸

The only claimed notice of the COINTELPRO against the Ku Klux Klan was given after the program had begun and consisted of a partial description buried within a discussion of other subjects. In September 1965, copies of a two-page letter were sent to President Johnson and Attorney General Katzenbach, describing the Bureau's success in solving a number of cases involving racial violence in the South. That report contained a paragraph stating that the Bureau was "seizing every opportunity to disrupt the activities of Klan organizations," and briefly described the exposure of a Klan member's "kick-back" scheme involving insurance company premiums.⁵⁹ More questionable tactics, such as sending a letter to a Klansman's wife to destroy their marriage, were not mentioned. The Bureau viewed Katzenbach's reply to its letter—which praises the investigative successes which are the focus of the FBI's letter—as constituting authorization for the White Hate COINTELPRO.⁶⁰

The claimed notification to Attorney General Ramsey Clark of the White Hate COINTELPRO consisted of a ten-page memorandum captioned "Ku Klux Klan Investigations—FBI Accomplishments" with a buried reference to Bureau informants "removing" Klan officers and "provoking scandal" within the Klan organization.⁶¹ Clark

⁵⁶ Excerpt from FBI Director's Briefing of Cabinet, 11/6/58.

⁵⁷ Memorandum from Hoover to Attorney General Robert Kennedy, 1/10/61, copies to White and Rusk.

⁵⁸ Letter from J. Edgar Hoover to McGeorge Bundy, 7/25/61, and attached I.I.C. Report: "Status of U.S. Internal Security Programs."

⁵⁹ Letters from Hoover to Marvin Watson, Special Assistant to the President, and Attorney General Katzenbach, 9/17/65.

⁶⁰ Memorandum from Katzenbach to Hoover, 9/3/65.

⁶¹ Memorandum from Hoover to Clark, 12/18/67.

told the Committee that he did not recall reading those phrases or interpreting them as notice that the Bureau was engaging in disruptive tactics.⁶² Cartha DeLoach, Assistant to the Director during this period, testified that he “distinctly” recalled briefing Attorney General Clark “generally . . . concerning COINTELPRO.”⁶³ Clark denied having been briefed.⁶⁴

The letters and briefings described above, which constitute the Bureau’s entire claim to notice and authorization for the CPUSA and White Hate COINTELPROs, failed to mention techniques which risked physical, emotional, or economic harm to their targets. In no case was an Attorney General clearly told the nature and extent of the programs and asked for his approval. In no case was approval expressly given.

Former Attorney General Katzenbach cogently described another misleading form of “authorization” relied on by the Bureau and other intelligence agencies:

As far as Mr. Hoover was concerned, it was sufficient for the Bureau if at any time any Attorney General had authorized [a particular] activity in any circumstances. In fact, it was often sufficient if any Attorney General had written something which could be construed to authorize it or had been informed in some one of hundreds of memoranda of some facts from which he could conceivably have inferred the possibility of such an activity. Perhaps to a permanent head of a large bureaucracy this seems a reasonable way of proceeding. However, there is simply no way an incoming Cabinet officer can or should be charged with endorsing every decision of his predecessor. . . .⁶⁵

For example, the CPUSA COINTELPRO was substantially described to the Eisenhower Administration, obliquely to the Kennedy Administration designees, but continued—apparently solely on the strength of those assumed authorizations—through the Johnson Administration and into the Nixon Administration. The idea that authority might continue from one administration to the next and that there is no duty to reaffirm authority inhibits responsible decision making. Circumstances may change and judgments may differ. New officials should be given—and should insist upon—the opportunity to review significant programs.

The CIA’s mail opening project illustrates an instance in which an intelligence agency apparently received authorization for a limited program and then expanded that program into significant new areas without seeking further authorization. In May 1954, DCI Allen Dulles and Richard Helms, then Chief of Operations in the CIA’s Directorate of Plans, briefed Postmaster General Arthur Summerfield about the CIA’s New York mail project, which at that time involved only the examination of envelope exteriors. CIA memoranda indicate that Summerfield’s approval was obtained for photographing envelope exteriors, but no mention was made of the possibility of mail opening.⁶⁶

⁶² Clark, 12/3/75, Hearings, Vol. 6, p. 235.

⁶³ DeLoach, 12/3/75, Hearings, Vol. 6, p. 183.

⁶⁴ Clark, 12/3/75, Hearings, Vol. 6, p. 232.

⁶⁵ Katzenbach, 12/3/75, Hearings, Vol. 6, p. 202.

⁶⁶ Memorandum from Richard Helms, Chief of Operations, DDP, to Director of Security, 5/17/54.

The focus of the CIA's project shifted to mail opening sometime during the ensuing year, but the CIA did not return to inform Summerfield and made no attempt to secure his approval for this illegal operation.

Intelligence officers have sometimes withheld information from their superiors and concealed programs to prevent discovery by their superiors. The Bureau apparently ignored the Attorney General's order to stop classifying persons as "dangerous" in 1943; unilaterally decided not to provide the Justice Department with information about communist espionage on at least two occasions "for security reasons;" and withheld similar information from the Presidential Commission investigating the government's security program in 1947.⁶⁷ More recently, CIA and NSA concealed from President Richard Nixon their respective mail opening and communications interception programs.

These incidents are not unique. The FBI also concealed its Reserve Index of prominent persons who were not included on the Security Index reviewed by the Justice Department; its other targeting programs against "Rabble Rousers," "Agitators," "Key Activists," and "Key Extremists;" and its use of intrusive mail opening and surreptitious entry techniques. Indeed, the FBI institutionalized its capability to conceal activities from the Justice Department by establishing a regular "Do Not File" procedure, which assured internal control while frustrating external accountability.

Subfunding (g)

The weakness of the system of accountability and control can be seen in the fact that many illegal or abusive domestic intelligence operations were terminated only after they had been exposed or threatened with exposure by Congress or the news media.

The lack of vigorous oversight and internal controls on domestic intelligence activity frequently left the termination of improper programs to the *ad hoc* process of public exposure or threat of exposure by Congress, the press, or private citizens. Less frequently, domestic intelligence projects were terminated solely because of an agency's internal review of impropriety.

The Committee is aware that public exposure can jeopardize legitimate, productive, and costly intelligence programs. We do not condone the extralegal activities which led to the exposure of some questionable operations.

Nevertheless two points emerge from an examination of the termination of numerous domestic intelligence activities: (1) major illegal or improper operations thrived in an atmosphere of secrecy and inadequate executive control; and (2) public airing proved to be the most effective means of terminating or reforming those operations.

Some intelligence officers and Executive branch administrators sought the termination of questionable programs as soon as they became aware of the nature of the operation—the Committee praises their actions. However, too often we have seen that the secrecy that protected illegal or improper activities and the insular nature of the agencies involved prevented intelligence officers from questioning their actions or realizing that they were wrong.

⁶⁷ See Part II, pp. 35-36, 55-56.

There are several noteworthy examples of illegal or abusive domestic intelligence activities which were terminated only after the threat of public exposure:

—The FBI's widespread COINTELPRO operations were terminated on April 27, 1971, in response to disclosures about the program in the press.⁷³

—IRS payments to confidential informants were suspended in March 1975 as a result of journalistic investigation of Operation Leprechaun.⁷⁴

—The Army's termination of several major domestic intelligence operations, which were clearly overbroad or illegal, came only after the programs were disclosed in the press or were scheduled as the subject of congressional inquiry.⁷⁵

—On one occasion, FBI Director Hoover insisted that electronic surveillance be discontinued prior to his appearance before the House Appropriations Committee so that he could report a relatively small number of wiretaps in place.⁷⁶ Contrary to frequent allegations, however, no general pattern of temporary suspensions or terminations during the Director's appearances before the House Appropriations Committee is revealed by Bureau records.

—Following the report of a Presidential committee which had been established in response to news reports in 1967, the CIA terminated its covert relationship with a large number of domestically based organizations, such as academic institutions; student groups, private foundations, and media projects aimed at an international audience.⁷⁸

Other examples of curtailment of domestic intelligence activity in response to the prospect of public exposure include: President Nixon's

⁷³ Memorandum from Brennan to Sullivan, 4/27/71; letter from Director, FBI, to all Field Offices, 4/28/71. Even after the termination of COINTELPRO, it was suggested that "counterintelligence action" would be considered "in exceptional instances" so long as there were "tight procedures to insure absolute secrecy" (Sullivan memorandum, 4/27/71; letter from Director, FBI to all Field Offices, 4/28/71.)

⁷⁴ See IRS Report: "Operation Leprechaun."

⁷⁵ The Army made its first effort to curb its domestic collection of "civil disturbance" intelligence on the political activities of private citizens in June 1970, only after press disclosures about the program which prompted two Congressional committees to schedule hearings on the matter. (Christopher Pyle, "CONUS Intelligence: The Army Watches Civilian Politics" *Washington Monthly*, January 1970.) Despite legal opinions, both from inside and outside the Army, that domestic radio monitoring by the Army Security Agency was illegal, the Army did not move to terminate the program until after the media revealed that the Army Security Agency had monitored radio transmissions during the 1968 Democratic National Convention (Memorandum from Army Assistant Chief of Staff for Intelligence to the Army General Counsel re: UPASA Covert Activities in Civil Disturbance Control Operations.) Department of Defense controls on domestic surveillance were not imposed until March 1971, after NBC News reported that the Army had placed Senator Adlai Stevenson III and Congressman Abner Mikva under surveillance. (NBC News, "First Tuesday", 12/1/70.)

⁷⁶ This involved nine of the so-called "17" wiretaps in February 1971. (Report of the Committee on the Judiciary, House of Representatives, 8/20/75, pp. 148, 149.)

⁷⁸ This included nine of the so-called "17" wiretaps in February 1971. In response to the storm of public and congressional criticism engendered by a press account of CIA support for a student organization, President Johnson appointed a Committee, chaired by then Under Secretary of State Nicholas Katzenbach, to review government activities that "endanger the integrity and independence" of United States educational and private voluntary organizations which operate abroad. In March 1967, the Committee recommended "that no federal agency shall provide any covert financial assistance or support, direct or

revocation of approval for the Huston Plan out of concern for the risk of disclosure of the possible illegal actions proposed and the fact that "their sensitivity would likely generate media criticism if they were employed;"⁷⁹ J. Edgar Hoover's cessation of the bugging of Dr. Martin Luther King, Jr.'s hotel rooms after the initiation of a Senate investigation chaired by Edward V. Long of Missouri;⁸⁰ and the CIA's consideration of suspending mail-opening until the Long inquiry abated and eventual termination of the program "in the Watergate climate."⁸¹ More recently, several questionable domestic intelligence practices have been terminated at least in part as a result of Congressional investigation.⁸²

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indirect, to any of the nation's educational or private voluntary organizations." The CIA responded with a major review of such projects.

The question of the nature and extent of the CIA's compliance with the Katzenbach guidelines is discussed in the Committee's Foreign Intelligence Report.

⁷⁹ Response by Richard Nixon to Interrogatory Number 17 posed by Senate Select Committee.

⁸⁰ On January 7, 1966, in response to Associate Director Tolson's recommendation, Director Hoover "reserve[d] final decision" about whether to discontinue all microphone surveillance of Dr. King "until DeLoach sees [Senator Edward V.] Long." (Memorandum from Sullivan to DeLoach, 1/21/66.) The only occasion on which the FBI Director rejected a recommendation for bugging a hotel room of Dr. King's was January 21, 1966, the same day that Assistant Director DeLoach met with an aide to Senator Long to try to head off the Long Committee's hearings on the subject of FBI "bugs" and taps. (Memorandum from DeLoach to Tolson, 1/21/66.) When DeLoach returned from the meeting, he reported:

"While we have neutralized the threat of being embarrassed by the Long Subcommittee, we have not yet eliminated certain dangers which might be created as a result of newspaper pressure on Long. We therefore must keep on top of this situation at all times." (Memorandum, Executives Conference to the Director, 1/7/66.)

Another possible explanation for Hoover's cessation of the King hotel bugging is found in the impact of a memorandum from the Solicitor General in the Black case which Hoover apparently interpreted as a restriction upon the FBI's authority to conduct microphone surveillance. (Supplemental memorandum for the *United States, U.S. v. Black*, submitted by Solicitor General Thurgood Marshall, 7/13/66; Katzenbach, 10/11/75, p. 58.)

⁸¹ In 1965, the Long Subcommittee investigation caused the CIA to consider whether its major mail opening "operations should be partially or fully suspended until the subcommittee's investigations are completed." When the CIA contacted Chief Postal Inspector Henry Montague and learned that he believed that the Long investigation would "soon cool off," it was decided to continue the operation. (Memorandum to the files by "CIA officer," 4/23/65.)

Despite continued apprehensions about the "flap potential" of exposure and repeated recognition of its illegality, the actual termination of the CIA's New York mail-opening project came, according to CIA Office of Security Director Howard Osborn because: "I thought it was illegal and in the Watergate climate we had absolutely no business doing this." (Howard Osborn deposition, 8/28/75, p. 89.) He discussed the matter with William Colby who agreed that the project was illegal and should not be continued, "particularly in a climate of that type." (Osborn deposition, 8/28/75, p. 90.)

⁸² Shortly after the Senate Select Committee on Intelligence Activities held hearings on the laxity of the system for disclosure of tax return information to United States attorneys, the practice was changed. In October 1975, U.S. Attorneys requesting tax return information were required by the IRS to provide a sufficient explanation of the need for the information and the intended use to which it would be put to enable IRS to ascertain the validity of the request. Operation SHAMROCK, NSA's program of obtaining millions of international telegrams, was terminated in May 1975, according to a senior NSA official, primarily because it was no longer a valuable source of foreign intelligence and because the Senate Select Committee's investigation of the program had increased the risk of exposure. (Staff summary of "senior NSA official" interview, 9/17/75, p. 3.)

There are several prominent instances of terminations which resulted from an internal review process:

—In August 1973, shortly after taking office, Internal Revenue Service Commissioner Donald Alexander abolished the Special Service Staff upon learning that it was engaged in political intelligence activities which he considered “antithetical to proper tax administration.”⁸³

—An internal legal review in 1973 prompted the termination of the joint effort by NSA and CIA to monitor United States-South American communications by individuals named on a drug traffic “watch list.”⁸⁴

—On May 9, 1973, newly appointed CIA Director James Schlesinger requested from CIA personnel an inventory of all “questionable activities” which the Agency had undertaken. The 694 pages of memoranda received in response to this request—which became known at the CIA as “The Family Jewels”—prompted the termination or limitation of a number of programs which were in violation of the the Agency’s mandate, notably the CHAOS project involving intelligence-gathering against American citizens.⁸⁵

—In the early 1960s, the CIA’s MKULTRA testing program, which involved surreptitiously administering drugs to unwitting persons,

⁸³ Donald Alexander testimony, 10/2/75, Hearings, Vol. 3, p. 8. Alexander testified, however, that in a meeting with IRS administrators on the day after he took office, the SSS was discussed, and “full disclosure” was not made to him. Prior to the Leprechaun revelations, Commissioner Alexander had also initiated a general review of IRS information-gathering and retrieval systems, and he had already suspended certain types of information-gathering due to discovery of vast quantities of non-tax-related material. (Alexander, 10/2/75, Hearings, Vol. 3, pp. 8–10.)

Another termination due to internal review took place at IRS in 1968. The Chief of the Disclosure Branch terminated what he considered the “illegal” provision of tax return information to the FBI by another IRS Division. (IRS Memorandum, D. O. Virdin to Harold Snyder, 5/2/68.) During this same period, the CIA was also obtaining returns in a manner similar to the FBI (though in much smaller numbers), yet no one in the Intelligence Division or elsewhere in the Compliance Division apparently thought to examine that practice in light of the change being made in the practice with respect to the FBI. (Donald O. Virdin testimony, 9/16/75, pp. 69–73.)

⁸⁴ The CIA suspended its participation in the program as a result of an opinion by its General Counsel, Lawrence Houston, that the intercepts were illegal. (Memorandum from Houston to Acting Chief of Division, 1/29/73.) Shortly thereafter, NASA reviewed the legality and appropriateness of its own involvement in what was essentially a law enforcement effort by the Bureau of Narcotics and Dangerous Drugs rather than a foreign intelligence program, which is the only authorized province for NSA operations. (“Senior NSA official deposition,” 9/16/75, p. 10.) In June 1973 the Director of NSA terminated the drug watch list, several months after the CIA had terminated its own intercept program. NSA’s drug watch list activity had been in operation since 1970. (Allen, 10/29/75, Hearings, Vol. 5, p. 23.)

In the fall of 1973, NSA terminated the remainder of its watch list activity, which had involved monitoring communications by individuals targeted for NSA by other agencies including CIA, FBI, and BNDD. In response to the Keith case and to another case which threatened to disclose the existence of the NSA watch list, NSA and the Justice Department had begun to reconsider the propriety of the program. The review process culminated in termination. See NSA Report: Termination of Civil Disturbance Watch List.

⁸⁵ Schlesinger described his review of “grey area activities” which were “perhaps legal, perhaps not legal” as a part of “the enhanced effort that came in the wake of Watergate” for oversight of the propriety of Government activities. (Schlesinger testimony, Rockefeller Commission, 5/5/75, pp. 114, 116.) Schlesinger testified that his request for the reporting of “questionable activities” came after

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was "frozen" after the Inspector General questioned the morality and lack of administrative control of the program.^{85a}

—Several mail-opening operations were terminated because they lacked sufficient intelligence value, which was often measured in relation to the "flap potential"—or risk of disclosure—of an operation. However, both the CIA and the FBI continued other mail-opening operations after these terminations.⁸⁶

The Committee's examination of the circumstances surrounding terminations of a wide range of improper or illegal domestic intelligence activities clearly points to the need for more effective oversight from outside the agencies. In too many cases, the impetus for the termination of programs of obviously questionable propriety came from the press or the Congress rather than from intelligence agency administrators or their superiors in the Executive Branch. Although there were several laudable instances of termination as a responsible outgrowth of an agency's internal review process, the Committee's record indicates that this process alone is insufficient—intelligence agencies cannot be left to police themselves.

(Continued)

learning that "there was this whole set of relationships" between the CIA and White House "plumber" E. Howard Hunt, Jr., about which Schlesinger had not been briefed completely upon assuming his position. (Schlesinger, Rockefeller Commission testimony, p. 115.) "As a consequence," Schlesinger "insisted that all people come forward" with "anything to do with the Watergate affair" and any other arguably improper or illegal operations. (Schlesinger, Rockefeller Commission, 5/5/75, p. 116.)

^{85a} After the Inspector General's survey of the Technical Services Division, he recommended termination of the testing program. (Earman memorandum, 5/5/63.) The program was then suspended pending resolution at the highest levels within the CIA of the issues presented by the program—"the risks of embarrassment to the Agency, coupled with the moral problem." (Memorandum from DDP Helms to DCI McCone, 9/4/65.) In response to the IG Report, DDP Helms recommended to DCI McCone that unwitting testing continue. Helms maintained that the program could be conducted in a "secure and effective manner" and believed it "necessary that the Agency maintain a central role in this activity, keep current on enemy capabilities in the manipulation of human behavior, and maintain an offensive capability." (Memorandum from Helms to DCI McCone, 8/19/63.) The Acting DCI deferred decision on the matter and directed TSD in the meantime to "continue the freeze on unwitting testing." (CIA memorandum to Senate Select Committee, received 9/4/75.) According to a CIA report to the Select Committee:

"With the destruction of the MKULTRA files in early 1973, it is believed that there are no definitive records in CIA that would record the termination of the program for testing behavioral drugs on unwitting persons. . . . There is no record to our knowledge, that [the] freeze was ever lifted." (CIA memorandum to Senate Select Committee, received 9/4/75.)

Testimony from the CIA officials involved confirmed that the testing was not resumed. (See Foreign and Military Intelligence Report.)

⁸⁶ Two FBI mail-opening programs were suspended for security reasons involving changes in local postal personnel and never reinstated, on the theory that the value of the programs did not justify the risk involved. (Memorandum from San Francisco Field Office to FBI Headquarters, 5/19/66.) The CIA's San Francisco mail-opening project "was terminated since the risk factor outweighed continuing an activity which had already achieved its objectives." (Memorandum to Chief, East Asia Division, June 1973.) The lack of any significant intelligence value to the CIA apparently led to the termination of the New Orleans mail-opening program. (Memorandum from "Identity 13" to Deputy Director of Security, 10/9/57.) Three other programs were terminated because they had produced no valuable counterintelligence information, while diverting manpower needed for other operations.